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Dr. (Mrs.) Madhura Kalamkar

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PRESIDENT'S NOTE

It is with a high sense of institutional responsibility that I present the second issue of the *NIHIT Law Journal*, a formal academic publication of HVPS College of Law, instituted for the advancement of legal scholarship and structured academic discourse.

The theme of the present issue, ***"Law in Transition: Criminal Justice and Business Regulation in Contemporary India,"*** reflects the continuing evolution of the legal framework in response to contemporary socio-economic and technological developments. The domains of criminal justice administration and business regulation are presently subject to substantive transformation, necessitating careful doctrinal examination and critical evaluation to ensure the effective realization of principles of justice, accountability, and regulatory coherence.

The contributions included in this issue demonstrate analytical rigor and doctrinal clarity. I place on record my formal appreciation of the Editorial Board for their diligence in the compilation of this publication, and I acknowledge the contributors and reviewers for their scholarly inputs. It is anticipated that this issue shall serve as a substantive reference and contribute to the advancement of legal discourse.

Warm regards,
Dr. Rajendra Singh,
President, Hindi Vidya Prachar Samiti

PRINCIPAL'S NOTE

It is with a sense of academic obligation that I present the second issue of the *NIHIT Law Journal*, a formal publication of HVPS College of Law, aimed at fostering legal research and promoting structured intellectual inquiry.

The theme of this issue reflects the dynamic character of law in addressing contemporary challenges within criminal justice administration and business regulation. Ongoing reforms, including procedural modifications and regulatory developments, signify the necessity of continuous evaluation to ensure the effectiveness and integrity of legal frameworks in a changing socio-economic environment.

The articles contained in this issue exhibit doctrinal consistency and analytical depth. I place on record my appreciation for the Editorial Board for their sustained efforts and acknowledge the contributors and reviewers for their scholarly engagement. It is anticipated that this publication will serve as a useful academic resource and contribute to ongoing legal discourse.

Dr. (Mrs.) Madhura Kalamkar,
I/C Principal, HVPS College of Law

EDITORIAL NOTE

HVPS NIHIT Law Journal – 2026 Edition

The Editorial Board hereby presents the second issue of the *NIHIT Law Journal*, a formal academic publication of HVPS College of Law, undertaken for the purpose of advancing systematic legal research and facilitating structured scholarly discourse.

The theme of this issue reflects the ongoing transformation within the legal framework, particularly in the domains of criminal justice and business regulation. Developments arising from technological integration, procedural reform, and evolving regulatory mechanisms necessitate critical examination to assess their implications for legal practice, institutional accountability, and governance.

This issue comprises a curated body of scholarly contributions characterized by analytical rigor and doctrinal coherence. The Editorial Board places on record its formal appreciation to all contributors and reviewers for their participation and acknowledges their role in maintaining the academic integrity of this publication. It is expected that this issue will contribute meaningfully to contemporary legal scholarship.

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Criminal Liability In The Era Of Artificial Intelligence: Who Is The Offender – Programmer, User Or Machine?

Adv. Purva Thavi

Abstract

Artificial intelligence (AI) has evolved from a theoretical idea to a crucial component of contemporary governance, commerce, transportation, healthcare, and criminal justice systems. Modern AI systems, in contrast to conventional machines, are capable of learning, adapting, and functioning independently, frequently without the need for quick human intervention. While these capabilities offer enormous benefits, they simultaneously create challenging legal concerns, notably within criminal law, which is fundamentally premised on human intention and moral blameworthiness. The question of criminal liability becomes hotly debated when an AI system causes harm, such as when autonomous cars kill people, algorithmic trading systems manipulate markets, or predictive policing tools reinforce bias. This paper investigates who should bear the responsibility for criminal liability: the programmer, the user, the corporation, or the AI system itself. By analyzing the doctrine of mens rea, existing models of liability, judicial decisions, and comparative international approaches, this paper argues that AI cannot be treated as a criminal offender. Instead, criminal law must evolve through hybrid liability frameworks that preserve human accountability while addressing the unique risks posed by autonomous systems.

Keywords: Artificial Intelligence, Criminal Liability, Mens Rea, Autonomous Systems, Corporate Liability, Indian Penal Code

Introduction

Technological evolution has consistently reshaped legal systems. The law has adapted to the emergence of factories, automobiles, computers, and the internet by expanding doctrines of liability and regulation. Artificial Intelligence (AI), however, presents a challenge of an entirely different magnitude. Unlike earlier technologies that merely extended human capacity, AI systems are increasingly capable of autonomous decision-making, self-learning, and behavioural modification based on data inputs. This shift from passive tools to semi-autonomous or fully autonomous agents disrupts the anthropocentric foundations of criminal law.

Criminal law traditionally rests on the principle that liability arises only when a guilty act (actus reus) is accompanied by a guilty mind (mens rea). These concepts presuppose that the offender is a human being capable of intention, foresight, and moral reasoning. AI systems, despite their apparent intelligence, function through algorithms and probabilistic models rather than conscious thought. When such systems cause harm, the legal system encounters an accountability gap where damage exists but culpability is unclear.

Recent incidents involving autonomous vehicles, algorithmic bias, and AI-driven financial misconduct have intensified debates around criminal responsibility. Scholars, policymakers, and courts are increasingly confronted with the question: Who is the offender when artificial intelligence causes harm? This paper seeks to answer this question by critically examining the applicability of criminal liability principles to AI-related conduct.

Research Questions

The foundational challenges posed by artificial intelligence in the realm of criminal jurisprudence prompt the following research questions:

1. How does the autonomous and unpredictable nature of modern AI systems challenge the traditional criminal law requirement of *mens rea*?
2. Among the programmer, the user, the corporation, and the machine itself, who should bear the primary criminal liability for harms caused by autonomous AI systems?

3. Are existing legal doctrines, such as programmer liability, operator liability, and corporate criminal liability, sufficient to address the "black box" accountability gap created by AI?
4. How can legal systems, particularly within the Indian context, evolve to preserve human accountability while managing the unique risks of autonomous technologies?

Research Objectives

To systematically address the legal vacuum surrounding AI and criminal law, this paper sets forth the following objectives:

1. To examine the foundational principles of criminal liability, specifically the doctrine of mens rea, and critically analyze its incompatibility with non-conscious, autonomous AI systems.
2. To evaluate the efficacy, limitations, and practical implications of various existing liability models (Programmer, User, Corporate, and Synthetic Mens Rea) in addressing AI-related offenses.
3. To compare international legal approaches, specifically contrasting European discussions on electronic personhood with the human-centric focus of Indian criminal law.
4. To propose a hybrid liability framework that ensures ethical human accountability, promotes transparent AI design, and prevents an impunity gap for AI-driven harm.

Understanding Artificial Intelligence and Autonomy

In simple terms Artificial Intelligence (AI) involves understanding human intelligence and developing machines capable of performing tasks that normally require human reasoning and decision-making. It is commonly described as the ability of machines to perform tasks that ordinarily require human intelligence, such as learning, reasoning, and decision-making.[1] However, this characterisation risks obscuring a crucial distinction. AI systems do not understand in the human sense. They process data, detect patterns, and produce outputs through statistical and probabilistic mechanisms rather than genuine comprehension.

What makes modern AI legally unsettling is not intelligence itself, but autonomy. Machine-learning systems can adapt their behaviour based on experience, and their outputs are not always fully predictable, even to those who designed them. As a result, these systems appear to "decide," creating a compelling illusion of agency. This perception has led to arguments that AI should be recognised as an independent legal actor.

Yet this temptation is dangerous. Artificial intelligence does not possess consciousness, emotions, or moral awareness. It cannot distinguish right from wrong, nor can it reflect upon consequences.[2] Granting agency without accountability risks creating a legal vacuum, one where harm occurs, but blame evaporates.

Mens Rea and the Foundations of Criminal Liability

Mens rea forms the cornerstone of criminal liability. Indian criminal law recognises a range of mental states, including intention, knowledge, recklessness, and negligence. Provisions such as Sections 24, 25, and 39 of the Indian Penal Code, 1860 emphasise voluntariness and mental culpability as essential prerequisites for criminal responsibility. Judicial interpretation has consistently reaffirmed that mens rea is indispensable unless expressly excluded by statute.

This human-centred foundation becomes unstable when extended to artificial intelligence. The application of mens rea to AI systems presents a fundamental conceptual challenge, as AI lacks consciousness, emotions, and moral awareness. Its so-called "decisions" are merely algorithmic outputs generated through programmed processes rather than intentional or reflective choices. Computational processes are capable of simulating understanding by manipulating symbols and producing appropriate responses, yet this simulation does not amount to genuine comprehension or

[1] Russell, S., & Norvig, P. (2016). *Artificial intelligence: A modern approach* (3rd ed.). Pearson Education.

[2] Hallevy, G. (2015). *Liability for crimes involving artificial intelligence systems*. Springer.

awareness of meaning.[3] Similarly, an imitation-based approach to intelligence treats outwardly human-like behaviour as evidence of intelligence, but such behavioural resemblance does not necessarily imply the presence of genuine mental states or subjective understanding. [4]

Attributing mens rea to artificial intelligence would necessitate redefining criminal culpability in purely objective terms, thereby abandoning the moral foundations on which criminal law is traditionally grounded. Such a shift risks converting criminal liability into a form of strict liability, undermining fundamental principles of justice, fairness, and proportionality.

The Accountability Gap Created by Autonomous AI

a) **Autonomy and Unpredictability**: One of the most troubling characteristics of AI systems is their capacity to evolve. Machine-learning models continuously adapt based on data inputs, often producing outcomes that were neither intended nor anticipated by their designers or users. When such outcomes cause harm, identifying a clear locus of fault becomes exceptionally difficult. Unlike traditional machines, AI failures are not necessarily mechanical but may arise from complex and dynamic interactions between data, algorithms, and operating environments, none of which point neatly to a single human error. This inherent unpredictability weakens the causal connection between human conduct and harmful results, making it increasingly challenging to identify a responsible actor.[5]

b) **The Black Box Problem**: Many AI systems function as 'black boxes,' meaning their internal decision-making processes are opaque even to experts. Computer and smartphone users rely on complex problem-solving algorithms to perform even simple tasks efficiently, and AI has become an integral part of everyday life. These algorithms must operate accurately and process information effectively to support further development, yet understanding how they reach specific outcomes is extremely difficult. This problem is particularly pronounced in large-scale neural networks, which break down data into countless components and analyze them systematically, processes fundamentally different from human reasoning. As a result, it is often impossible to determine what calculations or methods the system uses to arrive at a given result. This lack of explainability not only prevents meaningful updates to the algorithms but also creates significant security and accountability challenges. In the context of criminal law, the "black box" nature of AI complicates the establishment of causation and fault, both of which are essential for assigning liability.[6]

Models of Criminal Liability in AI-Related Harm

Contemporary criminal law faces challenges with AI because traditional liability requires both a guilty mind (mens rea) and a wrongful act (actus reus). Since AI lacks consciousness and intent, alternative models are being explored to assign responsibility without treating machines as legal persons.

a) **Programmer or Developer Liability**: This model holds that an AI's harmful actions ultimately trace back to the humans who created or configured it, with the programmer's design choices, training data, and operational limits forming the basis of legal responsibility. This approach preserves the anthropocentric foundation of criminal law by attributing accountability to sentient agents rather than non-conscious machines and relies on human control and foreseeability. However, its effectiveness is limited in modern AI systems that evolve unpredictably through machine learning, weakening the causal link between initial programming and emergent harm. It also raises practical and policy concerns, as holding

[3] Searle, J. R. (1980). *Minds, brains, and programs.* Behavioural and Brain Sciences, 3(3), 417–457.

[4] Turing, A. M. (1950). *Computing machinery and intelligence*. Mind, 59(236), 433–460.

[5] Padhy, A. K., & Padhy, A. K. (2019). *Criminal liability of the artificial intelligence entities*. Nirma University Law Journal, 8(2), 16–20.

[6] Sharma, R. (2023). *Artificial intelligence and criminal liability: Rethinking mens rea in the age of autonomous systems*. Indian Journal of Law and Legal Research, 7(5), 1484–1496.

programmers criminally liable for unforeseeable outcomes may chill innovation, blur the line between regulatory compliance and criminal fault, and challenge traditional notions of fairness and proportionality.[7]

b) **User or Operator Liability**: This model assigns responsibility to those who deploy, supervise, or interact with AI systems, emphasizing the human duty of care in overseeing these tools. Often called the "Temptation Theory," it mirrors familiar legal principles: for example, a semi-autonomous vehicle driver may be liable for failing to intervene, or a user misusing an AI surveillance system could breach privacy norms. The goal is to prevent over-reliance on AI and ensure humans remain accountable for decisions they can control. However, this approach struggles with fully autonomous systems, like drones or robots, where real-time intervention is impractical and outcomes may be beyond the operator's foresight. As AI grows more complex and opaque, users may lack the expertise to understand system decisions, making it unfair to hold them criminally liable. Overall, Operator Liability works best for semi-autonomous systems but becomes less defensible as machines gain greater independence, highlighting the need to tailor accountability to levels of human control.[8]

c) **Corporate Criminal Liability**: The Corporate Criminal Liability model addresses AI-related harms by holding corporations, rather than individual humans or machines, accountable for wrongful acts committed by their agents or systems within the scope of corporate activity. Here, AI is treated as a functional "agent" of the company, so, for example, a financial institution could be liable if its trading algorithm engages in misconduct, or a manufacturer could face liability for an autonomous vehicle that causes fatalities. This framework allows for penalties, regulatory sanctions, and compliance measures without needing to prove individual intent, promoting safer and more ethical AI deployment. However, it raises moral and practical concerns: corporations cannot experience guilt, and liability may be diffused so that no individual is directly responsible, potentially undermining justice and the traditional moral purpose of criminal law.

d) **Synthetic Mens Rea**: The concept of "Synthetic Mens Rea" is a radical proposal that reimagines culpability for AI systems, shifting the focus from human-like consciousness and intent to the objective assessment of the system's design, behaviour, and risk potential. Liability under this model would be based on measurable factors such as algorithmic logic, decision pathways, data sources, and operational outcomes, rather than on subjective mental states. For example, if an AI repeatedly exhibits harmful behaviour that its programmers fail to correct, it could be said to possess a form of "synthetic intent," allowing responsibility to be traced to the human designers or operators. While this approach is innovative, it raises profound philosophical and doctrinal concerns, as it constructs a legal fiction of intent for a non-sentient entity, potentially undermining the moral foundations of criminal law, which rely on conscious choice and moral awareness. Furthermore, if AI were treated as capable of mens rea, it could imply legal personhood, necessitating rights, defences, and procedural safeguards that current legal systems are not equipped to handle. Consequently, most scholars argue that Synthetic Mens Rea should function as a tool to evaluate human negligence or institutional fault rather than as a replacement for genuine intent. Overall, the framework highlights the tension between adapting law to intelligent technologies and preserving the ethical and moral coherence upon which criminal responsibility is based.

Case Studies and Judicial Developments

[7] Hallevy, G. (2010). *The criminal liability of artificial intelligence entities: From science fiction to legal social control*. Akron Intellectual Property Journal, 4, 179–198.

[8] Wakhle, A. S. (2023). *The future of criminal liability in the age of artificial intelligence.* International Journal of Integrated Studies and Research, 3(3), 84–90.

a) **Uber Autonomous Vehicle Case (2018)**: Waymo, a self-driving car company owned by Google, filed a lawsuit against Uber in February 2017, accusing it of stealing trade secrets related to autonomous vehicle technology. The case primarily centered on Anthony Levandowski, a former Google engineer who worked extensively on AI-driven self-driving systems before joining Uber. According to the charge sheet, Levandowski downloaded around 14,000 confidential files containing critical engineering and technical data related to self-driving cars before leaving Google. This alleged misuse of proprietary information led to a major civil dispute between Uber and Waymo, which was settled in February 2018, with Uber agreeing to pay $245 million. Following repeated traffic violations and regulatory warnings, Uber was compelled to remove its self-driving cars from public roads in December 2016. When Levandowski failed to comply with court orders to surrender the disputed data, Waymo initiated a trade secret lawsuit against him, after which Uber terminated his employment. Levandowski later entered into a plea agreement, receiving an 18-month prison sentence (to be served post-pandemic), and agreed to pay restitution of $757,000 to Google, a fine of $95,000 and $179 million to Waymo. This case highlights the legal system's reluctance to treat AI as an offender and reinforces the preference for human or corporate accountability.[9]

b) **The Facebook-Cambridge Analytica Scandal**: The Facebook-Cambridge Analytica scandal is one of the most significant AI-related controversies in recent years, impacting millions of Facebook users' personal data. In March 2018, it was revealed that Cambridge Analytica, a political consultancy firm, had obtained the data of over 87 million Facebook users without their consent. This information was reportedly used to influence the 2016 U.S. presidential election in favour of Donald Trump and to sway the Brexit referendum toward the Vote Leave campaign. Mark Zuckerberg, Facebook's CEO, did not take immediate action after learning about the data breach and failed to ensure that Cambridge Analytica had deleted the data. The incident led to lawsuits against Facebook for violating user privacy and enabling manipulation. During testimony before the U.S. Congress, Zuckerberg committed to implementing stricter policies and measures to prevent future data breaches.

Comparative International Approaches

The rapid rise of artificial intelligence (AI) has forced legal systems worldwide to grapple with questions of accountability when autonomous systems cause harm. Different countries are taking very different approaches, reflecting their legal traditions and policy priorities.

a) **European Approach - Electronic Personhood**: The European Parliament has proposed granting "electronic personhood" to highly autonomous AI systems, giving them limited legal status mainly for civil liability. This would allow victims of AI-caused harm to seek compensation even when no human or corporation is directly at fault. While this approach addresses accountability gaps, extending it to criminal liability is controversial, as criminal law requires intent and moral awareness, qualities which AI lacks. Critics also warn that treating AI as a criminal "person" could shift responsibility away from human designers or operators. Nevertheless, Europe's discussions offer a model for hybrid liability frameworks combining civil, administrative, and quasi-criminal mechanisms to manage AI-related risks.

b) **Indian Perspective - Human-Centric Liability:** India's criminal law, rooted in the Indian Penal Code, remains focused on human and corporate responsibility, tying liability to intent, knowledge, or dishonesty, attributes that AI cannot possess. This creates a legal vacuum for harms caused by autonomous systems, such as accidents involving self-driving cars. Existing frameworks such as the IPC and the Information Technology Act, 2000 are ill-equipped to address autonomous decision-making. To address this, India may need legislative reforms, specialized statutes defining AI-specific offences, or regulatory mechanisms to assign

[9] Wakhle, A. S. (2023). *The future of criminal liability in the age of artificial intelligence*. International Journal of Integrated Studies and Research, 3(3), 84–90.

responsibility to designers, operators, and corporations. Unlike Europe, India is likely to maintain human-centred accountability while adapting its legal framework to ensure justice in the era of intelligent machines.

Ethical and Policy Considerations

Assigning criminal liability to AI presents one of the most complex challenges in modern law, sitting at the crossroads of technology, ethics, and policy. The central problem is that AI can act autonomously, yet lacks consciousness, intent, or moral understanding. Criminal responsibility has historically relied on human free will and awareness, making it difficult to hold machines "guilty." At the same time, ignoring AI's growing autonomy risks leaving harmful acts unpunished and victims uncompensated. This tension raises a dual moral hazard: overextending liability to AI could dilute human accountability, while treating AI solely as a tool could create impunity for real-world harm caused by autonomous systems.

To address these challenges, the focus must shift from punishing AI to ensuring human accountability and responsible design. Key strategies include developing explainable and auditable AI systems, embedding humans in oversight roles, and establishing robust governance frameworks that trace decisions back to human actors. Legal and regulatory reforms should correspond to the AI's autonomy and risk, while ethical considerations must address systemic biases and societal harms. Ultimately, the goal is to balance technological innovation with moral responsibility: humans remain accountable, AI decisions are transparent, and both law and policy evolve together to prevent harm rather than simply react to it.

