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VIDYA

NEWSLETTER

For the year - 2026 **(26th Issue)**



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22nd July, 2026

MESSAGE

Another milestone is achieved in disseminating the varied ideas, perceptions and the experiences gained through a judicial journey by the judicial officers beyond the traditional barriers, which would enrich the readers in presenting another edition of 'Vidya'. It is not only the constellation of ideas, independent perceptions beyond the four corners of the court rooms on the nuances of law, but anthologies the experience gained by passage of time in the judicial journey of the judicial officers, which would pave the path not only in shaping the mindset beyond the traditional barriers, but would augment the evolution in law. It is not mere a collation of the articles authored by the judicial officers, but a reflection of understanding of law through insight gained for years of service in discharge of their solemn duties. Such scholarly contributions are invaluable as they promote the culture of research within the avowed aim to illuminate the path for the young officers within the framework of law.

I heartily congratulate Odisha Judicial Academy and all its contributories for endowing the epic of legal literature, which would pave the path to embark the legal journey, enrich understanding and a beacon for judicial learning to its destination.

Harish Tandon

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FROM THE CHAIRMAN'S DESK

नास्ति विद्यासमो बन्धुर्नास्ति विद्यासमः सुहृत्।

नास्ति विद्यासमं वित्तं नास्ति विद्यासमं सुखम् ॥

There is no friend, no companion, no wealth or no bliss as great as Vidya (knowledge).

सा विद्या या विमुक्तये, i.e. "Vidya is what liberates", which means any knowledge that leads to self-realization, is called as 'Vidya'. For a judge, knowledge is the foundation of fair adjudication. Now the nature of work itself is shifting. Courts are digitizing, procedures are being streamlined, and the expectation from judicial officers is not just to know the law, but to apply it efficiently, ethically, and with technology at hand. For a judge, the need to gain knowledge is an ongoing process as law, technology and society keep evolving with every passing day.

This edition of 'Vidya' reflects the collective efforts of judicial officers across the state, grounded in their experience, research, and learning. When one officer's insight reaches another, it refines practice, strengthens reasoning, and enhances the administration of justice. 'Vidya' is an initiative to turn individual experience into institutional learning and this is how shared knowledge becomes the foundation of a legal system, which is more fair, effective, accessible and vibrant.

I extend my sincere appreciation to all the judicial officers who have contributed their articles for this edition. These articles are a testament to the time, reflection, commitment and effort, that they have devoted alongside their judicial duties, which has certainly enriched this platform and shall certainly strengthen the collective knowledge of the fraternity.

I believe this edition will serve as a valuable repository for all the readers.

K. R. Mohapatra

Justice K. R. Mohapatra

Editorial Note



Shri Bidyut Kumar Mishra

Director, Odisha Judicial Academy

It is indeed a matter of pleasure and great satisfaction to bring out this edition of 'Vidya'. For me, this issue is special, because it captures the voice of so many officers, trainers, and learners from across the state. Through this newsletter, we have tried to document the experience and insights generated in courtrooms across the state, turning individual learning into shared knowledge.

Odisha Judicial Academy remains committed to fostering judicial excellence through continuous learning and capacity building. Our programmes have emphasized collective thinking and participative learning, encouraging open dialogue on contemporary legal challenges and peer exchange, so that diverse perspectives enrich our practice.

This edition encompasses a range of contemporary issues in the justice delivery system. From the role of mediation in resolving disputes to the practical challenges in execution proceedings, from the use of technology in courts, it's effects and admissibility of electronic evidence, to the problems and challenges made in this digital era and from nuances of pertinent provisions of POCSO Act and PWDV Act to Judicial review, it also addresses pressing concerns like arrest procedures, environmental pollution and use of community service to revolutionise the criminal justice system. The articles also elaborate the expanding scope of legal aid to strengthen access to justice.

We place on record our deep appreciation to all our patrons, resource persons and mentors for their support and guidance. I hope this issue serves as a useful resource and inspires continued learning and dialogue. We look forward to continue this journey of learning together.

Director
Odisha Judicial Academy, Kataka

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ROLE OF MEDIATORS, CHALLENGES FACED, AND WAY FORWARD IN THE INDIAN JUDICIAL CONTEXT



Dr. Bhagyalaxmi Rath

Registrar General, High Court of Orissa.

INTRODUCTION

The Indian Judicial System is confronted with chronic pendency, procedural delays, rising litigation costs and increasing complexity of disputes. In this backdrop, mediation has emerged as a vital component of Alternate Dispute Resolution offering a consensual, efficient and relationship preserving mechanism of dispute resolution. Recognising its potential, Indian Courts have been consistently promoting mediation; and, the enactment of the Mediation Act, 2023 marks a significant legislative endorsement. Mediators play a central role in this field; however, they face multiple challenges which are essentially to be addressed to realize mediation's full potential.

ROLE OF MEDIATORS IN THE INDIAN JUSTICE DELIVERY SYSTEM

Mediators act as neutral facilitators who assist disputing parties in arriving at a mutually acceptable settlement. Unlike Judges or Arbitrators, Mediators do not adjudicate disputes but guide the parties enabling them to understand underline interests rather than rigid legal positions. This role becomes particularly crucial in family disputes, matrimonial cases, commercial disagreements, neighbourhood conflicts, insurance and service matters where long term relationship and social harmony are at stake.

One of the most significant roles of the Mediators is the reduction of judicial backlog. Court-referred mediation resolves a substantial dispute at the pre-trial or interim stage allowing courts concentrate on serious and complex matters. Mediation also ensures speedy and cost-effective justice by reducing procedural delays, litigation expenses and emotional stress, thereby reinforcing the constitutional mandate of access to justice under Article-21.

Confidentiality is another keystone of mediation. By providing a private and informal setting, mediators encourage candid discussions, creative solutions and voluntary compliance. Furthermore, mediation promotes party autonomy, as settlements are crafted by the parties themselves rather than imposed by judicial orders, resulting in higher satisfaction and durability of outcomes.

In essence, mediators function as an extended arm of the judiciary strengthening judicial efficiency while fostering a culture of cooperation and consensus.

CHALLENGES FACED BY MEDIATORS IN INDIA

Despite its advantages, mediation in India encounters several structural, cultural and institutional challenges. A major obstacle is the lack of awareness and trust among litigants and advocates. Many parties view mediation as either an unnecessary detour or a compromise on their legal rights. This perception often results in half-hearted participation, undermining the effectiveness of the process.

Another significant challenge is resistance from lawyers and litigants. Some legal practitioners fear loss of professional fees while litigants prefer authoritative judicial decision over negotiated settlements. This adversarial mindset is deeply ingrained in India's litigation culture.

The absence of uniform training and accreditation further complicates the situation. Mediators in India come from diverse backgrounds, including Judges, Advocates and Professionals; but, the quality of mediation varies due to inconsistent training standards and limited opportunities for skill enhancement.

Mediators also face issue of profession recognition and adequate remuneration. Many court-annexed mediators work on an honorary or low paid basis, with no clear career progression or institutional support. Additionally, mediators frequently operate under time constraints, balancing mediation responsibilities with other professional commitments.

Enforcement of mediated settlements has also been a concern, particularly before the statutory clarity introduced by the Mediation Act, 2023. Uncertainty regarding legal sanctity discourages parties from fully embracing mediation.

THE WAY FORWARD: STRENGTHENING MEDIATION IN INDIA

The enactment of Mediation Act, 2023 provides a strong foundation for addressing these challenges. Its effective implementation, especially provisions relating to mandatory pre-litigation mediation and enforceability of mediated settlement agreements, can significantly enhance confidence in the process.

Capacity building is essential. Though several measures are being taken in imparting training to the mediators including judicial officers of the Country as per MCPC guidelines; yet there must be standardized training modules, accreditation mechanisms and continuous professional development for mediators. Judicial Academies and Mediation Institutions should play a pro-active role in upgrading mediation skills.

Judicial leadership is quite crucial in mainstreaming mediation. Judges must actively encourage mediation at the earliest stages of litigation and pass reasoned referral orders highlighting its benefits. In order to become good mediators, the trained judicial officers are required to consciously become facilitators than adjudicators while mediating. Judicial endorsement substantially increases party confidence and participation.

Incentivising lawyers and litigants can also drive greater acceptance. Reduced court fees, cost incentives and recognition of lawyer's contributions to successful mediation can transform resistance into cooperation.

Strengthening mediation infrastructure is equally important. Well-equipped mediation centres at State- district-taluka levels and dedicated mediation secretariat will ensure efficient case handling. Public awareness campaign, observing mediation weeks and inclusion of mediation in legal education can further promote a culture of amicable dispute resolution.

Finally, mediators must receive adequate professional recognition through fair remuneration, ethical codes and structured career pathways. Such recognition will attract skilled professionals and enhance the credibility of mediation as a serious dispute resolution mechanism.

CONCLUSION

Mediation signifies a paradigm shift from adversarial adjudication to collaborative resolution in the Indian Justice Delivery System. Mediators play a pivotal role in this transformation by facilitating dialogue, reducing pendency and restoring social harmony. While challenge persists, a combination of legislative support, judicial leadership, institutional development and change in the mindset can certainly establish mediation as a robust pillar of justice in India. With sustained commitment, mediation can move from the margins of the mainstream, ensuring timely, accessible and cost-effective justice.

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INDOOR POLLUTION: A LEGAL AND ENVIRONMENTAL PERSPECTIVE



Dr. Pabitra Mohan Samal (OSJS)

Principal Secretary, Law Dept. Govt. of Odisha

When we think about pollution, we often imagine smoky factories, traffic-filled roads, or polluted rivers. However, one of the most harmful forms of pollution is often overlooked because it exists inside our homes, schools, offices, workplaces and other enclosed spaces. This is known as "Indoor Pollution", and it can affect our health and well-being just as much as outdoor pollution sometimes even more. Indoor pollution may be invisible, but its effects are real and far-reaching. In our country, where people spend a significant amount of time indoors, polluted indoor air has emerged as a serious public health concern. Smoke from cooking fuels, poor ventilation, chemical-based household products, and tobacco smoke are common sources.

Indoor pollution can come from many everyday activities and materials, including:

- "Burning fuels" such as wood, coal, kerosene, or gas for cooking and heating
- "Tobacco smoke" from cigarettes or other smoking products
- "Household products" like cleaners, paints, air fresheners, and pesticides
- "Building materials and furniture" that release chemicals
- "Poor ventilation", which traps polluted air inside
- "Dust, mold, and pet dander"

In many homes, especially where ventilation is limited, these pollutants can build up to unhealthy levels. Fortunately, indoor pollution can be reduced with simple and practical steps:

- Improve ventilation by opening windows and using exhaust fans
- Use cleaner fuels and maintain stoves and heaters properly
- Avoid smoking indoors
- Choose eco-friendly household products
- Keep homes clean and dry to prevent dust and mold
- Add indoor plants, which can help improve air quality

Despite the existence of environmental and public health laws, no Indian legislation expressly addresses indoor pollution as a distinct issue; consequently, its regulation remains indirect and largely dependent on judicial interpretation rather than explicit statutory provisions.

The Hon'ble Supreme Court's landmark decisions played a vital role in linking environmental protection with the "Right to Life under Article 21" of the Constitution. In **Subhash Kumar v. State of Bihar** , it was held that the right to life includes the right to enjoy "pollution-free air and water". Although the case concerned industrial pollution, the principle equally applies to indoor pollution, as clean air is essential for a

dignified life regardless of whether it is indoors or outdoors.

Similarly, in **M.C. Mehta v. Union of India (Oleum Gas Leak Case, 1987),** the Supreme Court emphasized the responsibility of authorities and industries to prevent environmental hazards. Also, the Hon'ble Court introduced the principle of "absolute liability", recognizing that exposure to toxic substances even within enclosed spaces poses serious risks to human health.

The issue of pollution affecting living conditions was addressed in **Municipal Council, Ratlam v. Vardichand (1980).** It was held that local authorities cannot ignore public health hazards due to lack of funds or resources. Though the case dealt with sanitation and open pollution, its reasoning extends to indoor pollution caused by neglect, overcrowding, and lack of proper ventilation in residential areas. Further, Hon'ble Court took note of pollution in living spaces, particularly in cases involving poor housing conditions, school environments, and workplaces. Repeatedly, stressed that authorities must ensure healthy surroundings as part of their duty to protect life and health.

In a significant recent judgment, the Hon'ble Court held that every citizen has a fundamental right to live in a clean and pollution-free environment under Article 21 of the Constitution of India. The Hon'ble Court further clarified that this right includes protection from harmful air quality and criticised both the Central and State Governments for failing to effectively enforce air pollution control norms. By expressly recognising the right to clean air as part of the right to life, also laid down a principle that applies not only to outdoor environments but also extends to indoor spaces, since the constitutional guarantee of a pollution-free environment operates wherever individuals live and work.

In **Murli S. Deora v. Union of India** , the Supreme Court directly addressed air pollution inside public places by prohibiting smoking in public areas. In addition, observed that non-smokers cannot be compelled to inhale polluted air, affirming that involuntary exposure to indoor air pollution violates Article 21.

In a series of landmark judgments, the Hon'ble Apex Court has established a robust constitutional framework for addressing issues of pollution, by interpreting the right to life under Article 21 of the Constitution to include the right to clean and healthy air, implicitly extended the scope of environmental protection to indoor spaces as well. Consequently, indoor pollution is no longer merely a public health concern but assumes the character of a constitutional issue, requiring preventive action by the State and responsible conduct by individuals. Furthermore, the Hon'ble Court has progressively recognised pollution whether occurring in public or private spaces as a matter implicating human rights and public welfare. The impact of indoor pollution is particularly severe on vulnerable groups such as children, women, and the elderly, thereby highlighting the need for effective judicial oversight and intervention. Accordingly, in legal discourse and academic analysis, discussions on indoor pollution are commonly grounded in the Supreme Court's jurisprudence on clean air and Article 21, even though no judgment has been expressly titled "Indoor Pollution."

It is also pertinent to mention that notwithstanding the existence of several environmental and public health statutes in India, none of the major legislations expressly or comprehensively address indoor pollution as a distinct legal concern. Laws such as the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 are primarily oriented towards regulating ambient air quality and environmental pollution in a general sense, without specifically recognizing or defining pollution within indoor or private spaces. Even sector-specific enactments like the Factories Act, 1948 and municipal building regulations, while prescribing standards for ventilation and workplace safety, do not explicitly conceptualize indoor air pollution as an environmental or public health issue. As a result, the regulation of indoor air quality in our country remains implicit and fragmented, relying largely on indirect statutory interpretation and judicial expansion under Article 21 rather than clear legislative mandate.

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BALANCING ACCOUNTABILITY: EXPLORING PRODUCT LIABILITY IN INDIA



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ABSTRACT

The Consumer Protection Act, 2019 marks a significant shift in Indian consumer jurisprudence by introducing a statutory framework for product liability. The Act imposes accountability on product manufacturers, product sellers, and product service providers for harm caused by defective products or deficient services, thereby replacing the traditional doctrine of caveat emptor with caveat venditor and strengthening consumer rights. The legislation clearly delineates the circumstances under which product liability actions may be instituted before Consumer Commissions and prescribes distinct standards of liability for various stakeholders involved in the supply chain. It further empowers adjudicatory authorities to grant compensation, impose penalties, and award punitive damages in appropriate cases. The establishment of the Central Consumer Protection Authority (CCPA) represents a significant regulatory advancement, enabling proactive intervention through investigation, recall of unsafe goods, and action against misleading advertisements and unfair trade practices. Against such a backdrop, this paper undertakes a doctrinal and analytical examination of the product liability regime under the Consumer Protection Act, 2019, with emphasis on its implications for consumer adjudication and regulatory compliance. It concludes that the statutory recognition of product liability has enhanced consumer protection by promoting accountability, transparency, and product safety in the marketplace.

KEYWORDS

Product Liability; Consumer Protection Act, 2019; Defective Products; Caveat Venditor; Central Consumer Protection Authority (CCPA).

INTRODUCTION

The Consumer Protection Act of 2019 Act has introduced the legal regime on product liability and dedicated an entire chapter (Chapter VI) to enumerate the situations where a claim for compensation, under a product liability action, would be available for 'harm' caused by a 'defective' product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.

Product liability action means a complaint filed by a person before a District Commission or State Commission or the National Commission, as the case may be, for claiming compensation for the harm caused to him. 'Harm,' in relation to a product liability, inter alia, includes: (i) damage to any property other than the product itself; (ii) personal injury, illness, or death; (iii) mental agony or emotional distress, etc. It may be noted that this does not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental, or consequential loss relating thereto.

Further, the Act defines 'defect' to mean any fault, imperfection, or shortcoming in the quality, quantity, potency, purity, or standard, which is required to be maintained by or under any law or contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods or product.

Whereas the term 'injury' means any harm whatever illegally caused to any person in body, mind, or property. As is evident from the above, to bring about a product liability action, it is important for a consumer to establish that 'harm' was caused due to a 'defective' product.

The 2019 Act distinguishes between the roles of a product manufacturer, product seller, and service provider and accordingly envisages individual criteria for attracting product liability actions against each of them. The same has been discussed below:

I. LIABILITY OF A PRODUCT MANUFACTURER

The 2019 Act, under Section 2(36), has defined a 'product manufacturer' as a person who: (a) makes any product or parts thereof; or (b) assembles parts thereof made by others; or (c) puts or causes to be put his own mark on any product made by any other person; or (d) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, or maintains such product or is otherwise involved in placing such product for commercial purpose; or (e) designs, produces, fabricates, constructs, or re-manufactures any product before its sale; or (f) being a product seller of a product, is also a manufacturer of such product.

The Act enumerates the situations where a product manufacturer shall be liable in a product liability action as follows:

a. If the product contains a manufacturing defect;

b. If the product is defective in design;

c. If there is a deviation from manufacturing specifications;

d. If the product does not conform to an express warranty;

e. If the product fails to contain adequate instructions on correct usage to prevent any harm or any warning regarding improper or incorrect usage.

A product manager shall not be liable in a product liability action if he proves that he was not negligent or fraudulent in making the express of a product.

II. LIABILITY OF A PRODUCT SELLER

A product seller under the 2019 Act in relation to a product means any person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purposes and includes: (i) a manufacturer who is also a product seller; or (ii) a service provider, but specifically excludes certain people from the definition of a product seller who are as under:

- A seller of an immovable property unless such a person is engaged in the sale of constructed houses or in the construction of homes or flats.
- A provider of professional services, in any transaction in which the sale or use of the product is only incidental thereto, but the furnishing of opinion, skill, or services is the essence of such transaction.
- A person who (i) acts only in a financial capacity with respect to the sale of the product or (ii) is not a manufacturer, wholesaler, distributor, retailer, direct seller, or an electronic service provider or (iii) leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease agreement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

The Act enlists the instances under which a product seller who is not a product manufacturer shall be liable in a product liability action as under:

a. if he has substantial control over the

designing, testing, manufacturing, packaging, or labelling of a product that caused harm.

b. if he altered or modified the product and such alteration or modification becomes the substantial factor in causing the harm.

c. if he has made an express warranty of a product, independent of any express warranty made by a manufacturer, and such product failed to conform to the express warranty made by the product seller, which caused the harm.

d. if the product has been sold by him and the identity of the product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him, or he is not subject to the law, which is in force in India, or the order, if any, passed or to be passed cannot be enforced against him.

e. if he failed to exercise reasonable care in assembling, inspecting, or maintaining such product or if it does not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

III. LIABILITY OF A PRODUCT SERVICE PROVIDER

A product service provider under the 2019 Act is defined as a person who provides a service in respect of any product. The definition of a product service provider has been specifically added to the 2019 Act so as to cover services such as maintenance or repair where the service and the product are inherently related, and the service has a direct bearing upon the performance of the product.

The Act describes the instances under which a product service provider shall be liable in a product liability action for a harm caused by a defective product serviced by the product service provider. The instances are as under:

a. If the service provided by the service provider was faulty or imperfect or deficient or inadequate in quality, nature, or manner of performance, which is required to be provided by or under any law for the time being in force or pursuant to any contract or otherwise;

b. There was an act of omission or commission or negligence or conscious withholding of any information, which caused harm.

c. The service provider did not issue adequate instructions or warnings to prevent any harm.

d. The service did not conform to the express warranty or the terms and conditions of the contract.

IV. PENALTIES

If the consumer forum arrives at the finding that the product is defective or any of the allegations of the complainant with respect to service, unfair trade practice or claim for product liability is proved, the consumer forum may inter alia direct one or more of the following: removal of defect, replacement of the product, return of the price paid by consumer along with interest, compensation to consumer, including punitive damages for negligence, discontinuation of unfair trade practices, withdrawal of hazardous or unsafe goods, direction to cease to manufacture hazardous goods or cease to offer for sale hazardous services, compensation for product liability action, cease and desist from issuing misleading advertisement or direction to issue corrective advertisement. Since the Consumer Protection Act of 2019 aims to provide enhanced protection to consumers, it accordingly provides for more stringent punishments compared to the Erstwhile Act.

The 2019 Act has also defined 'unfair contracts,' which means a contract between a manufacturer or trader or service provider on one hand and a consumer on the other having such terms that cause significant change in the rights of such consumer, including (a) requiring excess security deposits from consumers; (b) imposing disproportionate penalty upon the consumer for breach of contract; (c) refusing to accept early repayment of debt; (d) entitling unilateral termination; (e) permitting assignment of contract to the detriment of the customer

without his consent; (f) imposing on the consumer any unreasonable charge, obligation, or condition that puts such consumer at a disadvantage.

The 2019 Act has also established a Central Consumer Protection Authority (CCPA), or the Central Authority.

The CCPA is a regulatory authority under the Act with powers of investigation, inquiry, and injunctive actions. The primary objective of the CCPA is to regulate matters pertaining to violations of the rights of consumers, unfair trade practices, and false or misleading advertisements that are prejudicial to the interests of the public and consumers.

The CCPA has the power to direct recall of goods or withdrawal of services that are dangerous, hazardous, or unsafe. It can also direct reimbursement of the prices of goods or services so recalled to the purchasers. Additionally, the CCPA has also been empowered to direct discontinuation of practices that are unfair and prejudicial to consumers' interests. Whoever fails to comply with any direction of the CCPA shall be punished with imprisonment for a term that may extend six months or with a fine that may extend to twenty lakh rupees, or both.

Further, the 2019 Act also sternly addresses the issue of misleading advertisements. Any manufacturer or service provider who causes a false or misleading advertisement to be made, which is prejudicial to the consumers' interests, is punishable with imprisonment extending up to two years and with a fine extending up to ten lakh rupees, and in case of a subsequent offense, with imprisonment extending up to five years and with a fine extending up to fifty lakh rupees.

In order to ensure compliance with the order of the CCPA, the 2019 Act criminalises failure to comply with the directions of the CCPA and makes it punishable with imprisonment for a period up to six months or with a fine that may extend to twenty lakh rupees or with both.

Furthermore, the 2019 Act also provides for punishment, including imprisonment or a fine or both, for manufacturing products for sale or storing, selling, distributing, goods available for sale or importing products containing adulterant or spurious goods.

V. POSSIBLE DEFENCES TO A PRODUCT LIABILITY ACTION

A perusal of the definition of 'product liability' reveals that in order to establish a claim of product liability, the complainant must establish 'harm' caused by a 'defective' product. Therefore, the product not being 'defective' and the absence of any 'harm' caused to the consumer by use of the product are certainly valid defences to a product liability action. In addition to the above, the 2019

Act also envisages the below-mentioned defences to a product liability action:

a. In case of a claim against a product seller, it would be a valid defense that at the time of the harm alleged, the product was misused, altered, or modified.
b. In case of a claim against a product manufacturer for failure to provide adequate warnings or instructions, the following would be valid defences:
    i. The product was purchased by an employer for use at the workplace, and the product manufacturer had provided warnings or instructions to such employer;
    ii. The product was sold as a component or material to be used in another product, and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;
    iii. The product was one that was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts, and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or

iv. The complainant, while using such product, was under the influence of alcohol or any prescription drug that had not been prescribed by a medical practitioner.

Also, a product manufacturer shall not be liable for failure to instruct or warn about a danger that is obvious or commonly known to the user or consumer of such product or that such user or consumer ought to have known, taking into account the characteristics of such product.

CONCLUSION

Any product liability claim requires swift action, starting with internal investigation, expert analysis, followed by appropriate preventive steps, requiring adequate disclosures and recalls if need be. The 2019 Act addresses the issue of 'Product Liability' comprehensively and has certainly enhanced the nature of compliance, not only for product manufacturers, sellers and service providers, but also for the parties connected with the sale process, including endorsers, importers, marketers and repairers.

With the introduction of the concept of product liability, it becomes all the more necessary for product manufacturers, service providers, etc., to be extra cautious about the regulatory compliances under the Consumer Protection Act, 2019, and provide adequate disclosures and warnings and swiftly take preventive and precautionary steps as and when required. There is also a need for product manufacturers, traders, service providers to revisit the contracts in order to ensure that they are not covered under the definition of 'unfair contracts'.

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DELAY IN JUSTICE DELIVERY: CAN TECHNOLOGY BE THE SOLUTION?



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INTRODUCTION

The maxim"Justice delayed is justice denied" has long been a serious concern in the Indian legal system. Despite constitutional guarantees and judicial pronouncements emphasising speedy justice under Article 21, delays continue to plague courts at all levels. Massive pendency of cases, procedural complexities, shortage of judges and outdated administrative practices have eroded public confidence in the justice delivery mechanism. In this backdrop, the increasing use of technology has emerged as a potential solution to address delays. The critical question, however , is whether technology can offer a meaningful solution to cure this deep-rooted problem or whether it can only act as a supporting tool.

CAUSES OF DELAY IN JUSTICE DELIVERY

The delay in justice delivery is the result of multiple systemic and structural factors. One of the primary reasons is the enormous pendency of cases running into crores across district courts, High Courts, and the Supreme Court. Judicial vacancies further aggravate the situation, placing an excessive burden on existing judges. Procedural laws, though designed to ensure fairness, often allow repeated adjournments, lengthy oral arguments, and prolonged evidence recording. Inadequate court infrastructure, manual record-keeping, and frequent transfers of judges also contribute significantly to delays. Additionally, lack of legal awareness among litigants and misuse of the legal process for harassment or prolongation of disputes worsen the problem.

JUDICIAL AND CONSTITUTIONAL PERSPECTIVE

Speedy justice is an integral part of the Right to Life and Personal Liberty under Article 21 of the Constitution. The Supreme Court has consistently held that unreasonable delay in trial amounts to a violation of fundamental rights. In cases such as Hussainara Khatoon v. State of Bihar, the Court highlighted the plight of undertrial prisoners languishing in jails due to delayed trials. Despite such judicial recognition, practical implementation of speedy justice remains a challenge, calling for innovative solutions.

ROLE OF TECHNOLOGY IN JUSTICE DELIVERY

Technology has begun to play a transformative role in the Indian judiciary. The e-Courts Project, a flagship initiative, has introduced digital case records, e-filing systems, online cause lists, and electronic access to judgments and orders. These measures have significantly reduced administrative delays and improved transparency. Litigants can now track case status online, minimizing unnecessary court visits and associated costs.

The introduction of virtual courts and video conferencing has further accelerated proceedings. Witness examination through video conferencing, especially in criminal cases, has helped avoid delays caused by nonappearance or logistical difficulties. Virtual hearings, introduced widely during the Covid-19 pandemic , reduced delays caused by physical constraints and improved accessibility, especially for litigants and lawyers from remote areas. Further introduction of Paperless Courts minimises the use of papers in the court room. It demonstrated that technology can overcome physical and geographical barriers.

ARTIFICIAL INTELLIGENCE AND ADVANCED TOOLS

Artificial Intelligence (AI) and data analytics hold further promise. AI-assisted legal research tools SUVAS & SUPACE can help judges and lawyers quickly access relevant precedents, statutes, and comparative jurisprudence. Case management software can assist courts in prioritising old and urgent cases, reducing pendency. Automated scheduling and digital case-tracking systems can help prevent unnecessary adjournments and ensure better monitoring of timelines. Predictive analytics can help identify bottlenecks and allocate judicial resources more effectively. Digitisation of evidence and use of electronic records also reduce time spent on procedural formalities.

BENEFITS OF TECHNOLOGY IN REDUCING DELAY

The use of technology enhances efficiency, transparency, and accessibility. It reduces dependence on manual processes, minimizes human error, and limits scope for manipulation of records. Technology also democratizes access to justice by enabling litigants from remote areas to participate in proceedings. Online dispute resolution mechanisms, particularly in commercial and consumer disputes, have shown promise in resolving matters quickly without burdening traditional courts.

LIMITATIONS AND CHALLENGES

Despite its advantages, technology is not a panacea i.e. technology is not acomplete cure. Justice delivery is a human process that requires judicial discretion, empathy and reasoning-qualities that technology cannot replace. Challenges such as digital illiteracy, uneven internet access, data privacy concerns, and the risk over-reliance on automated systems must be addressed. Moreover, technology cannot compensate for structural issues like judicial vacancies and outdated procedural laws. Without addressing these core problems, technological reforms may yield only limited results.

BALANCED APPROACH

For technology to be an effective solution, it must be integrated with broader judicial reforms. This includes timely appointment of judges, simplification of procedures, strict control over adjournments, and continuous training of judicial officers and lawyers in digital tools. Legal aid services must also be strengthened to ensure inclusive access to technologically driven justice systems.

CONCLUSION

In conclusion, technology can be a powerful enabler in reducing delays in justice delivery, but it is not a standalone solution. It should be viewed as a powerful facilitator that complements human decision-making and institutional reforms. When combined with increased manpower, procedural efficiency,simplified procedures and strong ethical safeguards and technology can significantly strengthen the speedy justice system. The future of justice delivery lies not in replacing courts or judges with machines, but in harnessing technology to make justice faster, fairer, and more accessible to all.

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LEGAL NUANCES OF COUNTER-CLAIM



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A civil lawsuit is a legal edifice in which pleadings are so important to be carefully drafted, otherwise the edifice will collapse. Pleadings not only cover plaint and written statement but also set off and counter-claim. A civil suit germinates once the plaint is presented. Plaintiff has some claims against the defendant and vice versa gives birth to counter-claim, which is a pleading/responsive pleading of the defendant, is essentially treated as a separate suit or cross-suit or cross-action and has to pass the procedural paraphernalia of a plaint as set out in Orders VI and VII of the Code of Civil Procedure, 1908 (CPC for brevity). A counter-claim is a new substantive lawsuit within the existing suit having all traits of a plaint to enforce independent rights. Counter-claim is also treated as a suit under Section 3 (2) (b) of the Indian Limitation Act, 1963.

DEFINITION OF COUNTER-CLAIM

CPC does not define 'counter-claim'. Black's Law Dictionary defines counter-claim as "a claim presented by a defendant in opposition to or deduction from the claim of the plaintiff."

Order VIII Rules 6A to 6G of CPC are devoted to counter-claim . A set off is also a cross-claim but it fundamentally differs from a counter-claim. What essentially makes the set off and counter-claim different is the thin line difference of legal admission. Set off is an assertive pleading admitting the claim of the plaintiff and to set off the defendant's claim against the claim of the plaintiff whereas counter-claim is a denial pleading of the contents of the plaint. Rather it (counter-claim) asserts its own claim by way of declaration, injunction, confirmation of possession, damages or seeking any relief/s against the plaintiff.

ORIGIN OF THE CONCEPT OF COUNTER-CLAIM

CPC is a pre-independence statute enacted in 1908 during the British regime. The concept of 'counter-claim' was not incorporated in the CPC till 1964 when the 27th Law Commission of India in its report recommended for provisioning counter-claim. As per the recommendation of the Law Commission of India, to avoid multiplicity of proceedings, the counter-claim by way of Rule 6A was inserted in the Civil Procedure Code. The statement of objects and reasons for enacting the Code of Civil Procedure (Amendment) Act, 1976 (Act No.104 of 1976), were-

1. A litigant should get a fair trial in accordance with the accepted principles of natural justice.
2. Every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;
3. The procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the

means to engage a pleader to defend their cases.

Thus counter-claim was not a creature of statute when CPC was enacted in 1908. CPC (Amendment) Act. 1976 (made extensive changes) incorporating Rules 6A to 6G under Order VIII is the resultant consequence . It thus emphasizes responsive participation of all stakeholders in one forum so as to create an adjudicative milieu for resolution of the dispute between/among the parties. The insertion of the provisions of counter-claim also justifies the legal maxim "ubi jus ibi remedium" (Where there is a right, there is a remedy).

Prior to the above amendment, the concept of 'counter-claim' is traced back to the decision of the Hon'ble Supreme Court of India in **Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala and Others** wherein the principal point that is raised for consideration in this appeal by special leave is as regards the legality and propriety of an order by the learned Single Judge of the High Court of Gujarat directing a counter-claim filed by the respondents to be treated as a plaint in a cross-suit and remanding the case for trial on that basis. The Hon'ble Apex Court has upheld the order of the High Court of Gujarat and dismissed the appeal by majority opinion.

PURPOSE OF PROVISIONING COUNTER-CLAIM

The core purposes of a counter-claim are as follows:

1. To resolve related issues in a single case
2. To attend judicial economy
3. To avoid multiplicity of proceedings
4. For convenience of parties
5. To save time of the Court
6. To avoid conflict of decisions
7. To attain speedy justice
8. Resolution of all disputes in one forum

OFFICE NOTE

Most of the Courts are skipping the stage of office note on a counter-claim, which is fatal to the case. We must remember that counter-claim is a plaint of the defendant/s having all features of a plaint. It is a cross-suit. It has its own legal stand. Counter-claim will continue independently even if the plaint is rejected on any grounds enshrined under Order VII Rule 11 of CPC or it (plaint) is dismissed for default on any ground enumerated in Order IX of CPC or the plaintiff withdraws it or discontinues or does not want to proceed in the lawsuit. A counter-claim is thus independent from and unconnected with the suit. Since counter-claim has its own legal existence and is not dependent upon the fate of the suit, office note is a must to check jurisdiction of the Court-pecuniary, territorial and subject matter, point of limitation, payment of court fees, filing of requisites, proper cause title, relief/s sought for, accrual of cause of action etc. The defects pointed out in the office note strike the maintainability of the counter-claim. Admitting a counter-claim without office note is just like constructing a building without a plinth making it vulnerable to collapse at any moment. When maintainability of a counter-claim is found or raised at the appellate stage, much water has flown by that time. Whatever remedial measure is to be taken for removal of the defects then is at the cost of procrastination in disposal, unnecessary expenses and mental agony of the parties. What is prudent to ward off such imbroglio is to go by the stages a plaint passes through because a counter-claim is nothing but a plaint of the defendant.

It is mostly seen that cause title is not changed in a counter-claim, which should not be. The defendant/s filing the counter-claim should be the plaintiff/s and the plaintiff/s of the suit and other defendants who are not plaintiffs in the counter-claim are to be mentioned as defendant/s. The cause title of the counter-claim is also so important to be mentioned in the judgment. Imagine one occasion where the plaint is dismissed on any ground and the counter-claim is proceeded with. Judgment is to be passed on the counter-claim. The names of the parties in the cause title then assume much importance by referring which any person can find out who has filed the counter-claim and against whom.

STAGE OF FILING A COUNTER-CLAIM

Ideally, counter-claim is filed in the same written statement or separately. The Hon'ble Supreme Court of India began emphasizing on the importance of both procedural and substantive justice, and the need to recognize and harmoniously stitch the two types of justice together to have an effective, accurate and participatory judicial system.

In **Ramesh Chand Ardawatiya v. Anil Panjwani** the question arose before the Hon'ble Apex Court as to whether the counter-claim filed belatedly can be accepted after the defendant is set ex parte. The Hon'ble Court has held the flowing three modes of such filing

Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with R.6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by R.6-A.

Secondly, a counter-claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed.

Thirdly, a counter-claim may be filed by way of a subsequent pleading under R.9.

CASE LAWS

1. Pravakar Sahoo versus Nazia Tahir and others (Hon'ble High Court of Orissa) – On the point of jurisdiction.

In this case the plaintiff filed C.S. No.73 of 2015 in the court of learned Civil Judge (Junior Division), Salipur for permanent injunction valuing the relief claimed at Rs.200/-. On receiving summons, the Defendants Nos.3 to 6 appeared and filed written statement along with counter-claim on 27th October, 2016 claiming damages of Rs.33,10,000/-. The office note of the counter-claim was made ready on 15th March, 2017 in which it was indicated that the value of the counter-claim exceeds the pecuniary jurisdiction of the said court and thus, the same may not be maintainable. As such, learned Civil Judge (Junior Division), Salipur posted the matter to 10th April, 2017 for consideration of the question of maintainability of the counter-claim. In the interregnum, the Defendant Nos.3 to 6 filed Transfer Petition (Civil) No.5 of 2017 before learned District Judge, Kataka to transfer Civil Suit No.73 of 2015 pending before learned Civil Judge (Junior Division), Salipur to the court of learned Civil Judge (Senior Division), Salipur. The said application was allowed by the learned District Judge, Kataka and CMP was filed in the Hon'ble Court against the said order. The Hon'ble Court found the impugned order not sustainable and set aside the same. It was further held by the Hon'ble Court that the counter-claim was not maintainable in the Court of Civil Judge (Junior Division), Salipur.

Therefore, when a counter-claim is filed in a Court having no jurisdiction to try, it should be returned to the party concerned to present it in the proper Court. While returning the counter-claim, the mandate prescribed under Order VII Rule 10 (2) is to be complied regarding date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Though the above Order mentions only about plaint and does not mention about counter-claim, the purpose behind it i.e. calculation of period of limitation if taken into account, it also applies to counter-claim.

2. Ramesh Chand Ardawatiya v. Anil Panjwani (Hon'ble Supreme Court of India) (supra) – Mode of pleadings for the counter-claim and counter-claim is not entertainable when there is no written statement on record.

3. Ashok Kumar Kalra v. Wing CDR Surendra Agnihotri & Ors., (Hon'ble Supreme Court of India) – Belated filing of counter-claim

Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating

inclusive factors provided below which are only illustrative, though not exhaustive:

- Period of delay.
- Prescribed limitation period for the cause of action pleaded.
- Reason for the delay.
- Defendant's assertion of his right.
- Similarity of cause of action between the main suit and the counter-claim.
- Cost of fresh litigation.
- Injustice and abuse of process.
- Prejudice to the opposite party.
- And facts and circumstances of each case.
- In any case, not after framing of the issues.

4. Rohit Singh and others v. State of Bihar - Non-acceptance of belated filing of counter-claim.

After the evidence was closed and arguments were heard, the defendant filed the counter-claim. The Hon'ble Apex Court held that a counter-claim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counter-claim can be raised after the issues are framed and the evidence is closed. Therefore, entertaining the so called counter-claim of defendants by the trial court, after the framing of issues for trial, was clearly illegal and without jurisdiction.

5. Mangulu Pirai v. Prafulla Kumar Singh and others - Filing of counter-claim after filing of written statement.

The question arose as to whether a counter-claim can be filed after the filing of the written statement or after the time fixed for the said purpose had expired.

Interpreting the words "either before or after filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired" appearing in O.8, R.6A(1) the Hon'ble Court came to hold that the same mean to limit the right of the defendant to set up by way of counter-claim in respect of a cause of action which arose after he delivered his defence or after the expiry of the date for filing his defence only. But any cause of action which may arise after the filing of the written statement by the defendant or after the expiry of the date for filing the defence will not come within the scope of R.6A(1). The restriction regarding the limit of the accrual of the period of the cause of action is based upon sound public policy, as otherwise the defendant may go on filing one counter-claim after another against the plaintiff in the same suit until it was disposed of and thus the suit may be indefinitely delayed.

6. Khetramohan Tripathy and another v. Basudev Acharya - Incorporation of counter-claim by way of amendment or subsequent pleading.

When a counter-claim is preferred by way of amendment incorporated subject to leave of the Court in a written statement or a counter-claim is filed by way of subsequent pleading, the same cannot be brought on record as of right, but shall be governed by the discretion vesting in the Court either under Order 6 Rule 17 C.P.C., if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order 8 Rule 9 C.P.C., if sought to be placed on record by way of subsequent pleading.

NEEDS ATTENTION

When a plaint is presented, it is registered in CIS (Case Information System) of the eCommittee project and 16 digits alpha-numeric CNR (Case Number Record) is allotted to it. If plaint is dismissed prior to the disposal of the counter-claim, the case has to be disposed of in CIS with uploading of the final order. In that exigency, how will the counter-claim proceed in CIS? Whether the counter-claim will be registered with generation of a separate CNR number is still a point to be sneaked into.

That apart, most of the provisions of CPC are silent regarding their application to counter-claim. For ex- Order VI Rule 1 of CPC needs amendment to include set off and counter-claim so that all provisions related to pleadings

including amendment shall be applicable to counter-claim.

Further, Order VII of CPC should also incorporate counter-claim for application of all procedures attached to a plaint, such as particulars of plaint, return of plaint, rejection of plaint etc.

To sum up, Civil Courts must be utmost sensitive and aware of the provisions relating to set off and counter-claim so as to attain the public policy of reducing inconvenience to the parties and to prevent multiplicity of proceedings. A little bit of responsiveness would go miles ahead in contributing a lot to the process of civil adjudication.

It is better to prevent the irregularities now than to cure them later on.

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ROLE OF FORENSIC SCIENCE IN CRIMINAL INVESTIGATION



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ABSTRACT

Forensic science seamlessly integrates scientific expertise with investigative methodologies, offering an invaluable tool in modern criminal investigations. By analyzing and interpreting evidence, forensic science provides clarity, aiding in both the pursuit of justice and the prevention of wrongful convictions. This paper explores the field's historical evolution, principles, applications, challenges, and its interaction with legal systems. Case studies and future advancements highlight it's continuing relevance in ensuring justice.

INTRODUCTION

Crime, in its many forms, has been a persistent challenge for society. Resolving criminal cases requires meticulous efforts to collect, analyze, and interpret evidence. Forensic science serves as the linchpin of this process, providing the objectivity and precision needed to unearth truths from physical evidence. Its wide-ranging applications extend from crime scene analysis to cybercrime investigations, underscoring its critical role in modern law enforcement.

The advent of forensic science has revolutionized criminal investigations by replacing conjecture with evidence-based reasoning. As societies evolve, so do the methods employed by criminals, necessitating parallel advancements in forensic techniques. By bridging the gap between science and law, forensic science not only aids in solving crimes but also serves as a deterrent by ensuring accountability.

EVOLUTION AND DEVELOPMENT

The journey of forensic science can be traced back thousands of years. Early societies employed rudimentary techniques for identifying offenders, relying on physical attributes or circumstantial evidence. For example, the Roman use of fingerprints in legal transactions predates modern fingerprint analysis.

In medieval China, Song Ci's "Collected Cases of Injustice Rectified" laid the groundwork for systematic crime scene analysis. His recommendations on examining wounds, bloodstains, and other evidence highlighted the need for scientific approaches even centuries ago.

The formalization of forensic science began in the 19th century. Sir Francis Galton's groundbreaking research on fingerprints established a reliable method for personal identification. Around the same time, advancements in ballistics, toxicology, and serology further enriched the field. The introduction of Locard's Exchange Principle by Edmond Locard emphasized the inevitability of evidence transfer, fundamentally shaping modern forensic practices.

The 20th century witnessed exponential growth in forensic science. DNA profiling,

introduced in the 1980s, revolutionized criminal investigations by enabling near-foolproof identification of suspects. Today, technologies such as digital forensics, facial recognition, and artificial intelligence continue to expand the horizons of this ever-evolving field.

KEY PRINCIPLES OF FORENSIC SCIENCE

The reliability and credibility of forensic science hinge on its adherence to a set of core principles:

1. Locard's Exchange Principle: This foundational concept states that every interaction between a person and their environment results in the transfer of materials. For example, fibers from a suspect's clothing may transfer to a victim, or traces of soil from a crime scene may adhere to a perpetrator's shoes.
2. Objectivity and Impartiality: Forensic scientists must analyze evidence without bias, ensuring that their findings are based solely on scientific data.
3. Standard Operating Procedures (SOPs): Adherence to SOPs guarantees consistency and reproducibility in forensic analyses, enhancing their credibility in legal proceedings.
4. Chain of Custody: Maintaining an unbroken record of evidence handling is crucial to preserving its integrity. Any gaps or discrepancies in the chain of custody can lead to evidence being deemed inadmissible in court.
5. Interdisciplinary Collaboration: Forensic science often intersects with other fields, including chemistry, biology, physics, and digital technology. Collaboration among experts from these domains enriches the investigative process.

APPLICATIONS IN CRIMINAL INVESTIGATION

Forensic science plays a pivotal role in criminal investigation, bringing scientific precision to the examination and interpretation of evidence. It encompasses an array of specialized disciplines that address diverse types of evidence, ensuring that even the smallest trace can be crucial in solving crimes and securing convictions.

1. BIOLOGICAL EVIDENCE

Biological evidence is among the most impactful tools in forensic science, primarily due to its ability to establish individual identity with remarkable accuracy. DNA profiling has revolutionized criminal investigations and become the cornerstone of forensic identification. Evidence such as blood, hair, saliva, and tissue samples can create a direct link between a suspect and a crime scene, even decades after the crime has occurred.

Advanced techniques like mitochondrial DNA analysis allow investigators to analyze degraded or old samples when nuclear DNA is insufficient. Similarly, Y-STR profiling focuses on male-specific markers, enabling identification in cases involving mixed genetic material or where male perpetrators are suspected.

2. PHYSICAL EVIDENCE

Physical evidence comprises tangible objects found at crime scenes that can be analyzed scientifically. This category includes fingerprints, tool marks, footprints, tire tracks, and impressions left by weapons. The importance of such evidence lies in its ability to reconstruct the sequence of events leading to a crime.

The introduction of Automated Fingerprint Identification Systems (AFIS) has dramatically expedited the identification process by comparing fingerprints against vast databases within minutes. Ballistics analysis further aids investigations by matching bullets and casings to specific firearms, revealing not only the weapon used but also the direction, distance, and angle of fire.

Tool marks, often overlooked, provide unique insights into cases involving burglary or homicide. Forensic experts can match marks left on locks

or surfaces to specific tools, linking suspects to the crime.

3. CHEMICAL EVIDENCE

Chemical evidence plays a critical role in uncovering the presence of substances that may have influenced or contributed to a crime. Forensic toxicology, for instance, identifies drugs, alcohol, or poisons in biological samples like blood or urine. This analysis is indispensable in cases of overdoses, impaired driving, or poisoning incidents.

Explosive residue analysis is another significant application. By studying chemical compositions, forensic scientists can determine the type of explosive used in bombings or arson, offering valuable leads on perpetrators and methods. The forensic examination of paint chips, fibers, or glass fragments also falls under chemical evidence. Such analyses can provide insights into vehicle collisions, hit-and-run incidents, or breaking-and-entering cases.

4. DIGITAL FORENSICS

In the digital age, electronic devices often hold the key to uncovering criminal activity. Digital forensics focuses on retrieving and analyzing data from computers, smartphones, storage devices, and networks. This discipline is especially critical in cybercrime investigations, which involve hacking, identity theft, fraud, or online harassment.

Techniques like metadata analysis, IP address tracing, and recovery of deleted files allow investigators to reconstruct digital activity and establish connections between suspects and criminal acts. Social media forensics, a growing subfield, examines posts, messages, and interactions to uncover motives or premeditation. Digital forensic experts also play a vital role in decrypting encrypted files or devices, often requiring cutting-edge software and algorithms.

5. FORENSIC ODONTOLOGY

Forensic odontology, the study of dental evidence, is integral to victim identification in mass disasters or cases where traditional identification methods fail. Dental records, due to their durability and uniqueness, can provide conclusive evidence of identity even in extreme conditions like fires or decomposed remains. Bite mark analysis is another application of odontology, proving essential in cases of assault or homicide where the perpetrator's teeth have left marks on the victim. Forensic odontologists analyze the size, shape, and alignment of bite marks to link them to specific individuals.

6. DOCUMENT EXAMINATION

In an era of increasing fraud and forgery, forensic document examination is indispensable. Experts analyze handwriting, ink, paper, and printing techniques to authenticate documents and detect alterations. This field plays a crucial role in cases involving counterfeit currency, forged contracts, fraudulent identification, and manipulated records.

Advanced techniques such as spectral analysis and chromatography allow for the identification of inks and materials, revealing the origin and authenticity of documents. This is particularly valuable in white-collar crimes and financial investigations.

7. EMERGING AREAS OF APPLICATION

While the traditional applications of forensic science remain relevant, the field continues to evolve with new technologies and disciplines. For example:

- Environmental Forensics: Investigates pollution crimes by analyzing soil, water, or air samples to trace contaminants to their source.
- Forensic Entomology: Studies insect activity on decomposed remains to estimate time of death and location.
- Forensic Archeology: Combines archeological methods with crime scene investigation, especially in cases involving mass graves or historical remains.

INTEGRATION OF FORENSIC SCIENCE WITH THE LEGAL SYSTEM

The relationship between forensic science and the legal system is inherently symbiotic, with each domain relying on the other to ensure justice is delivered. While forensic science provides the empirical data and evidence required to establish facts, the legal framework governs its admissibility, interpretation, and weight in judicial proceedings. Together, they create a balanced structure that upholds the principles of fairness and impartiality.

1. ADMISSIBILITY OF EVIDENCE

Forensic evidence must meet specific legal criteria to be deemed admissible in court. In India, the Indian Evidence Act serves as the foundation for determining the relevance and reliability of forensic findings. Section 45 of the Act specifically addresses expert testimony, allowing forensic scientists to provide opinions on matters requiring specialized knowledge. However, the acceptance of forensic evidence hinges on its presentation, the credibility of the expert, and the methodologies used during analysis.

Globally, courts adopt stringent standards for forensic evidence admissibility. For instance, the Daubert Standard in the United States requires that forensic methods be scientifically validated and widely accepted within the professional community. The application of such standards ensures that only credible and reliable evidence influences judicial decisions.

2. ROLE OF EXPERT TESTIMONY

Expert testimony is a cornerstone of legal proceedings involving forensic evidence. Forensic scientists, as expert witnesses, interpret complex data and present their findings to judges and juries in a comprehensible manner. They play a pivotal role in bridging the gap between scientific intricacies and legal reasoning.

During trials, expert witnesses explain their methodologies, findings, and the significance of evidence, often influencing the outcome of cases. Their credibility, communication skills, and ability to withstand cross-examination are critical to their effectiveness. For example, forensic experts may need to justify the use of specific DNA profiling techniques or address questions about contamination risks during evidence collection.

The significance of expert testimony extends beyond criminal cases. In civil litigation, forensic experts may provide insights into fraud detection, intellectual property disputes, or accident reconstruction.

3. CHALLENGES IN CROSS-EXAMINATIONS

Despite its importance, forensic evidence is frequently subjected to rigorous scrutiny during cross-examinations. Defense attorneys often challenge the credibility of forensic methods, pointing out potential errors, biases, or procedural lapses. Forensic scientists may be questioned about their qualifications, the validity of their techniques, and the integrity of the chain of custody.

Challenges also arise when forensic methods are perceived as overly complex or ambiguous. In such cases, jurors may struggle to interpret findings, leading to misjudgments or uncertainty. This underscores the need for concise, transparent, and comprehensible forensic reports that effectively convey scientific conclusions in layman's terms.

4. ETHICAL AND LEGAL CONSIDERATIONS

The integration of forensic science into the legal system is not without ethical and legal challenges. Ensuring the accuracy of forensic analyses while respecting the rights of individuals is a delicate balance. Issues such as invasive evidence collection, privacy violations, or the use of controversial techniques can raise ethical concerns.

Furthermore, forensic experts must adhere to strict professional standards to avoid conflicts of interest. Their role is to provide objective and impartial analyses, rather than advocating for either side in legal disputes.

5. GLOBAL COMPARISONS

While forensic science has become an integral part of legal systems worldwide, its application varies across jurisdictions. In India, the reliance on forensic evidence is growing, with courts increasingly recognizing its value. However, challenges such as resource constraints and limited access to advanced technologies often hinder its widespread use.

In contrast, countries like the United States and the United Kingdom have established robust forensic infrastructures, with dedicated laboratories and standardized protocols. These systems allow for more effective integration of forensic science into legal proceedings, serving as models for other nations to emulate.

6. ENSURING EFFECTIVE USE OF FORENSIC REPORTS

The effectiveness of forensic reports in legal proceedings depends on their clarity, transparency, and accessibility. Reports must be meticulously organized, detailing the methodologies used, the findings obtained, and their implications. By providing a clear narrative supported by data, forensic scientists can ensure their reports withstand legal scrutiny.

Training programs for forensic experts often emphasize communication skills, enabling them to present their findings confidently in courtrooms. Additionally, collaborations between forensic institutions and legal professionals can enhance mutual understanding, facilitating the seamless integration of science and law.

CASE STUDIES

1. **The Nirbhaya Case (India):** The brutal gang rape and murder of Nirbhaya in 2012 shook the nation. DNA evidence collected from the crime scene played a decisive role in identifying the perpetrators. The meticulous handling and analysis of biological samples underscored the significance of forensic science in securing convictions.
2. **The O.J. Simpson Trial (USA):** This high-profile case highlighted both the strengths and vulnerabilities of forensic science. While DNA evidence linked Simpson to the crime scene, issues related to evidence mishandling and the chain of custody cast doubt on its reliability. The case remains a cautionary tale about the importance of maintaining procedural integrity.
3. **The Aarushi Talwar Case (India):** The investigation into the murder of Aarushi Talwar and Hemraj exposed the consequences of forensic lapses. Conflicting expert opinions and the mishandling of evidence led to a protracted legal battle, ultimately raising questions about the competence of investigative agencies.

CHALLENGES IN FORENSIC SCIENCE

Despite its transformative impact, forensic science faces several challenges:

1. **Technological Limitations:** The rapid evolution of crime necessitates continuous advancements in forensic tools. For example, encryption technologies pose significant challenges for digital forensics, requiring innovative decryption methods.
2. **Resource Constraints:** Many countries, including India, struggle with inadequate infrastructure and a shortage of trained forensic professionals. This resource gap hampers the timely and accurate analysis of evidence.
3. **Ethical Concerns:** The collection and analysis of evidence must respect individuals' rights and privacy. Ethical dilemmas often arise in cases involving invasive procedures or surveillance technologies.
4. **Public Perception:** Dramatized portrayals of forensic science in media have created the "CSI Effect," leading to unrealistic

expectations among jurors and the public. This phenomenon underscores the need for awareness campaigns to bridge the gap between perception and reality.

FUTURE DIRECTIONS

The future of forensic science lies in embracing cutting-edge technologies and fostering interdisciplinary collaboration. Artificial intelligence (AI) and machine learning algorithms can automate evidence analysis, reducing human error and increasing efficiency. For instance, AI-driven facial recognition systems are already being employed to identify suspects in real time.

Advancements in imaging technologies, such as 3D crime scene reconstruction and virtual autopsies, promise to revolutionize investigative processes. These tools provide investigators with a detailed and immersive understanding of crime scenes, aiding in hypothesis testing and case resolution.

Collaboration between forensic experts, policymakers, and technologists will be crucial in addressing resource constraints and ensuring the equitable distribution of forensic facilities. By prioritizing training programs and public awareness initiatives, the field can continue to thrive in an increasingly complex world.

CONCLUSION

Forensic science stands as a pillar of modern criminal investigations, combining scientific rigor with legal principles to uncover the truth. Its diverse applications, spanning biological, chemical, physical, and digital domains, have transformed the pursuit of justice. While challenges persist, ongoing advancements in technology and methodology offer hope for a future where forensic science remains at the forefront of crime-solving efforts. By addressing resource gaps, ethical concerns, and public misconceptions, the field can continue to evolve, ensuring justice for all.

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THE MYTH OF MISOGYNY: A RE-EXAMINATION OF WOMEN'S INHERITANCE IN ISLAM



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ABSTRACT

Islamic law, or Shari'ah, fundamentally altered the status of women by granting them defined rights to property and inheritance, a significant departure from pre-Islamic Arabian customs where women were often treated as chattel and excluded from succession. The primary sources governing these rights are the Qur'an and the Sunnah (the practices of the Prophet Muhammad), which form the basis of Muslim Personal Law in India. While Islamic jurisprudence provides for specific shares for women, the practical realization of these rights often faces challenges due to socio-cultural factors and patriarchal interpretations. Now-a-days, it is a controversial issue for both Muslims and non-Muslims whether Muslim women have the right to inheritance and property ownership. The myth of misogyny, literally under Islamic law of Jurisprudence, termed as myth and nothing but "MYTH".

INTRODUCTION

The main purpose of this paper is to focus on the rights of inheritance and property ownership of Muslim women in Islamic laws. In the pre-Islamic age, women had no right to inherit the property their parents or kinsmen had left. Men had an absolute right to take over all the properties. Even women themselves were treated as an object that the male members of the family could inherit. But Islam has changed this social custom by making Islamic laws or sharia. The Qur'an and the Hadith play the primary role in making Islamic laws, and surprisingly both scriptures suggest that both males and females are equal in respect to their rights and duties. This idea of male and female equality in every aspect introduced by Islamic laws is a new approach that could not be found before the Islamic age. Islamic laws declared that women have the right to take her share from the property.

PRE-ISLAMIC ARABIAN CUSTOMARY LAW

Before Islam succession to property of a deceased both among Arabs and non-Arabs was quite unsatisfactory and not well defined. Both testate and intestate succession was prevalent among Arabs. Like other ancient societies, Arabs also enjoyed the complete freedom of testamentary disposition. In the tribal society of pre-Islamic Arabia the system of inheritance was designed to keep property within the individual tribe and maintain its strength as a fighting force. The object and purpose of inheritance under the customary rules of Arabs was the maintenance of the goods in the family. Concept of tribalism and corresponding responsibilities did not permit the inclusion of maternal or uterine relations in the scheme of inheritance. Notion of kinship were based on the blood feud which gave rise to the principle of comradeship. The right of succession depended on comradeship in arms. The basic principle of inheritance among them

was the criterion that one must be capable of defending the honour of the family and tribe. So the property of a deceased Arab devolved on his male agnates capable of being arms and as a result all females, minors, infirm and old persons incapable of bearing arms were excluded. Among early Arabs, the comradeship in arms i.e. the tie of war or revenge, was considered more important than family or blood tie.

The heir ship was determined by consanguity, adoption or contract. Only male agnates enjoyed the right of inheritance and nearest of them exclude the rest. In spite of recognizing both, agnatic and cognatic, relationship they preferred agnates over cognates. Female had no right of ownership and therefore, were not allowed to inherit. Daughter and sisters were excluded because they ceased, upon their marriage, to be members of their natural (Parental) family. Wives had no separate entity due to merger of their personality, on marriage, into that of her husband. Consequently, she as widow formed an integral part of the estate of her husband, and subject of inheritance. On the death of a person his sons and in their absence, his brothers inherited these widows like any other property. They descended to them as heritage of their father or brother as the case might be. The inheritors treated them their wives. This particular custom was the cause of origin of 'levirate marriages' not only among Arabs but also among other nations.

Females were not allowed even a limited right. Uterine brothers and sisters were also not considered heirs. The result was complete exclusion of females and cognates from inheritance and complete monopoly of hereditary rights by male agnates. Among agnates Descendants were preferred to Ascendants and Ascendants to Collaterals. Male agnates of equal degree of nearness, capable of bearing arms, shared the estate per capita.

REFORMS INTRODUCED BY ISLAM

Islam imposed clear cut restriction on the testamentary powers of a Muslim to dispose of his or her property in accordance with his or her whim and caprice. By discarding the doctrine of primogeniture Islam laid down and set the pattern of equitable and democratic concept of distribution of heritage. Parents, grandparents, daughters, grand-daughters, sisters, widows and many close relatives who were excluded in pre-Islamic time were made heirs. As a general rule Islam conferred new right of inheritance only on persons who were nearer, though excluded, than the customary heirs. So the disqualification and incapability to inherit attached to females and cognates was abrogated by Islam. Sura Nisa, specially provides the right of inheritance to females and cognates:

QURANIC VERSES

-O humanity! Be mindful of your Lord Who created you from a single soul, and from it he created its mate, and through both He spread countless men and women. And be mindful of Allah-in Whose Name you appeal to one another-and honour family ties. Surely Allah is ever Watchful over you.

-Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. Be fair to your parents and children, as you do not fully know who is more beneficial to you. This is an obligation from Allah. Surely Allah is All-Knowing, All-Wise.

-If you fear you might fail to give orphan women their due rights if you were to marry them, then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then content yourselves with one1 or those bondwomen in your possession. This way you are less likely to commit injustice.

-You will inherit half of what your wives leave if they are childless. But if they have children, then your share is one-fourth of the estate—after the

fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister from their mother's side, they will each inherit one-sixth, but if they are more than one, they all will share one-third of the estate—after the fulfilment of bequests and debts without harm to the heirs. This is a commandment from Allah. And Allah is All-Knowing, Most Forbearing.

The Holy Prophet (SAW), the real interpreter, the best explainator and commentator of the Holy Quran and the best knower of the intention of Allah, the Law Giver of Islam, recognized the right of inheritance of females and cognates, Sahik al Bukhari, Sunan Abu Daud and other books of ahadis narrate many sayings of the Holy Prophet (SAW) to this effect. Islam enhanced family dignity by abolishing the custom of inheriting women including step mothers and prohibiting 'levirate marriages' in principle.

By specifying clear cut entitlement and specific shares of female relatives Islam not only elevated their position but simultaneously safeguarded their social and economic interests. Islamic method of distribution of shares intended to break up the concentration of wealth in one of few hands thereby ensuring the socio-economic welfare of the family and society at large. The status of women in Islam is a pertinent issue across the world and there is a misconception in the West that women are subjugated within it. Conversely, a woman is considered an integral part of society in the sight of Islam.

QURANIC COMMANDS:- ALLAH SAYS IN QURAN:

"I will not let any of your work be lost, whether male or female, you are of one another."

"From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large"-a determinate share"

Quran-Surha 4 –Aayat 71

Islam considers women a special blessing, and their rights and responsibilities are equal to those of men. The sacred text of the Quran and the early history of Islam bear testimony to the fact that women hold the utmost importance. At a time when a female child would be buried alive in Arab societies and women were merely considered an object of sexual gratification, Islam honored women and protected them with unprecedented rights. Allah even devotes an entire chapter of the Quran to women, Surah-al-Nisa. At a time when a woman was considered a property to be inherited, Islam made her an heir. Daughters, wives, mothers, and sisters all have a particular share in inheritance, depending on their relation to the deceased kin and the number of heirs. No one has a right to exempt a woman from her inherited share of the property. Women are also free from any financial liabilities. She is not obliged to work or share family expenditures. What she receives from her father or what she earns herself is solely her own. It is her privilege if she wants to work or be self-supporting, provided her honour and integrity are safeguarded.

NATURE AND KIND OF PROPERTY

We have seen that in almost all systems the distinction is made between real and personal property. The natural law of succession refers to personal property. The succession to personal property is governed by one set of rule while succession to immovable (real) property is based on different principles. Hindu law, similarly, distinguished between ancestral and self-acquired property and provides different sets of rules of succession for the two categories of property. However, the Muslim law makes no distinction between various kinds of properties for the purpose of succession. Under Islamic law whether the property is real or personal, ancestral or self-acquired, corpus or usufruct, movable or immovable, is immaterial, the rules of succession are one and the same.

ACQUISITION OF PROPERTY

A Muslim woman possesses the absolute right to acquire, hold, and dispose of property. Her ownership is full and is not curtailed by her gender or marital status. Property can be acquired through several means:

1. Inheritance (Ilm al-Fara'id): Islamic law designates women as legal heirs to the property of their deceased relatives, including their father, husband, children, and other specified kin.

2. Mahr (Dower): At the time of marriage (Nikah), the husband is obligated to provide the wife with a sum of money or property known as Mahr. This becomes her exclusive property, over which she has complete control. Mahr is a mandatory religious and legal requirement for a valid Muslim marriage and serves as a form of financial security for the wife.

3. Hiba (Gift): A Muslim woman has the right to receive property through a Hiba, which is an unconditional and immediate transfer of property without consideration. She can hold and dispose of such gifted property at her discretion. An oral Hiba is considered valid if there is a clear declaration by the donor, acceptance by the donee, and delivery of possession.

4. Wasiyyat (Will/Bequest): A Muslim can bequeath up to one-third of their total property through a will to individuals who are not their legal heirs under the laws of inheritance. A woman can be a beneficiary of such a will.

5. Self-Acquired Property: Any property a woman earns or acquires through her own efforts is her absolute property. Her husband and his relatives have no claim over it.

TERMINOLOGY USED

Some technical terms are explained below

1. Deceased or Propositus means the person whose relatives are to be determined on his or her death for the purpose of distributing his or her estate in accordance with her law of intestate succession.
2. Estate, the surplus of all the property, movable or immovable, real or personal, ancestral or self-acquired possessed by a Muslim at the time of his/her death, after his/her funeral expenses have been paid, his debts discharged and the legacies, validity bequeathed, paid out, is termed the 'Estate'.
3. Claimants mean all such relations of the deceased, as are, or might be supposed to be either themselves entitled to inherit any part of his or her estate, or whose existence affects the right of those who are entitled to inherit.
4. Full blood relationship means the relationship through both parents e.g. real brother or sister.
5. Half blood relationship means the relationship through only one of the parents, e.g. brothers and/or sisters where only father or mother is common.
6. Consanguine sisters and/or brothers means the children of the same father by different mothers.
7. Uterine sisters and/or brothers mean the children of the same mother but by different fathers.
8. True grandfather is a male ancestor between whom and the deceased no female link intervenes. A 'false grandfather' is a grandfather between whom and the deceased one or more females intervene.2 No such distinction exists among Shias.
9. True grandmother is a female ancestor between whom and the deceased no false grandfather intervenes. A female ascendant related exclusively through male or female links. A grandmother other than true is referred to as a 'false

grandmother'. Shias do not recognize such distinction .

10. Agnate means a person whose relation to the deceased can be traced without the intervention of any female link e.g. son's son's daughter or son's son's son, father's mother. Sex of the persons concerned is of no effect.

11. Cognate means a person related to the deceased through one or more female links (the position does not change if a male link intervenes) e.g. son's daughter's son or father's mother's father or father's sister's son's son. Sex of the persons concerned is of no effect.

12. Lineal descendant or lineal ascendant means the person who has descended or is an ascendant in a direct line from the other (deceased) e.g., father, paternal grandfather, paternal great grandfather are all lineal ascendants, while son, son's son, son's son's son are all lineal descendants. They may be males and females both e.g. father's mother, son's daughter, son's son's daughter.

13. Collateral means a person having a common ancestor with the deceased (either on the side of the father or mother and agnate or cognate), but who is neither a descendant nor an ascendant of the deceased. For example, the brother, or sister or uncle of the deceased.

14. Quranic Heirs or Zav-il-furuz is relations whose names and respective shares are specifically mentioned in the Quran. They are entitled to receive fixed shares allotted to them in a certain order of preference. These heirs are also called sharers.

15. Customary Heirs or Agnatic Heris means the persons entitled to succeed in accordance with the customary law i.e., the nearest male agnates. Such heir is also known as "Residuary" because he is entitled to take the 'residue', or any part thereof. 'Residue means that portion of the estate (if any) which is left over after the Quranic heirs (Sharers) have received the shares to which they are entitled.

16. Distant Kindred-Zav-il-Arham (Uterine relations or Cognates), mean those relations by blood who are neither Shares nor Residuaries. This category of relations also include female agnates in the collateral line except sisters (who are Shares or Residuaries). Shia do not recognize this class of heirs.

17. Awl or increase means the process of adjustment of shares already allotted to the Quranic heirs (Sharers) where the total sum of such shares exceeds unity.

18. Radd or Return is the process by which the surplus left over after the allotment of shares to the Sharers, reverts back to the Quranic heirs.

19. Per Capita means on the basis of the number of claimants.

20. Per Stirpes means on the basis of number of branches of the claimants.

21. Executor (Wasi in Arabic) mean a person appointed by the testator, to execute his or her last whises.

22. Letter of Administration mean the written permission granted by a court of competent authority, to administrator the estate of the deceased. Such a person is called 'Administrator'.

MALES AND FEMALES

In principle males do not exclude females. Males share with their female counterparts. The

difference in their shares is based on the natural difference in their basic needs to discharge their primary obligations in the society.

SPOUSE'S POSITION

Quran fixes the right of spouses under different situations. The share and attention provided to them is both natural and just, they are neither excluded by any other heir nor can they exclude others. Considering the relative position of spouse on one hand and that of the other heirs on the other could not have been any better approach than the one adopted by Islam.

BIRTH RIGHT

Muslim law does not recognize this Hindu concept and theory of right by birth. Islam believes that every one is born empty handed and so he/she dies. The right of inheritance, in Islam arises only on the death of a certain person. This is one of the reasons why Muslim law does not recognize the doctrine of representation. The right of an heir-apparent or presumptive comes into existence for the first time on the death of the person through whom he/ she claims and he/ she is not entitled until then to any interest in the property to which he would succeed as an heir if he/she survived the deceased.

RULES OF PRIMOGENITURE

The well-known rule of primogeniture which is the incidence of real property in various systems, as discussed above, is not recognised by Islam and is completely foreign to Islamic law. Islam prohibits preference between same classes of heirs. Macnaghten observes: "the apparently unjust preference of the older son, to the exclusion of all the rest which in our own law had its original in the feudal policy of the times; is rejected by Islam and the equitable principle of equality obtains in its stead.

Blackstone informs us that "the Greeks, the Romans, the Britons, the Saxons and even originally the Feudalists do not recognize the rule of primogeniture." He admits that this (the non-recognition of this rule) is the most obvious and natural way.

ADMINISTRATION OF ESTATE OF A DECEASED MUSLIM

"Administration" means management and disposal of an estate whether it is that of a deceased person or of any other person. Here we are concerned only with the administration of the estate of a deceased Muslim the questions like who get the right to share the property of the deceased? What happens to the unpaid debts of deceased and legacies left by him or her? Are questions of substantive nature? But questions like who should immediately take charge of the property of the deceased? How to deal with claims for and against the deceased? Etc. Are the questions of procedural nature? Shariah, which governing substantive as well as procedural aspects allowed discretionary powers to Qazi in procedural matters. It is this discretionary power, vested in a Qazi, under Shariah, which prompted and encouraged the colonial powers to modify and abrogate Shariah rules and introduce their own in their respective colonies. India is one of such colonies. So the substantive aspect (as explained above) is still governed by Shariah, the Muslim Law, but since British rule in India, the procedural aspects came to be controlled by State through statutory provisions. Taking help of the discretionary powers vested in the Qazi, British parliament passed many statutes to deal with the disposal or application of the estate left by a deceased Indian Muslim. Administration, as understood in modern law, was unknown to Islamic jurisprudence. In Islam there is a mere distribution of property of the deceased, by the State if not by the heirs themselves. Unlike other modern systems to dispose of the estate of a deceased Muslim neither there is a need of Executor or/and Administrator nor probate or/and Letters of Administration. In the absence of an Executor appointed by the will of the deceased, heirs of a Muslim have the right and capacity to dispose of the estate of the propositus according to law. In case they fail or refuse to do so the Qazi (Magistrate) may appoint an Executor, unlike other legal systems, the estate immediately on death vests in the heirs. Under other systems, based on English Common Law.

Shariah recognizes four main charges on the estate of a deceased Muslim. In order of priority these may be enumerated below:

1. Funeral expenses.
2. Debts.
3. Legacies.
4. Claims of heirs.

The Muslim Law recognizes the above mentioned four distinct purposes to which the estate of the deceased is successively applicable.

EXCLUSION FROM INHERITENCE

Exclusion means preventing a rightful heir from having any share of the deceased's estate due to the presence of another heir. The principle behind who excludes who is the degree of closeness to the deceased. The closer relatives will exclude those who are not so close. For example, son will exclude grandson. A grandson can only inherit in the absence of a son since the latter is closer to the deceased than the former. There is a difference between exclusion and impediments to inheritance. In exclusion, a "stronger" heir eliminates a "weaker" heir while impediment has to do with preventing an heir from inheriting due to circumstances like murder, difference of religion, slavery, etc. There are two types of exclusion: total and partial. Partial exclusion means reducing the share of the estate an heir should have gotten due to the existence of another heir. For instance, a husband inherits half (½) of his wife's estate if she has no child, but supposing she has a child even if from a previous husband, he gets one-quarter (¼) of her estate. This reduction from ½ to ¼ is called partial exclusion. Meanwhile, we intend to concentrate on total exclusion. So, unless otherwise specified, whenever we say "exclusion," we mean "total exclusion."

CONDITIONS OF INHERITANCE

The estate of a pre-deceased person will be distributed to legal heirs only if some following conditions are fulfilled. The conditions are as follows;

1. Death of the person whose property is to be distributed, must be determined whether in actual death, or judicial death, or presumption of death (eg. Missing);

2. Survival of legal heirs. They must be alive even for a just moment, at the time of his death;

3. Legal heirs should be free from following impediments such as:-

a. Slavery; according to a slave, he has no right to own property as his own. Whatever he gained as property will belong to his owner;

b. Homicide, general principle is that a killer does not inherit from the victim and he is barred from Inheritance;

c. Difference of religion, a non-Muslim does not inherit from a Muslim and vice versa. If a Muslim dies left behind no Muslim survivors and without making a bequest for the disposal of his estate, all his assets will be given to the Islamic State Treasure. But a non-Muslim is not barred from taking bequest (Wasiyyah) even from a Muslim;

d. Apostasy (Murtad), conversion by a Muslim to another religion will bar him from taking property from the deceased's property. However, it is not applicable in India.