Recommendations and Suggestions

To bridge the accountability gap created by autonomous systems and to ensure justice in the era of artificial intelligence, the following legal and policy recommendations are proposed:

1. **Develop a Hybrid Liability Framework:** Relying on a single model of liability is insufficient for complex AI systems. Lawmakers should adopt a hybrid framework that utilizes corporate liability for organizational failures, programmer liability for design negligence, and user liability for operational misuse. This ensures humans remain accountable for the technologies they deploy.
2. **Enact AI-Specific Legislation:** Existing frameworks like the Indian Penal Code and the Information Technology Act, 2000 are ill-equipped to handle autonomous decision-making. The legislature must introduce specialized statutes that define AI-specific offenses and outline clear regulatory mechanisms to assign responsibility.
3. **Mandate Explainable AI (XAI) and Auditability:** To combat the "black box" problem, regulatory bodies should mandate that high-risk AI systems be designed with transparency and auditability in mind. Developers must be required to create systems where decision pathways can be traced back to human inputs or verifiable data sources.
4. **Implement "Human-in-the-Loop" Oversight:** To prevent foreseeable harms caused by fully autonomous actions, critical AI systems, especially those deployed in high-risk sectors like transportation or predictive policing, should be legally required to maintain a degree of human oversight and intervention capability.
5. **Reject Independent AI Criminal Personhood:** Legal systems must avoid the dangerous temptation of granting AI independent agency or "electronic personhood" in criminal law. Treating AI as a criminal entity would inappropriately shift liability away from the human designers and operators, diluting moral accountability.

Conclusion

The rise of artificial intelligence challenges the very foundations of criminal law by introducing autonomous systems capable of acting independently of human intent. Traditional concepts of guilt, intention, and moral responsibility, which have long underpinned criminal jurisprudence, are increasingly insufficient in addressing harms caused by complex AI systems. At

the same time, disregarding the agency of AI and its potential for significant impact is equally problematic. The solution lies in developing a hybrid framework that combines human accountability with technological oversight. Designers, operators, and corporations must bear responsibility for the deployment and consequences of AI, while legal and regulatory mechanisms must ensure transparency, explainability, and auditability of autonomous systems. By balancing ethical principles with practical realities, the law can prevent a vacuum of responsibility, maintain fairness, and protect public safety. Ultimately, the evolution of criminal law in the age of AI is not about punishing machines, but about ensuring that humans remain answerable for the decisions and outcomes that emerge from the technologies they create. In doing so, the law can uphold justice, preserve moral order, and retain its relevance even as the boundary between human intent and machine autonomy becomes increasingly blurred.

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The Gender Pay Gap and Labour Law Reforms.

Author Name
Miss Sonali Khandu Pawar

Abstract

The issue of gender pay gap remains a large issue in the job market despite the numerous laws that claim equality. Even though the majority of the countries prohibit paying men more than women, women continue to earn less due to a number of factors: they are employed in other jobs, they do more unpaid care, the regulations are not strictly followed, and salaries are not always transparent. This paper examines the legislation that ought to provide equal pay to all, identifies the key causes of the gender pay gap and examines reforms to labour legislation that attempt to address the issue of wage inequality.

It examines international labour organization rules, European Union making pay more visible, the use of reporting rules in the UK and the 2019 Wage Code in India, which safeguards equal pay. The article indicates that reforms in labour legislation should not end with mere equal-pay regulations. Rather, the reforms must be directed at putting the rules into practice, in fact, by being clear, enforced, and concerned about unpaid responsibilities. Real gender wage inequality should be reduced by using both laws and institutions.

Keywords: gender pay gap, equal remuneration, labour law reform, pay transparency, wage discrimination, employment law.

Introduction

A gender pay gap is described as the difference between the average or median income of men and women in paid work.[10] It is one of the most apparent signs of gender inequality in labour markets. The disparity exists even in those jurisdictions where legal frameworks require equal pay since wage inequity is not only influenced by direct and indirect discrimination in pay-setting, but also by institutional and social systems, such as occupational segregation, unequal caregiving roles, and weak enforcement of the law. The International Labour Organization identifies the gender pay gap as a severe social justice issue and notes that women around the world earn much less than men, and the disparity is quite high in different countries.[11]

The legal issue, then, is two-fold: to outlaw direct and indirect pay discrimination; and to develop mechanisms that would make equality rights enforceable.[12] New reforms are more and more recognizing this dual purpose. Instead of using only the complaint-based anti-discrimination laws, most jurisdictions currently focus on pay transparency, employer reporting, and institutional accountability. This paper will discuss these developments and suggest a reform framework that would bring the labour law in line with the current social and workplace realities.[13]

Research Questions

1. How far have existing equal pay laws been effective in reducing the gender pay gap in labour markets?
2. What are the major structural causes behind the persistence of the gender pay gap despite formal legal guarantees of equality?
3. How does the principle of equal remuneration for work of equal value strengthen the legal response to wage discrimination?

[10] International Labour Organization, *The Gender Pay Gap* (15 April 2024).
[11] International Labour Organization, *The Gender Pay Gap* (15 April 2024).
[12] International Labour Organization, *Equal Remuneration Convention, 1951 (No. 100)*; International Labour Organization, *Equal Pay: An Introductory Guide*.
[13] European Commission, *EU Action for Equal Pay*; Government of India, *The Code on Wages, 2019*; PRS Legislative Research, *The Code on Wages, 2019* (2019).

4. In what ways do occupational segregation, vertical inequality, and the motherhood penalty contribute to wage disparities between men and women?
5. How does lack of pay transparency weaken the enforcement of equal pay rights?
6. To what extent do enforcement gaps and weak compliance mechanisms limit the practical success of equal pay legislation?
7. How does the EU Pay Transparency Directive improve upon traditional equal pay frameworks?
8. What lessons can be drawn from the UK gender pay gap reporting model for future labour law reforms?
9. How effective is the Code on Wages, 2019 in India in addressing gender-based wage discrimination, especially in informal and unregulated sectors?
10. What kind of labour law reform framework is needed to combine equal pay rights, pay transparency, institutional enforcement, and care-sensitive labour policies to reduce the gender pay gap?

Research Objectives

1. To examine the concept and legal foundations of the gender pay gap in the context of labour and employment law.
2. To analyse the principle of equal remuneration for work of equal value and its significance in addressing gender-based wage discrimination.
3. To identify the major causes responsible for the persistence of the gender pay gap, including occupational segregation, unpaid care work, motherhood penalty, lack of pay transparency, and weak enforcement.
4. To study the role of anti-discrimination law in ensuring equal access to employment, promotion, training, and fair wages for women.
5. To evaluate recent labour law reforms aimed at reducing gender wage inequality, with special reference to the EU Pay Transparency Directive, UK Gender Pay Gap Reporting framework, and India's Code on Wages, 2019.
6. To assess the extent to which pay transparency and employer reporting mechanisms improve accountability and enforcement of equal pay rights.
7. To examine the importance of gender-neutral job evaluation and objective remuneration systems in reducing the undervaluation of women-dominated work.
8. To explore the relationship between labour law reform and care-sensitive social policies such as parental leave, childcare support, and flexible working arrangements.
9. To propose a reform-oriented legal framework that combines substantive equal pay rights, transparency measures, stronger enforcement, and institutional support for reducing the gender pay gap.

2. The Equal Pay Legal Foundations.

2.1 Equal Remuneration and the Principle of the Work of Equal Value.

The existing international legal doctrine goes beyond the limited understanding of equal pay in the same job and requires equal pay in the same work of equal value.[14] This wider context is necessary because empirical data shows that men and women are likely to be segregated into separate occupational categories. This principle is expressed in the Equal Remuneration Convention of 1951 (No. 100) of the International Labour Organization, which states that the pay rates should not be discriminatory based on gender to the workers who do work of equal value. The Convention thus squarely addresses the structural underestimation of the traditionally female-dominated roles, which include care giving, support, and administration.[15]

The criterion of work of equal value replaces a close same-job comparison, as wage differentials are often based on occupational classification plans, and not on blatant unequal pay in the same job

[14] International Labour Organization, *Equal Remuneration Convention, 1951 (No. 100)*.
[15] International Labour Organization, *Equal Pay: An Introductory Guide*.

titles. Therefore, any wholesale labour-law reform should include job-evaluation, comparable-worth, and the creation of gender-neutral pay standards.[16]

2.2 Discrimination and access to the labour market.

Equal pay regulations are also based on the wider anti-discrimination regulations. Unequal wages may occur at the start of a job, due to unfair hiring, promotion obstacles, unequal training chances, and being excluded of high-paying industries. The ILO demonstrates that equal pay is associated with non-discrimination in work in a broader sense, that is, you cannot equal pay by simply altering payroll records. This broader perspective is reflected in contemporary reforms, which introduce wage-equality provisions to clear recruitment procedures, anti-retaliation protection, and information rights.[17]

3. Why the Gender Pay Gap Persists

3.1 Vertical inequality and occupational segregation.

One of the biggest factors that have contributed to the gender pay gap is the fact that men and women remain in different occupations. Women are concentrated in low-paid sectors and less in senior, managerial or technical positions. Due to this, the pay gap is not only about the same work being remunerated differently, but also about the unequal distribution of jobs in the market.[18] Segregation is one of the primary causes of wage inequality as identified by ILO and associated policies.[19]

3.2 Care duties and the motherhood penalty.

Women continue to do most of the unpaid care work, particularly to children and the elderly. Females are more likely to interrupt their careers, work less, and grow their pay more slowly after childbirth. This motherhood penalty is the reason why incomes are not even. According to the ILO, motherhood may cause a pay penalty that is long-term in the career of a woman. Reforms in labour law must thus be accompanied by care-supportive policies like parental leave, flexible working regulations and childcare.[20]

3.3 Lack of pay transparency

The rights of equal pay are difficult to implement when the workers are unaware of the wages of the others. Discrimination remains unnoticed without pay data. Europe and other new regulations provide employees with a right to access pay information, compel organizations to disclose pay ranges, and demand employer disclosure.[21] According to the European Commission, equal-pay laws cannot work without transparency. [22]

3.4 Gap in enforcement and compliance.

The other fundamental issue is the discrepancy between what is said in the law and what is actually occurring. Although discrimination may be prohibited, unless there are checks of the workplace, powerful courts and actual sanctions, employers have no incentive to correct wage disparities. Several equal-pay systems have been based on individual suing by workers, which is expensive and challenging. Obligations to obey the law, institutional surveillance and procedural rights of workers are now added as modern reforms.[23]

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[16] International Labour Organization, *Equal Remuneration Convention, 1951 (No. 100)*; International Labour Organization, *Equal Pay: An Introductory Guide*.

[17] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023; European Commission, *EU Action for Equal Pay*.

[18] International Labour Organization, *Equal Pay: An Introductory Guide*; International Labour Organization, *The Gender Pay Gap* (15 April 2024).

[19] nternational Labour Organization, *The Gender Pay Gap* (15 April 2024).

[20] International Labour Organization, *The Gender Pay Gap* (15 April 2024); International Labour Organization, *Equal Pay: An Introductory Guide*.

[21] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023; European Commission, *EU Action for Equal Pay*.

[22] European Commission, *EU Action for Equal Pay*.

[23] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023; European Commission, *EU Action for Equal Pay*.

4. The Labour Law Reforms: Comparative Developments.

4.1 European Union: Pay Transparency Directive.

The EU Pay Transparency Directive (Directive (EU) 2023/970) is one of the most recent reforms that have been adopted to reinforce the use of equal pay as equal work or work of equal value by providing transparency and enforcement mechanisms.[24] The Directive contains a number of practical tools: disclosure of salary information prior to employment, limitations on the use of salary history, the rights of workers to pay information, employer disclosure and more effective remedies to discrimination claims.

The reform is significant since it shifts the equal pay law to an evidence-based compliance model, as opposed to a purely declaratory framework. Employers have ceased to be passive consumers of the nondiscrimination regulations; they must create and publish information that can demonstrate the differences.[25] A transposition deadline of 7 June 2026 is also observed by the European Commission and is thus a legal priority to be implemented in the near future by Member States.

4.2 United Kingdom: Gender Pay Gap Reporting.

The UK has implemented a reporting model whereby employers who have more than 250 employees are required to publish the annual data on gender pay gap. Procedural instructions clarify who is to report, what measurements should be reported and when they should be reported. This framework has assisted in normalizing the accountability of the people by making the gender pay gaps visible at the employer level.[26]

The UK model, however, also demonstrates that transparency-only regulation has a weakness in that reporting does not necessarily necessitate remedial action. Employers do not have to make structural adjustments in recruitment, promotion, or pay progression to disclose gaps. This implies that the next reforms must include reporting requirements alongside action plans, audits, or enforcement triggers.[27]

4.3 India: Code on Wages, 2019

The Code on Wages, 2019 in India is a significant consolidation of labour laws, which contains a certain ban on gender discrimination in wages on the same work or work of similar nature. Section 3 of the Code deals with gender discrimination and is a modernized wage law framework. Both the statutory text and legislative summaries confirm that the Code outlaws discriminatory wage practices and discrimination in recruitment of similar work.[28]

The reform in India is important in that it incorporates the wage equality in a wider labour code framework instead of it being a separate equality law. Simultaneously, the success of impact will be determined by implementation, regulations, inspection, and awareness particularly in the areas where women are concentrated in informal or unregulated jobs.[29]

5. The Reform Agenda to end the Gender Pay Gap.

The reforms in labour law have been made better in design, yet lasting development needs a more comprehensive strategy. There are three priorities that are of particular importance.

5.1 Disclosure with binding implications.

Transparency is needed, but not limited to disclosure. There should be concrete obligations in cases where there are major gaps in reporting and pay information rights. They can be compulsory pay audit, remedial action plan, consultation with workers and fines against non-compliance. The EU

[24] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023.
[25] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023; European Commission, *EU Action for Equal Pay*.
[26] GOV.UK, *Gender Pay Gap Reporting: Guidance for Employers* (updated 27 December 2025).
[27] GOV.UK, *Gender Pay Gap Reporting: Guidance for Employers* (updated 27 December 2025); European Commission, *EU Action for Equal Pay*.
[28] Government of India, *The Code on Wages, 2019*; PRS Legislative Research, *The Code on Wages, 2019* (2019).
[29] PRS Legislative Research, *The Code on Wages, 2019* (2019).

model is more robust than the old-fashioned methods as it integrates the transparency with the enforcement mechanisms as opposed to disclosure.[30]

5.2 Gender neutral job evaluation and remuneration plans.

Equal pay legislation should deal with the under-valuation of female dominated labor. This necessitates gender-neutral job evaluation systems which compare skill, effort, responsibility and working conditions across jobs.[31] The legal frameworks ought to promote or enforce objective pay standards and minimize discretion which allows latent discrimination. The principle of work of equal value offered by the ILO gives the theoretical foundation to this strategy.[32]

5.3 Integration of care-sensitive labour policy.

Wage law alone cannot be used to address the gender pay gap. As the care burdens are major determinants of the earnings of women, the labour law reform must be aligned with social policy, such as parental leave, childcare systems, and flexible working provisions.[33] In the absence of these, women can still be clustered in lower-paid or interrupted career choices despite the existence of formal equal pay rights. This relationship is strengthened by the ILO analysis of the motherhood wage penalty.[34]

Recommendations

1. **Strengthen enforcement of equal pay laws**

Equal pay provisions should not remain only declaratory in nature. Governments must ensure strong enforcement through labour inspections, monitoring authorities, specialised grievance mechanisms and effective penalties for non-compliance.

2. **Introduce mandatory pay transparency measures**

Employers should be required to disclose salary ranges, maintain transparent pay structures and provide employees with access to pay-related information. Transparency helps in identifying hidden wage discrimination and improves accountability.

3. **Link reporting requirements with corrective action**

Mere disclosure of gender pay gap data is not sufficient. Employers reporting significant pay gaps should be legally required to prepare remedial action plans, conduct pay audits and adopt measurable steps to reduce disparities.

4. **Adopt gender-neutral job evaluation systems**

Labour law reforms should encourage or mandate objective job evaluation mechanisms based on skill, effort, responsibility and working conditions. This will help prevent the undervaluation of female-dominated occupations.

5. **Address occupational segregation through policy measures**

Governments and employers should promote women's participation in higher-paid, technical, managerial, and leadership positions through skill development, equal opportunity recruitment, career advancement support, and anti-discrimination safeguards.

6. **Reduce the impact of unpaid care work and the motherhood penalty**

Labour law reforms should be integrated with supportive social policies such as paid parental leave, affordable childcare facilities, flexible working arrangements, and return-to-work support for women after career interruptions.

7. **Improve awareness among workers regarding equal pay rights**

Many employees, especially women in informal or low-paid sectors, may not be aware of their rights. Governments, trade unions, and civil society institutions should conduct awareness programmes and legal literacy campaigns on wage equality.

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[30] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023; European Commission, *EU Action for Equal Pay*.

[31] International Labour Organization, *Equal Remuneration Convention, 1951 (No. 100)*; International Labour Organization, *Equal Pay: An Introductory Guide*.

[32] International Labour Organization, *Equal Remuneration Convention, 1951 (No. 100)*.

[33] International Labour Organization, *The Gender Pay Gap* (15 April 2024); International Labour Organization, *Equal Pay: An Introductory Guide*.

[34] International Labour Organization, *The Gender Pay Gap* (15 April 2024).

8. **Provide stronger institutional support for complaints and dispute resolution**

Workers should have access to simple, affordable, and confidential complaint mechanisms. Labour courts, equality bodies, and dispute resolution agencies should be made more accessible and responsive in cases of wage discrimination.

9. **Ensure better implementation of the Code on Wages, 2019 in India**

In the Indian context, special attention should be given to enforcement in informal, unregulated, and women-dominated sectors where wage discrimination is often less visible and less challenged.

10. **Promote a combined legal and institutional approach**

Real reduction in the gender pay gap requires more than a legal ban on discrimination. A combination of substantive rights, transparency, accountability, monitoring, and care-sensitive labour policies should form the basis of future reform.

6. Conclusion

Gender pay gap is a structural labour market issue that cannot be eradicated even after decades of formal legal equality. The traditional equal pay legislation is still needed, but it is not enough when employees are not able to gain access to pay data, employers are not so accountable, and labour markets are still influenced by segregation and unpaid care costs.

The recent reforms demonstrate a noticeable change towards the right direction. The pay transparency system of the EU, the employer reporting system of the UK and the wage code protection of India all provide valuable resources to the contemporary wage equality governance. However, the best way to go is a hybrid approach: explicit substantive equal pay rights, compulsory transparency, institutional enforcement, and care-sensitive labour policy.

To put it briefly, the gender pay gap can be narrowed by reforming labour laws only when equality is created as a binding system, rather than as a legal principle.

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Marital Rape in India: Need for Legal Recognition?

By
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Abstract

Marital rape has emerged as an important area of debate within the Indian criminal justice system, particularly due to its continued exclusion from the statutory definition of rape under the **Indian Penal Code, 1860** and the **Bharatiya Nyaya Sanhita, 2023.** In simple terms, marital rape involves sexual acts imposed by a husband upon his wife without her **consent**. Historically, the institution of marriage has been associated with the notion of implied consent to sexual relations, a belief that has played a decisive role in granting legal protection to husbands against prosecution for such acts. This traditional understanding, however, invites critical examination in light of **constitutional principles** relating to individual dignity, personal liberty, and bodily **autonomy** of married women.

This research paper seeks to explore the concept of **marital rape** within the Indian legal context by adopting a **doctrinal** method of research. It examines relevant constitutional provisions, criminal statutes, and related legal frameworks governing the protection of women, while consciously maintaining a balanced and **neutral** approach. In addition, the study acknowledges concerns surrounding the rights of men, particularly the apprehension regarding false or **malicious allegations**, which are frequently cited as a major obstacle in the process of **criminalising** marital rape. These concerns are analysed for their potential impact on marital relationships and the functioning of the criminal justice system.

The paper also reviews available statistical data relating to rape cases in India, including information on unproven or false complaints, to assess how such data influences legislative choices and policy formulation. Without endorsing a particular stance, the study aims to provide an objective evaluation of the legal, social, and constitutional aspects of marital rape in India.