CLASSIFICATION OF HEIRS

On the basis of importance the heirs of a deceased Muslim may be divided into the following two classes.

1. Primary, and
2. Secondary

Primary heirs are the relations supposed to be closest to the deceased. They are directly related to the deceased because of the proximity they always inherit and are never excluded. They are; parents- Father and Mother. Children- Sons, and Daughters, Spouses- Husband and widows.

Except above six relations others are called Secondary heirs. All blood relations come under this category. These heirs sometimes

inherit and sometimes are excluded, partially or completely, depending presence of other heirs.

On the basis of the nature of relationship the heirs are divided into the following two categories.

A. Relations by Blood: All blood relations whether connected though full blood or half blood and irrespective of their remoteness are included in this section.

B. Relations by affinity (Valid Marriage): In this category of relations. Only spouses (husband or widow) are recognised as heirs of each other. Only they enjoy the mutual rights of inheritance. Others can never claim any hereditary rights e.g. in-laws, step children or step parents are not heirs. Relations by fosterage and adoption are not considered heirs under any school of law.

On the basis of order of priority to inherit, the Sunni (Hanafi) law recognises the following seven classes of heirs, First three, Principal and other four subsidiary.

PRINCIPAL CLASSES

Class I : Zavi-ul-Faruz- Quranic Heirs or Sharers

Class II : Asaba- Agnatic Heirs or Residuaries.

Class III : Zavi-ul-Arham- Uterine Heirs or Distant Kindred

Class I : They are called Quranic Heirs because they are specified in the Holy Quran along with their fixed shares. Because of their specified shares they are also known as Sharers. They are twelve in number. Only twelve heirs are entitled to succeed to specific shares from the above rules. The shares of each of them have been fixed in the Quran. The twelve sharers are: 1. Husband, 2. Wife, 3. Father, 4. True grandfather how high so ever 5. Mother 6. True grandmother 7. Daughter 8. Sons's daughter, how low so ever 9. Full sister 10. Consanguine sister 11. Uterine brother, and 12. Uterine sister.

Class II : They are known as Agnatic heirs because all of them are agnates. They are also called Residuaries because, they are entitled to take the residue, left after the specific shares have been provided to the heirs of Class I. They are also called customary heirs because all the male agnates comprising this class were heirs according to the customary law of Arabia. All the male agnates belong to this class. Four female agnates namely daughters and son's h.l.s, sisters full and sisters consanguine also inherit as members of this class in special circumstances. Primarily they belong to Class I but under certain special circumstances they are treated as heirs of class II and inherit as such. In such situations they do not inherit as Quranic heirs.

Class III : To this class belong all cognates and all female agnates except the four who are members of class I and II, i.e, daughter, son's daughter, sister full and sister consanguine. It is because of the cognetic connection of the female sex of the members of this class that this class is known as Uterine Heirs. As they are permitted to inherit only in the absence of class I and class II heirs, therefore, are distant in claim. So they are also known as Distant Kindreds.

SUBSIDIARY CLASSES

IV. Successor by Contract;

V. Acknowledged kinsman;

VI. Universal or sole Legatee;

VII. Government treasury.

These four classes have lost their practical applicability and have become nearly obsolete in the modern time.

ORDER OF INHERITENCE

Property of a deceased Hanafi goes, in the first instance, to the heirs of Class I. if the property is not consumed by them, the remainder goes to the heirs of Class II. In the absence of heirs of Class I and Class II, the property devolves on the uterine heirs, i.e. Class III.

In the absence of an heir of the three Principal classes, the right of inheritance devolves upon

heirs of the four subsidiary classes, among whom each class excludes the next, i.e. IV excludes V, V excludes VI, and VI excludes VII.

GENERAL RULE

From the above it is clear that Principal classes comprise only blood relatives with the exception of surviving spouse of the deceased. The Property in the first instance is to be distributed among those sharers who are entitled to get property. Their shares are fixed. Once the property is distributed among the sharers, and anything is left, this surplus called the residue goes to the next category called residuaries. When there is no residuary present, the property passes to the third category which comprises cognates. So long as any heirs in the former two categories is present, the property does not pass to the third category of distant kindred. This rule has one exception viz., in absence of the residuaries, if either of the spouses is present i.e., widow or widower, then the spouse will take his/her fixed share as a sharer and the rest of the property would be taken by the distant kindred. Position of husband and wife is peculiar. When there are no residuaries, the Quranic heirs would get the share by the rule of 'Return', except the husband or wife. In such a situation, the residue would not go to the distant kindred. In case the only heir is husband or wife, the residue shall also devolve on the husband or wife, after any of them had taken his or her allotted share. But court has held that when the only sharer be husband or wife, and there be no relation belonging to the class of residuares, the husband or wife will take his or her full share and the remainder of the estate will be divided among distant kindred.

INHERITENCE RIGHTS OF WOMAN

No discrimination between males and females in the matter of Inheritance of property under Muslim succession law because Muslim law does not create any distinction between the rights of men and women. Both of them are entitled to the deceased's property according to their portion. Nonetheless, the proportion of the share entitled to them may be subject to variation according to their interest in the concerned property.

In Surah al-Nisa, all guidelines with regard to distributing property among the female heirs are given in detail. The quantum of the share of males is double that of female heirs. In other words, the share of the female heirs is half of that of the male heirs. It is noteworthy that the revelation of Qura`n was come down while the whole women category was unfairly abandoned from being the part of deceased's property. Moreover, the responsibility of a woman over the expenses of the family is less than that of a man.

RIGHT OF MOTHER

In the Muslim law of Inheritance, the mother is entitled to get a specific share of the deceased's property depending upon some circumstances. There are three shared patterns in the matter of her obtaining property. She is entitled to a one-sixth share of the property in case of being the son(s)/daughter(s)/ full or consanguine or uterine brother(s)/ sister(s), and in case of the absence of aforementioned persons, she is entitled to inherit the one-third share of the property. The Sunni schools observe that the Mother is also entitled to inherit one-third of the remainder. If the father and one of the spouses are present along with the mother, the spouse will take their respective share, and the mother will take one-third of what remains after the spouse has taken their share.

RIGHT OF DAUGHTER(S)

Muslim law does not create any distinction line between the rights of sons and daughters. But it is generally found that the quantum of the share of a daughter is half of that of the son. In the case of one daughter, she is entitled to inherit half of the property whether other legal heirs are there or not, as long as not have a son parallel to her. In the case of a son similar to her, he makes her residuary, and she gets half of that of what his share is. If they have more than one daughter, they jointly are entitled to two-thirds of the property in the absence of a son parallel to them.

RIGHT OF SON'S DAUGHTER (S)

Son's daughter (s) is entitled to half share of the property in the case of the absence of other legal heirs and if two or more than two-thirds shares. The percentage is reduced to one-sixth in the presence of one daughter, and nothing is given to them when there are two or more daughters. The total quantum reserved for them is two-thirds of the real property, and if the son's daughter (s) is present with only one daughter, she is entitled to one-sixth while the daughter gets one-half of the property. When she is with two or more daughters, they take a two-thirds share of the property, and the son's daughter doesn't come into this picture. If there is a grandson parallel to her, the same pattern in the case of son and daughter should be applied.

RIGHT OF SISTER(S)

Sisters can be broadly categorised into three, namely full sisters, consanguine sisters, and uterine sisters. Full sister means siblings who share the same biological parents; a consanguine sister is a type of sister who shares the same father but has a different mother. A uterine sister is a type of sister who shares the same mother but has another father. According to the full sister, she is entitled to a one-half share if she is the only heir and if two or more full sisters, then they are entitled to a two-thirds stake.

She ceases to be a sharer and becomes a residuary where there is a brother parallel to her, and she is entitled to half of that of the percentage of brother. Consanguine sister gets one-half of the share of the property where she is the only heir and two-thirds if two or more. She is entitled to one-sixth, where she is present with one full sister and nothing if two or more full sisters. She ceases to be a sharer and becomes a resident where there is a brother parallel to her. On the other hand, the uterine sister is entitled to one-third when the deceased has no child or child of a son or father or true grandfather and one-sixth in the presence of the aforementioned. Unlike others, a brother parallel to her cannot make her residuary, and the respected share will be devolved upon them equally.

RIGHT OF WIFE

Islamic law of Inheritance specifies the share of the widow from the deceased's property as per status as an heir. She is entitled to one-fourth of the share when the deceased had not left any heirs who caused the reduction of her claim, such as the children of the dead husband. If the deceased had left behind children, then the widow's share shall be reduced, and she is entitled to a one-eighth share from the deceased's property.

RIGHT OF GRANDMOTHER

Only true grandmothers can be considered as heirs of the deceased's property. True grandmother means a female ancestor between whom and the dead. No grandfather intervenes. In case of the intervention of a grandfather among them, then they are said to be false grandmothers. As a result, they will not be capable of inheriting the property, which is subject to division among the heirs. The category of grandmother is entitled to a one-sixth share of total property, as per status as heir. In cases where the mother of the deceased is absent at the time of death, then the nearest maternal grandmother is entitled to inherit one-sixth as an heir. The presence of a father will not exclude the maternal grandmother from being an heir. But the closest maternal grandmother bans the distant maternal as well as paternal grandmothers. In cases where both father and mother are no more, then the paternal grandmother is entitled to inherit one-sixth. If there are two or more grandmothers of the deceased (maternal and paternal), then all of them jointly inherit one-sixth part of the property.

CONCLUSION

The religion of Islam has its viewpoint on all walks of life, including the inherent right of a person from the deceased's property. According to Islamic law of Inheritance, it doesn't create any distinction between men and women from being part of the share of the property. Both of them are entitled to the deceased's property according to their portion. Nonetheless, the proportion of the share entitled to them may be subject to variation according to their interest in the concerned property. Normally, the percentage of female heirs is half of that of male heirs. It is noteworthy that the revelation of Qura`n was come down while the whole women category was unfairly abandoned from being part of the deceased's property.

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MEDIATION: IT'S IMPLICATIONS AS AN EFFECTIVE MODE OF ACCESS TO JUSTICE IN RESOLVING THE COMMON MATIRMONIAL DISPUTES IN INDIA.



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ABSTRACT:

"Justice is maintained by the spirit of the law, not by its formal structure." ***Earl Warren, LJ.***

The perception which marriage carries and its significance in the society has undergone significant transformations in recent times. Marriage is no longer expected to be a lifelong commitment, as the principle of equality has taken precedence over hierarchy in family law. Consequently, additional causes for family disputes have emerged, and ending marriages that are unbearable or unsatisfying due to reasons most of which have arrived due to principle of equality and modern day trends from the west and hence this has become socially acceptable.

In any culture or society, the family holds immense importance. It functions both as an institution and a collective of individuals. Within the family, economic needs are met, but perhaps more importantly, emotional needs are fulfilled. Divorces and conflicts related to inheritance have surged, driven by various factors like economic circumstances among family, professional pressures and psychological imbalances of individuals. The author of the paper has conducted a socio-legal investigation into the root causes of family conflicts which the Society must devise measures to safeguard the family while addressing and resolving disputes that threaten its delicate fabric.

Keywords: Mediation, Mediator, Alternative Dispute Resolution (ADR) System, Matrimonial Disputes, Access to Justice, Judicial process, Family Courts Act, Civil Procedure Code, Amicable.

INTRODUCTION

"Injustice anywhere is threat to justice everywhere" - King Martin Luther Jr.

Law is the means and justice is the end and to achieve that end the law must have legal system accessible to all. Access to justice gives life and meaning to law.

Etymologically, the access to justice for all is treated as 'Dharma' in the nation's justice administration system. Access to justice is one of the key factors for a 'welfare State' through which the nation is elevated into the concept of 'civilized country'. 'Access to justice' is an integral part of the concept of 'Equality before Law' which is also part and parcel of the doctrine of 'rule of law'.

As said in the words of - Sandra Day O'Connor 1

"The courts of this country should not be the places where resolution of disputes begins.

They should be where the disputes end after alternative methods of resolving disputes have been considered and tried."

The above-quoted words of Sandra Day O'Connor who was the first female associate justice of the Supreme Court of the United States from 1981 to 2006, show that the importance of ADR is increasing in recent years.

In an ever-evolving social and family landscape, the younger generation encounters a plethora of new challenges, including feelings of insecurity, shifting dynamics between spouses, and the pressures of a fast-paced lifestyle. These factors can easily give rise to misunderstandings that may escalate into disputes. Unlike other contractual conflicts, these disputes encompass emotional, social, and personal dimensions. The conventional legal procedures often do not align well with these unique needs. Consequently, the dissatisfied party often resorts to appeals, petitions for reviews, and similar actions in the hope of securing a favorable judgment.

Moreover, the primary cause of many problems in relationships is a breakdown in communication. Mediation serves as a means to facilitate communication, foster comprehension, and reach resolutions with the assistance of a neutral mediator. This approach is particularly well-suited for divorce and other family law disputes, especially when there's a likelihood of an ongoing relationship, particularly if there are young children involved. Many divorced spouses find mediation advantageous as it helps them steer clear of the exorbitant expenses associated with divorce litigation. Advocates of mediation emphasize its ability to preserve Family Relationships, Shield Children from Trauma associated with traditional Divorce proceedings, and ensure speedy resolution. Moreover, mediation offers several advantages, including confidentiality, cost-effectiveness, informal procedures, party autonomy, and mutual agreement. Importantly, it aligns with the principle of timely justice, which is essential in resolving marital conflicts.

Marital conflicts tend to arise early in a marriage because newlyweds may have lower tolerance for each other's idiosyncrasies. In contrast, long-term couples are often more accustomed to each other's habits and more accepting.

MEDIATION VRS. JUDICIAL PROCESS

Judicial process adjudicates in favour of one party, mediation settlements arrived at with consent of both the parties.

Judicial processes focuses on the past which are based on legal rights and obligations; whereas mediation facilitates mutually acceptable agreement satisfying everyone's interests.

Mediation changes disputes from win-lose to win-win situation of the dispute.

Family disputes are inherently emotional, and court battles can intensify these emotions. ADR methods like mediation enable open discussion by creating a controlled environment where parties can freely express their concerns and helps ease emotional strain by encouraging discussion over confrontation while developing a respectful environment for dispute resolution.

Traditional litigation can be expensive and time-consuming. ADR offers speed and cost savings over standard courtroom trials. Mediation stands out because parties can resolve disputes through just a few sessions rather than enduring the extensive and expensive litigation process.

It is quite natural for the relations between family members to break due to the respective disputes, but ADR methods often result in preserving such relations, and even if a case arises where the decision leads to a split, ADR ensures that parties settle the dispute in a mutual and peaceful manner.

PROCEDURE FOR MEDIATION

Unlike the Arbitration and Conciliation act there is no particular legislation to initiate the mediation process between the parties in matrimonial disputes. The process can be initiated only by two ways:

- Parties voluntarily agree for mediation process or private mediation
- Mediation is referred by the courts in accordance to Section 89 of Civil Procedure Code.

WHO IS A MEDIATOR ?

A mediator is a third party who remains impartial and facilitates communication between conflicting parties to assist them in arriving at a mutually agreeable solution. A mediator is different from a judge or an arbitrator because he does not make decisions but assists in negotiations, maintaining fair communication and collaboration for arriving into an amicable settlement. Mediators are important as they facilitate communication, find areas of agreement, and prepare agreements. Their active listening, conflict resolution, and neutrality skills make them vital in effectively resolving legal, commercial, workplace, and family conflicts.

ROLES AND RESPONSIBILITIES OF A MEDIATOR

A mediator carries out several roles in order to facilitate a fair and effective process of dispute resolution. The most important roles and responsibilities of the mediator as follows:

1. ENCOURAGER OF VOLUNTARY DECISION-MAKING

In contrast to litigation, mediation allows parties to make decisions themselves instead of having a solution forced upon them.

2. NEUTRAL THIRD PARTY

Neutrality is a cornerstone of mediation. The mediator avoids taking sides to ensure no unequal advantage for either party.

3. PROBLEM-SOLVER

The mediator aids in discovering issues beneath the surface, defining interests, and venturing into new and creative ideas that work within the interest of both parties.

4. CONFIDENTIALITY KEEPER

Mediation talks are kept confidential, and the mediator maintains this as a policy to establish trust among participants.

5. FACILITATOR OF COMMUNICATION

An intermediary makes the communication between parties open and constructive by handling emotions, active listening, and synthesizing the central points.

6. LEGAL AND ETHICAL COMPLIANCE

While mediators are not legal counsel, they need to make sure that agreements are legal and ethical.

SKILLS REQUIRED FOR A MEDIATOR

A successful mediator must have a collection of qualifications, including soft and professional skill sets to negotiate complicated disputes effectively. Some of the requisite skills include:

• COMMUNICATION SKILLS

Mediator must be able to articulate an idea clearly, ask open-ended questions, and encourage respectful dialogues.

• ACTIVE LISTENING

This is an important aspect of the building of trust with each party by understanding their perspective and concerns.

• IMPARTIALITY AND NEUTRALITY

One of the responsibilities of a mediator is to be neutral and ensure fair treatment throughout any conflict.

• PROBLEM SOLVING-SKILLS

A resourceful mind easy to explore options and find a solution for fulfilling parties' interests.

•EMOTIONAL INTELLIGENCE

Keep emotions flowing, reflection cool; keep open collaboration.

Patience and Persistence- A mediator is someone who needs to keep helping the parties, and these traits are crucial for guiding everyone towards a resolution.

THE ETHICAL CONSIDERATIONS IN THE SETTLEMENT OF MATRIMONIAL DISPUTES INCLUDE

Integrity and Confidentiality matters in conflict resolution because: It protects everyone involved. Some conflicts could incorporate sensitive details, such as personal information or illegal activity. By conducting the resolution process in the open, it could allow for personal feelings to interfere with the process.

• INTEGRITY

A mediator should be honest, incorruptible, and do the right thing, even when no one is watching. They should also disclose any potential conflicts of interest.

• CONFIDENTIALITY

Parties involved in mediation must agree to keep all information shared confidential, even if they don't reach a settlement. This is important because some conflicts may involve sensitive information, like personal details or illegal activity.

• CHILDREN'S BEST INTERESTS

When making decisions that affect children, their best interests should be the top priority. Children should not be involved in the dispute, but they should be able to have their views heard without fear of punishment or losing their parents' love.

• COMMUNICATION

Practitioners should consider the potential consequences of their actions and advise clients accordingly. Disclosing information that could prejudice the client or the mediation process could violate ethical rules, even if the client consents.

• RECORD MAINTENANCE

Marriage and family therapists should keep accurate and adequate clinical and financial records in accordance with the law.

JUDICIAL OUTLOOK ON MEDIATION AS PROCESS OF ALTERNATIVE DISPUTE RESOLUTION (ADR) SYSTEM

The judiciary has made important and necessary judicial reform interventions to increase access, the focus of its interventions betray a partial and incomplete understanding of access to justice under the constitutional scheme. By focusing primarily on access to courts, and on questions of resources, the court loses the opportunity to meaningfully engage with the constitutional mandate of creating a just social order. Rather than viewing access to courts as the be-all of securing access to justice, the judicial conceptualisation of access to justice should be that of a means to the end of securing social justice. As a way to achieve this ideal, the judiciary should view access to justice not as a goal, progress towards which can be measured in concrete numbers or input/output variables, but as a perspective that should inform all

aspects the judicial function — from decision-making on substantive rights, to construction of procedural norms, to fashioning remedies, to the very administration of the judicial set-up. These two attitudinal changes will go some way in addressing the present disconnect between the constitutional ideal of access to justice, and the judicial implementation thereof.

JUDICIAL INVOLVEMENT IN MEDIATION/ADR

Courts play an active role in promoting ADR by :

- **Referring cases:** Courts can proactively identify suitable cases for ADR and refer them to relevant mechanisms.
- **Case management:** Judges can use case management techniques to guide parties towards ADR options.
- **Promoting awareness**: Courts can educate the public and legal professionals about the benefits of ADR.
- **Recognizing ADR agreements:** Courts validate and enforce agreements reached through ADR processes.

In essence, the judicial outlook on ADR is one of active encouragement and integration. Courts recognize ADR as a valuable tool to enhance access to justice, promote efficiency, and foster amicable resolutions, actively participating in its implementation and promotion.

JUDICIAL DECISIONS RELATED TO MATRIMONIAL DISPUTES AND MEDIATION

1. SALEM BAR ASSOCIATION V. UNION OF INDIA

In this case, Writ Petitions were filed to challenge amendments made to the Code of Civil Procedure through Amendment 46 of 1999 and Amendment 22 of 2002. One of the amendments under scrutiny was Section 89 of the Code of Civil Procedure.

The Supreme Court noted that Section 89 was introduced to provide an option for cases filed in courts to be resolved through methods other than traditional litigation. The Court expressed support for promoting Alternate Dispute Resolution (ADR) methods and viewed Section 89 as a positive development. Consequently, the Court recommended the formation of a committee to ensure that the amendments to the Code of Civil Procedure facilitate swifter dispensation of justice and effectively promote ADR.

2. SRINIVAS RAO V. D.A. DEEPA

In this case the Supreme Court mandated mediation as a prerequisite before finalizing a divorce. When cases fall under Section 498A of the Indian Penal Code, the Court directed criminal courts not to handle the complaint until it is referred to mediation centers. However, in exceptional cases involving severe and hazardous cruelty, criminal courts may proceed without mediation referral. Additionally, the Court ruled that all mediation centers must establish litigation clinics to address marital issues outside of court proceedings.

The Supreme Court in this case emphasizes relevance of mediation in matrimonial disputes including complaints. The court observed that civil matrimonial disputes can be amicably settled by directing the parties to mediation. The courts have always taken a positive approach and encouraged the settlement of matrimonial disputes.

3. MUSHTAQ AHMAD V. STATE

In this case the wife initiated divorce proceedings and filed an FIR against her husband under Section 498A of the IPC due to disputes that had arisen between them after the birth of their daughter. The provincial court directed the parties to engage in mediation under Section 89 of the CPC. Subsequently, the matter was

resolved amicably through mediation, leading the wife to request the quashing of the FIR. The Court granted this request, asserting that, in appropriate cases, it can use its inherent powers to quash criminal proceedings, FIRs, or complaints in order to serve the interests of justice.

4. GURUDATH K. V. STATE OF KARNATAKA

In this case the court emphasised that even if the offences are non-compoundable and pertain to marital disputes, the courts are willing to acknowledge that the parties have amicably settled them. Section 320 of the Cr.P.C. would not hinder the court's authority to quash an FIR or criminal complaint concerning such offences. Consequently, the court permitted the offences to be compounded, concluding that the spouse had not been subjected to any coercion or threat in reaching this agreement.

5. AFCONS INFRASTRUCTURE LTD. V. CHERIAN VARKEY CONSTRUCTION CO. (P) LTD.

In this case the Supreme Court clarified that even when a case is referred to mediation, the court maintains its control and jurisdiction over the matter. Furthermore, any mediation settlement must be presented to the court for formal recording and disposal. This demonstrates the court's commitment to ensuring that mediation is carried out in a thorough and comprehensive manner in every possible aspect.

6. RAO V. L.H.V. PRASAD

In this case the court ruled that marriage is traditionally viewed as a child-centric heterosexual institution within our society. However, in the event of marital breakdown, it necessitates adjustments among various relationships, disrupting the typical structure and harmony of the family. Consequently, family laws and courts predominantly promote the resolution of matrimonial disputes through reconciliation and amicable settlements rather than resorting to litigation.

THE EFFECTIVENESS OF MEDIATION IN RESOLVING THE COMMON MATRIMONIAL DISPUTES IN INDIA

In India, access to justice in matrimonial cases is crucial for upholding the rights and well-being of individuals navigating marital disputes. While the legal system provides various avenues for redressal, various barriers can hinder the effective access, particularly for the marginalized groups like women

The following are the key implications of the Mediation as a process of ADR System through which India can ensure that all individuals, regardless of their background, have meaningful access to justice in matrimonial cases.

1. Upholding Fundamental Rights:

Access to justice through is a fundamental right, encompassing the right to a fair trial, equality before the law, and the right to be heard. In matrimonial cases, this means ensuring both parties have equal opportunities to present their case and seek redressal for grievances through ADR System.

2. Protecting Vulnerable Individuals:

Many individuals, especially women, face significant challenges in accessing justice due to factors like poverty, lack of awareness, and social stigma. Ensuring access to legal aid, counseling, and alternative dispute resolution mechanisms (like Lok Adalats) is vital for protecting vulnerable parties.

3. Promoting Gender Equality:

Matrimonial cases often involve power imbalances, with women historically facing disadvantages in legal proceedings. Efforts to promote gender equality in access to justice include addressing biases in court procedures, providing legal support for women, and ensuring fair and impartial decision-making.

4. Addressing Systemic Barriers:

Procedural delays, high costs of litigation, and lack of awareness about legal rights can impede access to justice. Reforms like simplifying procedures, providing legal aid, and promoting awareness campaigns are crucial for overcoming these systemic barriers.

5. Ensuring Fair Outcomes:

Access to justice is not just about accessing the courts; it's about achieving fair and just outcomes in matrimonial disputes. This requires courts to consider the specific circumstances of each case, including the contributions of each party to the marriage, and to ensure that decisions are equitable and promote the well-being of all parties involved.

6. Cost-Effective:

Mediation tends to be cheaper than court trials.

7. Time-Saving:

It settles disputes more quickly than in prolonged legal processes.

8. Confidentiality:

As opposed to court cases, mediation is not public.

9. Flexibility:

Parties have more control over the process and outcome.

10. Saves Relationships:

Because mediation involves working together, it saves personal and business relationships.

11. Legally Enforceable:

Disagreements resolved in mediation can be legally enforceable if properly documented.

ROLE OF MEDIATION IN RESOLVING THE MATRIMONIAL DISPUTES

Mediation is a mechanism for dispute settlement, that can save a lot of time, cost, and also ensuress confidentiality.

1. There is a mutual consensus between the parties towards reaching a solution that is acceptable to both where they can exercise some control over the resolution. Mediation is generally less stressful than the court litigation, couples are not only the ones who experience financial loss; the government and the community also incur a loss. ADR promotes finality. There is no scope for any appeal or revision or further litigation in it.

2. Chances also are that it can help to improve or restore the relationship because there are many such cases where the dispute is caused by trivial reasons.

3. Mediation is also way more participative and parties get an opportunity to present their case in their own words. It leads to better compliance as the parties themselves have agreed and signed on the settlement.

4. In court litigation, couples are not only the ones who experience financial loss; the government and the community also incur a loss.

5. The implementation of a non-adjudicatory, non-judicial mechanism for dealing with matrimonial breakdown would compel a basic reassessment of the society's conception of divorce.

6. The realities of contemporary divorce — the number of cases pending and the general dissatisfaction should prompt legislative bodies to make alternative

mechanisms available for divorcing couples. Finally, mediation can also lead for settling of related or connected cases.

7. Other areas of matrimonial disputes are in the form of denying education, exposure to child maltreatment or witnessing violence in the family, silent experience of harmful use of alcohol, attitudes accepting of violence and gender inequality.

8. Though there are enough laws with an object to curtail violence against women in India, it is still continuing. Hence, a comprehensive study to evaluate the effectiveness of the present statutory provisions intended to curb the menace of Matrimonial Disputes, has become the need of the hour.

9. The premarital counseling is required to be given through the Expert Family Counselor to teach couples information about married life, to enhance their communication skills, to encourage them to develop conflict resolution skills and to allow them to speak about certain sensitive topics.

SUGGESTIONS

In India, there have been ongoing discussions and trials of non-judicial avenues such as mediation, conciliation, arbitration, and negotiation, as well as simplified legal alternatives, to provide a practical source of hope for justice for the common person. The increasing backlog of cases in the courts could potentially result in injustice for the ordinary citizen. To achieve the objective of justice for all through alternative dispute resolution (ADR) methods, the following suggestion are proposed as recommendations.

1. The primary and most crucial step that the government should take is to raise awareness about the Mediation/ ADR process. This can be achieved by creating a website, utilizing various media channels such as local cable TV, radio, pamphlets, brochures, and newspapers, and organizing seminars, workshops, and symposiums.

2. Given the current workload, judicial officers may have limited time for effectively implementing the Mediation/ ADR mechanism. To address this issue, the appointment of new judges is necessary.

3. Legal practitioners should transition into Mediator/ADR practitioners. To facilitate this transition, lawyers should receive appropriate training and engage in role-playing or mock exercises. Distinct categories of mediators and conciliators should be established to enable them to work effectively in specialized areas like family law or corporate matters.

4. The government must take concrete steps to allocate sufficient funds to meet the essential requirements for the successful implementation of the Mediation/ADR mechanism. This includes ensuring proper infrastructure, higher-level authorities, a skilled panel of mediators, conciliators, and arbitrators, among other resources.

5. Since a significant portion of pending cases in the courts involve litigation with or against the government, it is advisable to appoint a dedicated defender or mediator to resolve matters related to government cases.

CONCLUSION

Mahatma Gandhi had put in correct words as : "I had learnt the true picture of law. I had learnt to find out the better side of human nature and to enter men's heart. I realised that the true function of a lawyer was to unite parties. The lesson was

so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromised of hundred of cases. I lost nothing thereby-not even money-certainly not my soul."

The majority of cases directed to mediation within court-managed systems involve matrimonial disputes. Consequently, there is a societal demand for mediators in this field who possess the capacity to approach disputes with empathy and understanding, aiding parties in resolving the intricate matter of dissolving deeply personal relationships. Parties involved will soon realize that mediation surpasses other methods of conflict resolution, prompting them to seek it out at an earlier stage.

Marriages cannot be quickly dissolved or interrupted because it is in the best interests of society's peace. It is in the public interest to preserve matrimonial relations and, to the extent practicable, to prevent them from being disrupted at the request of any of the parties to a marriage. This form of conflict resolution not only saves time, but also reduces acrimony and strained relationships that may arise from litigation. In India, mediation is becoming increasingly common, especially in the case of marital disputes. If relief is deferred in a marital proceeding, the whole object of relief is nullified, and the parties are physically and emotionally wrecked, with little to no hope of remarriage.

Alternative conflict resolution strategies are preferred to maintain future relationships and should be the remedy for peace. Mediation provides a ray of hope for many couples seeking to settle their differences. Via advice and conciliation services, it is our duty to protect marital relationships. Therefore, it can be concluded that employing an alternative dispute resolution (ADR) mechanism is significantly more advantageous than relying solely on the traditional court-based redressal system. This holds true when the Mediation/ADR process is supported by a robust organizational structure, skilled mediators, and well-trained judges, along with effective case management. Consequently, it can be firmly asserted that, according to research, the alternative dispute resolution mechanism proves superior to court redressal due to its cost-effectiveness and time efficiency. As a result, it contributes to reducing the backlog of cases in the courts and provides more satisfactory and acceptable solutions to the parties involved, facilitated by their active participation and convenience.

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EXECUTION: CHALLENGING LEGAL BATTLE FOR GETTING THE FRUIT OF DECREE



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Registrar, Civil Courts, Kataka

The privy council Justice J.W. Colville, in the year 1872 had observed in the case of General Manager of Raj Darbhanga Vs. Cooner Ramaput Singh, reported in 1871-72 (14) MIA 605 that the difficulties of litigant in India begin when he obtained a decree. After 150 years, the plight of the decree holder, even in the year 2026, the position has not been improved and the decree holder faces the same problems which was being faced in the past.

In recent past in the case Periamal (dead through his Lrs) Vs. V. Rajamani and Anr. in the Civil Appeal No.3640-3642 of 2025, the Hon'ble Supreme Court of India expressed his deep concern about the backlogs of execution petitions and called for the pending of execution petitions from all the District judiciary across the country and as on date 06.09.2025 around 8,82,578, Execution Petitions are pending in the country and out of which around 17,109 execution petitions are pending before District judiciary under Orissa High Court. In the said judgment, the Hon'ble Apex court pleased to quote at the out set of the judgment, derives from the case Shreenath and another Vrs. Rajesh and other, reported in (1998) 4 SCC 543 as follows:-

"The seeker of justice many a time has to take long circuitous routes, both on account of hierarchy of courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breathes fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with many hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings, the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower courts under the scrutiny of a higher court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seeker in his journey to justice. But this obviously is one of the causes of delay in justice."

It generally prevails among the litigants that the difficulties of litigants are by no means over on being getting decree for property, However, the difficulty is real and practical sense arise after getting the decree. Execution is the enforcement of a decree by a judicial process which enables the decree holder to realize the fruits of the decree passed by a competent Court in his favour. In this regard Section 36 to 74 of CPC and Order 21 deals with the procedures for the execution proceedings. Order 21 of CPC

contains elaborate and exhaustive provisions for execution of decree and order. The provisions also take care of different type of situations and provide effective remedies not only to the D.Hr and J.Dr but also to the objectors and 3rd parties.

Execution is the most important aspects of the civil justice. Success or failure of system of civil justice derives from rate of success in executing the decree in Civil Court. However, the provisions enumerated under the sections and rules of the CPC might have felt intimated to the novice as the procedure itself is complicated. As per the procedure, the DHR files an execution petition for execution of decree and the substantive provisions of Section 51 of CPC enumerates different mode of execution in general terms. By different provisions under order 21 of CPC, a decree may be enforced by the delivery of any property in the decree or by attachment and sale or by sale without attachment of any property or by arrest and detention as a Civil Prison of the JDr or by appointing a receiver or by effecting partition or any such manner as the nature of relief made require.

As the execution is separate proceeding, the DHr is required to issue show cause notice to the J.Dr and in that regard Order 21 Rule 22 of CPC provides for issue of show cause notice to the persons against whom execution applied if the execution is filed after 2 years of the decree. In certain cases, it is frequently found that the execution proceeding lingers for years for serving of notice to appear before the Court for filling show cause notice in the execution proceeding. The J.Dr avoids willfully to receive the notice in order to linger the case for years. Taking into the reliefs as decreed, the DHrs take any of the mode of execution as follows:-

a. By arrest and detention in Civil Prison;
b. By attachment and sale of movable property;
c. By attachment and sale of standing crops and agricultural produce;
d. By attachment of debt, share or other immovable property not in the possession of J.Dr;
e. By attachment of salary of Govt. Servant;
f. By attachment of salary of private employees;
g. By attachment of debtor share in partnership firms;
h. By attachment of negotiable instrument;
i. By attachment of decree obtained by the J.Dr in another case
j. By attachment of sale of immovable property.

However, during the attachment of the properties there is claim and objection over the said properties and the Rules 56 to 63 of Order 21 deals with the attachment of the property and objection to attachment of property. When the properties are attached in execution decree, there may be objection to attachment either by the party or his representative or by 3rd party. Since, all question arising in between the parties to the suit in which the decree under execution has been passed or their representative leading to the execution discharge or satisfaction of the decree are to be determined by the Executing Court and not by the separate suit. The Executing Court has to investigate the claims and settle them final in execution proceeding in order to avoid lingering of the litigation. It is often found that objection to attachment of property under Order 21 Rule 58 of CPC is mostly responsible for delay in disposal of proceedings. Further, in some occasion, the JDr opts delaying tactics and in collusion with 3rd party raises objection to attachment of the properties. So, the Executing Court should be careful enough to scrutinize the objection and dispose of accordingly.

The Rule 35 and 36 of Order 21 of CPC provide the mode of executing decree for possession of immovable properties to the D.Hr. Order 35 and 36 corresponding to Rule 95 and 96 which lays down the procedure for delivery of property to the auction purchaser which is purchased by the purchasers in an auction sale. Where the decree is in respect of immovable properties in the possession of J.Dr or in possession of the person bound by the decree, it can be executed

by removing the J.Dr or any person bound by the decree and delivery of possession there in D.Hr.

Section 74 and 97 to 106 enumerate the provisions about resistance or obstruction to delivery of possession to the D.Hr and auction purchaser. It so happens that the J.Dr in order to avoid the delivery of possession of the decreed immovable properties, in collusion with 3rd party by delivering the possession in his favour. Thereafter, the 3rd party makes an application before the Court as per the provisions of Rule 99 Order 21 of CPC and protracts the case as long as possible. Prior to amendment of 1976, the Rule 97 to 103 of Order 21 of CPC enable the Executing Court to investigate the claims and objection summarily. However, the position has been radically changed after the amendment of 1976. Now the Executing Court under take full and complete inquiry into the right title and interest of the parties to the proceeding or their representatives and the order passed in such inquiry amounts to decree U/s. 2(2) of the CPC. The Court shall, on receipt of an application under Rule 97 of CPC, proceed to adjudicate upon in accordance with Rule 101 of CPC. The Court is to hold a full inquiry and determine all question including the question relating to right, title and interest in the property arising in between the parties to the proceeding or their representatives. Similarly, on receipt of the application under Rule 99, the Court shall proceed to adjudicate upon the application in accordance with Rule 101 of CPC. It is pertinent to mention here that the order passed under Rule 99 and Rule 100 amounts to a decree and is appealable in nature.