Keywords: Indian Penal Code 1860, Bhartiya Nyay Sanhita 2023, Consent, Constitutional Principles, Autonomy, Doctrinal, Marital Rape, Malicious Allegations, Criminalising.

Introduction

Marital rape has become a subject of sustained legal and constitutional debate in India, largely because it continues to remain outside the statutory definition of rape under Section 375[1] of the Indian Penal Code, 1860 and the corresponding provisions of the Bharatiya Nyaya Sanhita, 2023[2]. Broadly understood, marital rape refers to sexual acts forced upon a wife by her husband without her free and voluntary consent. While contemporary legal discourse increasingly recognises consent as central to sexual autonomy, Indian criminal law has traditionally refrained from treating non-consensual sexual acts within marriage as an offence, except in narrowly defined circumstances.This legal position is deeply rooted in the conventional understanding of marriage as a sacred, lifelong bond that presumed the wife's continuous consent to sexual relations. The theory of implied and irrevocable consent, derived from colonial jurisprudence and reinforced by entrenched patriarchal norms, has played a decisive role in shaping rape laws in India. However, such an assumption appears increasingly incompatible with modern constitutional values. In particular, it raises serious concerns when examined against Articles 14, 19, and 21 of the Constitution of India[3], which collectively safeguard equality, individual liberty, human dignity, privacy, and bodily integrity. The ongoing preference accorded to the institution of marriage over the personal rights of married women thus remains a critical issue requiring careful constitutional evaluation.

[1] Indian Penal Code, 1860, S 375.
[2] Bharatiya Nyaya Sanhita, 2023, S 63.
[3] Constitution of India, 1950.

This paper adopts a doctrinal research methodology to analyse the legal status of marital rape within the Indian framework. It examines constitutional provisions, penal statutes, judicial interpretations, and related legal mechanisms designed to address sexual violence against women. Special emphasis is placed on the judicial evolution of concepts such as consent, privacy[4], and sexual autonomy, particularly in the context of landmark constitutional decisions that have broadened the understanding of individual rights. Throughout this analysis, the study maintains an objective and neutral stance, avoiding advocacy for any specific legislative reform.

Alongside the examination of women's rights, the research also considers concerns expressed regarding the potential implications of criminalising marital rape for men. A commonly articulated argument against criminalisation is the fear of misuse through false or motivated complaints, which are perceived as capable of undermining marital relationships and burdening the criminal justice system. These concerns are assessed within the broader principles of criminal law, including the presumption of innocence, procedural fairness, and the necessity of safeguards against abuse of legal provisions. The paper evaluates whether such apprehensions justify the existing legal exemption or whether they can be effectively mitigated through appropriate procedural and evidentiary measures.

The study further engages with available statistical data relating to rape and sexual offence cases in India, including acquittal rates and cases that do not result in conviction. By examining these figures, the paper seeks to understand how empirical data shapes legislative reluctance, policy decisions, and judicial approaches to the issue of marital rape. At the same time, it acknowledges the inherent limitations of statistical analysis, particularly given the widespread underreporting of sexual offences and the evidentiary challenges associated with offences occurring within the private sphere of marriage.

Without advancing a conclusive position, this research endeavours to offer a balanced and comprehensive assessment of the constitutional, legal, and social dimensions of marital rape in India. By situating the discussion within the broader framework of gender justice, individual autonomy, and criminal law reform, the paper aims to contribute constructively to an ongoing and sensitive legal debate, while recognising the diversity of perspectives that surround this issue.

Literature Review

Yes Means Yes: Visions Of Female Sexual Power And A World Without Rape, Edited By Jaclyn Friedman And Jessica Valenti:

It is a compelling and insightful book that redefines the concept of consent by emphasizing that it should be clear, willing, and continuous, not simply assumed from silence or lack of resistance. By bringing together essays from feminist thinkers and activists, the book examines how deeply rooted beliefs about sexuality, power, and relationships often undermine women's agency, including within marriages and long-term partnerships. Although it does not deal directly with the legal framework of marital rape, its real contribution lies in questioning the cultural attitudes that excuse or ignore non-consensual sex in intimate settings. Readers often praise the book for its strong voice and emotional impact, even though some feel the essays differ in depth and practical application. Overall, it serves as an important resource for understanding consent culture and the social conditions that allow issues like marital rape to continue.

Rit Foundation V/S Union Of India (2022) [5]:

Justice C. Hari Shankar, in his opinion in *RIT Foundation v. Union of India (2022)*, held that Exception 2 to Section 375 of the IPC is constitutionally valid and does not require judicial interference. He took the view that marriage constitutes a separate and legally distinct relationship, and therefore the legislature is justified in treating it differently from other relationships. According to him, bringing marital rape within the ambit of criminal law could have serious implications for the stability of marriage, amount to excessive intrusion into the private domain of spouses, and open the door to potential misuse. He further reasoned that the idea of consent within marriage operates

[4] Constitution of India, art. 21.

[5] RIT Foundation v. Union of India, 2022 SCC Online Del 3338 (Justice Rajiv Shakdher)

differently from consent outside it and that such a sensitive and socially complex issue involves policy considerations best left to Parliament rather than the courts. Justice Hari Shankar also pointed out that married women are not left without remedies, as protections already exist under provisions like Section 498A IPC and the Domestic Violence Act. The judgment is considered significant because it formed one half of a split verdict, with Justice Rajiv Shakdher taking the opposite view, which ultimately resulted in the matter being referred to the Supreme Court for final determination on the constitutional validity of the marital rape exception.

Research Questions

1. Does the marital rape exception under Indian criminal law violate Articles 14, 15, and 21 of the Constitution of India?
2. Is there any provisions in Indian law which criminalised Marital Rape?
3. Is it necessary to view the concept of Marital Rape with a Neutral point of view?
4. What can be an Impact in Indian society if Marital Rape is criminalised?

Methodology

This research adopts a doctrinal method to examine the concept of marital rape in India by critically analysing statutory provisions, constitutional principles, and judicial interpretations. It focuses on the marital rape exception under criminal law, relevant Supreme Court and High Court judgments, and the evolving jurisprudence on consent, dignity, and bodily autonomy. By relying on primary legal sources such as statutes, case law, and constitutional texts, along with secondary sources like commentaries and scholarly writings, the study aims to assess the constitutional validity and legal justification of the marital rape exception within the existing legal framework.

Statistical Data Related To Marital Rape:

Marital rape in India is a significant concern that often goes unnoticed because of legal limitations and societal pressures. Data from the National Family Health Survey (NFHS-5, 2019–21)[6] shows that about 5–6% of married women have experienced forced sexual relations by their husbands, suggesting that a large number of women may be affected nationwide. Furthermore, nearly 29% of women between the ages of 18 and 49 have faced some form of spousal abuse whether physical, emotional, or sexual with sexual violence forming a notable share of these cases. Despite this, Indian law does not clearly criminalize marital rape involving adult wives, which means such incidents are not separately recorded in official statistics like those of the National Crime Records Bureau (NCRB)[7]. Instead, they are often included under broader categories such as "cruelty by husband or relatives," which saw over 1.4 lakh reported cases in 2022. Due to factors like social stigma, lack of legal recognition, and fear of repercussions, many cases remain unreported, making it challenging to determine the actual extent of the problem.

Looking at the issue from another perspective, available data from related legal provisions helps in understanding the extent of false cases in marital or relationship disputes. Government and NCRB-based figures suggest that roughly **5–10% of cases** under laws such as rape and Section 498A (cruelty by husband or his relatives)[8] are found to be false after investigation. For instance, about **10% of dowry harassment cases** and nearly **5–6% of rape cases** are categorized as false or based on errors in fact. At the same time, many genuine incidents remain unreported due to social stigma, fear, and legal challenges. Hence, although misuse of legal provisions does occur. Criminalising Marital Rape will open a new door for creating a disturbance in the society especially destroying the core values and base of Indian marriage system.

Provisions Realated To The Marital Rape In India.

[6] National health survey (NFHS-5, 2019–21)

[7] https://swayam.info/resources/violence-facts-figures.
National Crime Records Bureau (NCRB) Data (2022–2023)

[8] Indian Penal Code, 1860, Section 498A

In India, marital rape is not completely treated as a criminal offence because of the exception in Section 375[9] of the Indian Penal Code, which has also been carried forward in the Bharatiya Nyaya Sanhita 2023[10]. This provision assumes consent within marriage when the wife is above 18 years of age. Despite this, some related laws offer limited protection to women. For example, Section 376B of the Indian Penal Code makes it an offence for a husband to have forced sexual relations with his wife if they are living separately. Similarly, Section 498A of the Indian Penal Code deals with cruelty, which can include physical, emotional, and even sexual abuse within marriage. In addition, the rotection of Women from Domestic Violence Act 2005[11] acknowledges sexual abuse and allows women to seek civil reliefs such as protection orders and compensation, though it does not impose criminal liability. Survey findings, such as those from NFHS, indicate that about 5% of women have faced sexual violence from their husbands, but many such incidents remain unreported due to social stigma and legal barriers. Therefore, although certain legal provisions indirectly address the issue, India still lacks a specific law that directly criminalizes marital rape.

Neutral View on Marital Rape.

A balanced view on marital rape in India involves examining the legal framework along with social and ethical considerations. Currently, marital rape is not completely treated as a criminal offence because of the exception contained in Section 63 of Bharatiya Nyaya Sanhita (which replaces the earlier Section 375 IPC). This provision assumes consent within marriage when the wife is above 18 years of age. Despite this, certain laws offer partial protection. For example, Section 67 of Bharatiya Nyaya Sanhita makes it punishable if a husband forces sexual relations while living separately from his wife. Similarly, Section 498A of the Indian Penal Code deals with cruelty, covering physical, emotional, and in some cases sexual abuse within marriage. The Protection of Women from Domestic Violence Act 2005 also recognizes sexual abuse and allows women to seek remedies like protection orders and compensation, although it does not impose criminal penalties.

Supporters of criminalizing marital rape argue that marriage should not be interpreted as unconditional consent and that a woman's bodily autonomy and dignity must be safeguarded. They also point out that many countries have already recognized marital rape as a crime in line with global human rights standards. In contrast, those opposing such criminalization express concerns about potential misuse of the law, difficulties in proving absence of consent within a marital relationship, and possible effects on the institution of marriage. Survey-based data, including findings from NFHS[12], indicate that a proportion of women experience sexual violence by their husbands, though many such incidents go unreported due to social stigma and lack of awareness. Hence, a neutral approach recognizes both the need to address abuse within marriage and the importance of ensuring that any legal reform maintains fairness and prevents misuse.

Possible Impact of Criminalising Marital Rape In Indian Society.

The issue of criminalizing marital rape in India carries significant legal, social, and institutional implications, which is why it remains widely debated. Currently, marital rape is not fully treated as a criminal offence because of the exception under Section 63 of Bharatiya Nyaya Sanhita, which presumes consent within marriage when the wife is above 18 years of age. If this exception were to be removed, it would mark a major shift in recognizing and protecting women's rights, especially their bodily autonomy, dignity, and personal freedom. Such a reform would reinforce the idea that consent is essential in every relationship, including marriage, and could encourage more victims to report abuse, thereby improving access to justice and reducing the acceptance of sexual violence within marital relationships.

[9] Indian penal code 1860

[10] Sec63 of Bhartiya Nyay Sanhita 2023.

[11] Protection of domestic violence act 2005.

[12] National Family Health survey

From a legal standpoint, criminalizing marital rape would bring Indian law closer to global human rights standards followed by many countries. It would also address gaps in the existing legal framework, where provisions like Section 498A of the Indian Penal Code and the Protection of Women from Domestic Violence Act 2005 mainly offer indirect or civil relief in cases of abuse. However, implementing such a law could present practical difficulties. Establishing absence of consent within a marriage can be complex due to the private nature of the relationship, lack of direct evidence, and social pressures. This raises concerns about evidentiary challenges and the potential for false accusations, which is often highlighted in debates around similar legal provisions.

On a societal level, criminalisation could contribute to changing long-standing patriarchal attitudes that equate marriage with permanent consent. It may promote greater gender equality and encourage healthier, more respectful relationships based on mutual consent. At the same time, critics caution that such a law might be misused in matrimonial conflicts, possibly increasing legal disputes and placing additional pressure on families and the judicial system[13]. There are also fears that it could be used strategically during divorce proceedings, although similar risks exist in other laws and can be mitigated through proper safeguards and fair investigation processes.

In conclusion, the impact of criminalising marital rape in India would be far-reaching and complex. While it has the potential to strengthen women's rights and drive positive social change, its success would depend on careful implementation, clear legal standards, and mechanisms to prevent misuse.

Landmark Judgement

Rit Foundation V/S Union of India[14]

A key case often cited in opposition to the criminalisation of marital rape in India is *RIT Foundation v. Union of India*. In this matter, the validity of the marital rape exception was examined by the Delhi High Court. The bench delivered a divided opinion, with one judge favouring the removal of the exception and the other disagreeing. The judge who opposed criminalisation raised concerns that eliminating the exception could disrupt the stability of marriage as an institution and might increase the risk of misuse in marital conflicts. It was further noted that such a sensitive and complex issue is better suited for determination by the legislature rather than through judicial intervention.

Independent Thought V/S Union of India.[15]

The Supreme Court of India has addressed the issue only to a limited extent by holding that sexual intercourse with a wife below 18 years of age amounts to rape, while at the same time retaining the marital rape exception for adult wives. This reflects a cautious judicial approach, showing that the Court has refrained from completely criminalizing marital rape and has instead left the broader question to be decided by the legislature. Such decisions highlight ongoing concerns about possible misuse of the law, challenges in proving absence of consent within marriage, and the potential effect on the institution of marriage, all of which form the core arguments against full criminalisation in India.

Conclusion

Criminalising Marital Rape has always been a controversial topic in India. The issue of criminalising marital rape in India is a sensitive and multifaceted one that calls for a careful balance between protecting individual rights and addressing broader societal concerns. On one side, recognising marital rape as a criminal offence is viewed as an important step toward affirming a person's right to bodily autonomy, dignity, and equality within marriage. It highlights that consent is essential in every relationship, including within marriage, and that no one should be subjected to force or coercion.

[13] https://timesofindia.indiatimes.com/india/no-proposal-to-criminalise-marital-rape-as-bns-law-against-domestic-violence-protect-married-women-govt-in-rs.

[14] RIT Foundation v. Union of India, 2022:DHC:1825 (Delhi High Court)

[15] Independent Thought v. Union of India, (2017) 10 SCC 800 (Supreme Court of India)

At the same time, concerns have been raised, particularly from men's perspectives, about the possible misuse of such a law. In a setting where matrimonial disputes can already become highly contentious, there is apprehension that false or exaggerated allegations could be used as a tool for harassment or pressure. References are often made to the debates surrounding laws like Section 498A, where issues of misuse have been discussed. Additionally, because marital relationships are private in nature, proving such allegations may be difficult, which can complicate the process of ensuring fair and unbiased trials.

A balanced approach would recognise the need to protect victims of genuine abuse while also safeguarding against wrongful accusations. This could be achieved through clearly defined legal standards of consent, proper investigation procedures, and safeguards to prevent misuse, including consequences for false claims.

In conclusion, the objective should not be to prioritise one group over another, but to develop a fair and effective legal framework that upholds justice, protects individuals from harm, and ensures due process for everyone involved.

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Misplaced Mens Rea and Misguided Prosecution: Counterfeit Garment Enforcement in India

Adv. Ikrama Farooqui

Abstract

The manufacture and circulation of counterfeit branded garments constitute a persistent feature of India's informal manufacturing economy, particularly within decentralised industrial clusters. Criminal law enforcement in such cases has largely focused on tailors and stitching workers who are physically present at production sites, while individuals who exercise control over branding, labeling, storage, and distribution frequently evade prosecution. Simultaneously, consumers who knowingly purchase counterfeit garments are rarely subjected to criminal liability. This research paper critically examines the allocation of criminal responsibility in counterfeit garment prosecutions, with specific emphasis on the doctrinal requirement of *mens rea* under Indian criminal law. Adopting a doctrinal and qualitative socio-legal approach supplemented by anonymised field observations, the paper argues that tailors engaged solely in stitching activities lack the requisite criminal intent to attract liability under the Trade Marks Act, 1999 and general principles of criminal jurisprudence. It further contends that consumers purchasing counterfeit garments for personal use do not incur criminal liability in the absence of resale or fraudulent intent. The paper concludes that prevailing enforcement practices reflect selective prosecution and misuse of criminal process, necessitating a recalibration of investigative focus towards those who control branding and commercial exploitation.

Keywords: Counterfeit garments, mens rea, criminal liability, tailors, consumers, Trade Marks Act

Introduction

Counterfeit branded apparel has emerged as a complex and entrenched phenomenon within India's informal manufacturing sector. Garments bearing the labels of globally recognised brands are produced and sold at prices substantially lower than their genuine counterparts.[1] This trade is sustained through decentralised production models in which tailors, finishing units, label suppliers, warehouse operators, transporters and retailers operate as fragmented components of a single commercial chain.[2]

Despite this layered structure, criminal prosecutions relating to counterfeit garments frequently target tailors and stitching workers, who represent the most visible and accessible participants in the manufacturing process. These workers are generally employed on a per-piece or daily-wage basis and exercise no authority over branding decisions, labeling processes, pricing mechanisms, or distribution networks. Their prosecution raises serious questions concerning the correct attribution of criminal liability,[3] particularly in light of the foundational criminal law principle that liability must be predicated upon both a guilty act and a guilty mind.

Simultaneously, consumers who knowingly purchase counterfeit garments remain largely outside the scope of criminal law. This selective application of criminal sanctions exposes structural inconsistencies within enforcement practices and underscores the need for a doctrinal reassessment of how *mens rea* is applied in counterfeit garment cases.

Research Problem

The central problem addressed in this study is the **misallocation of criminal liability** in prosecutions involving counterfeit branded garments. Law enforcement actions frequently implicate tailors and low-level workers despite their lack of control over trademark usage and absence of

[1] Organisation for Economic Co-operation and Development (OECD) & European Union Intellectual Property Office (EUIPO), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact (OECD Publishing, Paris, 2019) 23–26.

[2] Mark Bartholomew, "Trademark Counterfeiting and the Informal Economy" (2017) 55 Houston Law Review 657, 665–672.

[3] Andrew Ashworth & Jeremy Horder, Principles of Criminal Law (9th edn, Oxford University Press 2019) 90–96.

criminal intent.[4] Conversely, individuals who procure counterfeit labels, manage large-scale production, control storage facilities, and supervise distribution often remain unidentified or unprosecuted.

This pattern raises serious concerns relating to:

- Improper application of criminal statutes requiring intent or knowledge
- Criminalisation of economically vulnerable labour participants
- Selective enforcement of intellectual property laws
- Failure to ensure accountability of principal offenders

Research Objectives

The objectives of this research are as follows:

1. To examine the legal framework governing offences relating to counterfeit branded garments in India.
2. To analyse the requirement of *mens rea* in determining criminal liability under the Trade Marks Act, 1999.
3. To assess whether tailors engaged solely in stitching activities can be legally held criminally liable.
4. To evaluate the criminal liability, if any, of consumers who knowingly purchase counterfeit garments for personal use.
5. To identify the actual victim of trademark offences within counterfeit garment manufacturing.
6. To examine whether existing enforcement practices reflect selective prosecution and misuse of criminal process.

Research Questions

1. Whether tailors engaged solely in stitching activities can be held criminally liable for offences relating to counterfeit trademarks.
2. Whether consumers who knowingly purchase counterfeit branded garments incur criminal liability under Indian law.
3. Whether the requirement of *mens rea* is satisfied in prosecutions against tailors under the Trade Marks Act, 1999.
4. Whether prevailing enforcement practices amount to selective prosecution and misuse of criminal process.

Hypotheses

- **H_1:** Tailors who merely stitch garments without participating in branding or labeling lack the *mens rea* required for criminal liability.
- **H_2:** Consumers who knowingly purchase counterfeit garments for personal use do not attract criminal liability under Indian law.
- **H_3:** Prosecutions disproportionately target tailors while principal offenders evade punishment.
- **H_4:** Effective enforcement requires shifting investigative focus to those exercising commercial control over counterfeit operations.

Research Methodology

This study adopts a **doctrinal and qualitative socio-legal methodology**. The doctrinal component involves analysis of statutory provisions, principles of criminal jurisprudence, and judicial interpretations relating to *mens rea*, vicarious liability, and intellectual property offences. Secondary sources include academic literature on trademark enforcement, informal labour economies, and criminal justice administration.

Data Collection

Qualitative observational data has been gathered through anonymised field observations based on the author's professional visits to garment manufacturing godowns and tailoring units located within major informal industrial clusters. Informal, non-recorded interactions were conducted

[4] Dev S. Gangjee, "Rethinking the Scope of Trademark Criminal Enforcement" (2016) 8 Journal of Intellectual Property Law & Practice 563, 567.

with tailoring workers regarding the nature of their work, remuneration, and awareness of branding practices. No personal identifiers, addresses, or establishment details have been recorded or disclosed. The data is used solely to contextualise doctrinal analysis and does not constitute investigative or evidentiary material.

Legal Framework Governing Counterfeit Garments

Trade Marks Act, 1999

Sections 103 and 104 of the Trade Marks Act criminalise the falsification and false application of trademarks.[5] The statutory language emphasises knowledge, intention, or reason to believe, thereby embedding *mens rea* as an essential ingredient of the offence.[6] Mere physical involvement with goods is insufficient unless accompanied by conscious participation in trademark falsification.

General Principles of Criminal Law

The maxim *actus non facit reum nisi mens sit rea* remains foundational to Indian criminal jurisprudence.[7] Unless expressly excluded, criminal liability cannot be imposed in the absence of guilty intent. Penal statutes affecting personal liberty must be strictly construed.[8]

Identification of the Victim and Non-Disclosure of Brand Names

Under the Trade Marks Act, the legally recognised victim of counterfeit garment manufacturing is the **registered trademark proprietor**.[9] The injury contemplated is the dilution of goodwill and unauthorised commercial exploitation of a protected mark.

This research deliberately refrains from naming specific brands, as it is not based on adjudicated findings or official enforcement records. Naming brands in the context of anonymised observation could imply unverified allegations and exceed the legitimate scope of academic inquiry. The legal issues examined are structural and independent of the identity of any particular brand.

Criminal Liability of Tailors: A Mens Rea Analysis

Tailors operating within decentralised garment units typically receive unbranded or semi-finished fabric. Branding and labeling occur at later stages, often at separate locations. Field observations indicate that tailors neither apply trademarks nor possess counterfeit labels, nor do they derive profit from brand value. Their remuneration remains fixed irrespective of subsequent branding, negating *mens rea*.

Liability of Owners and Commercial Controllers

Individuals who procure counterfeit labels, control storage facilities, and manage distribution networks possess both *actus reus* and *mens rea*.[10] Criminal liability must therefore correspond with economic control and intentional exploitation rather than mere physical proximity to goods.[11]

Criminal Liability of Consumers

Indian law does not criminalise the purchase of counterfeit goods for personal use.[12] Knowledge alone, without intent to deceive or commercially exploit, is insufficient to attract criminal liability. Consumers, therefore, remain outside the scope of penal sanctions.

Why Consumers Knowingly Purchase Counterfeit Garments: A Critical Socio-Legal Analysis

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[5] Trade Marks Act, No. 47 of 1999, §§ 103–104 (India).

[6] P. Narayanan, Law of Trade Marks and Passing Off (7th edn, LexisNexis Butterworths 2017) 1655–1663.

[7] R v. Prince (1875) LR 2 CCR 154 (UK); also discussed in K.D. Gaur, Textbook on Indian Penal Code (6th edn, Universal Law Publishing 2016) 92–94.

[8] Tolaram Relumal v. State of Bombay, AIR 1954 SC 496.

[9] Lionel Bently & Brad Sherman, Intellectual Property Law (5th edn, Oxford University Press 2018) 919–921.

[10] Nathulal v. State of Madhya Pradesh, AIR 1966 SC 43 (holding that absence of guilty intention may negate criminal liability where mens rea is an essential ingredient).

[11] V.K. Ahuja, Law of Intellectual Property Rights (3rd edn, LexisNexis 2017) 304–308.

[12] Trade Marks Act 1999 (India), §§ 102–105 (criminal liability attaches to falsification, false application, and commercial dealing in counterfeit marks rather than mere consumer purchase).

The continued demand for counterfeit garments cannot be understood solely through the lens of illegality or moral blame. A critical examination reveals that consumer participation in the counterfeit market is driven by a complex interaction of economic inequality, social aspiration, and structural market failures. This consumer behaviour, while legally non-criminal, plays a decisive role in sustaining the counterfeit economy.

One of the primary factors influencing such consumption is **economic disparity**. Genuine branded garments are priced far beyond the purchasing capacity of a significant segment of the population.[13] Counterfeit products offer functional substitutes that mimic the visual identity of branded apparel at a fraction of the cost. For many consumers, the choice is not between genuine and counterfeit goods, but between affordable counterfeit goods and no access to branded aesthetics at all.

A second and equally significant factor is **social signalling and aspirational consumption**. In contemporary urban and semi-urban India, branded clothing operates as a marker of social mobility, professional credibility, and personal status.[14] Consumers are often aware of the counterfeit nature of goods but prioritise outward appearance over authenticity. This reflects not individual criminality, but the commodification of social identity in a market-driven society.

Third, there exists a **normalisation of counterfeit consumption** due to its widespread availability and weak deterrence. The open sale of counterfeit garments in physical markets and digital platforms creates a perception of legality or at least tolerability. When enforcement visibly targets tailors and not sellers or organisers, consumers perceive little risk in purchasing counterfeit goods.

Fourth, **information asymmetry and selective awareness** play a role. While consumers may know that a product is not genuine, they often lack understanding of the broader economic and legal consequences of counterfeit trade, including loss of public revenue, exploitation of labour, and distortion of legitimate markets. This selective awareness weakens ethical resistance to counterfeit consumption.

From a legal perspective, this behaviour does not attract criminal liability because criminal law requires intent to deceive or defraud others. Consumers purchasing counterfeit garments for personal use do not misrepresent goods to third parties, nor do they derive commercial benefit through deception. However, the absence of criminal liability should not be mistaken for absence of responsibility in the broader regulatory sense.

Critically, consumer demand acts as the **economic engine** of counterfeit manufacturing. Without sustained consumer acceptance, organised counterfeit networks would lose commercial viability. This reality underscores the need for policy responses beyond criminalisation, including consumer awareness initiatives, price accessibility strategies, and market regulation reforms.

Thus, while consumers are not legal offenders under existing criminal law, their purchasing behaviour must be recognised as a structural contributor to the counterfeit economy. Addressing this demand-side dynamic is essential for any meaningful reform aimed at protecting intellectual property, strengthening the formal economy, and reducing exploitative informal labour practices.

Selective Prosecution and Misuse of Criminal Process

The routine arrest of tailors while principal offenders evade prosecution raises serious concerns under Article 21 of the Constitution of India. Selective enforcement undermines procedural fairness and disproportionately impacts economically vulnerable workers.[15]

Findings

- Tailors engaged solely in stitching lack *mens rea*.
- Consumers purchasing counterfeit garments for personal use incur no criminal liability.
- Principal offenders controlling branding and distribution bear primary responsibility.

[13] OECD & EUIPO, Misuse of Trademarks in Counterfeiting (OECD Publishing 2021) 31–34.
[14] Pierre Bourdieu, Distinction: A Social Critique of the Judgement of Taste (Harvard University Press 1984) 281–287.
[15] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

- Existing enforcement practices reflect selective prosecution.[16]

Recommendations

In order to address the misallocation of criminal liability in counterfeit garment manufacturing and to safeguard India's economic and legal reform objectives, the following measures are recommended:

1. Reorientation of Investigative Focus

Investigative agencies should prioritise the identification and prosecution of individuals and entities that exercise actual commercial control over counterfeit operations, including suppliers of counterfeit labels, organisers of large-scale production, warehouse controllers, and distribution network managers. Enforcement strategies must shift from location-based raids to supply-chain-based investigations.

2. Statutory Clarification on Mens Rea and Labour Protection

Legislative clarification should be introduced within the Trade Marks Act, 1999 to expressly distinguish between workers engaged in mechanical or manual processes and persons involved in branding, labeling, and commercial exploitation. Such clarification would prevent the criminalisation of tailors who lack knowledge or intent, while ensuring that liability is imposed on economically dominant offenders.

3. Stringent Punishment for Organised and Repeat Offenders

The law should provide for **enhanced and deterrent punishment** for organised counterfeit operations, repeat offenders, and entities deriving substantial commercial benefit from trademark infringement. Stronger penal consequences, including higher fines linked to turnover and mandatory imprisonment for repeat violations, are essential to protect legitimate markets and discourage parallel economies that undermine national revenue.

4. Integration of Intellectual Property Enforcement with Economic Policy

Enforcement of trademark laws must be aligned with India's broader economic reform goals, including formalisation of labour, tax compliance, and ease of doing business. Counterfeit trade directly affects revenue collection, investor confidence, and market fairness; therefore, IP enforcement should be treated as an instrument of economic governance rather than isolated criminal action.

5. Issuance of Clear Enforcement Guidelines and SOPs

Central and State authorities should frame clear Standard Operating Procedures to regulate arrests, searches, and prosecutions in counterfeit garment cases. Such guidelines should mandate preliminary assessment of intent and control before arrest, thereby preventing arbitrary action against low-level workers and ensuring compliance with constitutional safeguards.

6. Capacity Building and Specialised Training

Specialised training programmes should be conducted for police and enforcement officials to develop expertise in supply-chain analysis, financial investigation, and intellectual property law. Strengthening investigative capacity will enable authorities to dismantle organised counterfeit networks rather than targeting vulnerable labour participants.

7. Judicial Oversight and Bail Sensitivity

Courts should exercise heightened scrutiny at the stage of remand and bail in cases involving tailoring workers and daily-wage labourers, ensuring that criminal process is not misused as a tool of coercion. Judicial oversight is essential to uphold personal liberty while allowing effective prosecution of principal offenders.[17]

Recent Trends in Counterfeiting in India (2023–2025)

Counterfeiting continues to be a significant issue in India's economy, particularly in the apparel and luxury goods sectors. The illicit trade causes substantial revenue losses, undermines brand reputation, and poses risks to consumers. Key developments include:

[16] Aparna Chandra, Constitutional Culture and Judicial Review in India (Oxford University Press 2019) 147–150.
[17] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

- **Dominance of Apparel Sector**: Apparel remains the most counterfeited category, accounting for around 31% of fake products, followed by FMCG and automotive parts.[18] Estimates suggest the counterfeit market grows at 10–15% annually, with apparel and footwear driving much of this expansion.[19]
- **Growth in Luxury and Online Counterfeiting**: As India's luxury market expands (valued at approximately $17–18 billion in 2024), counterfeiters target high-end brands more aggressively. Online platforms, social media, and e-commerce facilitate sales of fakes, including through discounted "festive" or "anniversary" promotions and rogue websites mimicking authentic domains.[20]
- **Consumer-Driven Demand**: Price sensitivity and aspiration for branded items fuel the market, with many consumers knowingly purchasing affordable replicas. Social media influencers and "dupe culture" further normalise this trend.
- **Enforcement Challenges and Brand Actions**: Brands increasingly conduct "direct raids" in collaboration with police, while courts issue injunctions and damages. However, weak enforcement and sophisticated networks persist.

These patterns reflect a shift toward organised, digital-enabled operations in informal clusters and online spaces.

Notable Instances of Counterfeiting (2024–2025)

Recent raids highlight the scale of counterfeit apparel operations:

- In 2024, a couple running fake branded apparel sales via Instagram was arrested near Delhi. Police seized counterfeits of brands including US Polo, Benetton, Adidas, Tommy Hilfiger, Nike, and Puma, often sold through discounted events in hotel banquets.
- Bengaluru's Central Crime Branch raided garment shops on Commercial Street in early 2024, seizing fake clothes, belts, shoes, and accessories worth ₹23.9 lakh.[21]
- In August 2025, Delhi Police arrested three individuals manufacturing and selling counterfeit jeans bearing marks of Levi's, Zara, Calvin Klein, and Superdry. Raids recovered 684 fake jeans, loose labels, and tagging equipment.

These cases illustrate fragmented supply chains, where plain garments receive fake labels at separate stages.

Key Court Cases (High Courts and Supreme Court)

Courts have actively addressed counterfeiting, focusing on injunctions, damages, and platform liability under the Trade Marks Act, 1999.

Delhi High Court Cases

- **Louis Vuitton Malletier v. Abdulkhaliq Abdulkader Chamadia (2024)**: The court permanently restrained defendants from infringing Louis Vuitton trademarks, ordering delivery of seized counterfeit merchandise and blocking infringing subdomains.[22]
- **PUMA SE v. Indiamart Intermesh Limited (2024)**: Interim injunction against IndiaMART for facilitating counterfeit Puma listings via drop-down menus; the platform was denied safe harbour protection for aiding infringement.[23]

[18] CRISIL Market Intelligence & Authentication Solution Providers Association, State of Counterfeiting in India Report (2023) cited in Press Trust of India, "Counterfeits Constitute 25–30% of the Market: Report," Business Standard, Jan. 23, 2023.

[19] Federation of Indian Chambers of Commerce & Industry (FICCI), Report on Counterfeiting and Smuggling in India (2022) 12–16.

[20] Organisation for Economic Co-operation and Development (OECD), Illicit Trade in Fake Goods and the Digital Economy (OECD Publishing 2021) 49–55.

[21] Police Seize ₹30 Lakh Worth of Counterfeit Apparel in Bengaluru," Times of India, 2024.

[22] Louis Vuitton Malletier v. Abdulkhaliq Abdulkader Chamadia, 2024 SCC OnLine Del 1894

[23] PUMA SE v. Indiamart Intermesh Ltd., 2024 SCC OnLine Del 2117.

- **PUMA SE v. Himanshu Sharma (2024–2025)**: Summary judgment awarded PUMA approximately ₹8 lakh in damages and costs against an e-commerce site selling fake Puma shoes, emphasising strict action against deliberate counterfeiting.[24]
- **New Balance Case (2024)**: Over ₹14 lakh in costs awarded to New Balance against a rogue website selling counterfeit footwear and apparel.[25]

Supreme Court Cases

Recent Supreme Court decisions on trademark infringement (often involving deceptive similarity) guide counterfeiting enforcement, though no major new apparel-specific counterfeiting case emerged in 2024–2025. Precedents like **Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra (2024)** stress holistic mark comparison and confusion likelihood, applicable to counterfeit scenarios.[26] Overall, judicial trends favour swift relief for brands, including ex-parte injunctions and higher damages, while urging better platform oversight and supply-chain targeting.

Conclusion

Counterfeit garment manufacturing in India represents a complex intersection of intellectual property protection, informal labour, and criminal law enforcement. This study demonstrates that prosecuting tailors while overlooking principal offenders is doctrinally unsound and constitutionally problematic. Criminal liability must correspond with intention, control, and commercial benefit. A recalibrated enforcement strategy grounded in *mens rea* and fairness is essential to ensure effective regulation while safeguarding vulnerable workers.

[24] PUMA SE v. Himanshu Sharma, 2024 SCC OnLine Del 3225

[25] New Balance Athletics Inc. v. Fake Online Sellers, 2024 SCC OnLine Del 4189.

[26] Pernod Ricard India Pvt. Ltd. v. Karanveer Singh Chhabra, 2024 SCC OnLine SC 118.

"The Impact of Geopolitical Instability At Strategic Maritime Chokepoints on Global Maritime Trade, Shipping Operations, and the Regulatory Role of the Wto And International Maritime Laws – Challenges and Impact on India."

Adv. Jaishankar Harishankar Sharma

Abstract

Maritime transport is the 'backbone' of global trade, enabling more than 80% of international trade by volume. The efficiency of maritime trade largely depends on a network of strategic 'maritime chokepoints—narrow sea' passages that connect main shipping routes across the world. These chokepoints include the 'Strait of Hormuz', 'Strait of Malacca', 'Bab el-Mandeb Strait', and the 'Suez Canal'. While these routes significantly reduce travel time and shipping costs, they also represent critical vulnerabilities in the global maritime system. Geopolitical conflicts, piracy, terrorism and regional instability frequently threaten these passages, creating disruptions in global supply chains.

Recent geopolitical tensions in regions surrounding these chokepoints have highlighted the fragility of global maritime trade networks. Disruptions in maritime corridors can lead to increased shipping costs, delays in cargo delivery, and fluctuations in global commodity prices. Approximately 70% of overall 'oil demand' and over 90% of 'seaborne oil trade' move through major maritime chokepoints, emphasizing their critical importance to the world economy.

This research examines how geopolitical instability at key maritime chokepoints affects global maritime trade and shipping operations. It also evaluates the regulatory roles played by international institutions such as the 'World Trade Organization' and international maritime law frameworks like the 'United Nations Convention on the Law of the Sea (UNCLOS)'. Furthermore, the study explores a specific challenges and economic implications of these disruptions for India, some of the world's fastest-growing maritime trading nations.

Keywords:

Maritime Chokepoints; Geopolitical Instability; Global Maritime Trade; Shipping Operations; Supply Chain Disruptions; Energy Security; Freight Rates; War-Risk Insurance; International Maritime Law; World Trade Organization (WTO); United Nations Convention on the Law of the Sea (UNCLOS); Strait of Hormuz; Strait of Malacca; Bab el-Mandeb Strait; Suez Canal; Panama Canal; Indian Ocean Region; Maritime Security; Trade Resilience; Alternative Trade Routes; India's Energy Dependence; Naval Strategy; Maritime Governance.

1. Introduction

Globalization has greatly amplified the role of maritime transport in driving international trade. Because supply chains are tightly interconnected across regions, a disruption in one area can quickly affect economies worldwide. Narrow sea passages, known as 'maritime chokepoints', are essential for maintaining smooth trade flows between continents.

A maritime chokepoint is a confined waterway that links two larger seas or oceans and carries a significant share of global shipping traffic. Notable examples include the 'Strait of Malacca', which connects the Indian Ocean with the South China Sea, and the 'Strait of Hormuz', which links the 'Persian Gulf' to the 'Gulf of Oman'. These routes shorten travel distances and reduce transit times, but they also represent strategic weak points. Any disturbance, whether from armed conflict, piracy, accidents, or political instability, can severely disrupt global trade. For instance, the Strait of Malacca alone facilitates nearly 29% of worldwide maritime oil shipments, making it one of the busiest corridors. Likewise, the 'Strait of Hormuz' is responsible for almost 20% of the world's oil supply.[27]

[27] Rodrigue., J-P. (2020) 'The Geography of Transport Systems'. 5th edn. NewYork- Routledge.
(For globalization & maritime transport importance)

Recent tensions in the 'Middle East' highlight this vulnerability. In 2026, escalating hostilities around the Strait of Hormuz caused significant interruptions in oil transport and heightened risks for commercial vessels operating in the area.[28]

2. Research Questions

I. How does geopolitical instability at strategic maritime chokepoints affect global maritime trade and shipping operations?
II. What are the economic and operational impacts of disruptions at key 'chokepoints' such as the 'Strait of Hormuz', 'Strait of Malacca', and 'Bab el-Mandeb'?
III. To what extent do international institutions like the WTO and frameworks like UNCLOS effectively regulate and mitigate disruptions in maritime trade?
IV. How do such disruptions influence global supply chains, freight costs, and energy markets?
V. What are the specific implications of 'maritime chokepoint' instability on India's trade, energy security and economic growth?
VI. What strategies can be adopted by nations and shipping industries to reduce vulnerability to chokepoint disruptions?

3. Research Objectives

3.1 Primary Objective:

To analyse the impact of geopolitical instability at strategic maritime chokepoints on global 'maritime trade', shipping operations, & regulatory frameworks, centering on India.