One of such mode of executing a decree is arrest and detention in civil prison of the J.Dr. However, where the decree is for payment of money, executing court should not order for civil prison without giving the J.Dr an opportunity to showing the cause why he should not be detained in civil prison. Thereafter, arrest of warrant is issued after payment of diet money before the jail authority. In order to get the fruits of the decree, the D.Hr exploits any of the modes enumerated as above. So, the D.Hr has to face both financial and mental difficulties and to bear the cost of the proceeding after getting a decree from the competent Court. Further Section 47 of CPC deals with principles that matter relating to execution, discharge or satisfaction of the decree arising between the parties or their representatives and should be determined in execution proceeding and not by a separate suit. The underlying object of the provisions of Section 47 of CPC is to provide cheap and expeditious remedy for determining of certain question in execution proceeding without recourse to a separate suit and to prevent unnecessary litigations. However, on the other side the J.Dr in order to harass and frustrate decree, files frivolous application U/s. 47 of CPC and abuse the process of the law. So after getting a decree from the competent Court, the D.Hr still has to fight a long battle before the Court and in the mean time decades have been elapsed in order to get the fruit of the decree. So, it generally prevails in the minds of the common litigant that it is not difficult on the part of the litigant in getting a decree, but the difficulties arise after getting the decree.

The reasons behind delay in disposal of execution petitions can be summerised as following

a. Objection raised by the Jdr or third parties
b. Procedural complexities
c. Stay by Appellate court and appeal
d. Huge backlogs of execution petitions and vacancy of judges
e. Evasive tactics by the JDr or third parties
f. Non compliance of the court of the orders by the JDr
g. In efficiency of the Ministerial staff of the court
h. Lack of training of sub ordinate court judges and ministerial staff

In plethora of judgments, the Hon'ble Supreme Court has laid emphasis for speedy disposal of the execution petitions. It is agreed by all that justice must be cheap and expeditious. Delay in disposal of cases threaten the justice and lead

to loss of public confident in the judicial process which itself threaten the Rule of law. The delay of the disposal of cases rise the cost of litigation which in turn lead the litigants to either abandon the meritorious claim or compromise for lesser or unjust settlement out of Court. Hence, time to time the Hon'ble Supreme Court of India has made emphasis for speedy disposal of the execution petitions. In the case **Shub Karan Bubna V. Sita Saran Bubna,** reported in (2009) 9 SCC 689 in Para - 27 it is held that :-

Para - 27. "In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that emphasis is not only on disposal of suits, but also on securing relief to the litigant".

Similarly, in the recent judgment Rahul H Saha Vs. Jitendra Gandhi, the Hon'ble Supreme Court makes certain guidelines to be followed mandatorily in the suit and execution proceedings in order to avoid the delay disposal of the execution petitions:

Para - 42. "All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.
3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.
5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit.
8. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
9. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

10. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
11. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.
12. Under section 60 of CPC the term "... in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
13. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
14. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.
15. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts."

So, the Hon'ble Supreme Court of India in the case of Rahul H Saha Vs. Jitendra Gandhi has been pleased to highlight the abuse of the procedure and establish new legal principles to streamline the execution proceeding and prevent delay caused by frivolous objection. In conclusion, it may be quoted by the Hon'ble Apex Court in the case of Satyabati Vs. Rajindar Singh reported in 2013 (9) SCC 491 that if there is an unreasonable delay in execution of a decree, the D.Hr would be unable to enjoy the fruits of its success and entire efforts of successful litigation would be in vain.

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CHILD SAFETY ON INTERNET PROBLEMS & CHALLENGES IN THIS DIGITAL ERA



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"Empowering Children with the Knowledge of online safety ; It is their shield in the vast Digital World"

Under this era of Information Technology, internet has become an inextricable part of our life. The dependence on internet for various factors like social and business communications, entertainment, source of information has extended up to a new height. This is because of the wide spread of social networks, accessibility to computers and mobile phones. The internet has now become the most trusted, reliable and accurate source of information as well as entertainment for both adults and children. Children most often use the internet, for entertainment like playing games, communicating with friends and strangers on social media platforms like TikTok, Instagram and Snapchat. The ability to "click from one to another" reflects the child's natural impulsivity and curiosity along with the desire for immediate gratification or feedback. Children have almost endless supply of information and opportunities through internet. However, for an unsupervised child, the internet carries a wide range of risks and dangers. In the present day, though the parents have become more responsible to teach their children not to talk with strangers, not to open the door if they are at home alone, not to give personal information on phone to unknown callers, monitoring where their children are going, with whom they are playing or what TV shows or books they are following, still some parents do not realize the same level of guidance and supervision must be provided for a child's online exposure. They assume that their children shall be protected by the internet platforms. But practically most of the social media sites are unsupervised. Because of the anonymous nature of social media, a child may not know with whom he is communicating, whether with another child or an adult or even a child predator.

Our virtual existence and offline persona have diminishing boundaries and little or no personal information is left private in this social networking age.

STATISTICS ON CHILD USE OF INTERNET

Young people aged about 15 to 20 are more likely to use internet than the rest of the population. But this generation gap has been slowly narrowing over the years. According to the revised estimates, around 77% of people aged between 15 to 24 used the internet in 2023.

As per the survey conducted by Tata Consultancy Services, 7 out of 10 children shop

online, 76% children use Facebook, 9 out of 10 children own a mobile.

As per the survey conducted by ASSOCHAM, about 60% of Indian teenagers view 125 messages per day. 73% of children between 8 and 13 years in tier II cities have accounts on Facebook and although minimum age to set up an account in Facebook is 13 years, it is a shocking revelation that 82% parents help the children below 13 years to create a Facebook account. National trends show near universal teen internet use (97% for ages 13-17) with high social media engagement (84%), 75% at home internet access.

Likewise survey from America at one point of time, as many as 93% teen-agers between 12 and 17 go on the internet. Also, almost 75% of American teens have cell phones. On an average American teens between 12 to 17 years send and receive about 1500 text messages a month. Of course, now the numbers have increased beyond expectation.

ONLINE THREATS TO CHILDREN

The various threats to children in cyber space includes cyber bullying, sexual grooming, child pornography, malware attacks amongst other crimes.

A. Cyber Bullying – Children who use internet often become the victims of cyber bullying. The term cyber bullying refers to an act or series of acts done in order to harass a child's psychology, confidence or morality. In the present day, social media has become the most important tool for the children to interact online by creating social pages and sharing multiple information and ideas. Children often invite new members in their social account or even accept friend request from strangers or anonymous individuals or groups. In case, a stranger is accepted as a member by a child in his/her social network, the stranger could be a cyber criminal who could bully or harass a child by making unwarranted comments or pokes or posting objectionable contents in order to bully a child. Cyber bullying is also possible where another child or adult (who is pertaining to be a child) commits mischievous acts using social media or other means of online communication, in order to bully the victim child. Such person could have an acquaintance with the victim child, or a schoolmate or a neighbourhood person or a complete stranger. The children who face cyber bullying may or may not discuss the problem openly or seek required professional guidance or advice from family or friends and often become depressed or feel helpless when they are cyber bullied.

There are various types of cyber bullying like, Happy Slapping i.e. where a mobile or camera is used to record an incident where a child is being bullied or beaten and then circulating the same on social media. Harassment, Impersonation, illegally using nude pictures, creating insulting websites, rumour spreading, trolling i.e. to send abusive and hurtful statements online on social media are some of the other forms.

B. Cyber stalking - This is a widely prevalent cybercrime that poses risk to the children online. Cyber stalking is some thing that uses digital technology to repeatedly harass, intimidate or monitor someone thereby causing fear. It may include unwanted contact, spreading false information, hacking accounts, posting explicit content or tracking movements. Anyone can conceal one's true identity or use false names in order to start a conversation with a child online or use the available information about the child such as e-mail to send him/her harassing or intimidating contents online.

C. Malware Attack - Malware attacks interferes with child protection by deceptive downloads, device and data theft, phishing and

grooming, school system attacks. Often kids download free apps or games that secretly install malware or spyware. Malware can access cameras, photo galleries, steal login credentials, or hack social accounts. Offenders use fake emails or messages to trick kids for revealing personal data leading to potential grooming or financial fraud. Malware can also target school systems which comprises of sensitive information about the students like their home addresses or medical records.

D. Online Gambling - Some of the websites have the criminal objective to target and entice children for online gambling. This practice can be a addiction for many resulting in a criminal act in many jurisdictions like India. It is the act of wagering money on games of chance or skill through the internet, often associated with higher risks of gambling addiction.

E. Online Identity Thefts - Basically identity theft is nothing but stealing some one's identity to post or send any intimidating message or material. This is a crime often involved in cyber bullying cases where fake accounts are created by anti socials to post any objectionable post or even photo morphed images of children in order to bully them.

F. Cyber Pornography - Online child pornography is the abuse or exploitation of a minor (below the age of 18 years) in a sexually explicit act or conduct online through images or videos. The online predators lurking in social media platforms, gaming sites, chat rooms, lure and trick children along with adolescents into situations with the motive of sexual abuse or exploitation. The child victim is traumatized and suffers immensely both mentally and physically leading the child to depression, isolation, substance abuse etc.

G. Obscene Content - When we allow our children to use internet and mobile phones, it is only with the intent that it can be a good source of education and learning. However, if the internet is provided to the children without any protection filters, children may be exposed to a lot of information meant for adults, particularly obscene content. Either they can be curious to browse, on their own, for this information or such content could emerge as a search result when innocent key words are used by them to locate certain information on the internet. Many times, misleading pornographic website names like toys, dogs, boom, even porn sites using brand names like Barbie or Disney, could lead a child to read an obscene material unknowingly or such websites which are age inappropriate could crop up on their own in the form of popup ads to distract a child.

H. Sexual Predators - These criminals aim to attract the unsuspected children in conversation of their choice and later change the conversation to entice them to sexual activity such as sharing objectionable pictures or videos or preparing them for being used to create such illegal content online or meet them personally or make them meet someone offline for sexual exploitation.

CASES OF CYBER CRIMES AGAINST CHILDREN

As global data indicates a growing trend of children spending more time online the imperative for robust protection measures cannot be overstated. As of January, 2023, India had 692 million internet users, with approximately 30.4% being children. Children are facing high risk as they have increasingly shifted their activities online during the COVID-19 lockdown. With many students now attending classes and socializing virtually have become more susceptible to online exploitation. The lack of in-person interactions with peers and the extended and unsupervised time spent online, exposes children to potential harm.

TABLE - Comparison of Cyber Crimes against Children reported before, during and after Covid-19 pandemic

Cyber Crimes against Children reported	Before the Covid-19 pandemic			During and after the Covid-19 pandemic		
	2017	2018	2019	2020	2021	2022
Cyber Pornography / hosting or publishing obscene sexual materials depicting children (Sec.67B IT Act, along with other penal laws)	07	44	102	738	969	1171
Cyber Stalking	07	40	45	140	123	158
Other Cyber Crimes against Children	70	141	153	220	252	416

According to the NCRB report, there was a significant evolution in reporting cybercrimes against children in India particularly between 2017 and 2022. In the year 2017 only seven cases were officially recorded, a figure that rose to 1823 by the year 2022. This dramatic increase does not necessarily indicate a sudden surge in offences but reflects a notable shift in law enforcement, vigilance and public awareness. Over time, we believe that law enforcement agencies have become more equipped to address these crimes, and victims and their families have become more responsible in reporting these incidents, by overcoming the stigma that often deterred them in the past.

DO'S & DO NOT'S FOR ONLINE SAFETY OF CHILDREN

- Healthy discussion with a child regarding what information should be kept private and what can be disclosed;
- Making the child understand that personal pictures, phone numbers and other sensitive details should not be shared online;
- Enabling the privacy setting in a child blog;
- Explaining the child that posting of any illegal content or any inappropriate subject such as hate speech or abusive language is illegal and punishable;
- Making the child understand that any information posted online cannot be deleted permanently;
- Reviewing the child's blog from time to time;
- Explain children that any content sent through phones can be easily circulated among other people;
- Teach the children not to answer unknown calls and not to post their cell phone number on their profiles or share their passwords with any one while using their computers or cell phones.
- Before downloading music, files, video messages or other content, checking the content for viruses or other malware;
- Download materials from genuine sites;
- Reporting any illegal content or obscene digital content to law enforcing agency;
- Avoid playing games with strangers or cyberbullies;
- Let the child seek permission before using a credit or debit card online;
- If a child being cyberbullied by creation of a fake profile or webpage, immediately write to the service provider requesting immediate removal of the same. As per Indian Law, the internet service providers are under an obligation to

remove the illegal content within 36 hours from intimation of complaint in writing by a victim;

- Collect any evidence of receipt of an e-mail or message from a cyber-bully and take its screen shots noting the time and date when it was received and report it to local police and nearest cybercrime cell;
- Enable the firewall, anti-virus and security settings in a computer, laptop, ipad or cell phone used by children;
- Installing software for blocking unwanted popup windows and objectionable/ adult content;
- Children below 13, should be refrained from setting up accounts in social network. Even social networks should deploy age verification mechanism;
- In case a child becomes a victim of any online crime, the matter must be immediately reported to the Cyber Crime Cell nearest to the place where the victim resides;
- Consult a cyber law specialist for legal recourse or advice and a child psychologist for support services.

LEGAL FRAMEWORK FOR PROTECTION OF CHILDREN ON INTERNET IN INDIA

Apart from other legislations, the Information Technology Act, 2000 was enacted as a special legislation that governs transactions or activity that takes place online using mobile phones and/ or internet/computers, ipads, tablets, smartbooks or other similar devices or gadgets. The IT Act, 2000 was enacted in 2000 but several important amendments to the Act were made in the year 2008 through The IT (Amendment) Act, 2008 which broadened and clarified the scope and ambit of the Act and its provisions. The POCSO Act also deals with online abuse of children. The IT (Amendment) Act, 2008 enlarged the scope of the term "computer network" by inserting term "communication device" in its definition which means cell phones, personal digital assistance or combination or any other device used to communicate, send or transmit any text, video, audio or image. Therefore, provisions of IT Act are also applicable to any mobile content or any other contents which can be accessed through mobile phones, ipads or gaming consoles through which one can access internet. Few cyber crimes which were not expressly mentioned in 2000 Act, were added to the amended Act in 2008 such as child pornography. Child pornography now stands expressly prohibited by the amended Act 2008.

The POCSO Act, 2012 was enacted to provide legal protection against sexual assault, sexual harassment and child pornography. This is another Act which expressly deals with child pornography apart from IT Act.

Apart from the above, the Digital Personal Data Protection (DPDP) Act, 2023 mandating verifiable parental consent and prohibiting harmful data processing for children under 18 years of age. Further, the IT (Intermediary Guidelines) Rules, 2021 holds platforms accountable for content moderation and grievance redressal, supported by initiatives like the National Cyber Crime Reporting Portal.

Article 21 and Right to Privacy - In the landmark judgment in the case of Puttaswamy V. Union Of India, 2017 the Hon'ble Apex Court recognized privacy as a fundamental right under Article 21 of the Constitution. This landmark ruling forms the constitutional foundation for all data protection frameworks in India, including protection for children. Even though the ruling does not focus on children per se, the principles of dignity, autonomy and informed consent extend to minors.

In a landmark judgment with far-reaching global implications, the Hon'ble Supreme Court of India, in Just Rights for Children Alliance & Anr. Vrs. S. Harish & Ors. [Criminal Appeal Nos. 2161-2162 of 2024] decided on 23rd September, 2024 took a firm stand on the digital exploitation of children. The ruling highlights India's commitment to both national and international obligations to protect

children from sexual exploitation, especially in the rapidly evolving digital space. The judgment deals with key provisions under the Protection of Children from Sexual Offences (POCSO) Act and the Information Technology (IT) Act, broadening the scope of legal accountability for those involved in the possession, distribution, or even passive consumption of child pornography. This decision places India at the forefront of global efforts to combat the exploitation of children online and serves as a strong message of zero tolerance for child abuse in any form.

IN CLOSING

A multistake-holder approach is the right approach to combat online abuse against children, particularly in India. All parties including parents, educators, children, Government, Law enforcement agencies, NGOs, public and private sector companies need to synergise their efforts to successfully tackle this growing menace. A combined approach involving technical, social and legal measures is required to prevent cyber crimes and protect children in cyberspace. Spreading awareness on cyber safety practices will effectively contribute to prevent cybercrimes targeted at children. We also need to strengthen our cyberspace laws and deploy effective strategies to curb and combat this problem. We simply need to plug the loopholes in our socio-legal ecosystem and coordinate our efforts to promote a free yet secure cyberspace for every citizen, particularly our children!

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NECESSITY OF VALUE BASED LEGAL EDUCATION IN SCHOOL CURRICULUM: A CATALYST APPROACH FOR LAW AND SOCIAL TRANSFORMATION



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ABSTRACT:

The real education should come with moral values and character. Only the education with values can lead a man to path of virtue. Thus, our education system should adopt value based education at all levels. Education without values tends to make man a clever devil. It is important to have an intelligent mind, but it is far more important to have a good heart. Intelligence with good character is the goal of true education. All scams and episodes of corruption, crime and violence in recent times in our country and the world are evidence to failure of human being, not because of lack of education, but because of value- less education. Value education never allows one to perform under pressure or greed. In this context, now it is imperative to think as to whether the present legal education system which makes facility to study law after 12th class or graduation, is well equipped with human values to produce law knowing persons who act for truth and justice in the society and not to make money only by using their intelligent brain in the legal profession. It is essential for every individual to be educated and know the law of the land to lead a meaningful life. Ignorance of law is no excuse. The development of a nation depends upon the development of its citizen to the full extent by having all kinds of moral, societal, intellectual and constitutional values. We can have such values in a person if it is inculcated in the mind of a child from the early childhood elementary education. The Indian legal system, founded on constitutional values of justice, liberty, equality, and fraternity, is designed to ensure a fair and just society. However, the formal legal education system primarily trains aspiring lawyers, leaving the general populace, especially the youth, with a limited understanding of legal principles and their role as active citizens. The absence of an early-stage introduction to legal concepts and constitutional values in the Indian school curriculum is a significant lacuna. There is a necessity of integrating value-based legal education in Indian schools, examining its legal and ethical dimensions, and assessing its potential to create a more just and aware society. This article examines the necessity of such value based legal education in the school curriculum and developing a teaching-learning pedagogy in this regard.

I. INTRODUCTION

Education helps in molding character and personality of a person. If our basic education is enriched with value education then a child will be definitely transformed to be a good human being. Similarly, if a child is developed inheriting value based legal education then he will be definitely transformed to a responsible citizen aiming to bring welfare and justice in society. Without adhering any societal or moral values if we study law keeping it in mind as a professional course then it will be our understanding that protecting criminals from legal punishment is the ethics of legal profession and winning case of

an undeserving party in civil case is the victory of truth. Therefore, if a child is taught about values in life and social responsibility from his early childhood education then he will lead a meaningful life in society and the society will be highly benefited by having such a citizen in her lap.

The present legal education system is meant to provide legal education for creating legal professionals only. After studying law one can use such learning to make his profession and can earn money for which he may deviate from the true purpose of enactment of law because hardly any lawyer prefers to bow down before truth surrendering himself that his client has come with malafide intention and the opposite party is right. If he does so then he cannot survive in his profession. So here a question comes if we judge a matter with true spirit of law then can we make law as a profession. For example if a dacoit after looting a person and committing murder of that person approaches a lawyer stating that he had committed such offences and requests him to save him then what is the duty of that lawyer in such cases: Should he advise him that he would not admit his guilt before the court and as he has come to him to save himself, so he would defend him and asks him to act as per his instruction or when he (Advocate) realizes that the act of the person is not in accordance with law, he should leave him to be punished as sanctioned by law.

If we go for first one then he thinks that he is acting so, as the present legal profession permits him to do so but this is not value based or ethical. But if he chooses the second one then he may lose the case in his profession but he has acted with true spirit of legal values and as a responsible citizen. Here question comes our legal education should be shaped in which way i.e., inculcating values in a child to prepare him as a good human being and a responsible citizen or to make a professional who can earn a lot deviating from the true spirit of law. This is the crux of this discussion required for rethinking and making research in the field of legal education in order to shape a child as a good human being and responsible citizen for the state by inculcating value based legal education in his mind from the early school life.

II. NECESSITY FOR VALUE BASED LEGAL EDUCATION

Law regulates human behavior and conduct in a society. Law is an instrument to achieve justice. A man being social prefers to live in society being guided by the law of the society. Any act of a man not in conformity with law is subject to sanction by the appropriate authority. It is a core principle of the modern legal system that ignorance of law is no excuse. No lawbreaker can be heard to say that s/he was not aware of the law. Provided the law is "published" in writing, a duty is cast on individuals to educate them about the law. The Hon'ble Supreme Court said so in Union of India & Others vs M/S Ganesh Das Bhoj Raj (AIR 2000 SC 1102) "individual service of a general notification on every member of the public is not required and the interested person can acquaint himself with the contents of the notification published in the Gazette." The principle has some intuitive appeal; if ignorance of law were an excuse, every lawbreaker would invoke it, and the law would lose its deterrent value. Yet, beyond a point, it is difficult to take the principle seriously. The most obvious hurdle is that it disproportionately harms the insufficiently educated, i.e., those who are illiterate or otherwise not equipped with the know-how to find, read and understand the law, and to whom even the most well-published law is inaccessible. To demand regular and updated knowledge of law from such persons is to demand the impossible. The Rule of Law, which stands tall against arbitrariness, cannot possibly accept such an unfair principle. Neither are the educated in a position to stay abreast with the law. In such a situation it has become essential to educate each individual to have the ability to know and understand the law of the land where he lives in. The present legal education system makes facility to study law after 12th class or graduation and generally it is studied as a professional course. Somehow when one makes law as a carrier or profession he focuses on the interest of his clients or institution deviating from the true spirit of law. Is there any instance where a lawyer has admitted the fault of his client or institution admiring the opposite party who is on right path.

Whether our legal education has taught us that before fighting for a person in the court of law, to make an unbiased inquiry to know that the party who has come to him, whether he deserves justice or not? In the present so called legal profession client's interest is given paramount interest for the sake of reputation and money. Human values and humanity teaches us for self-introspection, to have the courage to admit our fault for ensuring victory of truth and justice. Such type of noble thought and personality can be acquired if we study law coupled with value education from the elementary level of school education during our childhood.

III. OPINIONS OF JURIST AND LEGAL EXPERTS

In light of evolving legal and societal norms, it has become imperative to revisit how the legal system engages with not only adults but also children and young people. Legal education in India must be re-envisioned to extend its scope beyond professionals and adults, reaching younger generations as well. As the country's legal framework undergoes significant transformation, it is essential for children to be introduced to fundamental legal principles, statutory protections, and the concepts that sustain and fortify the nation's democratic structure. Justice M.N. Venkatachaliah aptly noted, "Legal awareness must reach every section of society, especially children, as they are the future guardians of the nation's democratic values and constitutional ethos." This observation underscores the necessity of integrating legal education at the foundational level, equipping young minds to contribute meaningfully to preserving and enhancing India's legal and democratic systems. The strength of any democracy rests with its younger generation, and educating children about their legal rights and responsibilities is crucial to ensuring they grow into informed citizens who comprehend their role in safeguarding democratic values. Empowering children with legal knowledge from an early age prepares them to participate actively in civic life and ensures the long-term vitality of the nation's democratic institutions.

1. Upendra Baxi, The Crisis of the Indian Legal System, Vikash Publishing, 1982, p. 112

In India, legal education is taught mainly as higher education, much of it, restricted to students who intend specializing in law. This results in the majority of the public being ill informed about law, their rights and the laws that regulate them. Legal awareness promotion activities, which are part of legal aid initiatives, served the purpose of enhancing the general lawful knowledge, which is insufficient to speak about the legal consciousness enhancement.

2. N.R. Madhav Menon, Legal Education and Profession in India, LexisNexis Butterworths, 2012, p. 56

If law is adopted as one of the subjects taught in schools right from primary level, it would have a multiplicity of benefits to the individual, as well as to the society

3. M.N. Venkatachaliah, Rule of Law in India: A Quest for Reason, Oxford University Press, 2003, p. 120

Creating just and equitable society, in the long run, the purpose for which law was introduced at the primary education level is to shape a better world. People who grew up learning the importance of the law will recommend it and defend it.

4. Developing Legal Education in the Common Wealth: Some Current Issues", Commonwealth Legal Education Association, 2006, at 12

Legal education is a species of main stream education involving the study of law. It inculcates the ability to make use of law, to analyze it and to criticize it as a member of the legal community. It focuses on the individual freedom as also on the development of society, solidarity and strengthening of rule of law. The progress of high quality legal education is a prerequisite to high quality legal practitioners.

IV. EFFORTS TAKEN SO FAR FOR INCLUSION OF VALUE BASED LEGAL EDUCATION IN SCHOOL LEVEL

Several reports and commissions in India have highlighted the need for value-based education to promote humanistic and constitutional values. The National Education Policy (NEP) 2020 also emphasizes producing "good human beings capable of rational thought and action, possessing compassion and empathy, courage and resilience, scientific temper and creative imagination, with sound ethical moorings and values". However, the integration of foundational legal and ethical principles into the school curriculum remains limited. There is a gap between these policy ideals and their practical implementation, considering how a value-based legal education can address issues like declining moral standards and rising apathy towards the rule of law.

There are number of boards for secondary education in India. After going through the syllabus of all the Boards like Central Board of Secondary Education (CBSE), Indian Certificate of Secondary Education (ICSE), Council for the Indian School Certificate Examination (CISCE), National Institute of Open Schooling (NIOS), International Baccalaureate (IB), and Cambridge International Examinations (CIE), it was found that no much care is given to the legal education of the school going students. The basic concept of Indian constitution, legal services, mixed civil and criminal laws have been incorporated as a subject with theoretical knowledge; but this much is not sufficient. More focus must be drawn as these students are of crucial age and may easily be molded in any direction. So the knowledge of such Acts which may be useful for them must be incorporated in their syllabus.

V. PREPARING A TEACHING LEARNING PEDAGOGY FOR IMPARTING VALUE BASED LEGAL EDUCATION IN SCHOOL CURRICULUM

If we think that value based legal education is highly imperative for children in school curriculum then a specific teaching learning pedagogy and a special school curriculum has to be developed in this regard because the technicalities of law is beyond the understanding of children. Honorable Apex Court of India and various jurists have given emphasis on indianization of law deviating from British colloquial rules. Accordingly, we have to develop our own legal education system enriching human values in it. For example- in ancient India students used to learn “Nyayasastra” to bring justice in the society and to do justice to themselves by having noble personality. First a person used to learn all kinds of human values like compassion, honesty, respect, responsibility, gratitude, love, affection, cooperation, sympathy, discipline, sincerity, sacrifice, dedication, patriotism, self-introspection etc. to build up his personality then he used to study the law of the lands to be a good human being in the civic society. We all know that no law is made for any negative purpose and behind all laws, something noble, humane and pious is there. We have to extract these nobleness, piousness and values incorporated in the law and to teach them to the school children at first and then to teach them how specific laws have been made on such human values. For example- respecting women and their dignity is a great human value of a good human being. Accordingly a lesson will be there in school curriculum as to how to respect women and not to do certain acts with women for which laws have been made to make sanction for such acts. In this way a student will learn the human values and specific laws in this regard which protects such human values. Similarly, with regard to keeping promise in life, all the relevant provision under contract law relating to promise; human values of gratitude from quasi contract obligation; not to be violent in any occasion and to take action before the appropriate authority as per provision of BNSS or CPC without taking law into hand. Many instances are there where we have to first give priority on human values then the specific law in this regard. If such effort of imparting value based legal education in school curriculum becomes successful then after completing school education each and every person will be able to understand the laws

and the intrinsic values incorporated in it. After knowing the values incorporated in the law, a student's mind will be more justice oriented rather being profession oriented.

VI. CONCLUSION

We all need peace and harmony in society and to achieve this we have to self-introspect ourselves to see where is the lacuna in ourselves for not providing education to the children and common people about law and justice from their childhood. We have to think why our study of 'Nyayasastra' has become dormant. In an ever-evolving society, integrating legal education into the lives of children and young people is not merely beneficial—it is imperative. A legal curriculum that addresses both foundational legal principles and contemporary issues prepares the next generation to engage actively and responsibly in their communities. By understanding their rights and responsibilities, children can grow into informed citizens who appreciate the significance of democratic values, social justice, and ethical conduct. As such, society must embrace a holistic approach to legal education that emphasizes not only legal literacy but also social responsibility, personal integrity, and respect for diversity. Finally, let it be concluded with a quote of Eleanor Roosevelt "It's your life—but only if you make it so. The standards by which you live must be your own standards, your own values, your own convictions in regard to what is right and wrong, what is true and false, what is important and what is trivial."

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MEDIATION AS A PARADIGM SHIFT IN JUSTICE DELIVERY



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INTRODUCTION

India is home to nearly 1.5 billion people, representing an extraordinary mosaic of cultures, languages, economic interests, and social relationships. In a country with such vastness and diversity, disputes whether personal, commercial, familial, or institutional are inevitable. The Justice delivery system in India, today stands at a crucial crossroads caught between the constitutional promise of timely justice and harsh reality of huge pendency. Mediation has emerged not merely as an alternative, but as a necessary complement to formal adjudication. Mediation symbolizes a profound shift from contest to consensus. Rooted in dialogue, cooperation, and voluntary participation, it offers disputing parties the opportunity to resolve conflicts with dignity, confidentiality, and control over outcomes. Unlike adversarial litigation, mediation prioritizes healing over hostility, efficiency over delay, and mutual satisfaction over imposed verdicts. The year 2025 marked a watershed moment in India's mediation movement. Mediation drive lead by the judiciary and legal services institutions, was brought from the periphery of the justice system to its very centre. Courts across the country actively identified mediation-friendly disputes and thousands of litigants experienced resolution without the trauma of prolonged trials. The recent nationwide mediation initiatives, particularly the focused mediation drive of 2025, signify a paradigm shift in how disputes are perceived and resolved in India. In the present scenario, mediation is no longer viewed as a peripheral alternative but as an integral component of justice delivery.

CONCEPTUAL FOUNDATIONS AND HISTORICAL EVOLUTION OF MEDIATION IN INDIA

In India mediation is conceptually rooted in the ideals of consensual justice, restorative harmony, and participatory dispute resolution, reflecting a departure from rigid adversarial adjudication towards dialogue-based problem solving. Mediation emphasizes party autonomy, confidentiality, neutrality of the mediator, and voluntary settlement, enabling disputants to retain control over both the process and outcome. This concept resonates deeply with India's traditional dispute resolution practices, such as Panchayats and Sabhas which historically resolved conflicts through consensus and social accommodation rather than coercive authority. In the modern legal framework, mediation gained formal recognition with the incorporation of Section 89 of the Code of Civil Procedure, 1908, and subsequent judicial endorsement by the Supreme Court, which underscored mediation as an effective instrument to ensure access to justice and reduce judicial backlog. Over time, court-annexed mediation centres, structured training of mediators, and legislative consolidation through the Mediation Act, 2023 have transformed mediation from an informal, community-based practice into an institutionalised and legally robust

mechanism, firmly embedded within India's justice delivery system.

STATUTORY FRAMEWORK GOVERNING MEDIATION IN INDIA

The statutory landscape governing mediation in India reflects a gradual yet decisive shift towards institutionalising consensual dispute resolution within the formal justice system. The earliest legislative recognition of mediation is found in Section 89 of the Code of Civil Procedure, 1908, which empowers civil courts to refer disputes to alternative dispute resolution mechanisms, including mediation, where the elements of settlement exist. Complementing this, the Arbitration and Conciliation Act, 1996 provides a structured framework for conciliation, laying down principles that closely align with mediation, such as neutrality, confidentiality, and voluntary settlement. The Commercial Courts Act, 2015 further strengthened the mediation regime by introducing mandatory pre-institution mediation for specified commercial disputes, signalling legislative intent to prioritise settlement over litigation in business conflicts. The statutory landscape was significantly consolidated with the enactment of the Mediation Act, 2023, which for the first time provides a comprehensive legal framework exclusively for mediation, addressing issues of mediation agreements, enforceability of settlement outcomes, mediator accreditation, institutional mediation, and online mediation. Initial implementation challenges remain, such as ensuring consistent training and public awareness, but this Act represents a major step in institutionalising mediation within India's justice system. Collectively, these enactments establish mediation as a legally recognised, court-supported, and enforceable mechanism, integral to India's contemporary dispute resolution architecture.

JUDICIAL ROLE IN PROMOTING MEDIATION IN INDIA

Judiciary has emerged as the principal catalyst in transforming mediation from a peripheral alternative dispute resolution mechanism into a mainstream instrument of justice delivery. Guided by the constitutional vision of access to justice under Articles 14 and 21, courts have consistently emphasised that justice is not merely about adjudication but also about timely, effective, and harmonious resolution of disputes. Through purposive interpretation of Section 89 of the Code of Civil Procedure, 1908, the Hon'ble Supreme Court has clarified that referral to mediation is not a mechanical exercise but a judicial responsibility, requiring courts to assess the nature of disputes and actively encourage settlement where relationships, commercial continuity, or social harmony are at stake. The Judiciary has institutionalised mediation through structural initiatives. The establishment of court-annexed mediation centres in courts have provided an approachable and credible forum for parties to engage in dialogue under judicial supervision. The formation of the Mediation and Conciliation Project Committee (MCPC) by the Hon'ble Supreme Court has further build up this framework by standardising mediation procedures, training mediators, and integrating mediation within court processes. Judicial stewardship has also been evident in high-value commercial disputes, family and matrimonial matters where courts have proactively appointed mediators and monitored settlement efforts. In recent years, judiciary has gone a step further by spearheading nationwide mediation initiatives and awareness campaigns, reflecting a conscious shift from adversarial dominance to facilitative justice. Collectively, these judicial efforts demonstrate a transformative approach wherein courts function not only as adjudicators of disputes but also as enablers of dialogue, reconciliation, and sustainable justice.

LANDMARK JUDICIAL PRONOUNCEMENTS ON MEDIATION: AN EXPANDED PERSPECTIVE

Judicial pronouncements have been instrumental in embedding mediation within India's procedural and substantive justice framework. In Salem Advocate Bar Association v. Union of India (2005), the Supreme Court not

only upheld the validity of Section 89 of the Code of Civil Procedure, 1908, but also underscored the obligation of courts to meaningfully explore settlement through mediation and other ADR mechanisms as a response to systemic judicial delays. This decision marked the judiciary's first strong endorsement of mediation as a necessary adjunct to adjudication rather than a discretionary alternative.

The jurisprudence on mediation was decisively advanced in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd. (2010), where the Supreme Court provided structured guidance on the nature of disputes suitable for mediation, such as family, commercial, and property matters involving ongoing relationships. The Court clarified that while mediation is voluntary, judicial initiative in facilitating mediation is essential, thereby harmonising party autonomy with judicial responsibility. This judgment has since become the cornerstone for court-referred mediation in India. Collectively, these landmark pronouncements reflect a judicial shift towards a problem-solving approach to justice, wherein mediation is recognised as a vital instrument for achieving expeditious, equitable, and socially sustainable dispute resolution.

MEDIATION IN DIFFERENT CATEGORIES OF DISPUTES

Mediation has demonstrated its effectiveness in resolving a wide range of disputes where preservation of relationships, confidentiality, and expeditious resolution are of paramount importance. In matrimonial and family disputes, mediation plays a crucial role in addressing emotionally charged conflicts involving marriage, divorce, maintenance, custody, and domestic discord. Courts have consistently emphasised reconciliation and amicable settlement in such matters, recognising that adversarial litigation often worsen personal trauma and irreversibly damages familial relationships.

Mediation also offers a pragmatic alternative in commercial and corporate disputes to prolonged litigation and arbitration by facilitating interest-based negotiations and preserving business relationships. Mediation is particularly valuable in partnership disputes, shareholder conflicts, contractual disagreements, and infrastructure-related claims where continuity of commercial engagement is desirable.