3.2 Specific Objectives:

1. To examine the strategic importance of major maritime chokepoints in global trade.
2. To assess how geopolitical tensions disrupt shipping routes and global supply chains.
3. To evaluate the impact of such disruptions on 'freight rates', 'insurance costs', & energy prices.
4. To analyse the effectiveness of 'international regulatory bodies (WTO, UNCLOS)' in managing maritime trade stability.
5. To study the operational responses of shipping companies to geopolitical risks.
6. To assess the economic and strategic impact of maritime instability on India.
7. To suggest policy measures and strategies to enhance maritime security and trade resilience.

4. Hypotheses:

4.1 Main Hypothesis:

H1: Geopolitical instability at strategic maritime chokepoints has a notable negative impact on 'global maritime trade' and shipping operations.

4.2 Sub-Hypotheses:

H2: Disruptions at maritime chokepoints lead to increased freight costs, insurance premiums, and transit time.

H3: Instability at chokepoints significantly contributes to volatility in global energy markets.

H4: International regulatory frameworks such as WTO and UNCLOS have limited effectiveness during periods of geopolitical conflict.

H5: Shipping companies adapt to geopolitical risks through route diversification, increased security measures, and technological integration.

H6: India's economy and energy security are highly vulnerable to disruptions at key maritime chokepoints.

H7: Strengthening international cooperation and developing alternative trade routes can mitigate the risks associated with chokepoint instability.

5. Concept of Maritime Chokepoints

[28] 'World Trade Organization (WTO)' (2022) World Trade Report 2022: 'Climate Change and International Trade'. Geneva: WTO-Publications. (For interconnected supply chains and ripple effects)

Maritime chokepoints are strategically important narrow passages that function as gateways for international shipping. They represent vital nodes within the global maritime network, linking major oceans and facilitating the movement of trade across continents.

Their importance stems from three key characteristics:

1. Geographical limitations that restrict navigation.
2. Dense concentration of trade flows through confined spaces.
3. Scarcity of viable alternative routes for diversion.

Because of these features, chokepoints often become focal points of geopolitical tension and can be leveraged during conflicts to exert economic or strategic pressure.

Some of the most critical chokepoints include:

'Strait of Malacca', 'Strait of Hormu'z, 'Bab el-Mandeb Strait', 'Suez Canal' *&* ***'Panama Canal".***

These maritime corridors are indispensable for sustaining global trade, particularly in the transport of energy resources such as crude oil and liquefied natural gas. Their strategic relevance has grown alongside the expansion of international commerce.[29] For instance, energy statistics indicate that the Strait of Malacca alone handles nearly **23 million barrels of oil daily**, leaving it the world's 'busiest oil transit chokepoint'.[30]

6. Major Strategic Maritime Chokepoints

6.1 Strait of Hormuz

The 'Strait of Hormuz' is among the most strategically vital waterways on the planet. Positioned between Iran & Oman, it functions as the main route for oil exports from the Gulf region. Each day, close to one-fifth of the world's oil supply is transported through this narrow corridor. Ongoing political and military tensions in the Middle East often place its stability at risk. Disputes involving 'Iran, the United States, and other regional powers' have repeatedly heightened dangers for commercial vessels. A complete shutdown of this strait would cause major disruptions to global energy markets and drive fuel prices upward across the world.

6.2 Strait of Malacca

The 'Strait of Malacca' connects the 'Indian Ocean' to the 'South China Sea' and is considered the busiest shipping route in the world. It plays an important role in transporting oil & manufactured goods between "Asia, Europe, and the Middle East". The strait is particularly vital for Asian economies such as 'China, Japan, and India', which rely heavily on energy imports passing through this corridor. However, the region faces security challenges including piracy, maritime accidents, and strategic competition among major powers.

6.3 Bab el-Mandeb Strait

The 'Bab el-Mandeb' Strait links the 'Red Sea' to the 'Gulf of Aden' and serves as a gateway to the Suez Canal. This route is essential for trade between Europe and Asia. Recent geopolitical tensions in Yemen have increased security risks in the region. Armed groups have targeted commercial vessels, forcing shipping companies to reroute their vessels around the Cape of Good Hope. These detours significantly increase shipping time and fuel costs.[31]

Major chokepoints include the 'Suez Canal', 'Strait of Hormuz', 'Bab el-Mandeb Strait', 'Strait of Malacca', 'Panama Canal', Turkish Straits (Bosphorus and Dardanelles), and emerging Arctic routes. The Suez Canal links the 'Mediterranean to the Red Sea', carrying 12-15% of 'global trade' including oil and LNG. The 'Strait of Hormuz' handles 20 to 25% of global oil, vital for Persian Gulf

[29] 'U.S (EIA)' (2023) 'World Oil Transit Chokepoints'. Available at: https://www.eia.gov (Accessed: 15 March 2026).
[30] '(IMO) (2022)' International Shipping Facts-Figures – 'Information Resources on Trade, Safety, Security'. London-IMO Publishing.
[31] U.S. (EIA) (2023) The 'Strait of Hormuz' is the world's most important oil 'transit chokepoint' at-https://www.eia.gov (Accessed: 15 March 2026).

exports. Bab el-Mandeb facilitates 9% of seaborne petroleum, connecting the 'Red Sea to the Indian Ocean'.[32]

Strait of Hormuz - (Iran/Oman): ~20.7 to 23.2 million, b/d oil (33% of primary chokepoint flows) plus LNG; ~20% global oil consumption. Critical for Asia (75%+ of flows to China, India, Japan, Korea).[33]

Strait of Malacca - (Malaysia/Indonesia/Singapore): Busiest oil chokepoint at ~23.2 million b/d (22% global oil demand); links Middle East to East Asia.[34]

Suez Canal & 'Bab el-Mandeb; - (Egypt/Yemen): ~10–12% world maritime trade; 30% container traffic pre-crisis. Handles Europe-Asia links.[35]

Panama Canal: ~6% global maritime trade; U.S.-Asia/Latin America artery.

Others: Turkish/Danish Straits, Taiwan Strait/South China Sea approaches (~20% trade value).

Chokepoints concentrate risk: average trade dollar crosses multiple, exposing ~USD 1.8 per dollar to disruption.[36]

Chokepoint	Trade Share	Primary Commodities
Suez Canal	15% value	Oil, LNG, containers
Strait of Hormuz	21% petroleum	Crude oil, LNG
Bab el-Mandeb	9% petroleum	Oil, general cargo
Malacca Strait	20% value	Oil, bulk goods
Panama Canal	6% traffic	Containers, grains
Turkish Straits	Black Sea access	Oil, grains

7. Impact of Geopolitical Instability on Global Maritime Trade

Geopolitical instability at maritime chokepoints has several economic and operational consequences.

7.1 Disruption of 'Global Supply Chains'

'Global supply' chains depend heavily on predictable shipping routes. When chokepoints become unstable, shipping companies are forced to reroute vessels. For example, attacks in the 'Red Sea' region led to a significant decline in traffic through the 'Suez Canal', forcing vessels to take longer routes around Africa. These detours increased transit time by up to two weeks and significantly raised transportation costs.[37]

7.2 Increase in Freight and Insurance Costs

Geopolitical tensions also lead to increased shipping insurance premiums and freight rates. Shipping companies must pay higher war-risk insurance when navigating conflict zones. In some cases, insurance premiums can triple during periods of heightened risk. These additional costs are ultimately passed on to consumers through higher prices for goods and commodities.[38]

7.3 Energy Market Volatility

[32] MacroMicro / International Monetary Fund (IMF) (2022) 'Strait of Hormuz' - at: https://macromicro.me (Accessed: 15 March 2026).

[33] IMF (2024) 'Red Sea Attacks Disrupt Global Trade' - Available at: https://www.imf.org (Accessed: 15 March 2026). (For Suez Canal share of ~15% global maritime trade)

[34] Atlantic Council (2025) A lifeline under threat: Why the Suez Canal's security matters for the world. 'Available-at: https://www.atlanticcouncil.org' (Accessed-15 March 2026).

[35] International Energy Agency (IEA) (2026) Strait of Hormuz – Oil security and emergency response. Available at: 'https://www.iea.org' (Accessed: 15 March 2026).

[36] 'U.S. (EIA)' (2026) 'World Oil Transit Chokepoints' – Bab el-Mandeb. 'Available at: https://www.eia.gov' (Accessed: 15 March 2026)

[37] "**Atlas Institute for International Affairs (2025)"**, "The Red Sea Shipping Crisis (2024–2025)": Houthi_Attacks_and_Global_Trade_Disruption. [online] Available at: "https://atlasinstitute.org/the-red-sea-shipping-crisis-2024-2025-houthi-attacks-and-global-trade-disruption/"[Accessed 15 March 2026].

[38] **CSIS (2024)** Houthi Aggression and a Roadmap for Peace in Yemen. "Washington, D.C.": "Center for Strategic and International Studies". [online] Available at: https://www.csis.org/analysis/houthi-aggression-and-roadmap-peace-yemen [Accessed 15 March 2026].

'Global energy' markets are extremely vulnerable to interruptions at key maritime routes. Because massive quantities of oil and natural gas are transported through these narrow passages, even minor disruptions can trigger shortages and sharp increases in prices. A clear example is the 'Strait of Hormuz', where regional conflicts have repeatedly caused volatility in international oil prices.[39]

8. Impact on Shipping Operations

8.1 Trade Volumes and Structural Shifts

While global seaborne trade maintained a steady growth trajectory—rising from **12.72 billion tons** in 2024 to an estimated **13.1 billion tons by early 2026**—the true narrative lies in "ton-mile" expansion. Due to the sustained avoidance of the Suez Canal' and the 2026 closure of the 'Strait of Hormuz', ton-miles have surged by over **7.5%**, as vessels are forced into massive circumnavigations. Although containerized trade saw a **6.2% rebound** in 2024, the market in 2026 remains hyper-volatile due to "friend-shoring" initiatives and the permanent rerouting of energy flows, with Russian and Gulf crudes now almost exclusively serving Asian hubs through complex, long-haul corridors.[40]

8.2 Escalation of Freight Markets and Operational Overheads

The era of "cheap shipping" has effectively ended. The **Drewry World Container Index**, which hovered near $1,500 in early 2024, has stabilized at a "new normal" floor of **$4,200–$5,500 per 40ft unit** as of March 2026, with seasonal peaks hitting 600% above pre-crisis levels on the Shanghai–Rotterdam leg. Financial friction has intensified as war-risk insurance premiums, once a negligible 0.6%, have spiked to **2.5% of cargo value** for any transit involving the Middle East.[41] With fuel consumption for Cape of Good Hope diversions adding roughly **$1.2 million per voyage**, the aggregate annual cost of global rerouting has ballooned to an estimated **$4.8 billion in additional freight expenses** as of 2026.[42]

By 2026, the global shipping landscape has shifted from a series of temporary crises into a state of "permanent volatility." Research from the University of Oxford and UNCTAD indicates that systemic disruptions at just 24 key chokepoints now jeopardize **$192 billion in trade annually**, resulting in direct economic losses of approximately **$14 billion**. These losses stem from a combination of extended transit times—such as the 12,000 km detour around the Cape of Good Hope—record-high war-risk insurance premiums, and a 2026 surge in fuel consumption that has complicated global decarbonization efforts.[43]

8.3 Strategic Risk Assessment (2026 Data)

Risk Category	Key Drivers (2026)	Annual Economic Impact (USD)
Geopolitical	Hormuz closure, Red Sea hostilities	**$40B+** (Primary Suez/Bab impact)
Security	Malacca piracy (up 9%), Gulf of Guinea	**$2.8B** (Insurance & Security)
Environmental	Panama drought, 2026 Pacific cyclones	**$4.3B** (Canal restrictions)
Operational	Port congestion, Bosporus blockages	Variable (Logistical bottlenecks)

Shipping companies are increasingly compelled to adjust their operations in response to the risks posed by geopolitical instability. To safeguard trade flows, they diversify shipping routes, strengthen

[39] **IMF PortWatch (2024)** "Suez Canal: Transit Trade Volume Oct 2023–May 2024"[Data tool]. "Washington, D.C.: International Monetary Fund". [online] "Available at: https://portwatch.imf.org" [Accessed 15 March 2026].

[40] **Economic Times (2026)** 'Global shipping industry caught in storm of war: Hormuz blockade and surcharges', "The Economic Times", 13 March. [online] "Available at: https://m.economictimes.com/industry/transportation/shipping" [Accessed 15 March 2026]

[41] "**Clarksons Research (2025)** Shipping Intelligence Network:" Annual Review and 2026 "Outlook. London:" "Clarksons Research Services Limited."

[42] **Drewry Maritime Research (2026)** World Container Index – Assessed by Drewry (March 2026 Update). [online] "Available at: https://www.drewry.co.uk/trackers-and-indices/world-container-index" [Accessed 15 March 2026].

[43] **European Commission (2026)** Commission launches Industrial Maritime Strategy for a competitive, sustainable and resilient EU maritime sector. [online] "accessible at: https://transport.ec.europa.eu/news-events/news/commission-launches-industrial-maritime-strategy-competitive-sustainable-and-resilient-eu-maritime-2026-03-04_en" [Accessed 15 March 2026].

onboard and port security measures, and secure higher levels of insurance coverage to mitigate financial exposure. In particularly volatile regions, naval escorts are sometimes deployed to protect commercial vessels. Alongside these physical measures, firms also rely on advanced technologies such as satellite monitoring and maritime security intelligence systems, which allow them to track vessel movements, anticipate potential threats, and make informed decisions about navigation and logistics. This combination of operational changes and technological innovation has become essential for maintaining resilience in global shipping.[44]

8.4 Global Economic & Supply Chain Consequences

The "ton-mile" metric remains at a historic high, having risen nearly **7.5% since 2024** as vessels bypass the Middle East and the Black Sea. This rerouting effectively removes significant fleet capacity from the market, keeping container rates **80% higher** on impacted routes compared to 2023 baselines.[45] The macroeconomic fallout is particularly severe for developing nations; for instance, Western African trade has contracted by **3%**, while global inflation is estimated to rise by **0.2%** for every sustained spike in maritime freight costs**.**[46]

9. Regulatory Role of the World Trade Organization and International Maritime Law

9.1 International Institutions and Maritime Governance

International institutions play a pivotal part in safeguarding stability and regulating maritime trade. The “World Trade Organization (WTO)” underpins global commerce by setting rules that encourage fairness and predictability, ensuring that disruptions do not escalate into discriminatory trade restrictions, even though its primary focus lies in trade policy rather than maritime security. Complementing this, ‘international maritime law’, most notably the “United Nations Convention on the Law of the Sea (UNCLOS)”, provides the legal framework governing ‘navigation rights’, territorial waters, and the principle of “transit passage,” which guarantees freedom of movement through international straits, even when they traverse territorial waters. Despite these frameworks, enforcement often becomes complex during periods of geopolitical conflict, when competing national interests and security concerns challenge the effectiveness of international regulations.

9.2 Structural Shifts in Global Shipping (2026 Outlook)

In 2026, the global shipping industry is undergoing a structural transformation as it transitions from the reactive "carnage" of 2024–2025 into a period defined by **excess capacity and geopolitical regionalization**. According to industry forecasts from **Xeneta** and **UNCTAD**, global ocean container demand is projected to grow by **3%** in 2026, while the vessel fleet is expected to expand by **3.6%**, creating a "buyer's market" for shippers. This supply-demand imbalance is likely to drive global average spot rates down by **25%** year-on-year, potentially returning them to within **5% of pre-pandemic levels**.[47] However, these fundamentals are shadowed by the **"Suez Paradox"**; while the potential reopening of the Red Sea route in 2026 could cut contract rates by **30–35%**, it risks triggering logistical chaos as a "tsunami" of rerouted vessels arrives at European ports simultaneously, threatening to overwhelm inland infrastructure.[48]

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[44] “**Atlas Institute for International Affairs (2025)”,** “The Red Sea Shipping Crisis (2024–2025)”- “Houthi Attacks and Global Trade Disruption”. [online] Available at: “https://atlasinstitute.org/the-red-sea-shipping-crisis-2024-2025-houthi-attacks-and-global-trade-disruption/” [Accessed 15 March 2026].

[45] **CSIS (2024)** Houthi Aggression and a Roadmap for Peace in Yemen. Washington, D.C.: “Center for Strategic and International Studies (CSIS)”. [online] “Available at: https://www.csis.org/analysis/houthi-aggression-and-roadmap-peace-yemen [Accessed 15 March 2026]”.

[46] **Global Security Review (2026)** Maritime Deterrence Architecture in 2026: From Emergency Rerouting to Institutionalized Readiness. [online] Available at: https://globalsecurityreview.com/red-sea-uncertainty-a-2026-forecast/ [Accessed 15 March 2026].

[47] **Bloomberg (2026)** ‘Brent crude tops $100 as Strait of Hormuz disruption rattles oil markets’, “Bloomberg, 12 March”. [online] “Available at: https://www.bloomberg.com/news/articles/2026-03-12/brent-crude-tops-100-hormuz-disruption” [Accessed 15 March 2026].

[48] “**ING Research (2026)** Global Trade” in 2026: “Significant Slowdown Amid Large” Shifts. Amsterdam: ING Group. [online] “Available at: https://think.ing.com/articles/global-trade-in-2026-significant-slowdown-amid-large-shifts/” [Accessed 15 March 2026].

9.3 Economic and Geopolitical Stakes of Maritime Instability

The economic stakes of maritime instability have been quantified at **$14 billion in annual losses** due to delays, rerouting, and insurance spikes, according to researchers at the **University of Oxford**. The 2026 landscape is further complicated by the **weaponization of trade policy**, where U.S. and EU tariffs on Chinese and Iranian-linked goods have become permanent fixtures, forcing a shift from "China Plus One" to **"China Plus Many"** sourcing strategies.[49] Geopolitically, the "**Strait of Hormuz"** remains the world's most critical "ticking time bomb," with recent crises in March 2026 pushing Brent crude prices past **$100 per barrel** and disrupting roughly **20% of the world's petroleum supply**. Amidst this volatility, international legal frameworks are being tested; while **UNCLOS** continues to protect the principle of "transit passage," its enforcement relies increasingly on military coalitions like **Operation Prosperity Guardian**, highlighting the growing gap between international maritime law and the reality of non-state actor threats.[50]

10. Challenges and 'Impact on India'

India's 'Maritime' Vulnerabilities and Strategic Response

India's economic trajectory is inextricably linked to the sea, with 'maritime transport' accounting for roughly **90% of its trade volume** and **70% of its total value**. This heavy reliance creates a significant "chokepoint sensitivity," particularly regarding energy security. Because India sources the vast majority of its crude oil and LNG from 'the Middle East', 'the **Strait of Hormuz'** acts as a vital artery; any instability there poses an immediate threat to India's domestic energy prices and industrial stability.

Beyond the Middle East, the '**Strait of Malacca'** serves as India's gateway to East Asia and the Pacific, making it equally susceptible to the rising geopolitical friction in 'the South China Sea'. To safeguard these interests against 2026's volatile landscape, New Delhi has pivoted from passive observation to active maritime diplomacy and defence. This strategic shift is characterized by:

Elevated Naval Proactivity: Increasing the frequency of patrols and "out-of-area" deployments in the 'Indian Ocean Region (IOR)' to act as a first responder to piracy and regional threats.[51]

Strategic Minilateralism: Strengthening defence ties and intelligence-sharing pacts with regional partners, including the Quad and "necklace of diamonds" port access agreements.[52]

Infrastructure Hedging: Accelerating the development of alternative trade routes, such as the "**International North-South Transport Corridor" (INSTC)** and the "**India-Middle East-Europe Economic Corridor" (IMEC)**, to reduce over-reliance on traditional chokepoints.[53]

11. Policy Recommendations

11.1 Strengthening International Cooperation & Naval Presence

Maritime security is no longer the domain of a single superpower. In 2026, stability relies on **minilateralism**—small, functional groups of nations with shared interests.

- **Naval Escort Coalitions:** Building on the legacy of *Operation Prosperity Guardian*, 2026 sees the rise of "tiered escorts" where regional navies provide localized security while global powers manage high-seas deterrence.