Civil disputes relating to Property and partition, often characterised by deep-rooted family conflicts and prolonged litigation, are well-suited for mediation due to their relational and negotiable nature. Mediation allows parties to explore equitable division, financial adjustments, thereby reducing hostility and preventing generational litigation. Settlements reached through mediation in such cases often ensure voluntary compliance and durable peace. Across these categories, mediation has emerged as a flexible and responsive mechanism that complements formal adjudication by focusing on resolution rather than retribution.

MEDIATION AND ACCESS TO JUSTICE

Mediation has now emerged as a vital instrument in advancing access to justice by addressing some of the most persistent challenges of the Indian judicial system, namely case backlog, high litigation costs, procedural delays, and adversarial hostility and by facilitating early and consensual resolution of disputes, mediation significantly reduces the burden on courts and contributes to the disposal of long-pending cases. From an economic perspective, mediation is inherently cost-effective, as it minimises legal expenses, court fees, and ancillary costs associated with prolonged trials and appeals. Mediation ensures speedy justice without sacrificing fairness. Equally significant is mediation's ability to preserve relationships by fostering cooperation, mutual understanding, and voluntary compliance, leading to durable settlements and social harmony. In this manner, mediation not only enhances efficiency within the justice delivery system but also reinforces its humane and participatory character.

CHALLENGES AND LIMITATIONS OF MEDIATION IN INDIA

In India mediation continues to face significant structural and practical challenges that hinder its full potential despite its growing acceptance. Notwithstanding its recognised advantages and judicial endorsement, mediation in India continues to confront several structural, procedural, and cultural challenges that limit its effectiveness and wider adoption. A primary impediment is the institutional and infrastructural deficit that characterises mediation facilities across many courts, particularly at the grassroots level. Mediation centres are now relatively being well-equipped at the district and subordinate courts. However at certain placed mediation centers often lack dedicated spaces, administrative personnel, and technological support necessary for conducting effective mediation sessions. Equally significant is the lack of a comprehensive and standardised framework for mediator training. In the absence of a centralised accreditation mechanism and continuing professional development requirements, the quality of mediation outcomes remains uneven. Another enduring challenge is cultural resistance to settlement, deeply embedded in the adversarial tradition of legal practice in India. Litigants often equate justice with judicial determination, while lawyers are being hesitant to encourage mediation due to various reasons. Additionally, parties frequently approach mediation as a procedural formality rather than a genuine opportunity for resolution, diminishing its effectiveness.

STRENGTHENING MEDIATION IN INDIA

The future of mediation in India lies in transforming it from a court-supported alternative into a first-choice dispute resolution mechanism. A crucial step in this direction is the effective implementation of the Mediation Act, 2023, through timely framing of rules, operationalisation of the Mediation Council of India, and establishment of uniform standards for mediator training, accreditation, and ethical conduct. Strengthening institutional infrastructure, particularly at the district and grassroots levels, is essential to ensure equal access to mediation services across the country. Equally important is fostering a cultural shift within the legal fraternity and among litigants, where mediation is viewed not as a compromise but as a constructive and dignified form of justice. Judicial encouragement, lawyer sensitisation programmes, and public awareness initiatives can play a decisive role in normalising mediation. The integration of technology and online mediation platforms can further enhance accessibility, efficiency, and cost-effectiveness, especially in commercial and cross-border disputes. With sustained institutional support, professionalization of mediators, and a collective commitment from courts, lawyers, and policymakers, mediation has the potential to become a cornerstone of a responsive, humane, and efficient justice delivery system in India.

CONCLUSION : MEDIATION AS A TRANSFORMATIVE JUSTICE MECHANISM

The evolution of mediation in India has swiftly evolved from a supplementary dispute resolution option to a statutory and judicially supported mechanism that alleviates judicial burdens and promotes amicable resolutions. Legislative innovations like the Mediation Act, 2023, proactive judiciary campaigns such as "Mediation for Nation," and landmark settlements exemplify mediation's growing importance. Through sustained judicial support, progressive legislative intervention, and evolving institutional frameworks, mediation has emerged as a credible response to the chronic challenges of judicial backlog, procedural delay, and adversarial excesses. The success of mediation depends upon effective implementation, professional integrity, and a collective willingness to transcend entrenched adversarial mindsets. Addressing infrastructural gaps, ensuring rigorous mediator training and accreditation, and cultivating awareness among litigants and legal professionals are essential to sustain confidence in the process. The success of mediation ultimately

depends not merely on statutory recognition but on its acceptance. Strengthening institutional capacity, professionalising mediation practice, and fostering a cultural reorientation towards consensual dispute resolution are imperative for mediation. As India strives towards an efficient, inclusive, and responsive justice system, mediation stands poised to serve not only as an instrument of efficiency, but as a reaffirmation of justice rooted in dialogue, dignity, and durable resolution.

The surge in mediation across India in 2025 marked a transformative moment in dispute resolution culture. Through the "Mediation for the Nation" drive, thousands of disputes were resolved amicably, court backlogs were reduced, and parties experienced a more humane form of justice. When effectively implemented, mediation not only reduces judicial backlog and litigation costs but also preserves relationships, promotes voluntary compliance, and enhances public trust in the justice system. In this broader perspective, mediation emerges as a vital instrument for realising the constitutional vision of access to justice one that is efficient yet empathetic, structured yet flexible, and firmly grounded in the values of dialogue, dignity, and social harmony.

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DISMISSAL OR DISPOSAL OF CIVIL SUITS WITHOUT TRIAL UNDER CPC, 1908



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ABSTRACT

Dismissal or disposal of civil suits without full trial under the Code of Civil Procedure, 1908 (CPC) represents a crucial balance between judicial economy and the litigant's right to adjudication on merits. This article examines the statutory framework enabling such disposal, with focus on Order VII Rule 11, Order IX, and Order XV CPC, together with res judicata and statutory bar doctrines. It analyses Supreme Court decisions delineating the contours of rejection of plaint, dismissal for default, and disposal at the first hearing, emphasizing the Court's insistence that threshold powers be exercised sparingly on a plaint-centric basis without engaging in a mini-trial. Contemporary jurisprudence seeks to prevent abuse of process while preserving the presumption in favour of trial wherever a genuine triable issue emerges from the pleadings.

KEYWORDS

Dismissal of suit; Disposal without trial; CPC 1908; Order VII Rule 11; Order IX CPC; Order XV CPC; Res judicata; Statutory bar; Rejection of plaint; Dismissal for default; Supreme Court of India.

INTRODUCTION

The Code of Civil Procedure, 1908 is designed to facilitate adjudication of civil rights on merits and to filter out suits that are frivolous, barred by law, or procedurally defective. Provisions such as Order VII Rule 11 (rejection of plaint), Order IX (dismissal for default), and Order XV (disposal at first hearing) constitute procedural gateways through which a suit may be terminated before evidence recording.

The Supreme Court of India has repeatedly underscored that these powers, though essential for curbing abuse of process, must be exercised with circumspection and within statutory text. At the rejection or summary disposal stage, the court must confine itself to a plaint-centric inquiry: assume the truth of the plaint's averments and ask only whether they disclose a cause of action, are barred by law, or suffer from defects mandating rejection, without weighing evidence or considering the defence.

Dismissal for default under Order IX is a procedural, non-merits termination that does not give rise to res judicata, leaving open remedial avenues of restoration or fresh suit institution. Disposal at the first hearing under Order XV is justified only where pleadings demonstrate no real issue of law or fact survives for trial. The present article examines the statutory scheme and case law governing dismissal or disposal without trial, highlighting evolving judicial standards that harmonise efficiency with fairness.

CONCEPT AND STATUTORY FOUNDATION

Dismissal/disposal "without trial" means termination of the suit without recording oral evidence on factual issues, though pleadings, documents, and legal arguments may be considered. Key CPC,1908 provisions providing such power include:

- Order VII Rule 11 of CPC,1908: Rejection of plaint
- Order VII Rule 10 of CPC,1908: Return of plaint
- Order IX Rules 2, 3, 5, 8: Dismissal for non-appearance/non-service .
- Order X, Rule-1: Ascertainment whether allegation in pleading are admitted or denied.
- Order XI, Rule-21:Non-Compliance with the order of discovery .
- Order XII Rule-6: Judgment on Admission
- Order XIV Rules 2(2) : Disposal at first hearing.
- Order XV Rules 1: Parties not at Issue .
- Order XV Rules 4: Failure to produce evidence
- Order XXIII Rules 1: Withdrawal of Suit or abandonment of part of claim .
- Order XXIII Rules 3: Compromise of Suit
- Order XV Rules 4: Failure to produce evidence.
- Sections 10 , 11 , 12: Stay of Suit, Res judicata and bar to further Suit.
- Section-35B: Denial of further prosecution for failure of the plaintiff or defendant to pay cost.

The Supreme Court has repeatedly held that while courts may reject manifestly meritless or barred suits at inception, they cannot undertake a "mini trial" or fact-finding exercise at the rejection or summary disposal stage.

ORDER VII RULE 11: REJECTION OF PLAINT

Order VII Rule 11 CPC empowers the court to reject a plaint in limine if it discloses no cause of action , is barred by law , is frivolous or vexatious, or is otherwise not maintainable. Rejection under this rule is a threshold mechanism to prevent procedurally or legally defective suits from consuming judicial resources. The court's inquiry is strictly limited to the four corners of the plaint and must assume the truth of all material averments. If the plaint, taken at face value, discloses a triable issue, rejection is impermissible.

ORDER IX: DISMISSAL FOR DEFAULT

Order IX CPC provides for dismissal of suits on procedural grounds, chiefly non-appearance of the plaintiff or non-service of summons . Such dismissal is non-merits termination and does not bar the plaintiff from instituting a fresh suit, as it does not give rise to res judicata. The Supreme Court has emphasized that dismissal for default should not be ordered mechanically; the court must consider whether the plaintiff's non-appearance was due to sufficient cause and whether adjournment is justified.

ORDER XV: DISPOSAL AT FIRST HEARING

Order XV CPC permits the court to dispose of a suit at the first hearing on the ground that no issue of law or fact requires examination , or where settlement has been reached . Unlike rejection under Order VII or dismissal under Order IX, disposal under Order XV may be on merits if the pleadings and documents clearly demonstrate the liability of the defendant and the claim's quantification requires no further evidence.

CASE LAW AND CONTEMPORARY JURISPRUDENCE

Supreme Court jurisprudence has evolved to protect litigants' right to trial while preventing frivolous litigation. In landmark decisions, the court has held that threshold powers must be exercised sparingly and the burden on the moving party seeking dismissal without trial is to establish conclusively that no triable issue remains. The plaint-centric approach ensures that unless the averments are manifestly untenable or barred by law on their face, the court cannot reject the plaint.

Recent judgments emphasize that the court should not engage in conjecture about evidence that may be led at trial or consider what the defendant's defence might be. The presumption is in favour of trial: whenever genuine doubt exists about triability, the suit must proceed to full adjudication. This jurisprudence seeks to balance docket management with access to justice, ensuring that judicial economy does not override the litigant's fundamental right to be heard on merits.

CONCLUSION

The framework governing dismissal and disposal of suits without trial reflects a careful constitutional balance. While judicial efficiency demands that manifestly frivolous or legally barred suits be filtered at the threshold, contemporary jurisprudence ensures this filtering is exercised with restraint and within strict statutory limits. The Court's insistence on plaint-centric analysis, the presumption in favour of trial, and the requirement that threshold powers be exercised sparingly all converge on a principle: dismissal without trial is an exception, not the rule. Litigants' access to justice and the right to full adjudication on merits remain paramount, even as courts work to prevent abuse of process and frivolous litigation.

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WRITTEN GROUNDS OF ARREST: STRENGTHENING ARTICLE 22(1) THROUGH JUDICIAL INNOVATION



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Article 22(1) of the Constitution guarantees that no person shall be arrested without being informed of the grounds of arrest. For decades, however, this safeguard was interpreted narrowly, satisfied by mere oral communication. Such practice reduced a vital protection for liberty into a ritualistic formality. Recent Supreme Court jurisprudence marks a decisive shift, insisting that the grounds of arrest must be supplied in writing, thereby transforming the safeguard into a verifiable right.

The constitutional requirement of communicating the grounds of arrest under Article 22(1) of the Constitution of India has undergone significant judicial elaboration. Recent Supreme Court pronouncements have clarified that such communication must be in writing and meaningful, thereby ensuring that the fundamental right to liberty under Article 21 is not rendered illusory. This note examines the constitutional mandate, its statutory incorporation, and its jurisprudential evolution, with particular reference to the Prevention of Money Laundering Act, 2002 and the Code of Criminal Procedure, 1973.

STATUTORY INCORPORATION

- **Prevention of Money Laundering Act, 2002 (Section 19):** Incorporates the constitutional requirement by obligating the arresting authority to inform the arrested person of the grounds of arrest.
- **Code of Criminal Procedure, 1973 (Section 50) and Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 47)**: Reinforce the constitutional safeguard.
- **Section 50 A CrPC:** Extends the obligation to inform friends, relatives, or nominated persons of the arrested individual, thereby broadening the protective ambit.

EVOLUTION OF THE LAW

- **Harikisan v. State of Maharashtra (1962):** Grounds must be communicated in a language understood by the detainee.
- **Lallubhai Jogibhai Patel v. Union of India (1981):** Communication must be meaningful and effective, not perfunctory.
- **Prabir Purkayastha v. State (NCT of Delhi), 2024:** Arrest invalidated because written grounds were not supplied, establishing that written communication is mandatory.
- **Pankaj Bansal v. Union of India, 2023:** Proposed acknowledgment of written grounds as the most effective safeguard, ensuring compliance can be tested before a magistrate.

VIHAAN KUMAR V. STATE OF HARYANA (2025)

The Court reaffirmed that written grounds must be given to the accused. Justice N. Kotiswar Singh, in a concurring opinion, advanced the principle further: written grounds must also be furnished to relatives or friends notified under Section 50A CrPC. This ensures that the safeguard is real and effective, enabling families to brief lawyers, prepare bail applications, and challenge unlawful arrests.

MIHIR RAJESH SHAH V STATE OF MAHARASHTRA(2025)

The Hon'ble Supreme Court of India in Mihir Rajesh Shah v. State of Maharashtra and anr has ruled that, "The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate." The court further made it clear that there was no room for a state of exception. The mandate to supply grounds of arrest-in writing- in language understood by the accused would apply irrespective of the statue under which arrest has been made- even to arrest under special criminal laws. In case of non-compliance with the mandate, the arrest and subsequent remand would become illegal and entitle the person to be set free.

REINFORCEMENT IN KAISAR REDDY (2025)

Justice J.B. Pardiwala endorsed Justice Kotiswar Singh's reasoning, holding that extending written grounds to relatives and friends is "not only desirable but constitutionally necessary." What began as a concurring opinion is crystallising into judicial consensus.

ROLE OF MAGISTRATES

If written grounds are supplied to both accused and relatives, with acknowledgment taken, compliance becomes a matter of record. Magistrates at the remand stage can demand these acknowledgments, refusing remand if absent. This shifts the burden from vague police claims to verifiable proof, strengthening judicial oversight.

COMPARATIVE PERSPECTIVE

India's evolving jurisprudence aligns with international standards:

- UK Police and Criminal Evidence Act, 1984: Requires written notice of reasons for arrest.
- European Court of Human Rights (Article 5, ECHR): Detainees must receive "prompt and precise" written reasons for detention.

Thus, India's position is part of a global trajectory towards enforceable safeguards against arbitrary arrest.

CONCLUSION

The jurisprudence surrounding Article 22(1) now firmly establishes a dual safeguard: communication of grounds of arrest to the arrested person and to relatives/friends nominated by them. This evolution transforms the constitutional guarantee from a formal requirement into a meaningful protection of liberty, ensuring that the right to life and personal freedom is not undermined by procedural opacity. The insistence on written communication, coupled with statutory reinforcement, reflects a robust commitment to constitutionalism and the rule of law.

In Mihir Rajesh Shah v. State of Maharashtra and anr the hon'ble Supreme Court's insistence on a strict two-hour prior communication rule transforms the constitutional guarantee under Article 22(1) into a practical safeguard. By mandating timely written notice, the Court

ensures that the right to liberty is not undermined by procedural opacity. This development marks a decisive step in aligning constitutional protections with the realities of criminal process, reinforcing the judiciary's role as guardian of personal liberty.

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ROLE, DUTY AND RESPONSIBILITY OF A JUDICIAL MAGISTRATE IN PROTECTING CONSTITUTIONAL & STATUTORY RIGHTS OF ACCUSED AND VICTIM DURING CRIMINAL INVESTIGATION UNDER CONSTITUTION OF INDIA, BNSS, 2023 AND CR.PC, 1973.



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ABSTRACT

This article critically examines the role, duty and responsibility of the Judicial Magistrate in safeguarding the constitutional and statutory rights of both accused and victims during criminal investigation under the Constitution of India, the Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023. It argues that the Magistrate is not a passive conduit between the police and the trial court, but a rights oriented judicial sentinel whose functions are constitutionally anchored in Articles 20, 21 and 22, and statutorily structured through provisions on registration of FIR, supervision of investigation, arrest and remand, recording of statements and confessions, and consideration of police reports. Drawing upon landmark judgments of the Supreme Court of India, the article analyses how the Court has progressively expanded the contours of "fair investigation" as a facet of Article 21, recognised independent participatory rights of victims, and insisted on strict judicial scrutiny of police action to prevent arbitrary arrest, coercive custodial practices and investigative bias. It further explores how BNSS, 2023 largely codifies and strengthens these judicially evolved safeguards, especially in relation to victim centric rights and vulnerable witnesses, thereby increasing the normative burden on Magistrates to actively balance liberty, fair investigation and societal interest in effective prosecution. The article concludes that a Magistrate's failure to discharge these proactive obligations risks converting the investigation stage into a site of rights erosion rather than rights protection, undermining both the legitimacy and effectiveness of the criminal justice system.

KEYWORDS

Magistrate; Criminal Investigation; Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973; Section 156(3) CrPC; Section 175(3) BNSS; Arrest and Remand; Section 41 CrPC; Section 35 BNSS; Section 164 CrPC; Judicial Supervision; Fair Investigation; Supreme Court of India; Cognizance; Police Report; Further Investigation; Victim's Rights; Constitutional Safeguards; Article 21; Article 22.

INTRODUCTION

Hon'ble Supreme Court in case of All India Judge's Association vs. Union of India (1992) 1 SCC 119 held that "The Trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful"

A Magistrate is the primary judicial safeguard in the criminal investigation process, ensuring that police powers under the CrPC, 1973 and now the BNSS, 2023 are exercised lawfully, fairly, and consistently with constitutional rights at every stage from registration of FIR to submission of final report. Building on the statutory framework of powers to direct and supervise investigation, to scrutinise arrest and remand, to record statements and confessions, and to deal with police reports at the stage of cognizance, the article demonstrates that the Magistrate functions as the primary judicial safeguard against arbitrary or unfair exercise of investigative powers. It traces how provisions such as Section 156(3), Section 164, Sections 41/41A and 167 of the CrPC, and their BNSS,2023 counterparts including Section 175(3) and Section 35, have been interpreted to require active, reasoned and rights-oriented judicial oversight. Relying on leading Supreme Court decisions such as Sakiri Vasu v. State of U.P. AIR 2008 SC 907, Kashmeri Devi v. Delhi Administration, 1988 AIR 1323 and later jurisprudence on arrest, remand and closure reports, the article argues that the Magistrate's role is neither mechanical nor peripheral, but constitutionally anchored in Articles 21 and 22 as a guardian of statutory right and also constitutional right indirectly for personal liberty and fair investigation. The Supreme Court has repeatedly held that the Magistrate's role is active and supervisory, not mechanical, and that this judicial control is essential to secure a fair and impartial investigation.

Obligation of Magisterial Vigil during Investigation:- The role of a Judicial Magistrate in investigation can be divided into six main stages:-

- **Stage 1:** After commission of an offence & just before registration of an FIR.
- **Stage 2:** Just after registration of an FIR.
- **Stage 3:** Cases in which arrest is effected by the Investigating Officer & deciding the question of validity of arrest and need for further custody-Police or Judicial custody.
- **Stage 4:** Magisterial interventions/discretion while deciding miscellaneous applications for recording statement(s) u/s 164 Cr.PC/183 BNSS,2023,test identification parades etc
- **Stage 5:** Monitoring of Investigation
- **Stage 6:** Further investigation u/s 156(3) CrPC/ 175(3) BNSS,2023 or under 173(8) Cr.PC/193(9) of BNSS,2023

Stage 1: After commission of an offence & just before registration of an FIR.;- Hon'ble Supreme Court in case of Sakiri Vasu v. State of U.P and Priyanka Srivastava vs. State of Uttar Pradesh held that Judicial Magistrate can direct police to register FIR u/s 156(3) of Crpc,1973 if police does not register FIR in a case where cognizable offence is made out. In Priyanka Srivastava case, It was held by Hon'ble Supreme Court that the complainant/informant should file an affidavit that he had exhausted the remedy under section 154(3) of Cr.Pc, 1973 and regarding the correctness of the fact. A 5 Judge Constitution Bench of Hon'ble Supreme Court in case of Lalita Kumari Vs Govt. of UP , held that registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation & if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not within 6 weeks & the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. The category of cases in which preliminary inquiry may be made are: matrimonial disputes/ family disputes, commercial offences, medical negligence cases, corruption cases, & cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

Stage 2: Just after registration of an FIR:- Criminal justice Administration is set into motion with the receipt of information with respect to the commission of a cognizable offence . Hon'ble

Supreme Court in case of Lalita Kumari Vs Govt. of UP, (2014) 2 SCC 1 held that Section 157 of Cr.PC,1973 mandates the sending of a report to this effect to the area magistrate forthwith, to bring the matter to his scrutiny. This is a safeguard meant to prevent police excess, embellishments, false prosecutions and non-investigation at a crucial stage. A copy of the FIR (often termed 'occurrence report') is to be brought to the seisin of the magistrate as soon as possible, and any delay can adversely affect the prosecution case at trial, if not explained adequately.

Stage 3: Cases in which arrest is effected by the Investigating Officer & Magistrate deciding the question of validity of arrest and need for further custody-Police or Judicial custody:

Magisterial check on police powers of arrest: - The Magistrate is a bulwark against unnecessary detention and abuse of power and process . "Eternal Vigilance, is the price of liberty ...." "Arrest brings humiliation, curtails freedom and cast scars forever". The following are the right of the accused:

(1) Right of the Accused to be produced before the magistrate within 24 hrs of arrest:

An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57, Cr.PC & Section 59 of BNSS, 2023 to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey.

Magistrate's role if violated: As per the Judgment of Hon'ble Supreme Court in case of Directorate of Enforcement Vrs Subash Sharma, the accused is to be released on bail by the Magistrate. Hon'ble High Court of Orissa in case of Jati @ Susanta Rout v State of Orissa reiterated the same ratio.

(2) Right of the arrested Accused to be informed of the ground of arrest in written & right to bail: Article 22(1) of Constitution & Section-50 of Cr,PC/Section-47 of BNSS,2023 mandates that ground of arrest should be informed in written & the grounds should be effectively and fully communicated to the arrestee in the manner in which he fully understand the same as per Hon'ble Supreme Court in case of Vihan kumar v State of Haryana

Magistrate's role if violated: As per the Judgment of Hon'ble Supreme Court in case of Vihan kumar v State of Haryana & Pankaj Bansal v Union of India , Prabir Purkayasta v State (NCT OF Delhi) & Mihir Rajesh Shah V State of Maharashtra , the accused is to be released on bail by the Magistrate.

(3) Right of the arrested Accused to be arrested lawfully, in accordance with law of arrest & all his/her constitutional and statutory rights are protected .

Magistrate's role if violated: As per the Judgment of Hon'ble Supreme Court in case of Arnesh kumar v State of Bihar , & Satender Kumar Antil V CBI , the accused is to be released on bail or by a Special Order by the Magistrate.

(4) Right of the arrested Accused to meet an Advocate of his choice during investigation as per Article 22(1) of Constitution of India & section-41 D of Cr.PC,1973/Section-38 of BNSS,2023 & to be examined by medical officer as per Section-54 of Cr.PC/Section -53 of BNSS,2023

Magistrate's role if violated: As per the Judgment of Hon'ble Supreme Court in case of Arnesh kumar v State of Bihar , & Satender Kumar Antil V CBI , the accused is to be released on bail or by a Special Order by the Magistrate.

(5) Right of the arrested Accused for "Presumption of innocence" and "fair investigation"

Magistrate's role if violated: Magistrate should refuse to mechanically accept tainted or perfunctory police reports and direct further investigation where investigation is biased or incomplete by exercising power under Section 156(3) and 173(8) CrPC /175(3) and section 193(9) of BNSS,2023 as per 3 judge Bench Judgment of Hon'ble Supreme Court in case of Vinubhai Haribhai Malaviya v State of Gujrat .

THE FOLLOWING ARE THE RIGHT OF THE VICTIM

(1) Victim has the right to be heard at every stage of a case from investigation to culmination of trial in appeal/revision as held by Hon'ble Supreme Court in case of Jagjeet Singh v Ashish Mishra@ Monu & Magistrate to ensure that this right is compiled by passing necessary orders.

(2) Victim's right to appeal against acquittal, convicting for a lesser offence or imposing inadequate compensation: Victim has an absolute right to file an appeal against an acquittal and other rights mentioned above under Section 372 CrPC /Section 413 BNSS,2023, without needing special leave & Magistrate to ensure that this right is compiled by passing necessary orders as per Hon'ble Supreme Court in case of (Mallikarjun Kodagali v. State of Karnataka,)

(3) Victim's right Right to Notice & file Protest Petition: Entitled to notice before police final reports (like closure reports) are accepted; if not served, they can file a protest petition as per Hon'ble Supreme Court in case of Bhagwant Singh V Commissioner of Police . Magistrate to ensure compliance of above ratio of Judgment in letter & Spirit.

(4) Victim's Right to Compensation: Supreme Court directed trial courts to pass orders for timely victim compensation in appropriate case under section 357 & 357 A of Cr.PC/ Section-395/396 BNSS,2023 and to deal with victim compensation matter in every case as per judgment of Apex court in case of Ankush Shivaji Gaikward v State of Maharashtra . Magistrate to ensure compliance of above ratio of Judgment in letter & Spirit.

(5) Victim's Right to Information: Under Section 173(2) of BNSS,2023, victims have the right to receive a free copy of the FIR .

(6) Victim's Right to CCTV Footage: In cases of human rights violations by investigating agencies, victims can claim CCTV footage as held by Hon'ble Supreme Court in case of Paramvir Singh Saini vs Baljit Singh and magistrate /Human Right designate court u/s 30 of Protection of Human Right Act.1993 or Constitutional Courts can order for CCTV Footage from police Stations and from all other law enforcing agencies in case of human right violation and all law enforcing agencies are directed to keep CCTV footage for at least 6 months.

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ADMISSIBILTY AND HANDLING OF ELECTRONIC EVIDENCE BY THE COURTS UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023- A LEGAL CONUNDRUM.



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INTRODUCTION

The advent of new criminal laws has ushered in the relevance and admission of 'electronic' and 'digital' evidence within the framework of criminal justice system. Following the passage of the Information Technology Act, 2000, and the consequent amendments to the Code of Criminal Procedure, 1973 ('CrPC') and the Indian Evidence Act, 1872 ('I.E.A'), the ambit of relevance and admissibility of electronic evidence was largely supplemented through judicial interpretation of these provisions. After a legislative vacuum of over 24 years, the new criminal laws have sought to abridge the said gap by expressly laying down provisions such as Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'B.N.S.S')which prescribes that trials, inquiries and proceedings under the Sanhita may be held in electronic mode, by use of electronic communication or use of audio-video means. However, a bare perusal of the relevant provisions (concerning electronic evidence) under the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as 'B.S.A' and 'Adhiniyam' in short) raises several concerns about their effectiveness and ease of operation. Certainly, those aspects shall become the subject matter of assessment by the Courts in the times to come; these concerns, nevertheless, will serve as a breeding ground for academic and research-oriented deliberations on the subject. This write-up seeks to examine the challenges that may arise before the courts concerning the admissibility and handling of electronic evidence under the available provisions of the B.S.A., in conjunction with judicial pronouncements interpreting the corresponding sections of the I.E.A.

SECTION 63 OF THE B.S.A-A FACELIFT?

Sections 65-A and 65-B of the I.E.A, which correspond to Sections 62 and 63 of the B.S.A, have been regarded as 'complete code' when it comes to admissibility of electronic records under the evidence law. In other words, these provisions have a primacy over the rules of evidence contained under 62 and 63 of the I.E.A (corresponding to Sections 57 and 58 of the B.S.A), since the former are special laws designed to address the admissibility of evidences contained in electronic form . Therefore, it becomes necessary to reproduce the bare provision contained under sections 62 and 63 of the B.S.A which are as follows:

62. Special provisions as to evidence relating to electronic record.

The contents of electronic records may be proved in accordance with the provisions of section 63.

63. Admissibility of electronic records

(1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper,

stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

a. The computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;

b. During the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;

c. Throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

d. The information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

(3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by means of one or more computers or communication device, whether--

a. In standalone mode; or

b. On a computer system; or

c. On a computer network; or

d. On a computer resource enabling information creation or providing information processing and storage; or

e. Through an intermediary,

all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely :-

a. Identifying the electronic record containing the statement and describing the manner in which it was produced;

b. Giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);

c. Dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, And purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is

appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

(5) For the purposes of this section

a. Information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

b. A computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).

COMPARATIVE ANALYSIS OF THE ABOVE PROVISION VIZ-A-VIZ SECTION 65-B OF EVIDENCE ACT

There are several differences in the wording, which reflect updates and expansions in the Adhiniyam, 2023. The main differences are as follows:

Sub section (1): The Adhiniyam, 2023 in its sub-section (1) includes the phrases "or semiconductor memory" and "or any communication device or otherwise stored, recorded or copied in any electronic form"

Sub section (2): The Adhiniyam, 2023 in sub-section (2), clause (a), includes the phrase "or communication device" with the term "computer" and also includes "create" in the phrase "store or process information". Further in sub-section (2), clauses (b), (c), and (d) it also includes the phrase "or communication device" with the term "computer".

Sub section (3): In sub-section (3) of Adhiniyam, 2023, new terms such as "creating," means of one or more," and "or communication device" have been introduced. Additionally, it introduces: clause (a): "in standalone mode;" clause (b): "on a computer system;" clause (c): "on a computer network;" clause (d): "on a computer resource enabling information creation or providing information processing and storage;" Clause (e): "through an intermediary." Whereas sub-section (3) of Act, 1872 uses different terms and phrases for similar concepts.

Sub-section (4): Sub-section (4) of Adhiniyam, 2023 introduces new phrases such as "shall be submitted along with the electronic record at each instance where it is being submitted for admission," "in charge of the computer or communication device." "and an expert," and "in the certificate specified in the Schedule." Additionally, it includes in clause (b) the phrase "or a communication device referred to in clauses (a) to (e) of sub-section (3)." Sub-section (4) of Act, 1872 uses different words and expressions for similar concepts.

Sub-section (5) of the Adhiniyam, 2023 introduces new device' in clauses (a) and (b), and in addition, in clause (b), it introduces the phrase "or other electronic means as referred to in clauses (a) to (e) of sub-section (3)." Further it does not include clause (b) from Act, 1872. Whereas sub-section (5) of Act, 1872 uses various different terminology for similar concepts.

Explanation: The Act, 1872 includes an explanation at the end, but the Adhiniyam, 2023 does not include this explanation.

Both statutes focus on the admissibility of electronic records, ensuring they have the same legal effect as traditional documents. The Adhiniyam, 2023 updates terminology and incorporates modern technologies such as communication devices, reflecting advancements. It introduces several advancements and updates in the admissibility of electronic records compared to section 65-B of the Act, 1872. However, most provisions of section 65-B will remain relevant to section 63 of Adhiniyam, 2023 as follows:

Sub-section (1): Both statutes affirm the admissibility of electronic records as documents, regardless of their electronic form, provided certain conditions are met.

Sub-section (2): Both require specific conditions for the admissibility of computer outputs, including regular use and proper functioning of the computer or device.

Sub-section (3): Adhiniyam, 2023 expands on the types of systems (standalone, network, etc.), but like the Act, 1872, treats multiple computers used over a period as a single unit for admissibility.

Sub-section (4): Both require certificates detailing the electronic record's production process, signed by a responsible person, to establish its authenticity.

Sub-section (5): Adhiniyam, 2023 and Act, 1872 define how information is supplied to computers. Adhiniyam, 2023 also includes provisions specific to communication devices

NEW INTRODUCTIONS AND ASSOCIATED CHALLENGES PERTAINING TO SECTION 63 OF THE ADHINIYAM

Production of certificate of genuineness is mandated under section 63(4), B.S.A in any proceeding where it is desired to give a statement in evidence by virtue of this section, and the said certificate is to accompany with the electronic record 'at each instance' where it is being submitted for admission. This requirement is in contrast with the corresponding provision of section 65-B (4) of the I.E.A, wherein such mandate was conspicuous by its absence. Besides, the B.S.A also requires such certificate to be signed by 'a person in charge of the computer or communication device or the management of relevant activities (whichever is appropriate)' and now additionally, an 'expert' shall be evidence of any matter stated in such certificate . To further streamline the procedure of certificate submission, Forms A (for the parties seeking to rely on an electronic record) & B (for the expert) have been provided under the Schedule of the Adhiniyam which shall serve as standard proforma for the said purpose. These forms also require recording of the hash value of the electronic evidence to ensure data integrity. The additional layers of protection introduced under the B.S.A., though prima facie desirable in terms of data security and reliability, may nevertheless render the process of adducing electronic evidence more onerous and cumbersome for litigants. Furthermore, at this stage, there remains a lack of clarity regarding the qualification requisite for recognition as an expert under this section. Nevertheless, it may be contended that expert testimony is best reserved for circumstances wherein the authenticity and integrity of electronic evidence are specifically controverted.

PRIMARY AND SECONDARY ELECTRONIC EVIDENCE UNDER THE B.S.A- A BLURRED CLASSIFICATION.

A bare reading of Section 63(1), B.S.A suggests that the direct electronic evidence is admissible per se, whereas anything excepting the direct evidence may be admissible only when the conditions mentioned under the said section are met. This principle was also reiterated by the Hon'ble Apex Court in Arjun Panditrao Khotkar v. Kailash Kishanrao Gorantyal while interpreting Section 65-B of the I.E.A. To put some perspective, in cases where the owner of the electronic device (which contains the electronic evidence sought to be admitted) produces the said device before the court, then the requirement of production of the certificate under sub-section (4) is rendered nugatory. However, if an electronic record formed part of a 'computer system' or 'computer network', and it is physically impossible to produce such network before the court, it is only then the mechanism of proving the said electronic record through Section 65-B of the I.E.A comes into play. However, Section 57 of the Adhiniyam appears to blur this settled classification, especially through Explanations (6) and (7) of the said section. It propounds

that a video recording which is simultaneously stored in an electronic form, and transmitted or broadcast or transferred to another, each of such stored recordings is primary evidence. So much so, the provision also regards each of the electronic or digital record stored in multiple storage spaces, including 'temporary files' as primary evidence. Section 2(d) of the Adhiniyam which defines 'documents' now includes within its fold 'electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice messages stored on digital devices'. In the light of the provisions discussed hereinbefore, a legal uncertainty looms large as to when an electronic record, purported for admission before the court, would be required to be accompanied by a certificate.

HANDLING OF ELECTRONIC EVIDENCE UNDER THE B.S.A.

Despite the introduction of the new criminal laws, there seems to be a legislative vacuum with respect to collection, storage and disposal of electronic evidence by the investigation agencies. This concern was also raised before the Hon'ble Supreme Court in Foundation for Media Professionals v. Union of India wherein it was submitted to declare that the contents on a person's digital device, including passwords, passcodes, patterns, PINs etc. are protected under Article 20 of the Constitution. It was also brought before the attention of the Hon'ble Court that the existing legal regime does not sufficiently provide for a standard procedure for search and seizure of digital devices, which leads to trampling upon the right to privacy of the respondents. Subsequently, this case was tagged with another case and batch of other matters, wherein the Hon'ble Court expressed concerns regarding absence of guidelines in relation to search and seizure of electronic evidence. While such guidelines are still awaited, the Union of India has submitted that the investigation agencies may adhere to C.B.I manual ad interim for the said purpose. Having said that, the lacuna resurfaces when courts assume custody of electronic evidence following investigation, and persists until the trial's conclusion and the consequent disposal of such evidence. Another concomitant issue that emerges is the question of what constitutes a 'proper chain of custody' of such evidence. The B.S.A propounds that an electronic record which is produced from 'proper custody' is primary evidence, unless disputed. Albeit, the Adhiniyam defines the scope of proper custody of electronic evidence in an open-ended fashion. It provides that an electronic record is deemed to be in 'proper custody' if it is kept in the place where, and looked after by the person with whom, such document is required to be maintained. Custody is not regarded as improper if it is shown to have a legitimate origin, or if the circumstances of the case render that origin probable. This definition, however, is confined to the purposes of Sections 81 and 93 of the Adhiniyam.

CONCLUSION

The jurisprudence of electronic evidence law in our nation stands at a critical juncture with the advent of new criminal laws, and a number of factors will influence the effective implementation of these provisions. Technology has seeped into the lives of almost every individual in society, regardless of social strata. Post-pandemic, technology has assumed a central role, be it for recreation, work, or day-to-day necessity. Such dependence also expands the scope of offences committed in cyberspace. Consequently, the issue of production and admissibility of electronic evidence before courts under the law of evidence becomes imperative. The entire legal system and its stakeholders are under an obligation to ensure that the added layers of statutory protection provided to electronic records under the B.S.A. do not hinder litigants' access to justice, which is their constitutionally guaranteed right.

For instance, under the earlier version of Section 65-B of the I.E.A., the owner of a smartphone could often provide the certificate on their own. The current requirement of an "expert" signature adds layers of cost and technical difficulty, and litigants may struggle to find an

"expert" (which remains undefined as of date) willing to certify a personal device, leading to the evidence being declared inadmissible. Most litigants lack the technical knowledge to generate a cryptographic hash. When a screenshot is printed or saved without an immediate hash value, the integrity of the record becomes vulnerable to challenge in court. As a result, the evidence may be excluded, since the chain of custody and mathematical proof of non-tampering were not established from the beginning. Another challenge that may come up under Section 63, is that if the processing involves multiple computers owned by different persons, the court may require certificates from intermediaries to prove that the data was not altered in transit. A private litigant has almost no power to compel a large technology company, such as Google or a bank, to provide a specific certificate under Section 63, B.S.A for a routine trial, thereby creating a deadlock for their evidence.

Furthermore, legal uncertainty regarding a standard procedure for collection, storage and disposal of the electronic evidence warrants steadfast legislative intervention and judicial guidance, for the benefit of investigation agencies and trial courts. One cannot underplay the ubiquity of Artificial Intelligence in cyberspace. In this backdrop, the legal presumptions envisaged under Sections 81, 86, 87, 90, and 93 of the B.S.A. warrant academic revisiting and legislative reconsideration.

Having said that, there is no denying that the new criminal laws have broken free from the shackles of colonial era jurisprudence and are a significant step towards the realisation of a modern and indigenous legal ecosystem. However, with the rising litigation rate and the continuously expanding scope of cyber criminal offences, an infrastructural overhaul is urgently needed. Furthermore, all stakeholders must be sensitized to and trained in the delicate handling of electronic evidence, and a broad awareness campaign among the general public is desirable. The way forward lies in striking a balance: ensuring the integrity and authenticity of electronic records without creating disproportionate barriers to access to justice for litigants.

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UNFOLDING OF THE JURISPRUDENCE ON TRANSGENDERS.



Mrs. Angswarupa Chatterjee

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Up until a decade ago, all Transgenders used to represent a neglected strata of our society who have been forever languishing in the fringes of our community, largely homeless and facing never ending poverty, continuously being spurned by all, mostly resorting to begging, succumbing to prostitution or predominantly eking out a living through dancing and singing in the hopes of earning a buck, as employment was a dream, well beyond their reach and were often at the receiving end of several forms of abuse.

Sadly, the bulk of our legislation still emanate from our British inheritance, leaving much to be desired in terms of growth and development over the years. One stark example of such slow evolution of law could earlier be found in our paucity of legislative initiatives towards third genders. However, the last decade has seen the said area of law develop in leaps and bounds. The judgment in National Legal Services Authority vrs. Union of India, brought cheer and relief to a long persecuted class of Indians i.e., the Transgenders. It was closely followed at the heels by The Transgender Persons (Protection of Rights) Act of 2019, which turned their hopes into concrete law for protecting their rights. This inclusive legislation heralded by the impact of this exemplary judgment is an example of the benevolent impact of our judiciary in uplifting the plight of the Transgender in our country.

Several times, over the years, this issue had been raised in various international forums but failed to make its mark on the condition of the Transgenders. One such instance would be the case of Corbett v Corbett in the year 1970, wherein the Court in England stipulated a principle which proclaimed that the biological sexual constituency of a person shall continue throughout the life time of that individual, irrespective of later growth of organs, or surgical intervention. Similar stance was taken by the House of Lords in Ballinger v Ballinger, in the year 2003 wherein one Mr. Ballinger, who happened to be a registered male, preferred being addressed and treated as a female.

Various early international initiatives towards basic human rights include Article 6 of the Universal Declaration of Human Rights, and likewise Article 16 of the International Covenant on Civil and Political Rights, both of which have emphasized on the right of every human being to live and to be protected under law equally. Moreover, Article 17 of the latter also focuses on the basic human right to be protected from unlawful interference in privacy of all persons. However, the Transgender persons continued to be sidelined and mistreated as the crux of the problem was that a child is designated a particular gender as soon as they are born. They are either recognized as 'male' or 'female'. As a result, law as well as our social mindset completely overlooks

the rights of the Transgender. Till the passing of this aforementioned 2014 judgment, they were assigned to be either male or female, ignoring the fact that they belonged to neither or that they chose to reassign their gender through surgery.

The said NLSA Judgment discussed that the right to be recognized belongs to all human beings universally. One need not have to exercise his/her 'right of choice' as only a privilege granted by a state. Such inherent rights must be allowed to exist, regardless of whether they are allowed in a social system or a legal ideology. Hence, the human right to be recognized and to have access to all forms of essential facilities cannot be taken away from them. Hon'ble Justice Radhakrishnan has most aptly alluded in the aforesaid judgment that as Transgenders are averted from all forms of cultural and social participation, it has adversely affected their accessibility towards medical and educational services.

The foremost problem that was accentuated in this cardinal judgment was whether Transgender Persons, who were neither male nor female, had the right to be identified as a third gender? In this context, Hon'ble Justice A. K. Sikri very lucidly explained that our esteemed Constitution of India has been affirmed to be given by the people of this country to themselves and is a living and dynamic instrument. Therefore, all the rights enshrined under it are to be embraced by every section of our society, without discrimination.

The Judgment also stated that any person who chooses to change their gender, in order to harmonize it with how they perceive themselves, and the gender characteristics they exhibit, and when such a change is well allowed by medical ethics and made viable through development in the field of medical science, then the Hon'ble Court could not find any legal barrier in granting recognition to the gender reassigned to a person after undergoing Sexual Reassignment Surgery.

In conclusion, it was also declared that there shall be a "third gender" aside from binary gender and direction was given to both the Center as well as State Governments to address the grave issue of social stigma and to come up with measures to tackle their health issues and to take initiatives to bring this class of people into the social and educational mainstream and to ensure that steps are taken to protect their legal and fundamental rights. Following this, the Hon'ble Apex Court rewrote history through Navtej Singh Johar v. Union of India by repealing the criminalization of same-sex relations under the outdated Section 377 of our Indian Penal Code, much to the joy of the LGBTQ+ community.

The movement set in motion by the Hon'ble Apex Court, through the aforementioned judgments also reached its culminating point on 5th December, 2019 through the enactment of The Transgender Persons (Protection of Rights) Act. This crucial piece of legislation extensively concentrated on the rights and welfare of the Transgender. Most essentially, for the very first time, it defined a Transgender Person by way of Section 2 clause (k) to mean "a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta."

Additionally, Section 3 broadly laid down that no transgender shall face discrimination in educational institutions, places of employment, or be subjected to unfair treatment while availing health services, or be denied the right to reside or hold public offices. This all-encompassing statute also upholds their right to be recognized through Section 4 and cites through Section 18, punishment for anyone who forces a Transgender person into bonded labour, or denies their right to access a public place or drives them out of their family or residence or for resorting to any form of physical, sexual, verbal, economical or emotional abuse against them.

Eventually, Section 2(10) of the Bharatiya Nyaya Sanhita marked a significant shift in criminal law by expressly defining 'gender' to include male, female and transgender, thereby adopting a more inclusive and right-oriented approach, beyond the binary understanding stipulated in the erstwhile Indian Penal Code, 1860. Furthermore, several provisions dealing with sexual offences have been framed in gender neutral terms by using phrases such as "any person" in order to extend the protection of criminal law to transgender persons. Such safeguard distinctly acknowledge them to be a protected class and thereby harmonizes the criminal law with the Act of 2019. Thus, it is now safe to say that everyone has the right to be recognized as an individual before the eyes of law despite of divergent gender preferences and identities. However, the whole country still needs to strive hard to remove the cloud of social stigma still persisting over this section of society in order to remain true to the spirit of these dynamic judgments and legislation.

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COMMUNITY SERVICE: A STEP TOWARDS REVOLUTIONISING THE CRIMINAL JUSTICE



Ms. Pratibha Dash (LL.M.)
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There is no society where a more or less developed criminality is not found under different forms and hence punishments are pivotal for maintenance of social order. The objective of imposing punishment in any criminal justice system is multifarious. It aims at preventing crimes, deterring like-minded criminals, retribution to the wrongs, restituting the victims and also reforming and rehabilitating the offenders. The Criminal Justice System in India has by far struck a reasonable balance between the maintenance of deterrence and reformation of the wrongdoers. The Indian Penal Code has prescribed death penalty, life imprisonment, imprisonment – simple and rigorous, forfeiture of property and fine as punishments. However introduction of community service as a punishment in the Bharatiya Nyaya Sanhita, 2023 has given a revolutionizing turn to the conventional forms of punishment. In this form of punishment, the Courts can mandate the offenders to carry out some public works pro bono under the supervision of a supervising authority. An offender who has wronged a society gets to pay the same society back with his service. It not only ensures his reformation but also his reintegration and establishment of restorative justice. Under the Bharatiya Nyaya Sanhita, certain petty offences are punishable with community service.

THE HISTORY OF COMMUNITY SERVICE AS PUNISHMENT

Back in the mid sixteenth century the House of Correction of Bridewell Palace in London imposed community service on vagabonds to do away with idleness. In the United States Alameda County California the traffic offenders were sentenced with free labour and community service, in 1966. Subsequently in 1970 the "Wootton Report" in England advocated for community service as a constructive and inexpensive alternative to imprisonment that brings communal restitution.

However much before that, references of community service are found in the Kautalya's Arthashastra. In Mauryan Empire, the offenders guilty of evading tax were condemned to perform hard labour for the State and it was referred as "Vishti". But unlike present day community services, it was more of a deterrent measure that served both punitive and utilitarian purposes.

COMMUNITY SERVICE MODEL OF PUNISHMENT, FOLLOWED IN THE CRIMINAL JUSTICE SYSTEM OF OTHER COUNTRIES

1. In Japan, though community service is not a form of sentence, but the offenders are required to perform social service as a pre condition for probation and parole. This

aims at the reintegration of the offenders. They have VPOs (Volunteer Probation Officers) to supervise these services.

2. In Australia, Community Service is used as an alternative form of punishment referred there as CSO (Community Service Order) or CWO(Community Work Order) and requires the offender to perform unpaid work on environment projects, cleaning of public places etc. Instead of paying an overdue fine, the offenders can opt for community service by applying through the State Penalties Enforcement Registry (SPER) .

3. In France, Community Service was introduced in 1984 as punishment for petty offences. The offenders are required to perform unpaid services like small administrative tasks, supporting public bodies, building maintenance etc. for 40 to 240 hours in a duration of 18 months. For Juveniles it is half of the hours prescribed and for a duration of 1 year.

4. In UK, Community Service is referred as "Community Payback". The Courts can order the offenders to perform unpaid works like clearing of wasteland, removing graffiti etc. for 40 to 300 hours depending on the nature and seriousness of the crime. For offenders committing crimes under the influence of drugs or alcohol or suffering from mental health issues and undergoing rehabilitation, such sentences are awarded to ensure their reintegration.

Similarly in various other countries like South Africa, China, US also community service is prescribed as punishment for petty offences.

COMMUNITY SERVICE IN INDIAN LEGAL PERSPECTIVE

The Courts in India including the Supreme Court have times and again in various Judgments stressed on the need to include Community Service for reformation of offenders.

The 156th Law Commission Report (1997) emphasized on revisiting and comprehensively revising the Indian Penal Code to introduce the concept of Community Service as an alternative to imprisonment for certain offences. The report also discussed its efficacy towards reformative justice and considered it as a constructive and less expensive option of community restitution. However it had also expressed concern over practical implementation, administrative supervision and continuous monitoring.

Further in 2003 the Malimath Committee for Reforms of the Criminal Justice system also suggested to include community service within the Indian Penal Framework as an alternative to custodial sentences for facilitating rehabilitation of offenders and promoting restorative justice.

In the case of Babu Singh and others vs State of UP, 1978 SCC (1) 579, the Supreme Court held that "Restorative devises to redeem the man, even through community service, meditative drills, study classes or other resources should be innovated....." hence emphasizing the role of community service towards restorative justice.

In the case of Tr.P.S Lodhi Colony, New Delhi vs Sanjeev Nanda, AIR 2012 SC 3104, the Supreme Court recognized community service by sentencing the accused to do community service for two years to be arrange by the Ministry of Social Justice.

In the Case of Aparna Bhat vs State of Madhya Pradesh AIR 2021 SC 1492, the Supreme Court noted that Community Service cannot be an alternative to punishment in serious crimes like sexual assault.

STATUTORY PROVISIONS REGARDING COMMUNITY SERVICE

Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that- the Juvenile Justice Board may order a child in conflict with law to perform community

service under the supervision of an organization or institution or a specified person, persons or group of persons identified by the Board, after considering the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child.

Section 4(f) of the Bharatiya Nyaya Sanhita, 2023 enumerates Community Service as one of the punishments to which the offenders are liable under the provision of the Sanhita. Community Service is prescribed as punishment alternative to imprisonment and fine in Section 202 of BNS penalizing public servant unlawfully engaging in trade, Section 209 of BNS penalizing non-appearance in response to a proclamation under Section 84 BNSS, Section 226 of BNS penalizing attempt to commit suicide to compel or restrain exercise of lawful power, Section 355 of BNS penalizing misconduct in public by a drunken person, Section 356(2) of BNS penalizing defamation.

Though provisions for Community Services were laid down but its implementation yet remained a Herculean Task. A number of issues such as what kind of works are to be included in community service, the sector of society where such services are to be provided, who is to monitor and supervised such services and for what duration such services has to be awarded was yet to be addressed.

Thereafter the Government of Odisha in consultation with the Hon'ble High Court of Orissa made guidelines for the award of Community Services. It included –

- Cleaning or maintenance of wards and peripherals of Government Hospitals or Government Dispensaries, Casualty or out patients management, Trolley or movement assistance and any other duties identified by Resident Medical Officers or Dean. The authorizing officer in such case is the Resident Medical Officer or Dean or Designated Officer.
- Cleaning or maintenance of study area, stock area and peripherals and arranging of books or listing of books or any clerical assistance or binding at District or Taluk Legal Services Authority Office or Legal aid Clinic or any Government Library. The Authorizing Officer in such case is Secretary DLSA or Librarian or In-charge Officer.
- Cleaning of classrooms, library, labs, grounds and peripherals in Government Educational Institution. The Authorizing Officer is the Headmaster or the Principal or the Designated Officer.
- Cleaning or maintenance along with Municipal or Corporation cleaning staff and removal of weeds from roadside in Corporation, Municipality or Panchayat. The Authorizing Officer is the respective Commissioner or Block Development Officer or Designated Officer.
- Any cleaning or maintenance of public buildings in Public Offices and the concerned officer of such public office is the Authorizing Officer.
- Traffic regulation, Crowd regulation, premises or station cleaning, Common areas maintenance at the police station. The station house officer or Designated Officer is the Authorizing Officer.
- Cleaning or maintenance of public parks or space or beach of Corporation or Municipality or Panchayat. The respective Commissioner or Block Development Officer or Designated Officer is the Authorizing Officer.
- Cleaning or maintenance of old age homes, Mental Health Institutes or Hostels or Social Welfare Department buildings. The Authorizing Officer is the warden or In-charge Officer or Designated Officer.
- Tree planting, watering, weed removal and maintenance work in the Forest Department. The Authorizing Officer is the Ranger or In-charge Officer or Designated Officer.

- Cleaning or maintenance or clerical assistance at zoo or museums. The Authorizing Officer is the Curator or In-charge Officer or Designated Officer.
- Any other duty as part of Community Service which the Court deems fit in the given case.

In all these cases, the Monitoring Authority is the District Probation Officer or any other officer appointed or designated by the State Government for the purpose from time to time. The duration of service as provided is one day to thirty one days or forty hours to two hundred hours. All these services as prescribed are humane and pious in nature.

ADVANTAGES OF COMMUNITY SERVICE AS A MODE OF PUNISHMENT

The Jails in our country are overcrowded with several under trial prisoners and convicted inmates. Community Service as an alternative punishment can reduce this problem. Further these inmates in prison are fed and maintained out of the public exchequers. Instead of incarceration as punishment, jails and prisons have become their comfortable abodes. Many a times prisoners are unwilling to leave the prisons. On the other hand, every sector of our society is run by man power. The Governments spend huge money for these men power. Community Service, as a punitive measure can make a good human resource in such sector. It would not just help the offenders reintegrate in the society but would also provide a cost effective human resource to many sectors.

Getting engaged in Community Service would prevent idleness among offenders and they would also be in a position to expiate their guilt by doing pious service. It will also help reduce the social stigma against them. It would also foster sense of social responsibility and would be a measure step towards their reformation.

PRACTICAL DISADVANTAGES OF COMMUNITY SERVICE AS PUNISHMENT

Community Service cannot be an alternative to other punishment in serious and heinous cases. Its implementation and monitoring still remains a grey area. Hence the Authorizing Officer as well as Monitoring Officers need to be trained enough to deal with the offenders. There are chances of the offenders evading Community Services and also there are risks of the offenders being exploited beyond their sentence in the name of Community Service.

CONCLUSION

Famous Sociologist Emile Durkheim quoted that "Punishment is not primarily a deterrence or rehabilitation, but it is a vital social act that reaffirms shared moral values, strengthens social solidarity and clarifies boundaries by expressing collective outrage against violation of the collective conscience." Community Service as a punitive measure indeed reaffirms the moral values and strengthens the social solidarity. Hence its introduction in our Criminal Justice System for petty offences, where imprisonment is neither justified nor would served the purpose as an alternative, is indeed a step towards revolutionizing the Criminal Justice System.

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ROMEO JULIET CLAUSE: A NECESSARY ADDITION IN THE POCSO ACT TO SHIELD THE RIGHTS OF THE YOUNG ADULTS



Sri Lalitendu Debata

J.M.F.C. (L.R. & L.T.V.), Kataka.

INTRODUCTION

The Protection of Children from Sexual Offences Act, 2012 (hereinafter POCSO Act) was legislated to expand the ambit of offence of "rape" against children to travel beyond penile-vaginal penetration to include penetration by any other part of the body and objects into specified orifices of the child and the offence was coined as "penetrative sexual assault". The amendment of the Act in the year 2019 amended the "statutory age of rape" or "the age of consent to sexual activity" from sixteen years to eighteen years and the discretion given to Courts to impose a punishment of less than the minimum statutory sentence was done away with. Though, such new dimension of penetrative sexual offence was applauded by child rights activists, the increase in the age of consent was met with a divided response, some for it, and others, against it.

AGE OF CONSENT

In 2013, the Justice Verma Committee recommended to truncate the age of consent to 16 years, however, an amendment to Section 375, IPC raised the age of consent to 18 years. Where two underage minors are engaged in a sexual relationship, the Juvenile Justice (Care and Protection of Children) Act, 2015 come into play with the likelihood of a child above 16 years being tried as an adult for offences which are heinous in nature. In 2018, the Supreme Court of India deemed the marital rape exception in the IPC, as per which sexual intercourse by a man with his wife not below 15 years would not constitute rape, unconstitutional and it contravenes the rights of children and the POCSO Act. Therefore, while a child marriage is recognised under personal laws and the Prohibition of Child Marriage Act, 2006, besides certain circumstances, sexual relation within such a marriage constitutes rape or aggravated penetrative sexual assault. In response to horrific cases of sexual violences against children in 2019, the minimum penalties for penetrative sexual offences under the POCSO Act were increased, and the death penalty was introduced for aggravated penetrative sexual assault.

COMPARATIVE ANALYSIS OF AGE OF CONSENT AMONG DIFFERENT COUNTRIES

Age of consent differs from countries to countries and vary worldwide. Majority of the countries requires young ones to be at least 14 before indulging into establishing sexual relationships. Certain Countries also have the Romeo and Juliet clause which doesn't make it illegal for young partners within a certain age gap to have sexual relationship.

- **EUROPEAN COUNTRIES**

Most of the European countries recognise 16-17 to be the age of consent while several others such as Malta and Vatican City sets the

age of 18 as lawful age for young partners to legal enter into sexual relationships. Countries including Austria, Italy, Serbia, Germany, and Portugal are amongst the countries which have made the age of 14 as the statutory age to have lawful sexual relationship.

- **GERMANY**

German Empire's Criminal Code have made the age of 14 as the statutory age for entering into a sexual relationship. Prosecution for rape can result in 6 months to 10 years of jail time. The age of consent shall be 14 and if both partners are below the age of 18, they shall not be prosecuted if the relationship is a consensual one. In fact, a person who is above the age of 21 may also engage in sexual activities with an individual who is above the age of 14 but less than 16 years of age only if the younger partner's lack of capacity for sexual self-determination is not exploited.

- **FRANCE**

Article 227-25 of the Penal Code determines 15 years to be the age of consent in France. Statutory rape is proscribed by up to 5 years of age and a fine of €75,000. France also has a Romeo and Juliet clause which doesn't make a person liable for prosecution when any individual under the age of 15 has sexual intercourse any person who is within five years of their age.

- **UNITED STATES OF AMERICA**

The age of consent in USA varies from 16 to 18. Thirty-one states recognise the age of consent as 16, eight states declare it to be 17 and other eleven recognise it as 18. As many as twenty-six states have "Romeo and Juliet" laws or close-in age laws, legalizing sexual intercourse among minor and adolescent partners are close enough to each other in age.

For example, in Colorado, 17 years is regarded as the age of consent, but those who are under the age of 15 may consent to a partner with whom the difference in age is less than four years, and those who have attained the age 15 or 16 may consent to partner who is 10 years older to such person. Comparability represents, Arizona law regards 18 years as the age of consent, but permits those who are teen aged 15-17 to consent to sexual relationship with partners who are not more than 24 months elder.

- **UNITED KINGDOM**

The age of consent in United Kingdom is 16 years old. The territories of UK have their own local age of consent laws but at present all of the territories have set the age of consent to be 16. However, United Kingdom doesn't have the close-in-age exemptions.

- **AUSTRALIA**

Almost all of the territories in Australia have set the age of consent to be 16 only with Tasmania and South Australia being the exception by raising the age of consent to 17 years. Several jurisdictions in Australia also have the close-in age exemptions, which also vary depending upon the territory.

VIOLATION OF THE RIGHTS OF THE YOUNG ADULTS AND JUDICIAL INTERVENTION

While the object of the POCSO Act has been to safeguard the children and minor from the rigours of unwanted and forceful sexual activities, its inadvertent result has been adverse for the adolescents while depriving them of their liberty. The law also erodes the identity of girls who are adolescents by un-dimensionally casting them as "victims", rendering them voiceless, while depriving them of any agency to choose their partners or to enter into relationships. In contrast, adolescent boys are unjustly treated as children in conflict with the law, and can even be subjected to trials as adults. The institutionalisation of adolescent victim-girl in Children's Homes result in compromise of their liberty when they deny to return to their parents and persist on being with their partner. An attentive watch on the plight discloses that "they are shamed, humiliated,

and stigmatised for their acts, alienated from their partners and society, and at times not released even after they turn eighteen. Such institutionalisation harms their physical and mental health, as well as overall development, and they have little or no recourse to challenge or seek review of such decisions." Administrative uncertainty regarding the Court's decision about whether to release the girls or to defer to the Child Welfare Committees has resulted in an extended period of detention, even for those who had attained majority. Furthermore, girls who are pregnant or have given birth to a child are compelled to reside in a Children's Home where they are devoid of access to sexual and reproductive health services and familial care.

"In X v. Principal Secretary, Health & Family Welfare Department, the Supreme Court observed that there is a conflict between the POCSO Act, the privacy obligation under the Medical Termination of Pregnancy Act, 1971, and the reproductive autonomy of minors. It clarified that in the case of minors below 18 years engaging in consensual sexual activity and seeking a termination of pregnancy, the registered medical practitioner (RMP) "only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act." The apex court also clarified that the RMP will be exempt from disclosing the identity of the minor in criminal proceedings which may ensue based on the RMP's report under Section 19. While this is a step towards ensuring their access to termination services, cases of adolescents in a consensual relationship who wish to retain the pregnancy will continue to be reported."

The Hon'ble Delhi High Court in Sahil v. the State NCT of Delhi the Court noted in para 11 of the order that POCSO cases filed at the behest of a girl's family objecting to romantic involvement with a young boy have become common place and consequent thereto these young boys languish in jails. Time and again, in a catena of orders and judgments the Hon'ble Supreme Court of India has urged the Legislature to incorporate the romeo-juliet clause or a close-in-age gap in the POCSO Act to protect the rights of the young adults with the most recent being in the case of The State of Uttar Pradesh v. Anirudh & Anr. , wherein the Hon'ble Court urged Secretary, Law, Government of India, to consider initiation of steps as may be possible to curb this menace inter alia, the introduction of a Romeo Juliet clause exempting genuine adolescent relationships from the stronghold of this law; enacting a mechanism enabling the prosecution of those persons who, by the use of these laws seeks to settle scores.

WAY FORWARD

The age of consent for establishing sexual relationships is very different from the age of making a decision by the adolescents. When the sexual activities between two consenting adolescents has not been recognised by the penal laws of India, it leads indirectly to criminalisation of consensual activities. Hence, certain remedies are prescribed to remedy the indirect discrimination made to the adolescents:

1. The age of consent under POCSO Act and IPC should be amended to reduce it to 16 years of age.

2. A "Romeo-Juliet" clause of close-in-age gap concept should be introduced under POCSO Act.

3. The consensual and non-exploitative sex should be decriminalised.

4. New guidelines should be introduced to deal and investigate cases arising out of romantic relationships or elopement cases.

5. There should be introduction of safe sex education in the syllabus of schools for adolescents.

6. Social awareness should be spread among the adolescents regarding safe sex procedure and the provision of information and services such as

pregnancy care and abortion, as well as diagnostic services for HIV, STIs, and pregnancy are not hindered by the mandatory reporting obligation under the POCSO Act.

CONCLUSION

Exploring one's sexual aspect and indulging in sexual activities with a romantic partner are normal aspects of development of adolescents. In India, the indirect criminalisation of this aspect coloured by the complexity of social stigmas serves as a bias against the basic rights of the adolescents. The age of consent under POCSO Act and the penal laws remain at a tug of war, especially in view of the pronouncements of the Higher Judiciary of the Country. Unfortunately, in between all these, the real intent of POCSO Act is failing which is to protect children from sexual assaults. Thus, it's high time that the Legislature should look upon the rights of the adolescents and amend the POCSO Act accordingly in order to protect the best interest of the children and allowing them to rightfully exercise their choice in terms of exploring in consensual sexual interests and protect themselves from unwarranted exploitations.

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SHOULD THERE BE LIMITS OF JUDICIAL REVIEW



Ms. Rojalinee Das (MA, LL.M.)

JMFC, Bhubaneswar

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INTRODUCTION

An independent judiciary is established under the Indian Constitution to protect citizens' rights and serve as the document's protector. Ensuring that the laws approved by the legislature and the executive acts comply with the provisions of the Constitution is one of the power of judicial review over legislative and executive action has been held to be an integral feature, constituting part of the basic structure of the Constitution. It is said to be the duty of the court to test the laws of the land on the touchstone of the Constitution and to provide appropriate remedies if and when called upon to do so. However, invalidating an act of the legislature is a grave step and should never be taken lightly. The judiciary's most Judicial review means the power of the judiciary to review the constitutional validity of the acts of the government, i.e., the legislature or executive, and to declare whether they are void or not according to the Constitution of a country, which is the Supreme Law of the Land.

MEANING OF JUDICIAL REVIEW

According to the Black's Law Dictionary, "judicial review" means "the court's power to review the actions of other branches of the government, especially the court's power to invalidate legislative and executive actions as being unconstitutional."

The principle of judicial review originated in the case of Marbury v. Madison, in which it was held that, the American courts have the power to strike down the actions of or laws made by the government if they do not adhere to the provisions of the American Constitution. Chief Justice Marshall noted that while the American Constitution does not contain a specific clause about judicial review, the power of judicial review is implied in the US Constitution, as it states that the Constitution is the supreme law of the land and all laws must be made according to the provisions of the Constitution. We call this procedure as "judicial review."

One of the most powerful tools available to courts is the ability to declare any government law, order, or conduct that is incompatible with the fundamental law of the land to be unconstitutional and unenforceable. Rather than guaranteeing that the authority reaches a legally sound decision, the fundamental goal of judicial review is to guarantee that the legislative or executive branch does not misuse its authority and that the people are treated justly and fairly.

The Apex Court in Government of **Andhra Pradesh vs. P.L. Devi (2008),** observed that since the power of invalidating a statute prevents the full play of the democratic process and that "invalidation of a statute made by the Legislature elected by the people is a grave step," it should be exercised with rigorous self-restraint. That is, if two results are possible, one making the statute constitutionally valid and the other making it invalid, the former view must be preferred.

IMPORTANCE OF JUDICIAL REVIEW

- It is essential for maintaining the supremacy of the Constitution.
- It prevents the tyranny of executives.
- It maintains the federal balance.
- It is essential for checking the possible misuse of power by the legislature and executive.
- It is essential for securing the independence of the judiciary.
- It protects the rights of the people.

EXAMPLES OF JUDICIAL REVIEW

IT Act Section 66(A)

In 2015, the SC struck down Section 66(A) of the amended Information Technology Act, 2000. This provided the punishment for sending "offensive" messages through a computer or any other communication device like a mobile phone or a tablet. A conviction could fetch a maximum of three years in jail and a fine. This was repealed by the SC on the grounds that this section fell outside Article 19(2) of the Constitution, which relates to freedom of speech.

Golaknath Case (1967)

The questions, in this case, were whether the amendment is a law; and whether Fundamental Rights can be amended or not. SC contented that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13, and that to amend the Fundamental rights a new Constituent Assembly would be required. Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution.

CONSTITUTIONAL PROVISION FOR JUDICIAL REVIEW

The High Courts and the Supreme Court have the unique authority to examine legislative and executive actions. The Indian Constitution contains various provisions that grant this authority of judicial review. These are discussed about in the provision below:

Judicial reviews of laws, past and present, are discussed under Article 13 of the constitution. It is regarded as a judicial review charter. It says that if a statute contradicts or infringes upon the fundamental rights guaranteed by Part 3 of the Constitution, the court has the authority to declare it unconstitutional.

The right to petition the Supreme Court to have fundamental rights upheld is guaranteed by Article 32 of the constitution . The Supreme

Court has the authority to declare any legislation or order under this Article as unconstitutional if it violates fundamental rights of the people.

The Supreme Court has exclusive original jurisdiction over disputes involving conflicts between the Center-State and two or more states, according to Article 131.

Article 132 gives the Supreme Court the authority to review decisions made by the High Courts if they raise any significant legal issues pertaining to the interpretation of the Constitution.

According to Article 133, the Supreme Court has the authority to review decisions made by lower courts in civil matters presenting significant legal issues of public concern.

Article 134 establishes the Supreme Court's appellate jurisdiction over decisions made by the High Court in criminal proceedings.

According to Article 134A, the High Court must provide a certificate allowing an appeal to the Supreme Court.

The Supreme Court may use its jurisdiction and authority as a federal court under any pre-constitution. The Supreme Court is empowered under Article 136 to grant special leave to appeal a decision made by any court or tribunal in any cause or matter before itself.

Similar judicial review authority is granted to the High Court by Article 226. However, the scope of the High Courts' writ jurisdiction is greater, as they have the right to issue writs not only against the State and statutory authorities, but also against any individual or organization carrying out a public obligation. I statute, as permitted by Article 135 of the Constitution. The territorial jurisdiction of the State Legislature and the Parliament is covered by Article 245.

The topics on which the legislatures of the states and Parliament may pass laws are outlined in Article 246.

According to Articles 251 and 254, the central law will take precedence over state legislation and the state law will be deemed void in any situation where it conflicts with laws established by the parliament.

According to Article 372 of the Indian Constitution, pre-constitutional laws will continue to be in effect until they are in compliance with the provisions of the Constitution.

LIMITATIONS OF JUDICIAL REVIEW

(A) General Limitations

The power of judicial review provided to the judiciary is not absolute. It has certain limitations as well. These are discussed in detail below:-

LIMITED TO PROCEDURAL REVIEW

Limited to procedural judicial review's main goal is to confirm that the process used to reach a decision was legitimate and compliant with the constitution. However, courts are unable to replace the government's decision-making on questions of policy because they often do not evaluate the decision's effectiveness or merits. This is due to the judiciary's incapacity to replace the policymaking bodies due to its lack of experience in creating policies. Therefore, the judiciary cannot judge whether a policy is desirable or effective, even though it can rule a policy unlawful if it violates any fundamental rights. Chief Constable of the North Wales Police v. Evans, (1982), saw Lord Bright man make the observation that "judicial review is concerned not with the decision, but with the decision-making process."Unless that restriction on the power of the court is observed, the court, under the guise of preventing the abuse of power, will be itself guilty of usurping power."

DESIGNATED ONLY TO THE SUPREME COURT AND HIGH COURTS

Only the Supreme Court of India and the High Courts of the several States have the authority

to declare any legislation, ordinance, order, bye-law, rule, regulation, notification, custom, or usage that conflicts with Part 3 of the Indian Constitution.

The Constitution of India, through Article 246 and the 7th schedule, delineates a clear demarcation and point of contact between the legislative powers of the Union Parliament and the individual state legislatures.

Consequently, disputes pertaining to legislative competence—particularly those involving the Center-State relationship—may only be decided by higher courts. As a result, subordinate courts in India are not able to exercise the power of judicial review.

FAIL TO COMPLY WITH THE PRINCIPLE OF SEPARATION OF POWER

Anytime judicial review declares a measure unconstitutional, it goes beyond the constitutionally prescribed boundaries of power. In India, the concept of separation of functions is adhered to instead of the notion of separation of powers. "Separation of functions" refers to how the three arms of government carry out their respective responsibilities while working together. Instead of a rigid division of powers, the concept of checks and balances is practiced in India. Its purpose is to keep the government from having any one branch become unduly powerful. The idea of checks and balances is also the foundation of judicial review, which gives the courts the authority to examine legislative and executive actions and declare them null and invalid if found unconstitutional.

In the landmark case of P. Ramachandra Rao vs. State of Karnataka (2002), the Supreme Court of India made a significant pronouncement regarding the separation of powers between the judiciary and the legislature. The Court emphasized that while the judiciary plays a crucial role in interpreting laws and addressing legal issues, it must refrain from encroaching upon the legislative domain, which is primarily the responsibility of elected representatives.

The Court's observation in this case highlights the delicate balance between the powers of the judiciary and the legislature in a democratic society. The judiciary is tasked with upholding the Constitution and ensuring that laws are applied fairly and impartially. However, the Court recognizes that it should not overstep its boundaries and interfere with the legislative process, which is the function of the legislature.

The Court's statement, "Court can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps, but they cannot entrench upon in the field of legislation, properly meant for the legislature," encapsulates this principle. The Court acknowledges that it has the authority to interpret laws, clarify ambiguities, and address gaps in legislation. However, it emphasizes that it cannot create new laws or usurp the legislative function.

DOCTRINE OF STRICT NECESSITY ON

The "strict necessity" theory states that judges shouldn't make a constitutionality decision unless it is absolutely required. Therefore, strict or inescapable need is necessary for evaluating any constitutionality argument. When addressing constitutional issues, judges ought to exercise caution and confine their authority to the specific facts of each case. Therefore, constitutionality issues are only raised when legislation infringes upon a person's fundamental rights and there is a compelling purpose for doing so.

The Court is restricted from using its power of judicial review by the doctrine of "strict necessity." It states that a law can only be declared unconstitutional when there is no remedy available or it is unredeemable.

In the landmark case of Sunil Kumar Shabukumar Gupta (Dr.) vs. State of Maharashtra (2010), the Indian Supreme Court laid down a fundamental principle of constitutional interpretation. The Court held that when interpreting a statute, if two possible interpretations are available, one that renders the statute constitutional and the

other that renders it unconstitutional, the former interpretation must always be preferred.