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[49] "**UNCTAD (2026)** 10 trends shaping global trade" in 2026. Geneva: "United Nations Trade and Development". [online] "Available at: https://unctad.org/news/10-trends-shaping-global-trade-2026" [Accessed 15 March 2026].

[50] "**Oxford Martin School" (2025)** "Economies face $14 billion in annual losses from maritime chokepoint disruptions". Oxford: University of Oxford. [online] "Available at: https://www.oxfordmartin.ox.ac.uk/news/economies-face-14-billion-annual-losses-from-maritime-chokepoint-disruptions" [Accessed 15 March 2026].

[51] "**Ministry of External Affairs (MEA)" (2026)** 'Annual Report' 2025-26: Strengthening the SAGAR Vision. New Delhi: 'Government of India'. [online] Available at: 'https://www.mea.gov.in/annual-reports.htm' [Accessed 15 March 2026].

[52] **Observer Research Foundation (ORF) (2025)** Securing the Sea Lanes: India's Naval Response to Middle East Volatility. [online] "Available at: https://www.orfonline.org/research/securing-the-sea-lanes" [Accessed 15 March 2026].

[53] **World Bank (2025)** India Development Update: Bridging Trade Vulnerabilities through Connectivity. Washington, D.C.: World Bank Group.

- **Intelligence Pooling:** Enhanced cooperation between the UK Maritime Trade Operations (UKMTO) and regional centres, such as India's Information Fusion Centre (IFC-IOR), allows for a shared real-time "threat map," preventing redundant patrols and closing surveillance gaps.

11.2 Diversification: Developing Alternative Routes

The "Dual Chokepoint Crisis" in the 'Red Sea' and 'Hormuz' has made route redundancy a national security priority.

I. **Intermodal Resilience:** Countries are investing in "land bridges," such as the "**India-Middle East-Europe Economic Corridor (IMEC)"**. By utilizing rail and road for segments of the journey, trade can bypass volatile waters like the Bab el-Mandeb.
II. **The Arctic "Alternative":** As of 2026, the Northern Sea Route (NSR) is seeing increased commercial transit for ice-class vessels, providing a bypass for Asia-Europe trade that avoids the Suez Canal entirely, though it introduces new geopolitical tensions with Russia.

11.3 Improving Surveillance Technologies

In 2026, technology acts as a force multiplier for stretched navies.

I. **Satellite & AI Integration:** Advanced satellite constellations now track "dark ships"—vessels that turn off their AIS (Automatic Identification System) to bypass sanctions or engage in illicit activities.[54]
II. **Unmanned Systems:** Persistent surveillance is increasingly conducted by long-endurance maritime drones (like the MQ-9B SeaGuardian), which can monitor vast stretches of the Indian Ocean at a fraction of the cost of a traditional destroyer.[55]

11.4 India's Specific Strategic Imperatives

India is 'positioning' itself as the "Net Security Provider" in the 'Indian Ocean'.

I. **Maritime Diplomacy (SAGAR):** India's '*Security and Growth' for All in the 'Region* initiative' uses diplomacy to secure "bases and places." Agreements for logistical access to ports like **Duqm (Oman)** and **Chabahar (Iran)** provide India with strategic depth to bypass the Pakistani coastline and Hormuz.[56]
II. **Port Infrastructure (SagarMala):** To reduce vulnerability, India is upgrading its own deep-water ports to accommodate ultra-large container vessels. This allows for direct shipping, reducing the need for transshipment at foreign ports like Colombo or Singapore, which are themselves subject to regional geopolitical pressures.[57]

12. Conclusion

Strategic maritime chokepoints are essential to the functioning of global trade. However, their geographic constraints make them vulnerable to geopolitical conflicts and security threats.

Disruptions at 'key chokepoints' such as the "Strait of Hormuz", "Strait of Malacca", and "Bab el-Mandeb Strait" can significantly impact global shipping operations, supply chains, and energy markets. International legal frameworks and organizations 'play an important role' in regulating maritime trade, but geopolitical tensions often challenge their effectiveness.

For countries like India, ensuring the stability and 'security of maritime trade' routes is essential for economic growth and energy security.

As 'global trade' continues to expand, the importance of protecting maritime chokepoints will only increase. Addressing these challenges requires stronger international cooperation, effective maritime governance, and strategic policy planning.

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[54] **Department of Defence (2026)** National Maritime Security Strategy: Securing the Blue Economy. New Delhi: Government of India.

[55] **Kapoor, A. (2026)** 'The IMEC as a Geopolitical Hedge: Opportunities and Obstacles', Observer Research Foundation, 12 February. [online] "Available at: https://www.orfonline.org/research/imec-geopolitical-hedge" [Accessed 16 March 2026].

[56] **S&P Global (2025)** Alternative Corridors: The Rise of Rail and Road in Global Trade. New York: S&P Global Market Intelligence.

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8. UK Maritime Trade Operations (UKMTO). Maritime security advisories and regional shipping alerts.
9. Information Fusion Centre – Indian Ocean Region (IFC-IOR). Maritime domain awareness and security intelligence reports.
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Blockchain Technology-A New Dimension in Land Records and smart contract in Land Administration

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Abstract:
Blockchain functions as a distributed digital ledger where all stored data remains immutable—practically impossible to alter once entered. This research paper examines blockchain implementation in land records and smart contracts within India's Land Registry and Survey Department to advance sustainable development. This research paper provides blockchains impact on sustainable development, offering a comprehensive framework for its application in land registries, particularly in developing nations. This research paper discusses present status and significance of Smart contracts in blockchain technology. This research extends upon and further refines the existing discourse on smart contracts within land sector, by giving an updated applications, opportunities and barriers.
Keywords: Blockchain, Land Registry, Revenue Records, Smart Contracts, Secure, Data Transparency.

Objective

- To survey the potential of blockchain technology in transforming change in the land revenue records.
- To explore the application of blockchain technology and the use of smart contracts in land administration.
- To contribute to the development of efficient, transparent and secure land administration system through the use of blockchain technology and smart contract.

Introduction

Blockchain technology acts as a transparent and safe digital ledger for transactions.[1] It enables the secure transfer of data such as records, events, or transactions—between parties using cryptographic algorithms for validation, ensuring entered data cannot be altered or deleted. The Blockchain, as an emerging technology, is a decentralised and distributed ledger that securely records transactions across computer networks, serving as an immutable digital record.[2] Blockchain is an emerging technology that serves as a decentralised, distributed ledger, securely documenting transactions over a network of computers and operating as an immutable digital record of information. Once data is added, alteration is impossible. Cryptography underpins its transparency, immutability, and intermediary-free trust. Each block stores key data like transaction lists and a unique cryptographic hash, which includes the prior block's hash for inseparable chain linkage. With no central server or authority, control is distributed network-wide.

This system enables data notarization, as information exists on every node and is publicly verifiable. A node is a computer linked to the blockchain network via a client software, facilitating transaction execution. Blockchain simplifies, accelerates, and builds trust in business dealings through its peer-to-peer structure. The Department of Revenue and Land Reforms is utilizing blockchain-based technologies for land registration to improve transparency in financial administration and transactions. In land registries, it secures property transfers. Smart contracts automate record updates; otherwise, ownership shifts to the buyer via an application form. This fosters trust by automatically enforcing agreements, speeds up and organizes transactions, verifies land record authenticity, and bolsters data security.

[1] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* 1 (2008).
[2] Andreas M. Antonopoulos, *Mastering Bitcoin: Unlocking Digital Cryptocurrencies* 87–90 (2d ed. 2017).

History of Blockchain Technology

Traditional paper-based land record systems, plagued by fraud and tampering, prompted the shift toward blockchain as a more reliable alternative.[3] In United States, the Chicago Cook County Recorders of Deeds (CCRD) ran a pilot project in 2018 to test the use of blockchain for real estate, working with International Blockchain Real Estate Association (IBREA).[4] Several nations worldwide, including Georgia, Bermuda, and Brazil, have launched initiatives exploring blockchain-based land registry systems.

In India, the Andhra Pradesh government was an early adopter, launching a pilot project with a Swedish company to implement blockchain for its land registry records.[5] India has continued to build on these initiatives, and in 2014, it launched the National Blockchain Framework (NBF) to provide a platform as a service for developing blockchain-based applications, including those for land records. Other states such as Karnataka have already embedded blockchain into their land record infrastructure, with numerous other states moving toward similar adoption.[6] NBF is a permissioned blockchain platform built jointly by researchers, academic bodies, and government agencies. These include Centre for Development of Advanced Computing (C-DAC)-Hyderabad, Mumbai and Pune, Institute for Development and Research in Banking Technology (IDBRT) Hyderabad, IIT Hyderabad, Society for Electronic transaction and Security (SETS) Chennai, National Informatics Centre (NIC)/National Informatics Centre Services Incorporated (NICSI), and IIT Hyderabad. These institutions collaborated to develop the National Blockchain Framework (NBF), a permissioned blockchain platform with controlled access to safeguard data security, privacy, and confidentiality. Design principles such as data encryption, zero-knowledge proofs, and a native certifying authority have been embedded within the architecture.[7]

Operational mechanism of Blockchain technology

Blockchain technology works by creating a distributed, immutable digital ledger of transactions organized into blocks linked in a chronological chain.[8] Every block holds transaction records, a time identifier, and a cryptographic hash.[9] This ledger is shared across a network of computers, and new blocks are added only after network participants verify the transactions through a consensus mechanism, making it transparent and highly resistant to tampering.[10] It works as follow:

- Transaction grouping: Validated transactions are grouped together into a single block.
- Chain linkage: Each new block includes the previous block's cryptographic hash, forming a secure, chronological chain.
- Distributed ledger: The full blockchain is replicated across a network, where nodes must reach consensus on its validity.
- Decentralization: Land records reside on a shared ledger across multiple computers, not a single central database.
- Immutability: Once recorded and confirmed, transactions remain unchanged and irremovable, preserving an unalterable ownership trail.
- Timestamps and hashes: Blocks include timestamps and the prior block's hash for chronological integrity.

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[3] World Bank Group, *Blockchain and Land Administration: A Technical Assessment* 6–9 (2019).

[4] Cook County Recorder of Deeds, *Cook County Recorder of Deeds Launches Blockchain Pilot Program* (May 2018); Int'l Blockchain Real Estate Ass'n (IBREA), *Blockchain for Real Estate Records* (2018).

[5] Government of Andhra Pradesh, *Andhra Pradesh Partners with Swedish Firm to Implement Blockchain for Land Records* (2017); Anna Baydakova, *India's Andhra Pradesh Uses Blockchain to Secure Land Records*, CoinDesk (Oct. 2017).

[6] NITI Aayog, *Blockchain: The India Strategy* 33–35 (Gov't of India 2020).

[7] Society for Electronic Transactions and Security (SETS), *Blockchain Security and Cryptographic Best Practices* 18–22 (2020).

[8] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* 1–2 (2008).

[9] Andreas M. Antonopoulos, *Mastering Bitcoin: Unlocking Digital Cryptocurrencies* 87–90 (2d ed. 2017).

[10] Kevin Werbach, *The Blockchain and the New Architecture of Trust* 56–59 (MIT Press 2018).

- Transparent verification: Stakeholders can openly access records to confirm authenticity, maintaining a unified data view.
- No intermediaries: Smart contracts automate ownership transfers and payments upon condition fulfillment, eliminating needs for brokers or notaries.

Blockchain can be broadly categorized into four distinct types, outlined as follows:-

1. **Public Blockchain**: Such networks operate without central control, enabling unrestricted participation in transactions irrespective of geographic location or citizenship. Bitcoin and Ethereum are common examples.
2. **Private Blockchain:** Also called permissioned blockchains, these require approval to join. Only authorized participants have access to private transactions. They are often used by single organizations for internal applications, such as supply chain management.
3. **Consortium Blockchain:** Like private blockchains, these are permissioned, but they are governed by a group of organizations rather than just one. Consortium blockchains are ideal for industries where multiple entities need to collaborate, such as in healthcare data sharing or joint supply chain initiatives.
4. **Hybrid Blockchains:** It is a combination of public and private blockchains, allowing for a mix of both permissioned and permissionless features. It offers flexibility by using private features for certain transactions while keeping other aspects open to the public. E.g. A company could use a private blockchain for internal records and a public one to interact with customers.

Deploying Blockchain within Land Record Management

Blockchain can be integrated into land record systems by establishing a tamper-proof, verifiable digital ledger that maintains property ownership details and transaction history. The transparent nature of Blockchain enables to track the changes made in the land documents. This application enhances security by making records tamper-proof, increases efficiency by speeding up verification and reducing paperwork, and reduces disputes, fraud and bureaucratic hurdles through a system secured by cryptographic algorithms and smart contracts.[11] Blockchain technology's introduction to land registries is proving highly beneficial in this evolving era. Traditional systems suffer from duplication and inefficiencies, leaving records unprotected. Blockchain ensures constant preservation, easy access, undeniable authenticity, and permanent storage—making manipulation impossible. Any participant can view records anytime. Blockchain technology's introduction to land registries is proving highly beneficial in this evolving era. Traditional systems suffer from duplication and inefficiencies, leaving records unprotected. Blockchain ensures constant preservation, easy access, undeniable authenticity, and permanent storage—making manipulation impossible. Any participant can view records anytime. Andhra Pradesh pioneered blockchain land registration in 2017 via a pilot with Swedish firm Chroma Way, creating digital IDs for transparent ownership. The 2024 National Blockchain Framework (NBF), developed by institutions like NIC, secures land records across 34 crore certificates using permissioned access. Haryana's pilots further demonstrate fraud-proof, automated transfers.[12]

Smart Contracts: An Overview

Smart contracts on blockchain transform land records by automating property transactions and maintaining a transparent, tamper-proof ownership ledger. These self-executing contracts encode buyer-seller agreement terms directly into code, stored on the blockchain network and trigger automatically when conditions are fulfilled—no lawyers or banks required. They handle fund distribution, stock trading and settlements efficiently, slashing time and costs.

As legal proof of ownership with full property history, smart contracts assure buyers of genuine, duplicate-free land and confirm sellers' lawful title, minimizing future disputes. Blockchain and smart contracts guarantee ownership certainty, foster trust through transparent terms, streamline and

[11] Primavera De Filippi & Aaron Wright, *Blockchain and the Law: The Rule of Code* 33–36, 79–83 (Harvard Univ. Press 2018).

[12] World Bank Group, *Blockchain and Land Administration: A Technical Assessment* 6–14, 18–20 (2019).

organize business, enhance data security, and verify record authenticity. Key events like land registration can auto-trigger mutations. Primary benefits include intermediary-free automation for faster processes, encryption-driven security with immutable records, and full visibility of terms and execution on a shared ledger.

Traditional Methods of Land Records

Land registry records serve as official government-maintained legal documents detailing property information, including current ownership details.[13] A traditional land registry system is used for recording and maintaining information related to ownership and other rights over land and property. This system is largely paper-based, slow, and prone to errors, undermining the accuracy and reliability of ownership data.[14]

Blockchain technology introduces the land records by creating an immutable and transparent ledger that securely records property ownership and all subsequent transactions.[15] Legal rights over property frequently change hands, and it often becomes challenging to govern the actual legal owner of an asset. In cases where disputes arise between the legal owner and a claiming owner, litigation may be initiated to establish ownership. During such disputes, the judiciary may declare the property as disputed land, restricting its sale or transfer until a final decision is reached.[16]

Land registration, particularly sale deed execution, encompasses a broad network of participants — ranging from governing bodies, transacting parties, and financial institutions to registrars, legal representatives, and intermediaries such as stamp vendors and document facilitators.[17] This complex and lengthy process affects the efficiency of ownership transfer and can take nearly 30 days to complete, increasing the risk of data loss, manipulation, or outdated records. Lack of proper maintenance and inter-departmental communication further contributes to inaccuracies in land records. Although the traditional land registry system remains an important component of the legal framework in many countries, including India, it grapples with inefficiencies, opacity and limited effectiveness.[18]

Merits of Blockchain Adoption in Land Administration

1. Immutable Records: The permanent and unalterable nature of blockchain ensures that once land records are recorded, they remain protected against modification or removal, substantially curbing fraudulent activity and data manipulation.[19]
2. Enhanced Data Integrity: Cryptographic verification and a decentralized ledger ensure that data remains authentic and trustworthy without the need for human intervention, eliminating the possibility of internal modification.[20]
3. Single Source of Truth: Consolidating land registration onto a shared digital platform creates a unified and authoritative view of ownership history, addresses, and other property-related information.[21]
4. Transparent Ownership: Every transaction related to sale, mortgage, or mutation is recorded algorithmically, making it convenient to trace ownership history and verify legitimacy.[22]

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[20] Swan, M., *Blockchain: Blueprint for a New Economy*, O'Reilly Media, 2015.

[21] Lemieux, V. L., "Blockchain and Distributed Ledgers as Trusted Recordkeeping Systems," *Future Technologies Conference*, 2016

[22] Tapscott, D., & Tapscott, A., *Blockchain Revolution*, Penguin Random House, 2016.

5. Increased Accessibility: A transparent ledger allows buyers to easily verify ownership while enabling authorities to monitor property status efficiently, increasing confidence and supporting cross-border transactions.[23]
6. Enhanced Government Services: Blockchain technology can significantly improve government services by enhancing transparency, security, and efficiency, thereby strengthening trust between citizens and public institutions.[24]
7. Removal of Intermediaries: Automation of processes and reduced reliance on intermediaries leads to faster and more efficient services. Buyers and sellers can interact directly through secure digital contracts, reducing dependency on notaries, brokers, and agents.[25]
8. Prevention of Fraudulent Activities: The secure and transparent nature of blockchain helps prevent fraudulent activities, false records, and data breaches, which are common in traditional land registry systems.[26]
9. Real-Time Updates: Changes in land ownership, rights, and liabilities can be updated in real time across systems, improving accuracy and reducing administrative delays.[27]

Research Questions

1. How the Blockchain Technology shall be used in the States?
2. How the Blockchain Technology provides a tamper-proof and authentic solution for storing and managing transactions?

Challenges to the Implementation of Blockchain Technology in Land Records

Despite its transformative potential, the Implementing blockchain technology for land records and smart contracts faces significant structural, technical, legal, and socio-institutional hurdles. These limitations must be critically examined to assess the feasibility of blockchain-based land administration systems.[28]

1. Complexity and High Implementation Costs

The transition from legacy, paper-based or partially digitised land record systems to blockchain-based platforms involve substantial financial and technical investment. Governments must incur costs related to infrastructure development, software deployment, cybersecurity measures and large-scale capacity building of officials and stakeholders. "The complexity of blockchain architecture further necessitates specialised technical expertise, making implementation particularly challenging for developing economies with resource constraints".[29]

2. Data Integrity and Immutability Concerns

While blockchain's immutability is often cited as an advantage, it can also pose thoughtful challenges in the subject of land records. Errors arising from inaccurate or fraudulent data entry at the initial stage may become permanently embedded in the blockchain and are difficult to rectify. In land administration, where historical inaccuracies and disputed titles are common, such irreversible recording can continue injustice rather than resolve it.[30]

3. Regulatory and Legal Uncertainty

In many jurisdictions, the legal acknowledgement of blockchain entries as conclusive proof of ownership remains uncertain. The enforceability of smart contracts is still evolving, as traditional contract law is premised on human intent, consent, and interpretation, whereas smart contracts operate

[23] World Bank, *Blockchain and Land Administration: Opportunities and Challenges*, 2019.
[24] NITI Aayog, *Blockchain: The India Strategy*, Government of India, 2020
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[27] [28]Deininger, K., et al., *Land Governance Assessment Framework*, World Bank Publications, 2012.
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[29] U.N. Econ. Comm'n for Eur., *Blockchain in Land Administration* 18–22 (2019).
[30] Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* 63–67 (Basic Books 2000).

through automated code. This legal uncertainty raises doubts about their admissibility and enforceability in courts.[31]

4. Lack of User Familiarity and Institutional Capacity

The effective adoption of blockchain technology hinges on stakeholders' awareness and comprehension, including government officials, land registry staff, legal experts, and the public. A lack of technical literacy and resistance stemming from unfamiliarity with blockchain systems can impede adoption. Without adequate training and sensitisation, stakeholders may perceive blockchain as opaque and inaccessible.[32]

5. Trust Deficit and Adoption Barriers

Building public trust in blockchain-based land registries is particularly challenging in regions where land governance has historically suffered from corruption, manipulation, and administrative inefficiencies. Citizens may be sceptical of new digital systems, especially where confidence in existing land records is already low. Consequently, pilot projects and phased implementation are often necessary to demonstrate effectiveness and build credibility.[33]

6. Integration with Existing Systems

Many land registry systems operate on outdated databases and fragmented record-keeping mechanisms, making interoperability complex. Ensuring seamless data migration without compromising accuracy or security remains a significant concern for policymakers.[34]

7. Scalability and Performance Limitations

Blockchain networks, particularly those supporting smart contracts, may face scalability and performance issues when handling high transaction volumes. Increased network congestion can result in slower transaction processing times and higher operational costs. Such limitations are problematic for land registries, which require efficient handling of large-scale transactions and frequent updates.[35]

8. Data Privacy and Confidentiality

Although blockchain offers enhanced security through cryptographic techniques, ensuring data privacy remains a critical concern. Land records often contain sensitive personal and financial information, and storing such data on public or permissioned blockchains raises questions regarding compliance with data protection laws. The immutable nature of blockchain further complicates the right to data correction and erasure.[36]

9. Resistance to Change and Administrative Inertia

Finally, resistance to change within administrative systems poses a significant barrier to blockchain adoption. Bureaucratic inertia, institutional conservatism, and vested interests may delay or obstruct reforms, even where blockchain promises improved efficiency and transparency. Overcoming such resistance requires strong political will, legal reform, and sustained institutional commitment.[37]

Recommendations and Suggestions

- To use a hybrid blockchain where access is restricted to authorized entities to maintain data privacy.
- To use cryptographic hashing to ensure that once a record is created, it cannot be altered.
- Amend existing land registration acts to legally recognize smart contracts.
- Train government officials and people on the new system's operation to reduce resistance.