This principle is based on the fundamental assumption that the legislature intends to enact laws that are consistent with the Constitution. As such, when faced with a statute that could potentially be interpreted in a way that violates constitutional principles, courts should strive to find an interpretation that upholds the constitutionality of the statute.

The principle established in Sunil Kumar Shabukumar Gupta (Dr.) vs. State of Maharashtra (2010) has been consistently applied by Indian courts in subsequent cases. It has played a crucial role in upholding the constitutionality of numerous statutes and has helped to maintain a balance between the legislative and judicial branches of government.

The rationale behind this principle is twofold. Firstly, it ensures that the legislature's intent is respected and upheld. By presuming that the legislature intended to enact a constitutional law, courts give effect to the legislature's purpose and avoid the unintended consequences of declaring a statute unconstitutional.

Secondly, this principle promotes judicial restraint and deference to the legislative branch. By refraining from striking down a statute as unconstitutional unless there is no other viable interpretation, courts acknowledge that the legislature is primarily responsible for making laws and that judicial review is a limited power that should be exercised only when necessary

CENTRAL LAWS CAN NOT BE CHALLENGED BY THE STATES:-

Any person whose rights have been violated may dispute the constitutionality of laws passed by the federal government, but state governments are not permitted to contest the legality of federal laws. "Challenging the validity of a central law by the state government would be against the federal structure woven under the Constitution," the Honorable Supreme Court noted.

IMPLIED LIMITATIONS

LOCUS STANDI

The old idea of "locus standi" in the Indian legal system restricted the ability to contest government actions. Put otherwise, under Article 32 of the Constitution, a writ may only be filed by a person who was directly impacted. However, the innovative idea of Public Interest Litigation (PIL) overcame this. PIL permits anyone to file a petition based on the public interest. This means that, in theory, the government cannot impose locus standi to prevent "patently bad" decisions from being challenged in a court of law, even if the act's scope could harm a sizable number of people without directly harming any one person. Consequently, this reinforces the judiciary's function in safeguarding the fundamental rights of the people.

RES JUDICATA

According to the doctrine of Res Judicata, a court's decision in a case involving adequate jurisdiction should be final and the parties involved shouldn't have to go through the legal system twice over the same issue. It is a civil law precept contained in the 1908 Code of Civil Procedure, Section 11.

The Supreme Court of India has held in numerous decisions that writ petitions filed under Article 32 are subject to the res judicata concept. The public policy premise serves as the foundation for the rule of Res Judicata, which is not a technical procedural norm.

UNREASONABLE DELAY OR LACHES

The idea that those who understand their rights and do not take them for granted will have support from the courts is one of the cornerstones of the administration of justice. The petitioner may not be permitted to file a writ petition under Article 32 to obtain redress for the infringement of his fundamental rights if he lags or delays excessively.

The general rule is that the court should not examine stale cases and that it should help the vigilant and the indolent. However, it is a rule of judicial prudence and has to be applied with caution.

CONSTITUTIONAL LIMITATIONS

Immunities and privileges for the President, governors, and judges of high courts and Supreme Court:

The Indian Constitution grants specific privileges and immunities to the President, Governors, and Judges of the Supreme Court and High Courts. The courts are unable to investigate these people's actions unless they have done so in their individual capacities. It is crucial to maintain the independence of the executive branch that the president and the governor are immune from legal action when acting in the course of their official duties. Since the commencement of the judiciary, judges have been granted complete immunity from any limitations on their ability to carry out their duties; however, the Indian Constitution does not specify the extent of this protection.

The President and State governors are granted immunities under Article 361 of the Indian Constitution. This means that they are not accountable to any court for the decisions they make while using their authority and performing their duties.

Additionally, the President of India is empowered to pardon and, in certain circumstances, to "suspend, remit, or commute" sentences under Article 72 of the Indian Constitution. In a similar vein, the pardoning authority of state governors is listed in Article 161 of the Indian Constitution.

Hence, the court cannot review the merits of the decision of these dignitaries other than in instances of malice aforethought, arbitrariness, or ignorance of some important information.

EMERGENCY RULES

As per Article 358 of the Indian Constitution, when a national emergency is declared, the six fundamental rights guaranteed under Article 19 are automatically suspended.

Article 19 of the Indian Constitution provides six fundamental rights to citizens:

- The right to freedom of speech and expression.
- The right to assemble peacefully and without arms.
- The right to form associations and unions.
- The right to move freely throughout the territory of India.
- The right to reside and settle in any part of India.
- The right to practice any profession, or to carry on any occupation, trade, or business.

These fundamental rights are essential for a democratic society, as they allow citizens to express themselves freely, participate in political and social activities, and pursue their chosen careers. According to Article 359, in the event of a national emergency, the President may suspend, by order, the ability to file a petition in any court to enforce the fundamental rights.

The declaration of a national emergency was exempt from judicial review under the 38th Amendment Act of 1975. However, the 44th Amendment Act of 1978 later repealed this provision.

In the landmark case of Minerva Mills vs. Union of India, the Supreme Court of India ruled that the judicial review of the legality of the President's proclamation of emergency under Article 352(1) of the Indian Constitution remains unaffected. This means that the courts have the authority to examine and assess the validity of the President's actions when imposing an emergency.

The courts have used their authority to conduct judicial reviews in emergency-related cases on multiple occasions since the Minerva

Mills case. The scope and bounds of the President's emergency powers, as well as the judiciary's responsibility to guarantee that these authorities are not abused or misused, have been made clearer by these cases.

CONCLUSION

The Indian Constitution incorporates a system of checks and balances that gives the court the authority to monitor legislative and executive actions to make sure they comply with the constitution's requirements. Through judicial review, the courts have the authority to declare any government action that violates the Constitution void. Nonetheless, there are several restrictions on how the courts can use this authority. The judiciary is not allowed to meddle in areas of government policy. Therefore, the judiciary's only responsibility is to determine whether the process used to obtain the conclusion was legitimate or not. It does not have the authority to re-make the decision being challenged or to inquire into the merits of that decision by the government.

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FROM CONSTITUTIONAL PROMISE TO COMMUNITY PRACTICE: EXPANDING THE VISION OF LEGAL AID



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"Before rights are pleaded and liabilities drawn,

Justice begins where legal consciousness is born."

CONSTITUTIONAL VISION AND THE LEGAL AID FRAMEWORK

The constitutional foundation of legal aid in India is firmly rooted in Article 39A, which directs the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and that free legal aid is provided to ensure that justice is not denied by reason of economic or other disabilities. This constitutional mandate was operationalised through the Legal Services Authorities Act, 1987, which established a comprehensive institutional framework for legal aid at the national, state, district, and taluk levels, with the National Legal Services Authority at its apex.

While this framework is structurally robust, its effectiveness depends largely on how far it penetrates the everyday realities of people's lives. Institutions and statutes, by themselves, cannot guarantee access to justice unless there are human agents capable of reaching those who remain excluded from formal legal processes. Paralegal volunteers represent that crucial human link between constitutional ideals and social realities.

WHO ARE PARALEGAL VOLUNTEERS AND WHY THEY MATTER

Paralegal volunteers are not judges, advocates, or legal scholars. They are ordinary individuals drawn from within the community teachers, Anganwadi workers, ASHA workers, retired government servants, social activists, and women leaders who possess local credibility and social trust. Their strength lies not in formal legal expertise but in accessibility, empathy, and familiarity with ground realities.

They speak the language of the people, understand local customs and power structures, and are often aware of disputes and vulnerabilities long before they reach any formal institution. In many cases, a paralegal volunteer is the first person to tell a victim of domestic violence that abuse is not a private matter, or an undertrial prisoner that prolonged incarceration without trial violates fundamental rights. Their intervention transforms the law from an abstract concept into a practical tool for survival and dignity.

JUDICIAL RECOGNITION OF LEGAL AID AS A FUNDAMENTAL RIGHT

The Supreme Court of India has consistently emphasized that legal aid is not a matter of charity but a constitutional obligation. In Hussainara Khatoon v. State of Bihar (1979), the

Court exposed the shocking reality of undertrial prisoners languishing in jails for years without trial, solely due to poverty and lack of legal representation. The Court held that the right to speedy trial is an essential ingredient of Article 21 and that free legal aid is a constitutional mandate. This landmark judgment marked a turning point in Indian legal jurisprudence by transforming legal aid from a policy aspiration into an enforceable right.

The obligation of the State was further clarified in Khatri (II) v. State of Bihar (1981), where the Supreme Court held that the right to free legal services arises not at the stage of trial alone, but from the moment an accused is produced before a magistrate. The Court categorically stated that the State cannot plead financial or administrative inability to deny legal aid. Despite these clear judicial mandates, ground realities show that awareness of these rights remains limited. Paralegal volunteers play a vital role in ensuring that such constitutional protections are actually communicated to those who need them most.

PARALEGAL VOLUNTEERS AS AGENTS OF PREVENTIVE JUSTICE

A significant portion of the work done by paralegal volunteers never enters court records. They counsel parties in matrimonial disputes, assist in resolving minor land and tenancy conflicts, and provide early legal guidance that prevents escalation into litigation or criminal proceedings. This preventive role is central to the idea that access to justice is not merely about access to courts, but about timely and effective resolution of disputes.

This approach resonates with the Supreme Court's observation in State of Maharashtra v. Manubhai Pragaji Vashi (1995) that the legal system must function as an instrument of social justice. By intervening early and locally, paralegal volunteers reduce the burden on courts while preserving social harmony, demonstrating that justice can be achieved outside formal adjudication without compromising fairness.

WOMEN, VULNERABILITY, AND THE HUMAN FACE OF LEGAL AID

The role of paralegal volunteers becomes particularly significant in cases involving women and children. Women paralegal volunteers often serve as trusted confidantes for women facing domestic violence, abandonment, or sexual exploitation. For many victims, approaching a police station or court is emotionally intimidating. Speaking to another woman from the same community provides a sense of safety, dignity, and reassurance.

The importance of legal support for women victims was recognized in Delhi Domestic Working Women's Forum v. Union of India (1995), where the Supreme Court emphasized the need for legal assistance, counseling, and rehabilitation for victims of sexual violence. Paralegal volunteers give practical shape to this victim-centric approach by combining emotional support with legal guidance, thereby humanizing the justice process.

MARGINALIZED COMMUNITIES AND SOCIAL JUSTICE

Paralegal volunteers play an equally crucial role in addressing issues faced by marginalized communities, including bonded labourers, child labourers, tribal populations, and victims of caste-based discrimination. Such violations often remain hidden due to fear, social pressure, or lack of awareness. Being embedded within the community, paralegal volunteers are often the first to identify these injustices and connect affected individuals with Legal Services Authorities.

This proactive role reflects the spirit of Bandhua Mukti Morcha v. Union of India (1984), where the Supreme Court underscored the State's duty to protect the rights of bonded labourers and emphasized that access to justice must meaningfully reach the most vulnerable sections of society.

PARALEGAL VOLUNTEERS IN THE DIGITAL JUSTICE ECOSYSTEM

An emerging but underexplored dimension of the paralegal volunteer system is its interaction with digital justice initiatives. With the increasing digitization of courts, online filing of applications, e-courts services, and virtual Lok Adalats, access to justice has paradoxically become more complex for digitally illiterate populations. For many beneficiaries, the shift from physical to digital interfaces has created a new form of exclusion. Paralegal volunteers increasingly act as digital facilitators helping individuals track case status, file legal aid applications online, access e-courts portals, and understand digitally generated notices. In this sense, PLVs are not merely legal intermediaries but digital bridges, ensuring that technological advancement does not undermine the inclusivity promised by Article 39A.

PARALEGAL VOLUNTEERS AND THE CRIMINAL JUSTICE PROCESS

Another critical angle lies in the role of paralegal volunteers within the criminal justice system, particularly at the pre-trial and undertrial stages. Arrest, remand, and bail proceedings are often the most opaque phases for an accused person, especially one without legal literacy or resources. Paralegal volunteers attached to legal services clinics in police stations and jails play a crucial role in informing accused persons about their rights to legal representation, bail, and speedy trial. Their intervention helps prevent prolonged illegal detention and procedural abuse. In many instances, timely guidance by a PLV results in early bail or legal representation, thereby reducing unnecessary incarceration and reinforcing the constitutional safeguards embedded in Articles 21 and 22.

RESTORATIVE JUSTICE AND COMMUNITY-BASED RESOLUTION

Paralegal volunteers also contribute significantly to restorative and community-based justice mechanisms. By facilitating dialogue, counselling parties, and encouraging amicable settlements where appropriate, PLVs help resolve disputes in a manner that preserves relationships and social harmony. This role is particularly relevant in family disputes, neighbourhood conflicts, and minor property disagreements, where adversarial litigation may exacerbate tensions rather than resolve them. Such community-based interventions align with the broader philosophy of restorative justice, which prioritizes healing, accountability, and reconciliation over punitive outcomes. In this context, paralegal volunteers emerge as informal custodians of social peace.

INTERSECTION WITH WELFARE RIGHTS AND SOCIAL JUSTICE SCHEMES

Legal problems faced by marginalized communities are often intertwined with denial of welfare entitlements such as pensions, ration cards, health benefits, or housing schemes. Paralegal volunteers frequently assist individuals in navigating these administrative processes, filing grievances, and understanding eligibility criteria. Their role thus extends beyond conventional legal aid into the domain of rights-based governance. By helping beneficiaries assert their entitlements, PLVs reinforce the idea that access to justice includes access to social and economic rights, not merely dispute resolution in courts.

NEED FOR INSTITUTIONAL ACCOUNTABILITY AND IMPACT ASSESSMENT

A significant gap in the current legal services framework is the absence of systematic impact assessment of paralegal volunteer interventions. Success is often measured through quantitative indicators number of camps held, beneficiaries reached, or cases referred rather than qualitative outcomes such as dispute prevention, empowerment, or long-term resolution. Incorporating social audits, beneficiary feedback, and outcome-based evaluation would not only improve accountability but also highlight the

real contribution of paralegal volunteers. Such assessment mechanisms would strengthen the credibility of Legal Services Authorities, including the National Legal Services Authority, and ensure that grassroots justice delivery remains responsive and effective.

PARALEGAL VOLUNTEERS AS CATALYSTS FOR LEGAL CONSCIOUSNESS

Beyond immediate dispute resolution, paralegal volunteers play a long-term role in fostering legal consciousness within communities. Repeated interactions, awareness programmes, and informal counselling gradually change how people perceive the law from an instrument of fear to a tool of protection. This cultural shift is perhaps the most enduring contribution of paralegal volunteers. By demystifying the law and normalizing the idea of rights, PLVs contribute to a more legally aware citizenry, which is essential for the functioning of a constitutional democracy.

EXPANDING THE VISION OF LEGAL AID

These additional dimensions make it clear that paralegal volunteers are not peripheral actors but central to the evolving concept of access to justice. Their work intersects with technology, criminal justice, welfare governance, restorative practices, and legal empowerment. Recognizing and strengthening these roles would move India's legal aid system closer to its constitutional vision where justice is not reactive, distant, or intimidating, but accessible, preventive, and humane.

STRUCTURAL CHALLENGES AND INSTITUTIONAL GAPS

Despite their indispensable role, paralegal volunteers operate within significant constraints. Training programs are often brief and generic, leaving them ill- equipped to handle complex legal and social issues such as mental health law, juvenile justice, or emerging cyber offences. Honorariums are modest and sometimes irregular, affecting motivation and continuity. More importantly, paralegal volunteers often lack formal authority, resulting in limited cooperation from police or administrative officials.

The Supreme Court's reasoning in Manubhai Ratilal Patel v. State of Gujarat (2013) that fair trial includes effective legal representation offers valuable insight here. If fairness requires effective representation in court, it logically follows that fairness also requires effective legal guidance before disputes reach courts. Strengthening paralegal volunteers is therefore essential to ensuring substantive, not merely procedural, justice.

CONCLUSION

Paralegal volunteers represent the most human face of India's legal aid system. They work quietly and often invisibly, ensuring that the promise of Article 39A does not remain confined to constitutional text or judicial pronouncements. Courts may interpret the law, legislatures may enact it, and authorities may administer it, but it is often the paralegal volunteer who ensures that the law reaches those who need it most.

If access to justice is to become a lived reality rather than a constitutional slogan, the role of paralegal volunteers must be acknowledged, strengthened, and institutionalized as a central pillar of the Legal Services Authorities framework. Justice, after all, often begins with a conversation.

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DEEPFAKES AND LEGAL REGULATION IN INDIA



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ABSTRACT

The exponential growth of artificial intelligence has ushered in a new era of synthetic media, commonly referred to as deepfakes, which can fabricate hyper-realistic audio-visual content indistinguishable from reality. While such technology holds transformative potential for innovation, creativity, and communication, its misuse poses profound legal, constitutional, and societal challenges. In India, deepfakes have already manifested as tools for non-consensual sexual exploitation, political misinformation, impersonation, financial fraud, and reputational sabotage. The existing legal framework, anchored primarily in the Information Technology Act, 2000, was not designed to address the unique harms caused by AI-generated content, resulting in reliance on analogical interpretation and judicial improvisation. This article undertakes a comprehensive analysis of deepfake technology within the Indian legal system, examining statutory provisions, judicial responses, recent deepfake-related case law, parliamentary initiatives, and the landmark October 2025 amendment to the Information Technology Rules. It argues that India is transitioning towards a mature regulatory model that recognises deepfakes as systemic threats to information integrity and democratic trust, while still grappling with unresolved questions of enforcement, proportionality, and cross-border governance.

INTRODUCTION

The relationship between law and technology has historically featured temporal dissonance, with legal systems responding belatedly to technological change. Artificial intelligence, especially in generating synthetic media, has intensified this tension. Deepfakes—AI-generated or manipulated audio, video, and images disrupt epistemic certainty by realistically fabricating speech, conduct, and identity, eroding the traditional evidentiary credibility of visual and auditory media in social discourse and judicial proceedings. In India, deepfakes pose acute risks amid a vast digital user base, pervasive social media, and polarised politics. Documented misuses include targeting women with fabricated explicit content, falsely portraying public figures endorsing positions, and blackmailing private individuals—harms that undermine constitutional values like dignity, privacy, autonomy, and democratic participation. Though Indian law recently lacked explicit deepfake provisions, forcing reliance on stretched cyber, criminal, and tort laws, evolving judicial responses and the October 2025 IT Rules amendment mark a shift. This article critically examines this transition within India's digital regulatory landscape.

UNDERSTANDING DEEPFAKE TECHNOLOGY AND ITS LEGAL IMPLICATIONS

Deepfakes are produced through advanced machine learning techniques, most commonly generative adversarial networks, wherein two neural networks operate in tandem—one generating synthetic content and the other refining it by detecting imperfections. Through iterative learning from vast datasets, these systems can replicate facial expressions, voice modulation, and behavioural cues with extraordinary accuracy. The resulting content often defies detection by the human eye or ear, thereby undermining traditional methods of verification. The legal implications of such technology are far-reaching. Deepfakes enable identity appropriation without physical proximity, consent, or direct interaction. They collapse the distinction between truth and falsity in digital communication, rendering individuals vulnerable to reputational harm, emotional trauma, and social ostracization. At a systemic level, deepfakes threaten electoral processes, market stability, and public trust in institutions by facilitating the viral spread of fabricated narratives. From a jurisprudential perspective, deepfakes challenge foundational legal concepts such as authorship, intent, causation, and evidentiary authenticity.

EXISTING LEGAL FRAMEWORK IN INDIA

India's principal statute governing cyberspace is the Information Technology Act, 2000. Drafted at a time when digital offences primarily involved hacking, unauthorised access, and basic online fraud, the Act does not expressly address AI-generated content or synthetic media. Nevertheless, enforcement agencies have attempted to regulate deepfake misuse through a patchwork of provisions. Section 66D, dealing with cheating by personation using computer resources, has been invoked in cases involving digital impersonation. Sections 67 and 67A, criminalising the publication of obscene and sexually explicit material in electronic form, have been applied to non-consensual deepfake pornography. While these provisions provide limited remedial scope, they suffer from conceptual inadequacy. Deepfakes often cause harm that transcends obscenity or impersonation, encompassing psychological injury, erosion of public trust, and large-scale misinformation. Moreover, reliance on broadly worded offences leads to inconsistent enforcement and uncertainty regarding the appropriate standard of culpability.

The intermediary liability framework under Section 79 of the IT Act further complicates regulation. Safe harbour protection shields intermediaries from liability for third-party content, provided due diligence obligations are met. However, the traditional 'notice-and-takedown' model is increasingly ineffective against deepfakes, which can spread virally within minutes, often causing irreversible harm before remedial action is taken. Moreover, numerous websites operating across different domain jurisdictions are designed to transform any image into a sexually lascivious depiction based on pre-set prompts. These platforms often levy charges in US dollars or other foreign currencies for executing such prompts and typically include disclaimers stipulating that full responsibility for the generated content rests solely with the user who employs the website for such purposes.

Recently, news reports have highlighted concerns surrounding Elon Musk's AI chatbot Grok, developed by xAI and integrated with the platform X, after users allegedly misused its image-generation capabilities to create deepfake and sexually explicit content. The incident has intensified global debate on AI accountability, platform responsibility, and the ease with which generative tools can be exploited for non-consensual imagery. Following criticism from regulators and civil society groups, xAI reportedly imposed restrictions on Grok's image features and revised its content safeguards.

JUDICIAL RESPONSES AND EMERGING CASE LAW IN INDIA

Indian courts have played a pivotal role in addressing the regulatory vacuum surrounding

deepfakes through creative and purposive interpretation. The judiciary has increasingly recognised that deepfake misuse constitutes a grave invasion of personality rights, privacy, and dignity under Article 21 of the Constitution.

The Delhi High Court, in a significant 2025 order, granted an ad-interim injunction restraining the circulation of sexually explicit deepfake content involving a private individual, directing social media platforms to take down the material and disclose subscriber information of those responsible, while also issuing a John Doe injunction against unidentified disseminators. The Court acknowledged that AI-generated content can inflict irreversible harm and that procedural delay would defeat substantive justice. Similarly, the Bombay High Court has repeatedly intervened to protect personality rights against AI-driven misuse. In cases involving actors such as Akshay Kumar and Suniel Shetty, the Court restrained the creation and dissemination of deepfake videos, voice clones, and false endorsements, holding that unauthorised digital exploitation of persona constitutes a serious invasion of dignity and commercial autonomy. These orders demonstrate judicial willingness to extend established personality rights jurisprudence into the digital realm.

The Sadhguru judgment is particularly noteworthy in this regard. The Court employed innovative injunction mechanisms to restrain unauthorised AI-generated use of the spiritual leader's name, image, and voice, recognising that digital impersonation through deepfakes could distort public perception and undermine individual autonomy. The judgment reflects judicial capacity to adapt traditional doctrines to novel technological harms without waiting for explicit legislative instruction.

Law enforcement responses have also intensified. FIRs have been registered in multiple jurisdictions concerning deepfake videos of political figures, including cases involving fabricated videos attributed to sitting Chief Ministers. These developments underscore the growing recognition of deepfakes as actionable wrongs under existing criminal law, even as courts acknowledge the limitations of current statutory frameworks.

LEGISLATIVE AND PARLIAMENTARY INITIATIVES

Recognising the inadequacy of existing laws, lawmakers have initiated efforts to directly address deepfake misuse. Proposed amendments to the Information Technology Act seek to strengthen provisions dealing with digital impersonation and malicious manipulation. While still at the proposal stage, these amendments reflect an intent to move towards technology-specific regulation.

In parallel, private members' bills introduced in both Houses of Parliament have sought to criminalise deepfake creation and dissemination without consent. A Deepfake Prevention and Criminalisation Bill, 2023 introduced in the Rajya Sabha proposed explicit penalties, consent-based safeguards, and transparency requirements for synthetic media. In the Lok Sabha, a separate bill proposed regulatory oversight mechanisms and mandatory disclosures for AI-generated content. Although these bills have not yet matured into law, they signify parliamentary acknowledgment that deepfakes constitute a distinct category of harm warranting dedicated regulation.

A decisive regulatory shift occurred with the October 2025 amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules. This amendment addresses deepfake misuse with unprecedented regulatory specificity. For the first time, Indian law provides a clear statutory definition of "synthetically generated information," thereby resolving longstanding ambiguity regarding the scope of regulation. The framework mandates visible labelling of AI-generated content, ensuring transparency and enabling users to distinguish between authentic and synthetic media.

Significantly, the amendment imposes upstream responsibility on AI tool providers, recognising that regulation cannot be confined

solely to end-user platforms. By establishing layered accountability across creators, tool developers, and intermediaries, the framework moves beyond a reactive takedown regime. It also expressly protects intermediaries acting in good faith from liability, thereby preserving the balance between enforcement and innovation. This regulatory architecture reflects a sophisticated understanding of the deepfake ecosystem. Rather than treating deepfakes as isolated cyber offences, the amendment acknowledges their systemic impact on information integrity, electoral legitimacy, and public trust.

UNRESOLVED CHALLENGES AND CONSTITUTIONAL CONSIDERATIONS

Despite these advances, unresolved questions persist. The technical reliability of deepfake detection and verification mechanisms remains uncertain, raising concerns about false positives and wrongful takedowns. Cross-border enforcement poses additional challenges, as deepfake content often originates from jurisdictions beyond India's regulatory reach. Constitutionally, any deepfake regulation must balance the right to freedom of speech under Article 19(1)(a) with the right to dignity and privacy under Article 21. Courts have emphasised that malicious deepfakes do not enjoy constitutional protection; however, care must be taken to ensure that satire, parody, artistic expression, and legitimate AI innovation are not inadvertently suppressed.

While challenges of enforcement, proportionality, and cross-border regulation remain, India's evolving legal response demonstrates a growing recognition that deepfakes pose existential threats to truth, trust, and democratic legitimacy. The task ahead is to ensure that this regulatory architecture remains adaptive, rights-respecting, and technologically informed, enabling India to harness the benefits of artificial intelligence while safeguarding the dignity and autonomy of its citizens.

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SECTION 28(2) OF THE PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT *(THE AMBIT AND PERIPHERAL LIMITS)*



Ms. Vaishali Bahubalendra

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Domestic violence is a pervasive social issue affecting individuals and families of all socio-economic stratus across all geographic boundaries. Domestic violence literally refers to violence and aggressive behaviour within a home, typically involving violent abuse of a spouse or partner. Domestic violence has been criminalised in many countries and so also in India. In India a separate legislation i.e. Protection of Women Against Domestic Violence Act has been enacted to criminalise, penalise and to provide help for the victims of domestic violence. This Act encompasses the entire mechanism beginning from filing of a petition for domestic violence till the disposal of the same and the reliefs to be provided to the victim. Apart from this the Act embraces procedures for enforcement of this reliefs. So as to ease the process of courts in enforcement of the provisions of this beneficial legislation, section 28(2) of the PWDV Act has been enacted enabling the courts to adopt its own procedure in disposing a petition under section 12 of this Act, but the Act is entirely silent as to the extent of such laxity bestowed upon the courts to adopt its own procedure while dealing with a petition under the PWDV Act. This article shall delve in to the extent and peripheral limits of this laxity, the purpose for which and boundaries and legal principles within which the own procedure can be adopted by the courts for disposing a petition under section 12 and 23 of the PWDV Act.

INTRODUCTION

Women are subject to violence at their homes by their own family members including spouse. Be it natal or marital home they are prone to the domestic violence. Literally it is a social menace engulfing both the individual and the family. The patriarchal bent of mind ingrained in the Indian society across all strata often plays menacing/ diatribe role culminating to such violence. It is paradoxical to our culture of Vedic period when women were venerated and history from ancient to modern period witnessed the excellence of women in different fields and various legislative enactments came to being to curb such menace.

When violence takes place at home, the states and the law enforcement agencies implicit silence and apathy effectively condone the abuse. One in three women worldwide have experienced abuse, coercion into sex, or beatings at some point in their lives at the hands of a family member. The most common type of violence against women and girls is domestic abuse, which is often concealed and disregarded. Studies indicate that between 20 to 50 percent of women have been physically abused by an intimate partner or family member, though accurate numbers are difficult to get.

IMPACT ON INDIVIDUALS AND SOCIETY

The phenomenon of violence against women within family in India is complex and deeply embedded. Women are not only subject to violence in the hands of their husbands but also from members of both the natal and marital home. Overall Domestic Violence is prevalent in all settings, regions and religious groups. Domestic violence can have devastating effects on victims, including physical injuries, long-term psychological trauma, and even death. Children who witness domestic violence may experience emotional and behavioural problems. On a societal level, domestic violence affects workplace productivity, increases health care costs, and undermines social stability.

LEGAL FRAMEWORK AND PROTECTIONS IN INDIA

The Domestic Violence Act that in India officially known as the Protection of Women from Domestic Violence Act, 2005, was brought into force by the Indian Government from October 2006. It was originally passed by the parliament in August of 2005 and subsequently got the Presidential assent in the month of September of the same year. In the month of November 2007 this Act was ratified by four of twenty-eight State Governments in India. This legislation defined the act of Domestic Violence for the first time in the Indian legal history. This definition has since been used in thousands of cases by the courts, both of civil and criminal nature to prosecute those individuals who commit violent action against their spouses and loved ones. In India, the Protection of Women from Domestic Violence Act, 2005, provides a legal framework to protect victims and offer redressal. The law covers physical, emotional, sexual, and economic abuse, and empowers courts to issue protection orders, grant financial compensation, and ensure safe accommodation for survivors. Police and non-governmental organisations also play a crucial role in providing support and rehabilitation.

Apart from the above-mentioned parent legislation i.e. PWDV Act there are other legislative enactments which protect the aggrieved person and penalize the perpetrators of Domestic violence. The Indian Penal Code 1860 (IPC) also criminalizes several forms against women. Section 498(A) of IPC penalizes husband or their relatives who subject a woman to cruelty, Section 304(B) creates a legal presumption that the accused caused the death of the women for the purpose of dowry, sexual harassment U/S. 354(A), outraging the modesty of women U/S. 354 etc.

Initially the PWDV Act constituted any "adult male" to be the perpetrator of Domestic Violence but later it was held that the words "adult male person" is contrary to the object of this legislation in affording protection to the aggrieved person suffering from Domestic Violence and the same was substituted by "any person". Later it was clear that definition 2 (q) does not exclude female relatives of the husband or male partner. Therefore, complaints under the PWDV Act are not only maintainable against the adult male person but also female relative of such adult male.

THE PROCESS OF DISPOSAL OF A PETITION UNDER SECTION 12 OF PWDV ACT

The DV proceedings starts with a petition under Section 12 of the PWDV Act. It can be filed by the protection officer, the aggrieved person by herself or any person on her behalf. In case the petition is filed without the Domestic Incident Report, the court calls for the same. As usual the court fixes a date for hearing within three days. Then it takes recourse to serve notice to the respondents for whom two options remain open: firstly, to argue against maintainability and file objection or secondly, not to appear. In case of the later, the petition is heard ex-parte against the respondent. List of witnesses are filed followed by the process of hearing starts where both the aggrieved person and the respondent adduce their evidence. Subsequent to the evidences

adduced by the witnesses of both the sides, the stage of the argument and then the judgment take place. If the case is made ex-parte against the respondent, the person aggrieved adduces the evidence and then the process of argument and judgment usually follows one after the other. There are provisions for reliefs before the disposal of the petition under Sec.12 of the PWD Act like the petition under Sec.23 of the PWD Act. i.e. interim relief for maintenance, custody orders under Sec. 21 ibid inter alia. The petition under section12 is to be dealt primarily in a civil manner aimed for quick relief. Courts follow CrPC procedure (Sec 126) but have discretion (Sec 28(2)) to lay down their own. Within the period of initiation of a proceeding under the PWDV Act by giving a petition under Section 12 and till its disposal the court may conduct counselling between the parties either suo motu or through an application by any of the parties and if the court finds that there is a chance for conciliation the parties may be referred to for mediation. Even when a case is referred for mediation the court retains its control and jurisdiction over the matter and the mediation settlement has to be placed before the court for recording the settlement and disposal.

THE LEGISLATIVE INTENT FOR BESTOWING THE DISCRETION ON COURTS FOR LAYING ITS OWN PROCEDURE

The PWDV Act is a beneficial and social welfare Legislation interpreted primarily for victim protection. Therefore, every effort must be made in providing the reliefs under this Act to the victim expeditiously and effectively. Apart from all other legislative enactments, the provisions laid down under Section 28 (2) of PWDV Act occupies a distinct entity in as much as it empowers the courts to lay down their own process exercising their discretion to achieve the objectives of expediting effective protection to women. Thus, it prompts to have a deliberation as to the scope and ambit of such discretion of the court with sole objective to expedite reliefs to the aggrieved women after the petition is filed under Secs. 12 and 13 ibid at the level District judiciary. Justice delayed is justice denied, so courts can adopt its own procedure keeping in purview the following: -

- Expeditious trial
- Immediate Relief to save the victim of domestic violence
- For saving the victim from destitution and vagrancy
- Passing custody orders for children of victim
- Other reliefs

But the courts while adopting its own procedure as empowered under section 28(2) of the PWDV Act must take care of the principle of natural justice and the fundamental rights as enshrined under the Indian Constitution. It is true that PWDV Act aims to provide effective protection and remedies for women experiencing violence within the family, ensuring their right to a violence free home and shared residence and covers women in live-in relationships . It also provides civil remedies and establishes system like Protection Officers and Service Providers to support victims. All the remedies and reliefs provided in this Act can be extended to the aggrieved by following due process of law and giving the opposite party a fair chance of hearing. While dealing with a petition under section 12 and section 23 of the PWDV Act a fair chance must be given to the opposite party for filing objection. So also, while the petition is set ex-parte the same must be done after ensuring due service of summons on the opposite party. The procedure to be followed by the Court under its own discretion cannot negate the principles of natural justice i.e. the opposite party must not be deprived of its right to be heard and a reasoned order. The principles of natural justice as imbibed under the Indian Constitution must be taken care of.

PROCEDURES WHICH CAN BE ADOPTED UNDER SECTION 28(2) FOR DISPOSAL OF THE PETITIONS UNDER SECTION 12 & 23 OF THE SAID ACT:

- Taking evidence-in-chief in the form of affidavits.
- Ensuring the parties to file the list of witness on the first day of hearing.
- Making shorter dates for filing of objection in petitions under section 12 & 23 of the Act.
- Imposing penalty for breach of protection order
- Ensuring the appearance of the aggrieved person while payment is done with respect of the reliefs to avoid doubts while execution and receiving the acknowledgement of the aggrieved person.

CONCLUSION

The procedures enlisted above are not exhaustive and the courts may adopt any other procedure but must follow the embargo of natural justice and constitutional provisions in carrying out the aims and objectives of this beneficial legislation. In course of adopting its own discretional procedure a conferred under Sec. 28 (2) of the PWDV Act, the courts must take care of natural justice and fundamental rights guaranteed under the COI. There is no gainsaying that the very core objective of this piece of legislation is to provide effective protection to women from violence within their family and to provide violence free home coupled with civil remedies and systems like Protection Officers and Service Providers. But while extending the said welfare to the victim there court can't give a go-bye to the due process of law and principle of audi alteram partem to the opposite partem. The thrust has been given to follow the principle of natural justice as imbibed in the COI. The PWDV Act 2005 is enacted with a noble intention to provide utmost protection to the rights of women guaranteed under the Indian Constitution who are victims of violence of any kind within the family and every endeavour must be made to carry out the provisions of this welfare legislation to its fullest.

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APPLICABILITY OF CONVENTION AGAINST TORTURE TO INDIVIDUAL PERPETRATORS OF TORTURE: A CRITICAL STUDY



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ABSTRACT

Being a part of Human race gives certain privileges in the form of Human Rights that are inherent in every human being disregarding any differentiating factor. These rights are international in character and are ensured by a number of International legal instruments like; the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1960, the International Convention on Economic, Social and Cultural Rights of 1960, the European Convention on Human Rights, other many regional instruments as well as a nation's own domestic laws. United Nations Convention against Torture is one of those instruments that provide every individual with a right against torture. However, the application of the convention has been restricted to the unlawful torture by state and its agencies, while its victims are mentioned to be the one who suffers the torture or 3rd party. The Law Commission of India Report No. 273 had suggested India to ratify the Convention however the attempts have failed in the forms of Prevention of Torture Bill of 2017, 2023 while now considerations of Bill of 2024 are going on.

Hence, the article tries to shed light on the context whether the convention can be applied to individual perpetrators of torture disregarding the sovereign immunity when the act or omission is unlawful in nature. For this, the articleis divided into five chapters, the first being introduction to the topic, the second deals with the origin and evolution of the Convention Against Torture, the third chapter makes a comparison between the ambit and obligations under the convention and India's penal statutes having similar provisions. The fourth chapter studies the approach of Judiciary in applying the principles of UNCAT, finally concluding and suggesting way forward in fifth part.