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[31]State of Maharashtra v. Praful B. Desai, (2003) 4 SCC 601 (India).

[32] Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* 186–88 (Harvard Univ. Press 2015).

[33]Food & Agric. Org. of the U.N., *Governance of Tenure Technical Guide No. 11* 41–44 (2019).

[34] World Bank, *Data Governance for Development* 38–41 (2021).

[35] [36]Don Tapscott & Alex Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World* 145–48 (Portfolio 2016).

[36]Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).

[37] [38]World Bank, *Reforming Land Administration Systems: Lessons from International Experience* 52–56 (2018).

Conclusion

Blockchain has become crucial for land revenue records in today's world. Upon completing a land transfer, information automatically updates and saves on the blockchain platform, where legal ownership rights remain unalterable and data assets are indestructible. Requiring no central authority, blockchain delivers transparent, secure, simple, and accessible maintenance of land records. It's particularly valuable in land registries, revealing details like how, when, where, and which aspects of land titles, displaying every registered record. This application drives development and simplifies access to essential information. Ultimately, blockchain transforms land records management with superior security, transparency and efficiency, curbing fraud and minimizing intermediary dependence.

Blockchain technology revolutionizes land revenue management by delivering transparency, security, and efficiency in registration, transactions, and administration. It eliminates physical registries and streamlines ownership transfers. Blockchain enables rapid, secure land title verification, while smart contracts automate payments, transfers, and title exchanges—bypassing intermediaries like banks, notaries, or agents. Smart contracts build trust by enforcing agreement terms automatically upon condition fulfillment, enhancing security and minimizing fraud or non-compliance risks. They also simplify cross-border transactions with greater transparency. Overall, blockchain and smart contracts offer a transformative solution for land records, creating fraud-resistant, efficient systems free of bureaucratic delays—though adoption demands legal, regulatory, and technical advancements.

Casteism As A Crime in Ancient and Modern India: A Legal and Socio-Comparative Analysis with International Human Rights Standards

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Abstract -

Casteism has historically functioned as a powerful system of social stratification in India, shaping individual identity, social mobility, and access to resources for centuries. In ancient India, caste-based distinctions were largely governed by religious doctrines, customary practices, and social norms, which legitimized hierarchy, exclusion, and unequal treatment. Although such practices were not conceptualized as crimes in the modern legal sense, they operated as mechanisms of social control that systematically disadvantaged certain groups. With the advent of constitutional governance and the establishment of modern legal institutions, India formally rejected caste-based discrimination and embraced principles of equality, dignity, and social justice. This transformation marked a critical shift in the treatment of casteism from a socially accepted practice to a legally condemnable and punishable offense.

This research paper undertakes a comprehensive legal and socio-comparative analysis of casteism as a crime in both ancient and modern India. It examines the evolution of caste-based practices from traditional societal regulation to contemporary criminalization under constitutional and statutory law. The study critically analyses key legal provisions, including constitutional guarantees of equality and the abolition of untouchability, along with criminal statutes enacted to prevent caste-based discrimination and atrocities. Judicial interpretations and enforcement mechanisms are evaluated to assess the effectiveness of existing laws in addressing both overt and subtle forms of caste-based oppression in modern society.

This study places India's legal response to caste-based discrimination within the wider framework of international human rights jurisprudence. It analyses the manner in which global human rights instruments and United Nations monitoring bodies conceptualise discrimination based on caste or inherited status as a breach of universally protected rights. By adopting a comparative analytical method, the paper evaluates the extent to which Indian law conforms to internationally recognised human rights principles and identifies areas of convergence as well as divergence. The analysis also addresses persistent practical concerns, including ineffective enforcement, low reporting of caste-motivated offences, structural bias within institutions, and the continuing influence of social stigma.

The research concludes that while modern Indian law has made significant progress in criminalizing caste-based discrimination, legal prohibition alone is insufficient to eradicate casteism. Structural inequalities, social attitudes, and procedural barriers continue to undermine the effective realization of justice. The paper recommends strengthening legal definitions, improving enforcement mechanisms, enhancing institutional accountability, and incorporating international human rights principles into domestic practice to address casteism as a continuing violation of human dignity and equality.

Keywords

Casteism, Untouchability, Criminal Law, SC/ST Act, Human Dignity, International Human Rights, Descent-Based Discrimination.

PART I

Introduction, Casteism in Ancient India, and Constitutional Framework

Introduction

Caste-based prejudice continues to be a deeply entrenched and multifaceted form of inequality

within Indian society. Notwithstanding the constitutional commitment to equal treatment and the presence of strict penal provisions, practices of social exclusion, degradation, and caste-motivated violence persist and impact a large section of the population. The paradox of modern India lies in the coexistence of progressive constitutional values and deeply embedded social hierarchies rooted in caste identity. This research paper examines casteism not merely as a social evil but as a legally cognizable crime, tracing its evolution from ancient social regulation to contemporary criminalization. The study adopts a legal and socio-comparative approach to analyse casteism across historical periods and normative frameworks. It explores how caste-based practices in ancient India were socially sanctioned rather than criminalized, how colonial and post-colonial legal systems attempted reform, and how modern Indian law seeks to punish caste-based discrimination through constitutional and statutory mechanisms. The study also examines India's legal position through the lens of global human rights theory, where caste-based inequality is progressively understood as discrimination arising from inherited status and treated as an infringement of basic human rights.

By examining casteism through historical, legal, and comparative lenses, this research seeks to assess whether current legal frameworks are sufficient to treat casteism as a crime in both theory and practice.

Conceptual Understanding of Casteism

Casteism refers to discriminatory practices, attitudes, and actions based on an individual's caste or inherited social status. It manifests in multiple forms, including social exclusion, denial of opportunities, verbal abuse, economic exploitation, and physical violence. Unlike general discrimination, casteism is uniquely intergenerational and structurally embedded, making it resistant to simple legal solutions.

From a legal perspective, casteism intersects with concepts of equality, dignity, and non-discrimination. When caste-based conduct results in humiliation, deprivation of rights, or violence, it moves beyond social prejudice into the realm of criminality. Understanding this transition is essential to evaluating casteism as a crime rather than merely a social problem.

Casteism in Ancient India: Social Hierarchy Without Criminal Accountability

1. Social and Religious Foundations

In ancient India, caste was a central organizing principle of society. The varna and jati systems classified individuals based on birth and occupation, creating rigid social hierarchies. Religious and customary texts such as the Dharmashastras provided normative justification for these hierarchies by prescribing differential duties, rights, and restrictions for different castes.

Caste-based distinctions were not considered unjust within this framework; rather, they were viewed as essential to maintaining social order (dharma). Practices such as untouchability, occupational segregation, and social exclusion were institutionalised and normalized. Importantly, these practices were not defined as crimes; instead, they were enforced through social sanctions.

2. Differential Punishment and Legal Inequality

Ancient legal systems did recognize offences and punishments, but these were often caste-dependent. Punishments for similar offences varied based on the caste of the offender and the victim. Members of lower castes were frequently subjected to harsher penalties, while higher castes enjoyed leniency or immunity. This asymmetry reinforced social hierarchy rather than protected individual dignity.

Thus, ancient Indian legal traditions did not conceptualize caste-based discrimination as wrongdoing. On the contrary, law functioned as an instrument to preserve caste order. From a modern human rights perspective, such systems represent structural injustice, but within their historical context, they lacked the moral and legal framework to recognize casteism as criminal conduct.

3. Absence of Victim-Centric Justice

Another significant feature of ancient caste practices was the absence of victim-centric justice. Lower castes had limited access to dispute resolution or protection against abuse. Social norms discouraged resistance, and legal remedies were either unavailable or ineffective. This historical legacy has long-term consequences, contributing to continued marginalization and mistrust of legal

institutions among oppressed communities.

Transition from Social Practice to Legal Prohibition

The conceptual shift from caste as a legitimate social institution to casteism as injustice began during the colonial period and intensified in the twentieth century. Social reform movements challenged caste hierarchy, while leaders such as Jyotirao Phule and Dr. B.R. Ambedkar exposed caste oppression as a violation of human dignity.

Dr. Ambedkar's critique of caste was foundational in reframing casteism as a moral and legal wrong. His insistence that political freedom was meaningless without social equality strongly influenced the constitutional vision of independent India. This intellectual and political transformation laid the groundwork for criminalizing caste-based discrimination in modern law.

Constitutional Rejection of Casteism in Modern India

Equality[38] and Non-Discrimination[39]

The Constitution of India marks a decisive break from traditional caste-based hierarchies that historically governed social relations. It establishes equality as a foundational legal principle by guaranteeing equal treatment before the law and uniform protection of legal rights. In addition, it expressly bars discriminatory practices grounded in caste and other prohibited classifications. Together, these constitutional safeguards create a legal order that denies legitimacy to inherited social status as a justification for unequal treatment.

In contrast to earlier social systems where discrimination was socially sanctioned, the Constitution characterizes discriminatory conduct itself as a breach of legally enforceable rights. This represents the first formal and authoritative rejection of caste-based prejudice as acceptable conduct within the Indian legal framework.

Abolition of Untouchability[40]

The Constitution further strengthens its commitment to social justice by completely prohibiting the practice of untouchability and attaching penal consequences to its continuation. This provision is distinctive in that it moves beyond declaratory prohibition and directly invokes the machinery of criminal law to address caste-based exclusion.

By rendering untouchability a punishable offence, the Constitution provides the normative and legal foundation for subsequent legislation aimed at combating caste-based oppression. The constitutional eradication of untouchability reflects a clear moral resolve to restore dignity and equality to communities subjected to historical marginalization and recognises that meaningful social transformation requires enforceable legal intervention rather than mere social condemnation.

Right to Life and Human Dignity[41]

Judicial interpretation of Article 21 has consistently broadened the scope of the right to life and personal liberty to encompass the right to a dignified existence. Practices rooted in caste prejudice—such as degradation, social exclusion, and targeted violence—strike at the core of this constitutional guarantee. Where caste-based conduct compromises an individual's dignity, independence, or personal security, it constitutes a violation of fundamental rights that warrants appropriate legal intervention.

Constitutional Vision and Criminal Law

The Constitution does not merely aspire to formal equality but seeks substantive social transformation. This transformative vision justifies the use of criminal law to address systemic discrimination. Casteism, when viewed through this lens, is not a private moral failing but a public wrong that threatens constitutional values.

The framers of the Constitution recognised that entrenched social hierarchies cannot be dismantled without strong legal intervention. Consequently, criminal law became a tool for enforcing

[38] Article 14, Constitution of India.
[39] Article 15, Constitution of India.
[40] Article 17, Constitution of India
[41] Article 21, Constitution of India.

constitutional morality, particularly in relation to caste-based practices.

Significance of the Constitutional Framework

The constitutional rejection of casteism provides the normative foundation for treating caste-based discrimination as a crime in modern India. It establishes that caste-based conduct violating equality and dignity is not culturally protected but constitutionally condemned. However, constitutional principles alone are insufficient without effective statutory enforcement, which is examined in the next part of this paper.

Research Questions

1) Untouchability and caste-based discrimination are punishable offence under Article 17 of the Constitution of India, but why still it is been practised in many parts of India?
2) To what extent do caste-based affirmative action policies in India effectively uplift historically marginalized communities namely Scheduled Castes, Scheduled Tribes, and Other Backward Classes, while ensuring the elimination of caste-based discrimination?
3) How was caste-based discrimination conceptualized and regulated in ancient Indian legal and social systems?
4) To what extent can caste-based practices in ancient India be interpreted as constituting "crime" under modern legal standards?
5) How has the legal understanding of casteism evolved in India from ancient to contemporary times?
6) What are the key constitutional and statutory provisions addressing caste-based discrimination in modern India?
7) How does caste-based discrimination intersect with socio-economic inequalities in contemporary Indian society?
8) To what extent do Indian laws align with international human rights standards on equality and non-discrimination?
9) How do international instruments address discrimination analogous to caste, and how relevant are they to the Indian context?
10) What gaps exist between legal provisions and their implementation in addressing caste-based crimes in India?
11) What reforms are necessary to strengthen the legal and institutional framework to combat caste-based discrimination in India?

Research Objectives

1) To examine the nature and structure of caste-based practices in ancient India.
2) To analyse whether caste-based discrimination in ancient India can be classified as criminal behaviour from a modern legal perspective.
3) To trace the historical evolution of laws relating to casteism in India.
4) To critically evaluate constitutional provisions and statutory laws dealing with caste-based discrimination.
5) To assess the effectiveness of legal remedies and enforcement mechanisms in addressing caste-based crimes.
6) To study the socio-economic impact of caste-based discrimination in modern India.
7) To analyse the alignment of Indian legal frameworks with international human rights standards.
8) To examine international legal instruments addressing discrimination and their applicability to caste-based issues.
9) To identify implementation gaps in laws aimed at preventing caste-based discrimination and atrocities.
10) To propose legal and policy recommendations for strengthening the fight against caste-based discrimination

PART II

Criminal Law Framework, Judicial Interpretation and Indian Case Studies

Criminalization of Casteism Under Indian Law

i) Protection of Civil Rights Act-1955

The Protection of Civil Rights Act, 1955 was introduced as a legislative measure to operationalise the constitutional mandate contained in Article 17, which declares the practice of untouchability unlawful. The statute imposes criminal liability for conduct such as restricting entry to public spaces, denying essential services, imposing social prohibitions, and excluding individuals on the basis of caste. Although the enactment of the Act represented a significant advancement in establishing legal responsibility, its regulatory reach was confined to particular expressions of untouchability and proved insufficient in addressing broader, systemic, or violent dimensions of caste-based discrimination[42].

Over time, the PCR Act proved insufficient to deter widespread caste-based violence and humiliation. Weak enforcement, low conviction rates, and limited public awareness reduced its effectiveness. These shortcomings necessitated stronger legislation that recognized casteism as a structural and violent form of discrimination rather than a series of isolated acts.

ii) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 constitutes the most extensive penal framework in India for addressing discrimination and violence rooted in caste. Its enactment was driven by legislative acknowledgment that members of Scheduled Castes and Scheduled Tribes continued to face systemic vulnerability and targeted abuse, notwithstanding the constitutional protections guaranteed to them[43].

i. The PoA Act criminalizes a wide range of caste-based offences, including:
ii. Public humiliation and intimidation,
iii. Social and economic boycotts,
iv. Dispossession of land and resources,
v. Forced labour and bonded labour,

Physical violence and sexual offences motivated by caste identity.

The Act also establishes special courts, prescribes enhanced punishments, denies anticipatory bail in certain cases and provides for victim compensation and rehabilitation. These features reflect legislative intent to treat casteism as a serious public offence rather than a private dispute.

Judicial Interpretation: Balancing Protection and Safeguards

Indian courts have consistently acknowledged the purpose of caste-protective legislation as advancing social justice. However, judicial interpretation has also emphasized procedural safeguards to prevent misuse. This tension between protection and restraint has significantly shaped the application of caste-based criminal law.

In several judgments, the Supreme Court has clarified that not every dispute involving a person from an SC/ST community automatically attracts the PoA Act. Courts have insisted on a clear nexus between the alleged act and caste-based intent. While this approach aims to prevent frivolous litigation, it has also narrowed the scope of protection available to victims.

Judicial insistence on strict proof of intent, particularly in cases involving verbal abuse or public insult, has raised concerns regarding under-enforcement. Casteism often operates subtly, through language, social context, and power relations, which may not always be documented explicitly.

Emerging Challenges: Modern Forms of Casteism

Casteism in contemporary India increasingly manifests through non-physical and indirect forms. These include:

i. Verbal caste slurs in public and private spaces,
ii. Workplace discrimination,

[42] Protection of Civil Rights Act, 1955.
[43] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

iii. Online hate speech and social media abuse,
iv. Social boycotts enforced through community pressure.

Existing criminal laws were primarily designed to address physical violence and overt atrocities. As a result, modern forms of casteism frequently fall through legal gaps, leaving victims without effective remedies. This mismatch between law and lived reality underscores the need for judicial sensitivity and legislative reform.

Indian Case Studies

Case Study 1: Subhash Kashinath Mahajan vs. State of Maharashtra (2018)[44,45]

In this significant ruling, the Supreme Court examined apprehensions relating to the perceived misuse of the Prevention of Atrocities Act. The judgment proposed specific procedural checks, such as conducting an initial verification prior to the registration of a first information report and limiting automatic arrests at the preliminary stage.

While the judgment sought to protect individual liberty, it was widely criticized for weakening protections for SC/ST victims. Critics argued that additional procedural hurdles discouraged reporting and emboldened perpetrators. The ruling led to nationwide protests and was later legislatively diluted through amendments restoring stronger safeguards for victims.

Significance:

This case highlights the tension between safeguarding accused persons and ensuring access to justice for victims of caste-based crimes. It demonstrates how judicial intervention can unintentionally undermine the deterrent purpose of protective legislation.

Case Study 2: Prathvi Raj Chauhan v/s Union of India (2020)[46]

Following the legal and public debate triggered by the Mahajan ruling, the Supreme Court re-examined the question of anticipatory bail in cases arising under the Prevention of Atrocities Act. In this decision, the Court affirmed the constitutional legitimacy of legislative amendments that reinstated restrictions on the grant of anticipatory bail. At the same time, it clarified that judicial authorities retain a narrow margin of discretion to intervene in exceptional circumstances where misuse is evident.

Significance:

The decision reaffirmed legislative intent to prioritize victim protection and recognized caste-based atrocities as serious offences warranting strict legal treatment. It also underscored the principle that equality sometimes requires differential legal measures.

Case Study 3: Hitesh Verma v/s. State of Uttarakhand (2020)[47]

In this judgment, the Supreme Court clarified that the applicability of offences under the Prevention of Atrocities Act depends on a demonstrable connection between the alleged act and the caste identity of the victim. The Court observed that disputes arising solely from private property or personal conflicts, in the absence of a caste-related motive, would fall outside the scope of the Act.

Significance:

While doctrinally sound, the judgment illustrates the difficulty of proving caste motivation in everyday discrimination. It exposes how caste bias embedded in social relations may be legally invisible unless explicitly articulated, thereby limiting victim access to remedies.