KEY WORDS

Convention Against Torture, Perpetrators, State, Right against Torture.

I. INTRODUCTION

Being a part of Human race gives certain basic rights in the form of Human Rights that are inherent in every human disregarding any differentiating factor. These rights are international in character and are ensured by a number of International legal instruments like; the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1960, the International Convention on Economic, Social and Cultural Rights of 1960, the European Convention on Human Rights, other many regional instruments as well as a nation's own domestic laws.

Now, 'torture' primarily means hurting a person physically or psychologically and has been interpreted in various judgments in India and away. But the definition is available in the Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment

also known as Convention Against Torture or UNCAT which was adopted by the United Nations General Assembly on 10th December 1984 and was subsequently enforced on 26th June 1987.4

On perusal of the Definition it is inferred that the state inflicted torture for enforcement of law is kept out of the scope and applicability of the UNCAT. However the unlawful torture inflicted by anybody; state, non-state actors, as well as individuals, is a matter that can be examined in consonance with the penal laws of India, which is what this article is about.

Law Commission of India in their 273rd Report have dealt elaborately on the topic 'Implementation of United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through legislations in India by studying the International Scenario, examining issues relating to torture by various commissions, constitutional and statutory provisions that deal with protection from torture, judicial response to Torture in India, compensation for custodial torture/ death, as well as recommendations with Prevention of Torture Bill of 2017 annexed. The report provides with how torture was intrinsic since ancient times as forms of punishment in India referring to Kautilya's Arthashashtra that dealt with 4 kinds of torture for lesser offences that included 6 punishments,7 kinds of whipping, 2 kinds of suspension from above, etc. and 18 Kinds of Torture for grave offences. The report suggests that though India has signed the Convention on 14th October 1997, has not ratified the same due to reservations against certain provisions that provide for; Inquiry by the Committee against Torture under Article 20, State Complaints under Article 21 and Individual Complaints under Article 22.

II. CONCEPT OF TORTURE: DEFINITION, MEANING AND SCOPE UNDER THE CONVENTION AGAINST TORTURE

Article 1 of the United Nations Convention Against Torture (CAT) provides a comprehensive definition of torture.According to this article, torture refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining information or a confession, punishing them for an act they or a third person have committed or are suspected of having committed, or intimidating or coercing them or a third person. This definition also includes acts of discrimination of any kind. The pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. However, it excludes pain or suffering arising only from, inherent in, or incidental to lawful sanctions

ELEMENTS OF DEFINITION

1. Act of severe pain and suffering
2. Suffering could be mental or physical
3. Intentionally inflicted
4. State inflicted torture
5. For specific purpose: a confession, information, etc.
6. Against the victim or a 3rd person.

Hence the victims of torture could be the victim of torture or also the 3rd party who here is not recognized as victim.

Scope of 'Torture' under the UNCAT : Punishes intentional infliction of pain both by act or omission i.e unlawful torture , but Excludes torture with legal sanction.

Jurisdiction : Universal Jurisdiction under Article 4 and 5 of the UNCAT.

Origin and Evolution of the Convention against Torture

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is a fundamental international treaty drafted to eliminate torture and ill-treatment worldwide.

The origin and evolution of the Convention

Against Torture (CAT) can be traced back to the growing international recognition of the need to prevent and punish acts of torture. The CAT was adopted by the United Nations General Assembly on December 10, 1984, and entered into force on June 26, 1987. This landmark treaty was the culmination of decades of efforts by human right activists, legal scholars, and international organizations to establish a comprehensive legal framework for the prevention of torture.

The CAT builds on earlier international instruments, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), both of which condemn torture and other forms of ill-treatment. Over the years, the CAT has evolved through the establishment of the Committee Against Torture, which monitors compliance with the treaty and provides guidance on its implementation. The Optional Protocol to the Convention, adopted in 2002, further strengthened the CAT by establishing a system of regular visits to places of detention by independent international and national bodies. The ongoing evolution of the CAT reflects the international community's commitment to eradicating torture and ensuring accountability for perpetrators.

DISCUSSING THE PROVISIONS

i. **Definition of Torture (Article 1) :** Article 1 provides a comprehensive definition of torture. It describes torture as any act that intentionally inflicts severe physical or mental pain or suffering for purposes such as obtaining information or confessions, punishment, intimidation, coercion, or discrimination. The definition emphasizes that the pain or suffering must be inflicted by, or with the acquiescence of, a public official or someone acting in an official capacity.

ii. **General Obligations (Article 2) :** Article 2 outlines the general obligations of States parties to take effective measures to prevent acts of torture within their jurisdictions. It emphasizes the absolute prohibition of torture, regardless of any exceptional circumstances, such as war or public emergency. It also states that orders from a superior officer or public authority cannot be invoked as a justification for torture.

iii. **Non-Refoulement (Article 3) :** Article 3 establishes the principle of non-refoulement, prohibiting States parties from expelling, returning, or extraditing a person to another state where there are substantial grounds for believing that they would be in danger of being subjected to torture.

iv. **Obligation to Criminalize Torture (Article 4)** Article 4 mandates States parties to ensure that all acts of torture are offenses under their criminal law. It requires States to impose appropriate penalties that reflect the grave nature of the crime. This article also applies to attempts to commit torture and acts by any person that constitutes participation in torture.

v. **Jurisdiction (Article 5) :** Article 5 requires States parties to establish jurisdiction over offenses of torture when the offenses are committed in any territory under their jurisdiction, by one of their nationals, or against one of their nationals if the state deems it appropriate. It also covers cases where the alleged offender is present in their territory and they do not extradite them.

vi. **Extradition (Article 8)** Article 8 treats torture as an extraditable offense between States parties. It requires States to include torture as an extraditable offense in any existing extradition treaties between them and to consider the CAT as the legal basis for extradition in the absence of such a treaty.

vii. **Training and Education (Article 10) :** Article 10 obligates States parties to

ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, medical personnel, public officials, and others involved in the custody, interrogation, or treatment of individuals subjected to any form of arrest, detention, or imprisonment.

viii. Prompt and Impartial Investigation (Article 12) : Article 12 requires States parties to ensure that their competent authorities promptly and impartially investigate any allegations of torture whenever there are reasonable grounds to believe that an act of torture has been committed.

ix. **Right to Complain (Article 13) :** Article 13 grants individuals the right to complain to, and have their cases promptly and impartially examined by, competent authorities whenever they allege that they have been subjected to torture. It also requires States to protect complainants and witnesses against any ill-treatment or intimidation as a consequence of their complaint.

x. **Redress for Victims (Article 14) :** Article 14 obliges States parties to ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

xi. International Cooperation and Assistance (Article 15 and Article 21) : Article 15 prohibits the use of any statement made as a result of torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. Article 21 outlines the procedures for States parties to bring communications against other States parties regarding breaches of the CAT, encouraging international cooperation and assistance.

xii. **Committee Against Torture (Articles 17-24) :** Articles 17 to 24 establish the Committee Against Torture, a body of independent experts responsible for monitoring the implementation of the CAT. The Committee examines reports submitted by States parties, investigates allegations of systematic torture, and provides general comments and recommendations.

Thus, the above are some of the important provisions of the Convention Against Torture.

III. STUDYING THE LEGISLATIVE REGIME: STATE INFLICTED TORTURE VIS-À-VIS TORTURE BY PRIVATE INDIVIDUAL

The legal consequences of state-inflicted torture and torture by private individuals differ significantly due to the nature of the perpetrators and the legal frameworks governing their actions. This chapter deals with the legislative regime created by the UNCAT and normal domestic legislations that punish the offenders, by making a comparison of the factors.

STATE-INFLICTED TORTURE

1. International Accountability: State-inflicted torture is a grave violation of international human rights law. States that engage in or condone torture can face international condemnation, sanctions, and legal actions under treaties such as the Convention Against Torture (CAT).

2. **Criminal Prosecution:** States are obligated to criminalize torture under their domestic laws. Public officials or others , acting in an official capacity who commit torture can be prosecuted and punished under national legal systems.

3. **Universal Jurisdiction:** The CAT allows for universal jurisdiction, meaning that individuals accused of state-inflicted torture can be prosecuted in any

state party, regardless of where the torture occurred.

4. **Extradition:** States parties are required to extradite individuals accused of torture to other states that have jurisdiction over the crime, provided that the requesting state has established a prima facie case.

5. **Victim Redress:** States must ensure that victims of state-inflicted torture have the right to seek redress and obtain fair and adequate compensation, including the means for as full rehabilitation as possible.

TORTURE BY PRIVATE INDIVIDUALS

1. **Domestic Criminal Law:** Torture by private individuals is typically addressed under domestic criminal law. Such acts are prosecuted as serious criminal offenses, such as assault, battery, or kidnapping, depending on the jurisdiction.

2. **Lack of International Jurisdiction:** Unlike state-inflicted torture, acts of torture by private individuals do not generally fall under the jurisdiction of international treaties like the CAT. However, they may still be subject to international human rights law if the state fails to prevent or respond to such acts.

3. **State Responsibility:** While private individuals are directly responsible for their actions, the state may also bear responsibility if it fails to prevent, investigate, or punish acts of torture by private individuals. This can lead to legal consequences for the state under international human rights law.

4. **Victim Redress:** Victims of torture by private individuals can seek redress through domestic legal systems. This may include criminal prosecution of the perpetrators, civil lawsuits for damages, and access to support services.

FACTORS	STATE INFLICTED TORTURE	TORTURE BY PRIVATE INDIVIDUAL
International Accountability	Under the convention, state parties could face international condemnation, sanction,etc.	Usually does not fall under international jurisdiction; however they may still be subject to international human rights law.
Criminal Prosecution	State parties Obligation	Punishable under Domestic Criminal Law if an offence
Universal Jurisdiction	State Parties are required to extradite	Lack of such arrangements under domestic law, however section 3 and 4 of IPC punish citizens and any person committing offence without and beyond India, e.g. Kashab. Now, Organized Crimes is a specific offence under section 111 ,113 of BNS.
International Monitoring	Committee against Torture monitors and investigates allegations.	India has not ratified the Convention due to provisions relating to this to protect External Sovereignty.

Victim Redress	Again, obligation on State.	Victim Compensation Scheme in India under Code of Criminal Procedure, 1973 , now section 396 of Bharatiya Nagarik Suraksha Samhita as well schemes by states like the Victim Compensation Scheme of Odisha , and other punishments in penal laws.
Prohibition on obtaining Confession using Torture	Prohibition on use of statements and confession obtained through torture.	Indian Evidence Act under sections 24 to 27 has dealt with similar provisions, now section 22 of Bharatiya Adhiniyam, 2023.
State Responsibility	State is obligated to take responsibility.	State also bears responsibility in Offences, as interim measure i.e. Victim Compensation and also if condones the offence, i.e victim also has right to appeal under section 372 proviso of Code of Criminal Procedure,1973 now, section 413 of BNSS .

In summary, state-inflicted torture carries significant international legal consequences, including accountability under international treaties, universal jurisdiction, and obligations to provide victim redress. In contrast, torture by private individuals is primarily addressed under domestic criminal law, with the state bearing responsibility for preventing and responding to such acts.

IV. APPROACH OF JUDICIARY IN APPLYING CONVENTION AGAINST TORTURE TO INDIAN JURISPRUDENCE

The Indian Judiciary has played a crucial role in applying the principles of the Convention Against Torture (CAT) to Indian jurisprudence, despite India not having ratified the CAT. The judiciary has relied on constitutional provisions, international human rights standards, and landmark judgments to address issues related to torture.

JUDICIAL ACTIVISM

The Indian Judiciary has been proactive in addressing cases of torture and custodial violence. Some authorities on it would be;

1. **Nambi Narayanan v. Siby Mathews and Others :** Wherein the Hon'ble Apex Court awarded the victim, ISRO Scientist Nambi Narayanan with compensation for being wrongly dragged in for charges of espionage which were later found to be baseless and erroneous, due to action of erring officials who tortured and recorded false confessions.

2. **In Re: Ramlila Maidan Incident :** The Supreme Court reiterated the importance of protecting individuals from torture and emphasized the need for strict adherence to constitutional and legal safeguards.

3. **D.K. Basu v. State of West Bengal :** The Supreme Court laid down guidelines to prevent custodial torture and protect the rights of detainees. These guidelines include mandatory medical examination, the right to inform a relative or friend, and the requirement for police officers to wear name tags,etc.

4. **Nilabati Behera v. State of Orissa :** The Hon'ble Supreme Court held that the state is liable to pay compensation to victims of custodial violence and their families. This judgment reinforced the principle of state accountability for human rights violations.

The Indian Judiciary has often referred to international human rights standards, including the CAT, to interpret and expand the scope of constitutional rights. In the absence of specific domestic legislation on torture, the judiciary has relied on international conventions and treaties to fill the gaps and ensure justice for victims.

V. CONCLUSION AND SUGGESTIONS

The Convention Against Torture (CAT) primarily focuses on acts of torture inflicted by state actors or those acting in an official capacity. According to Article 1 of the CAT, torture is defined as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted for purposes such as obtaining information, punishment, intimidation, or coercion. The definition specifies that the pain or suffering must be inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.'

While the CAT does not directly address torture inflicted by private individuals, state parties are obligated to take measures to prevent and punish such acts. This includes enacting and enforcing domestic laws to prosecute and penalize individuals who commit acts of torture. States are also responsible for ensuring that victims of torture by private individuals have access to justice and redress under Articles 4 and 14 of the Convention.

In summary, the CAT primarily applies to state actors, but it imposes obligations on states to prevent and address torture inflicted by private individuals through their domestic legal frameworks and hence can be said to be applicable to individual perpetrators of torture and thus being an exception to sovereign immunity as unlawful torture is not a sovereign function. Thus, India needs to implement the necessary provisions of the convention through a specific legislation as multiple failures on torture bill remain a concern to this day.

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OATH TAKING CEREMONY OF NEWLY RECRUITED CIVIL JUDGES (JR. DIVN) ON PROBATION OF 2023 BATCH HELD ON 4TH AUGUST 2025






ODISHA JUDICIAL ACADEMY
Oath Taking Ceremony
of
The Newly Recruited


of
The Newly Recruited
Civil Judges (Junior Division) on Probation
2023 Batch

DISTRICT JUDGES' CONFERENCE, 2025 ON 22ND - 24TH AUGUST 2025 AT ODISHA JUDICIAL ACADEMY



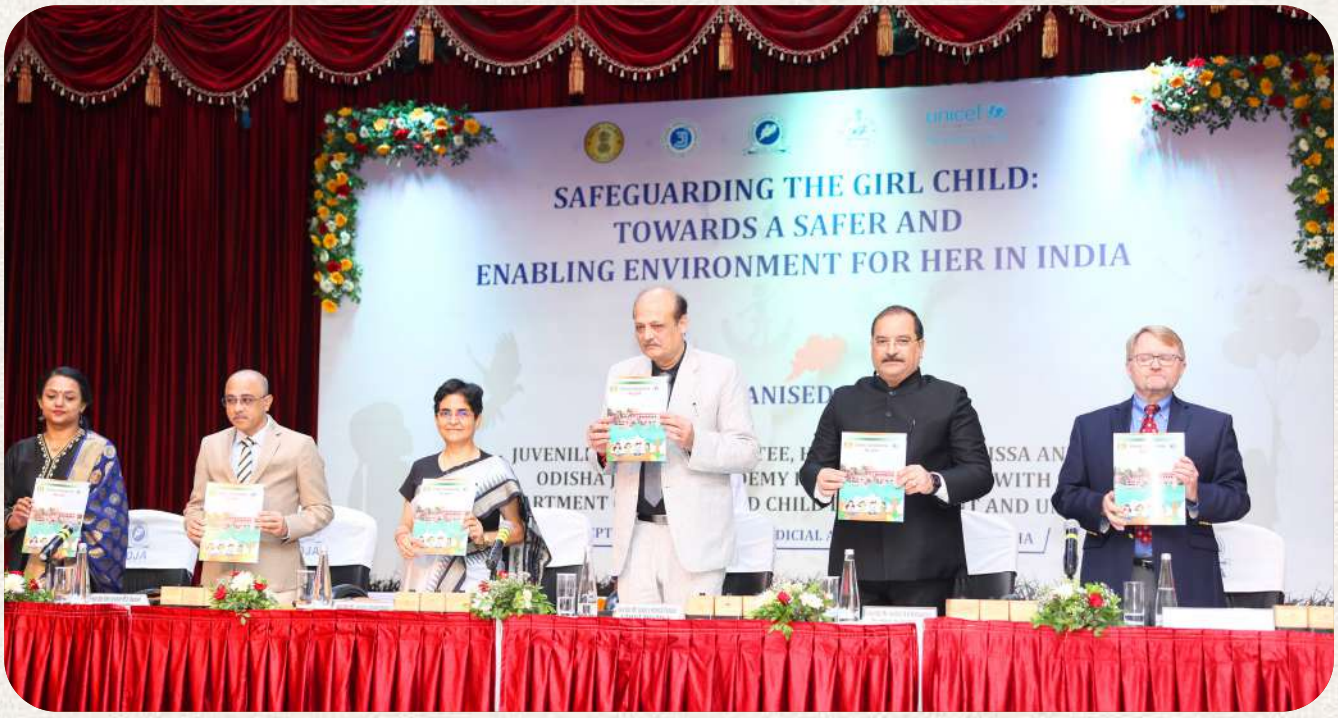



INAUGURATION OF
STRICT JUDGES' CONFERENCE, 2025
&
RELEASE OF
REPORT, 2024
BY
STICE HARISH TANDON
, HIGH COURT OF ORISSA
ODISHA JUDICIAL ACADEMY



ONE-DAY STATE LEVEL CONSULTATION ON THE THEME "SAFEGUARDING THE GIRL CHILD: TOWARDS A SAFER AND ENABLING ENVIRONMENT FOR HER IN INDIA" HELD ON 13TH SEPTEMBER 2025






SAFEGUARDING THE GIRL CHILD:
TOWARDS A SAFER AND
ING ENVIRONMENT FOR HER IN INDIA
ODISHA JUDICIAL ACADEMY
सत्यमेव जयते


AFEGUARDING THE GIRL CHILD:
TOWARDS A SAFER AND
LING ENVIRONMENT FOR HER IN INDIA
ODISHA JUDICIAL ACADEMY
सत्यमेव जयते


ODISHA JUDICIAL ACADEMY


SAFEGUARDING THE GIRL CHILD:
TOWARDS A SAFER AND

ONE DAY STATE LEVEL CONFERENCE ON COMBATING HUMAN TRAFFICKING & BONDED LABOUR IN ODISHA HELD ON 18TH OCTOBER 2025






One Day State Level Conference on
COMBATING HUMAN TRAFFICKING
& BONDED LABOUR IN ODISHA
in collaboration with International Justice Mission
Venue :
on 18th October 2025


in collaboration with International Justice Mission
Venue :

IMPACT ASSESSMENT TRAINING (1ST PHASE) FOR THE 54 CIVIL JUDGES (JR. DIVN.) OF 2022 BATCH HELD ON 28TH OCTOBER - 01ST NOVEMBER 2025



IMPACT ASSESSMENT TRAINING (1ST PHASE) FOR THE 54 CIVIL JUDGES (JR. DIVN.) OF 2022 – BATCH
(FROM: 28. 10. 2025 TO 01. 11. 2025)







ONE- DAY LEGAL WORKSHOP ON "MANAGEMENT OF HINDU RELIGIOUS ENDOWMENTS/ IMMOVABLE PROPERTIES UNDER THE OHRE ACT VIS-A-VIS OTHER CIVIL LAWS" ON 15TH NOVEMBER 2025



One - Day Legal Workshop
on
"Management of Hindu Religious Endowments/
Immovable Properties under the OHRE Act vis-à-vis other Civil Laws"
on 15.11.2025




Hindu Religious Endowments
ODISHA STORY -
The Odisha Hindu Religious Endowments Act, 1939
An Act to provide for the better administration and governance of certain Hindu religious endowments
This Act was designed to provide for the regulation of Hindu public religious endowments and to give the government the power to extend its provisions to other public endowments. Its primary function was to establish a framework for the management of temples and other religious institutions, which included provisions for the administration of property and the conduct of religious services.
Concepts of Hereditary and Non-Hereditary trustee was introduced



STATE LEVEL WORKSHOP ON E-GOVERNANCE IN JUDICIARY FOR DISTRICT INFORMATICS OFFICERS, ODISHA ON 16TH DECEMBER 2025








DY. DIRECTOR GENERAL & SIO,
NIC, ODISHA

ONE DAY WORKSHOP ON "WILDLIFE COMPENSATORY MEASURES IN WILDLIFE CRIME CASES" HELD ON 20TH DECEMBER 2025









ONE-DAY TRAINING PROGRAMME ON PRE-CONCEPTION AND PRE- NATAL DIAGNOSTIC TECHNIQUES (PCPNDT) ACT, 1994 HELD ON 29TH DECEMBER 2025





ONE-DAY TRAINING PROGRAMME ON GOVERNMENT e MARKETPLACE(GeM) HELD ON 31ST JANUARY 2026






GeM
AN OVERVIEW
A Department of
Commerce Initiative



TWO DAYS CAPACITY BUILDING TRAINING PROGRAMME ON "EFFECTIVE IMPLEMENTATION OF THE NEWLY ENACTED CRIMINAL LAWS"(FOR JUDICIAL OFFICERS, POLICE OFFICERS & PUBLIC PROSECUTORS) HELD ON 7TH & 8TH FEBRUARY 2026









SECOND ONE DAY INTRACTIVE PRACTICAL(ROLE PLAY) TRAINNING HELD ON 07TH FEBRUARY 2026





ATTACHMENT TRAINING PROGRAME OF 54 OT & AS PROBATIONERS 2023 BATCH HELD ON 24TH -27TH FEBRUARY 2026





TRAINING PROGRAMME CREATION/ CONVERSION OF EXISTING COURTROOM INTO "VWDCS" HELD ON 15TH MARCH 2026












Bisleri

TRAINING PROGRAMME FOR SURVEY KNOWING COMMISSIONERS (SALARIED AMINS) WORKING IN DIFFERENT JUDGESHIPS OF THE STATE, AT ROTI, BHUBANESWAR ON BEING SPONSORED BY OJA





SPECIAL OCASSIONS AND EVENTS AT OJA



INTERNATIONAL YOGA DAY ON 21ST JUNE 2025



OBSERVATION OF INDEPENDENCE DAY ON 15TH AUGUST 2025



GANESH PUJA ON 27TH AUGUST 2025



SARASWATI PUJA ON 23RD JANUARY 2026





OBSERVATION OF REPUBLIC DAY ON 26TH JANUARY 2026

DIFFERENT REFRESHER TRAINING PROGRAMMES AT ODISHA JUDICIAL ACADEMY



REFRESHER TRAINING PROGRAMME
"CIVIL APPEAL & REVISION, PROBATE PROCEEDING, GUARDIANSHIP OF MINOR, ARBITRATION AND CONCILIATION ACT, PROTECTION OF WOMEN FROM SEXUAL HARASSMENT AT WORKPLACE WITH SPECIAL REFERENCE TO AURELIANO FERNANDES VRS. STATE OF GOA & OTHERS, AIR ONLINE 2023 SC 423, DEPARTMENTAL PROCEEDINGS & CCA RULES. ANY OTHER EMERGING SUBJECTS ON LEGAL ISSUES".
FOR DISTRICT & SESSIONS JUDGE AND ADJS-1
ON 19th & 20th JULY, 2025



REFRESHER TRAINING PROGRAMME
HEARING ON OFFICE NOTE, ADMISSION AND REJECTION OF PLAINT, INTERLOCUTORY ORDERS, JUDGEMENT ON ADMISSION, JUDGMENT AND DECREE IN CIVIL SUIT AND COUNTER CLAIM, EXECUTION OF DECREE AND OTHER PROCEEDINGS ARISING THEREFROM INCLUDING THOSE WHICH REQUIRE DECISION LIKE SUIT, SUIT FOR SPECIFIC PERFORMANCE AND EXECUTION OF DECREES OF SUCH SUITS, DISCUSSION ON THE DECISION OF THE HON'BLE APEX COURT IN PERIYAMMAL (DEAD) THROUGH LRS. AND OTHERS VS. V. RAJAMANI AND ANOTHER, 2025 SCC ONLINE SC 507, ANY OTHER EMERGING SUBJECTS ON LEGAL ISSUES.
(FOR CIVIL JUDGES (JR. DIVISION) & ADDL. CIVIL JUDGES (JR. DIVISION)-1)
ON 16th & 17th AUGUST, 2025



REFRESHER TRAINING PROGRAMME ON
FUGITIVE ECONOMIC OFFENDERS ACT, PREVENTION OF CORRUPTION ACT, ORISSA SPECIAL COURTS ACT, DELHI SPECIAL POLICE ESTT. ACT, PREVENTION OF MONEY LAUNDERING ACT, BAIL UNDER SPECIAL STATUTES. ANY OTHER EMERGING SUBJECTS ON LEGAL ISSUES
FOR SPECIAL JUDGES (CBI) & SPECIAL JUDGES (VIGILANCE) AND ADJS
ON 06TH & 07TH SEPTEMBER, 2025



REFRESHER TRAINING PROGRAMME
TRAINING CODE:OJA/ REF/09/ 2025-26
ON THE TOPIC:PLEADINGS, ADMISSION AND REJECTION OF PLAINT, INTERLOCUTORY ORDERS, WRITTEN STATEMENT AND COUNTER CLAIM, COMMERCIAL COURT ACT, SPECIFIC RELIEF ACT, SUIT BY AND AGAINST GOVERNMENT, REPRESENTATIVE SUIT, LAW RELATING TO ELECTION DISPUTES, TIME AND RESOURCE MANAGEMENT / STRESS MANAGEMENT, EXECUTION OF DIFFERENT TYPES OF DECREES WITH SPECIAL REFERENCE TO PERIYAMMAL (DEAD) THROUGH LRS. AND OTHERS VS. V. RAJAMANI AND ANOTHER, 2025 SCC ONLINE SC 507. ANY OTHER EMERGING SUBJECTS ON LEGAL ISSUES.
FOR PRESIDING OFFICERS OF COMMERCIAL COURTS AND CIVIL JUDGES (SENIOR DIVISION) - 1
ON 25TH & 26TH OCTOBER, 2025



REFRESHER TRAINING PROGRAMME
TRAINING CODE:OJA/ REF/10/ 2025-26
On the Topic:- General principles of Criminal Trial, Sentencing, compensation, Plea Bargaining, Probation of Offenders Act and Compounding as triple method of pendency reduction in view of Suo Moto Writ Petition (Crl.) No. 04/2021 of Supreme Court, Wildlife Protection Act, Law specific to the issue of Arrest, remand, custody, bail and accused statement in light of the leading and latest decisions of Hon'ble Apex Court & High Court, Protection of Women from Sexual Harassment at Workplace with special reference to Aureliano Fernandes Vrs. State of Goa & Others, AIR Online 2023 SC 423, Time and Resource Management, Inspection of Courts of Judicial Magistrates and relevant provisions of GR&CO, Dealing with Fine Misc. Cases and Bailor Misc. Cases & any other emerging subjects on legal issues.
For the Chief Judicial Magistrates
on 22nd & 23rd November 2025



REFRESHER TRAINING PROGRAMME
TRAINING CODE: OJA/ REF/13/ 2025-26
ON THE TOPIC:"Court Fees Act, Stamp Act, Stamp Reporting, Suits Valuation Act & Orissa High Court Rules, Inspection of sub-ordinate Courts, Protection of Women from Sexual Harassment at Workplace with special reference to Aureliano Fernandes Vrs. State of Goa & Others, AIR Online 2023 SC 423, Civil Appeal & Revision / Crl. Appeal & Revision, Different abbreviations used for nomenclature of different cases filed in the High Court and basic requirements for maintainability of such cases, Govt. Servants Conduct Rules & CCA Rules, ORV Act & Rules, Any other emerging subjects on legal issues"
For Orissa High Court Staff
On 06th & 07th December 2025



REFRESHER TRAINING PROGRAMME
TRAINING CODE: OJA/ REF/14/ 2025-26
"Appreciation of evidence including Forensic and Medical Evidence, Appreciation of Electronic Evidence, Dying Declaration, Disclosure Statement and Hostile Witnesses, Circumstantial evidence, Law specific to the issue of Arrest, remand, custody, bail and accused statement in light of the leading and latest decisions of Hon'ble Apex Court & High Court, Time and Resource Management / Stress Management, The Digital Personal Data Protection Act, 2023, Duty & Responsibility of Children Courts, Appeals under the JJ(CPC) Act, Discussion on the decision of the Hon'ble Apex Court in Child in Conflict with Law through his Mother vs. State of Karnataka and Another, 2024 SCC Online SC 798. Any other emerging subjects on legal issues."
ForJudicial Officers in the cadre of District Judge (ADJs)
On 17th & 18th January, 2026



REFRESHER TRAINING PROGRAMME
TRAINING CODE: OJA/ REF/17/ 2025-26
"Provisions of POCSO Act with special attention to the allied provisions of the JJ(CPC) Act, Child friendly Court proceeding, Victimology and Child Psychology, Law specific to the issue of Bail and Anticipatory Bail and Victim compensation, Timeand Resource Management / Stress Management. Any other emerging subjects on legal issues."
For Presiding Officers of Special Courts dealing with cases under the POCSO Act
ON 21st & 22nd FEBRUARY, 2026



REFRESHER TRAINING PROGRAMME
TRAINING CODE: OJA/ REF/20/ 2025-26
"ADR Mechanism and its utility, Legal services Authority Act Vis-a-Vis Duty and Responsibility of Secy, DLSA, Time and Resource Management / Stress Management, Protection of women from sexual harassment at workplace with special reference to Aureliano Fernandes Vs. State of Goa & Others, AIR Online 2023 SC 423,Gohar Mohammed Vs. UPSRTC and Others – CA 9322 / 2022 and Parminder Singh Vs. Honey Goyal and Others – CA No. 4299 / 2025, Triple method of pendency reduction in view of Suo Moto Writ Petition (Crl.) No. 04/2021 of Supreme Court, Discussion on the decision of the Hon'ble Apex Court inAditi Alias Mithi vs. Jitesh Sharma, Odisha Victim Compensation Scheme and its implementation. Any other emerging subjects on legal issues."
For Secretaries of DLSAs
On 28th & 29th March, 2026



REFRESHER TRAINING PROGRAMME
OJA/ REF/21/ 2025-26
"Law of Succession, OCH & PFL Act, OLR Act, Representative Suit, Law on Adverse Possession, Law on Hindu religious endowment,Protection of Women from Sexual Harassment at Workplace with special reference to Aureliano Fernandes Vs. State of Goa & Others, AIR Online 2023 SC 423, Time and Resource Management / Stress Management, Art of writing decretal portion (different types) in judgment, Execution of different types of decrees with special reference to Periyammal (Dead) Through Lrs. And Others vs. V. Rajamani and another, 2025 SCC Online SC 507. Any other emerging subjects on legal issues."
For Civil Judges
On 25th & 26th April 2026

TRAINING PROGRAMMES HELD AT REGIONAL JUDICIAL ACADEMY, ANGUL, ODISHA



One Day Refresher Training on the topic of "Modalities of a fair and time bound criminal trial and duty of Magistrates, The Digital personal Data protection Act, 2023, Plea bargaining, Probation of Offenders Act and Compounding as triple method of pendency reduction in view of Suo Moto Writ Petition (Crl.)No. 04/2021 of Supreme Court, Wild life protection Act, NI Act, Recording of statement of accused U/s 313 of Cr.P.C./ 351 of BNSS and its relevance, Art of writing of different orders during a criminal trial. Any other emerging subjects on legal issues" for S.D.J.M.s & J.M.F.C.s (Cog. Taking) held on 18th January, 2026





One Day Refresher Training on the topic of "GR&CO (Criminal) and maintenance of case records, Dealing with magisterial & Sessions case records, dealing with Malkhana, maintenance & upkeepment of different kinds of Registers, preparation of statements, dealing with accounts, Drafting of differentkind of notes, Protection of Women from sexual Harassment at Workplace with Special reference to Aureliano Fernades Vrs. State of Goa & Others, AIR Online 2023 SC 423, Time and Resource Management / Stress Management, Any other emerging subjects on legal issues: Maintenance of Malkhana register with regard to keeping / sending of exhibits of sessions case/ Magisterial case to S.F.S.L., Rasulgarh & C.F.S.L., Kolkata" for District Court Staff (Criminal Side) held on 8th February, 2026





TRAINING PROGRAMMES HELD AT REGIONAL JUDICIAL ACADEMY, BALASORE, ODISHA



ONE DAY REFRESHER TRAINING PROGRAMME FOR THE JUDICIAL MAGISTRATES OF THE CLUSTER DISTRICTS HELD ON 07.12.2025 AT THE REGIONAL JUDICIAL ACADEMY, BALASORF





ONE DAY REFRESHER TRAINING PROGRAMME FOR THE SDJMs AND JMFCs (COG. TAKING) OF THE CLUSTER DISTRICTS HELD ON 18.01.2026 AT THE REGIONAL JUDICIAL ACADEMY, BALASORE.



TRAINING PROGRAMMES HELD AT REGIONAL JUDICIAL ACADEMY, GANJAM, ODISHA



One-day refresher training programme for Judicial Magistrates on " Odisha Excise Act, Odisha Forest Act with OTT Rules, Wildlife Protection Act, Environment Laws, Victim Compensation, maintenance of records & important registers and routine inspection of office, recording of statement of accused u/s 313 of CrPC / 351 of BNSS and its relevance, Art of writing of different orders during a criminal trial, Time and Resource Management, any other emerging subjects on legal issues. (Victim Compensation Pocso Act, Victim Compensation 2017 W.R.T Nipun Saxsena Vrs U.O.I reported in AIR 2018SC826 and Sakshi Vrs U.O.I. reported in AIR 2004SC3566)." on Dated 07th December 2025







One-day refresher training programme for SDJM & JMFC (Cog.Taking) on "Modalities of a fair and time bound criminal trial and duty of Magistrate, The Digital personal Data protection Act 2023, Plea Bargaining, Probation of Offenders Act and Compounding as triple method of pendency reduction in view of Suo Moto Writ Petition (Crl.) No.04/2021 of Supreme Court, Wildlife protection Act, NI Act, recording of statement of accused u/s 313 of CrPC/ 351 of BNSS and its relevance, Art of writing of different orders during a criminal trial, Any other emerging subjects on legal issues. [requirement of sanction before prosecuting certain public servant u/s.197 CrPC, 223 r/w 175(4) BNSS]." on Dated 18th January 2026





TRAINING PROGRAMMES HELD AT REGIONAL JUDICIAL ACADEMY, KORAPUT, ODISHA



One day Refresher Training Programme on the topic of "Odisha Excise Act,Orissa Forest Act with OTT Rules,Wildlife Protection Act,Environmental Laws,Victim Compensation,Maintenance of records & important registers and routine inspection of office,Recording of statement of accused u/s 313 of CrPC/351 of BNSS and its relevance,Art of Writing of different orders during a criminal trial,Time and Resource Management,Any other emerging subjects on legal issues" For Judicial Magistrates of the Cluster Districts On 7th December,2025 at REGIONAL JUDICIAL ACADEMY (KORAPUT AT JEYPORE)





One Day Refresher Training Programme On The Topic Of "Modalities of a fair and time bound criminal trial and duty of Magistrate,The Digital personal Data protection Act,2023,Plea Bargaining Probation of offenders Act and Compounding as triple method of pendency reduction in view of Scu Moto Writ petition (Crl.)No. 04/2021 of Supreme Court,Wildlife Protection Act,Recording of Statement of accused u/s 313 of CrPC V/351 OF BNSS and its relevance,Art of writing of different orders during a criminal trial,Any other emerging subjects on legal issues."For SDJMs &JMFCs(Cog.Taking) of the Cluster Districts on 18th January,2026at REGIONAL JUDICIAL ACADEMY (KORAPUT AT JEYPORE)



TRAINING PROGRAMMES HELD AT REGIONAL JUDICIAL ACADEMY, SAMBALPUR, ODISHA



ONE DAY REFRESHER TRAINNG PROGRAMME FOR NOMINATED JUDICIAL OFFICERS IN THE CADRE OF S.D.J.M.s & J.M.F.C.s (Cog. Taking) FROM ALL THE CLUSTER DISTRICTS ON 18 TH JANUARY 2026





ONE DAY REFRESHER TRAINNG PROGRAMME FOR NOMINATED DISTRICT COURT STAFFS (CRIMINAL SIDE) HELD ON 08th FEBRUARY 2026





ODISHA JUDICIAL ACADEMY

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