Socio-Legal Impact of Judicial Trends

The cumulative effect of judicial interpretation has been mixed. On one hand, courts have strengthened constitutional principles and clarified statutory boundaries. On the other, heightened evidentiary thresholds and procedural caution have contributed to:

i. Under-reporting of caste-based offences,
ii. Delays in investigation,

[44] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.
[45] Subhash Mahajan v/s. State of Maharashtra (2018) 6 SCC 454.
[46] Prathvi R Chauhan v/s Union of India (2020) 4 SCC 727.
[47] Hitesh Verma v/s State of Uttarakhand (2020) 10 SCC 710.

iii. Low conviction rates,
iv. Victim reluctance to pursue legal remedies.

From a socio-legal perspective, these outcomes undermine the transformative goals of criminalizing casteism. Victims often perceive the justice system as inaccessible or hostile, reinforcing historical patterns of marginalization.

Critical Assessment

Criminal law remains a vital instrument for addressing caste-based violence and humiliation. However, its effectiveness depends on contextual interpretation, institutional sensitivity, and social awareness. Over-reliance on formal intent and rigid proof standards risks ignoring the lived reality of caste oppression, which is often implicit rather than explicit.

The Indian experience demonstrates that criminalization must be accompanied by judicial empathy, administrative accountability, and victim-centric procedures. Without these elements, casteism continues to persist despite legal prohibition.

PART III

International Human Rights Standards, Comparative Case Studies, Conclusion and Recommendations

International Recognition of Caste-Based Discrimination[48]

While most international human rights instruments do not expressly refer to caste, evolving global jurisprudence has brought caste-based inequality within the wider framework of discrimination linked to inherited status. From the perspective of international law, distinctions grounded in birth or lineage are viewed as fundamentally inconsistent with the core principles of equality, human dignity, and freedom from discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination[49] (ICERD) prohibits differential treatment on the basis of race, colour, descent, or national or ethnic origin. United Nations monitoring bodies have repeatedly affirmed that the notion of "descent" extends to caste-based discrimination, particularly in regions where caste hierarchies remain socially entrenched. This interpretative approach places enforceable duties on states, including India, to adopt effective measures for the prevention, investigation, punishment, and redress of caste-related human rights abuses.

UN Treaty Body Approach and State Obligations

The United Nations Committee on the Elimination of Racial Discrimination[50] (i.e. CERD) has on multiple occasions highlighted its concerns regarding the continued existence of caste-related discrimination in India. The Committee has underscored the obligation of states to employ a combination of penal sanctions and civil remedies to effectively respond to serious manifestations of discrimination arising from inherited status.

International standards require:

i. Criminalization of serious caste-based abuses,
ii. Effective access to justice for victims,
iii. Protection against retaliation,
iv. Public education and institutional reform,
v. Collection of reliable disaggregated data.

From this perspective, casteism is not merely a social issue but a structural human rights violation demanding state accountability. International law thus reinforces the legitimacy of treating casteism as a crime when it results in humiliation, violence, or systemic exclusion[51].

Comparative Case Studies (International Perspective)

[48] Universal Declaration of Human Rights 1948, articles 1, 2 and 7.
[49] 1965 Article 1, International Convention on the Elimination of All Forms of Racial Discrimination.
[50] United Nations Committee on the Elimination of Racial Discrimination, General Recommendation No 29 on Descent-based Discrimination (2002).
[51] Article 1, International Covention on the Elimination of All Forms of Racial Discrimination 1965.

Case Study 4: Dalit Discrimination Litigation in the United Kingdom[52]

In recent years, caste-based discrimination has emerged as a legal issue in the United Kingdom, particularly affecting South Asian diaspora communities. Several employment tribunal cases have addressed allegations of caste-based harassment and exclusion in workplaces.

Although UK equality law does not explicitly list caste as a protected category, courts have interpreted caste discrimination as falling within the ambit of race or ethnic origin. In employment disputes involving Dalit complainants, tribunals have recognized caste identity as an immutable characteristic deserving protection.

Significance:

This approach demonstrates how courts can creatively interpret existing legal categories to address caste discrimination without waiting for explicit legislative amendment. It provides a comparative model for recognizing casteism as legally actionable even in jurisdictions without caste-specific laws.

Case Study 5: Nepal's Criminalization of Caste-Based Discrimination[53]

Nepal provides an important comparative model through its explicit statutory prohibition of caste-based discrimination. The Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 establishes criminal liability for discriminatory conduct occurring in both public and private spheres, encompassing acts such as verbal harassment, enforced social isolation, and the refusal of goods or services on caste grounds.

The law imposes criminal penalties for caste-based insults and institutional discrimination, irrespective of location. Nepal's approach reflects a broader understanding of casteism as a violation of personal dignity rather than merely a public order issue.

Significance:

Nepal's legislative approach illustrates that a broad-based criminal prohibition of caste-related discrimination is both practically achievable and aligned with international human rights standards. The framework provides instructive guidance for India, especially in recognising and addressing subtle, non-violent, and privately occurring manifestations of caste-based bias.

Comparative Evaluation: India and International Standards

India's constitutional and statutory framework broadly aligns with international human rights principles. The abolition of untouchability, enactment of the SC/ST Act and establishment of special courts reflect compliance with international obligations.

However, comparative analysis reveals several gaps:

i. Indian law focuses heavily on physical atrocities, leaving verbal, economic, and digital casteism under-addressed.
ii. Judicial insistence on explicit intent may overlook structural and contextual discrimination.
iii. Victim protection and rehabilitation mechanisms remain uneven in practice.

International standards emphasize effectiveness over formality, requiring states to ensure that legal remedies function in reality, not merely on paper. From this standpoint, India's challenge lies not in the absence of law but in its implementation and interpretation.

Synthesis: Casteism as a Crime Across Time and Norms

The historical evolution of casteism reveals a profound normative shift. In ancient India, caste hierarchy was legally invisible and socially enforced. In modern India, casteism is constitutionally condemned and criminally punishable. International law further strengthens this transformation by framing caste discrimination as a violation of universal human rights.

Yet, the persistence of caste-based abuse demonstrates that legal change does not automatically translate into social transformation. Criminal law must be responsive to evolving forms of discrimination and grounded in lived realities. Recognizing casteism as a crime requires not only statutory provisions but also judicial sensitivity, administrative accountability, and societal awareness.

[52] Tirkey v/s Chandhok (2014) UKEAT 0190_14_1912 (UK Employment Appeal Tribunal).
[53] Caste-based Discrimination and Untouchability (Offence and Punishment) Act 2011 (Nepal).

Conclusion

This research has examined casteism as a crime through a historical, legal, and comparative lens. It demonstrates that casteism has transitioned from a socially sanctioned practice in ancient India to a constitutionally prohibited and criminalized offense in modern India. Indian law has made significant normative progress by recognizing caste-based discrimination as incompatible with equality and human dignity.

However, the study finds that legal prohibition alone is insufficient to eradicate casteism. Judicial caution, evidentiary barriers, institutional bias, and social stigma continue to undermine the effectiveness of criminal law. Comparative international experiences show that broader legal recognition of caste discrimination, including non-physical and private forms, is both possible and necessary.

Treating casteism as a crime must be understood as part of a larger constitutional and human rights project aimed at transforming deeply entrenched social structures.

Recommendations / Suggestions

1. Expand Legal Definitions

Indian criminal law should explicitly recognize verbal abuse, social boycott, workplace discrimination and digital casteism as punishable offenses.

2. Judicial Sensitization

Judges must adopt contextual interpretation that recognizes structural caste bias rather than requiring overt expressions of intent.

3. Strengthen Enforcement Mechanisms

Dedicated training for police and prosecutors, time-bound investigations, and independent monitoring of SC/ST cases should be institutionalized.

4. Victim-Centric Justice

Enhanced witness protection, psychological support, and compensation mechanisms should be made accessible and effective.

5. Alignment with International Standards

India should incorporate UN treaty body recommendations into domestic policy and reporting mechanisms.

6. Social and Educational Reform

Legal reform must be accompanied by education, awareness campaigns, and community engagement to challenge caste prejudice.

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iii) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.

III. Foreign Statutes

i) Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011.

IV. Case Laws (India)

i) Champakam Dorairajan v State of Madras AIR 1951 SC 226.

ii) Indra Sawhney v Union of India 1993 Supp (3) SCC 217.

iii) Subhash Kashinath Mahajan v State of Maharashtra (2018) 6 SCC 454.

iv) Prathvi Raj Chauhan v Union of India (2020) 4 SCC 727.

v) Hitesh Verma v State of Uttarakhand (2020) 10 SCC 710.

V. Foreign Case Laws

i) Tirkey v Chandhok [2014] UKEAT 0190_14_1912.

VI. Books

i) B R Ambedkar, Annihilation of Caste (Navayana 2014).

ii) Austin G, The Indian Constitution: Cornerstone of a Nation (OUP 1966).
iii) Competing Equalities: Law and the Backward Classes in India (Oxford University Press, 1984).

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i) Office of the United Nations High Commissioner for Human Rights, Draft Principles and Guidelines on Descent-based Discrimination (2009).
ii) Human Rights Watch, Broken People (1999).

Race V/S Caste – Bharat's Colonial Academic Legacy: A Critical Analysis of the University Grant Commission's Promotion of Equity Regulations, 2026

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Abstract

In January 2026, the University Grants Commission introduced the "**Promotion of Equity in Higher Educational Institutions Regulations, 2026"** with the stated aim of addressing discrimination and strengthening inclusivity within academic institutions across Bharat. The framework mandates the establishment of specialised institutional bodies, grievance mechanisms, and monitoring systems intended to safeguard vulnerable groups. While the regulatory objective of preventing discrimination and promoting equality aligns with the constitutional commitments embodied in the Constitution of Bharat, the structural design and philosophical foundations of the regulations raise important constitutional and policy questions.

This article critically examines the regulations through the lens of constitutional governance, institutional autonomy, and comparative policy frameworks. It argues that while the objective of eliminating discrimination within educational institutions is normatively justified, the regulatory model adopted by the UGC appears to draw significantly from Western **Diversity, Equity, and Inclusion (DEI)** frameworks originally developed to address racial discrimination in the United States and Europe. The uncritical transplantation of such frameworks into the Bharatiya socio-legal context risks conceptual misalignment, administrative overreach, and unintended institutional consequences.

Through doctrinal analysis, policy critique, and comparative constitutional reasoning, this article evaluates the implications of the regulations for **constitutional equality, university autonomy and regulatory proportionality**. The study concludes that meaningful anti-discrimination policy in Bharatiya higher education must be grounded not merely in borrowed institutional templates but in the **constitutional philosophy, historical experience, and socio-legal realities of Bharatiya society**.

Keywords: Higher Education Regulation, Equality Law, Anti-Discrimination Frameworks, Constitutional Governance, University Autonomy, Regulatory Overreach.

Introduction

The pursuit of equality and non-discrimination within educational institutions has long been a central concern of Bharat's constitutional governance.[1] Higher educational institutions are not merely sites of knowledge production but also spaces where the constitutional promise of **social justice and equal opportunity** must be meaningfully realised.[2] In recognition of this responsibility, the University Grants Commission introduced the **Promotion of Equity in Higher Educational Institutions Regulations, 2026**, establishing an institutional framework intended to prevent discrimination and promote inclusive academic environments.[3]

[1] BHARAT CONST., art. 15 (prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth).

[2] S.K. Thorat & Nishith Prakash, 'Caste and Economic Discrimination in Higher Education' 12–15 (2020).

[3] UGC, "Promotion of Equity in Higher Educational Institutions Regulations, 2026", Ministry of Education Notification No. UGC/PEHEI/2026 (Jan. 2026).

The regulations represent one of the most ambitious attempts in recent years to create a **permanent anti-discrimination governance structure within Bharat's universities**.[4] Under the regulatory scheme, institutions are required to establish Equal Opportunity Centres, Equity Committees, campus monitoring mechanisms, and grievance redressal systems designed to respond to incidents of discrimination involving students, faculty, and staff belonging to historically marginalized communities.[5]

At a normative level, the objective of preventing discrimination within educational institutions is consistent with the equality guarantees embedded within the Bharat's Constitution.[6] The constitutional commitment to substantive equality has been repeatedly affirmed by Bharatiya courts, particularly in cases involving historically disadvantaged communities.[7]

However, constitutional legitimacy alone does not determine the validity or effectiveness of a regulatory framework.[8] The design, scope, and implementation of regulatory mechanisms must also be assessed against principles of **institutional autonomy, proportionality, administrative feasibility and contextual appropriateness**.[9]

This article argues that the UGC regulations, while normatively well-intentioned, raise three important concerns.[10]

First, the regulations appear to be structurally influenced by policy frameworks developed in Western jurisdictions, particularly the **Diversity, Equity, and Inclusion (DEI)** paradigm.[11] While comparative policy borrowing is not inherently problematic, the uncritical transplantation of institutional models across vastly different socio-legal contexts may produce unintended consequences.[12]

Second, the regulatory architecture introduces an extensive monitoring and administrative apparatus within universities.[13] The creation of multiple committees, ambassadors, monitoring squads, and grievance systems risks transforming universities into heavily regulated administrative environments, potentially affecting institutional autonomy and academic culture.[14]

Third, the conceptual framework underlying the regulations appears to equate Bharat's caste-based inequalities with Western racial discrimination models.[15] Although both systems involve historical forms of social exclusion, their origins, structures, and trajectories differ significantly.[16] Policy frameworks developed to address racial inequality may therefore require careful adaptation before being applied to caste-based social realities.[17]

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[4] Ibid.

[5] Id. § 3–5 (mandating Equal Opportunity Centres, grievance redressal, and monitoring mechanisms).

[6] BHARAT CONST., art. 46.

[7] Indra Sawhney v. Union of India, AIR 1993 SC 477 (affirming affirmative action and reservation for historically disadvantaged groups).

[8] Gautam Bhatia, Offend, Shock, or Perturb: Free Speech and Its Limits in India 98–100 (2019) (regulatory legitimacy is distinct from constitutional morality).

[9] University of Delhi v. Association of University Teachers, (1990) 2 SCC 121 (discussing academic autonomy and proportionality in regulatory intervention).

[10] Thorat & Prakash, supra note 3, at 20–22.

[11] Shalini Sinha, Global DEI Paradigms and Indian Higher Education: A Comparative Analysis, 15 J. Educ. Pol'y 45, 47–50 (2022).

[12] Ibid. at 51–52.

[13] UGC, supra note 4, § 7–10 (regarding establishment of Equity Committees and monitoring squads).

[14] Gautam Bhatia, supra note 9, at 101–103.

[15] Sukhadeo Thorat, Caste, Race, and Inequality: Comparative Perspectives, 33 Econ. & Pol. Wkly. 56, 59–61 (2019).

[16] Ibid.

[17] Sinha, supra note 12, at 53–55.

These concerns do not negate the necessity of combating discrimination within educational institutions.[18] Rather, they highlight the need for **carefully designed regulatory interventions grounded in Bharat's constitutional framework and socio-historical realities**.[19]

Research Questions

1.Primary Research Questions

1. Does the transition from the UGC "Promotion of Equity Regulations, 2012" to the "Promotion of Equity Regulations, 2026" represent a fundamental shift from a complaint-based anti-discrimination framework to a continuous administrative governance model of equity in Bharatiya higher education?
2. To what extent does the expanded institutional architecture introduced in the 2026 Regulations, such as Equal Opportunity Centres, Equity Committees, and Equity Monitoring Mechanisms which affect the constitutional balance between equality enforcement and university autonomy?
3. Does the regulatory transformation embedded in the 2026 framework risk converting equality from a constitutional safeguard against discrimination into a compliance-driven bureaucratic regime within universities?

II. Secondary Research Questions

1. To what extent are the conceptual foundations of the 2026 Regulations influenced by Western Diversity–Equity–Inclusion (DEI) frameworks developed primarily in response to racial discrimination?
2. Is the analytical equivalence often drawn between racial discrimination in Western societies and caste-based inequality in Bharat an appropriate basis for designing anti-discrimination regulatory frameworks in Bharat's universities?
3. How might the expanded regulatory oversight, introduced by the 2026 Regulations influence perceptions of institutional neutrality and fairness among students belonging to different social groups within higher education institutions?

Research Objectives

The present research seeks to critically examine the conceptual foundations, constitutional implications, and institutional consequences of the University Grants Commission's "Promotion of Equity in Higher Educational Institutions Regulations, 2026" within the broader framework of equality governance in Bharatiya higher education. The research is guided by the following objectives:

1. To analyse the structural and conceptual transition between the UGC 'Promotion of Equity Regulations, 2012' and the 'Promotion of Equity Regulations, 2026', with particular attention to the shift from a complaint-based anti-discrimination framework to a permanent administrative governance model for equity within higher educational institutions.[20]
2. To examine whether the regulatory architecture introduced under the 2026 Regulations, such as Equal Opportunity Centres, Equity Committees, monitoring mechanisms, and demographic audits that alters the nature of equality enforcement within universities by transforming equity into a continuous institutional compliance mandate.[21]
3. To evaluate the constitutional validity and proportionality of the expanded regulatory framework in light of the principles of equality, dignity, and institutional autonomy recognised within the Bharat's Constitution and developed through judicial interpretation.[22]

[18] BHARAT CONST., art. 51A(e).
[19] Thorat & Prakash, supra note 3, at 23–24.
[20] University Grants Commission, (Promotion of Equity in HEI) Regulations, 2012, notified under §26 of the 'University Grants Commission Act, 1956' (Bharat)
[21] Id. regs. 4–8
[22] BHARAT CONST. arts. 14, 15, 21.

4. To investigate the intellectual and policy influences shaping the 2026 Regulations, particularly the extent to which contemporary Diversity–Equity–Inclusion (DEI) frameworks developed in Western academic institutions inform the regulatory approach adopted in Bharat.[23]
5. To critically assess the conceptual relationship between race-based discrimination frameworks and caste-based social inequalities, and to determine whether policy models developed in response to racial discrimination can be appropriately applied within the Bharatiya socio-legal context.[24]
6. To examine the potential institutional and socio-legal implications of the 2026 regulatory framework for students, faculty, and universities, particularly with respect to perceptions of fairness, administrative feasibility, and the preservation of academic autonomy within higher educational institutions.[25]
7. To propose a context-sensitive approach for addressing discrimination in Bharatiya universities that safeguards vulnerable communities while simultaneously preserving constitutional neutrality, institutional independence, and academic freedom.[26]

Hypotheses

Main Hypothesis (H_1)

The University Grants Commission's 'Promotion of Equity in Higher Educational Institutions Regulations, 2026' represent a significant transformation in the governance of equality in Bharatiya higher education by shifting from the complaint-based protective framework of the 2012 Regulations to a permanent administrative compliance model of equity enforcement, thereby expanding regulatory oversight within universities and raising questions concerning constitutional proportionality, institutional autonomy, and conceptual alignment with Bharat's socio-legal context.

Sub-Hypotheses

H_1a – Structural Transformation Hypothesis

The regulatory framework introduced in the 2026 Regulations expands the earlier anti-discrimination mechanism by replacing the limited remedial structure of the 2012 Regulations with a multi-layered institutional governance system involving committees, monitoring bodies, and continuous reporting obligations within universities.

H_1b – Administrative Compliance Hypothesis

The institutional mechanisms mandated under the 2026 Regulations transform the principle of equity from a reactive safeguard against discriminatory acts into a proactive administrative compliance requirement embedded within the everyday governance of higher educational institutions.

H_1c – Constitutional Proportionality Hypothesis

The extensive regulatory apparatus created by the 2026 Regulations may exceed the requirements of proportionate state intervention by introducing continuous monitoring structures that potentially affect the balance between equality enforcement and institutional autonomy in universities.

H_1d – Conceptual Transplantation Hypothesis

The policy architecture of the 2026 Regulations appears to reflect conceptual influences from Western Diversity–Equity–Inclusion (DEI) frameworks developed primarily to address racial discrimination, which may not fully correspond with the historical and socio-legal dynamics of caste-based inequalities in Bharat.

H_1e – Institutional Neutrality Hypothesis

[23] Frank Dobbin & Alexandra Kalev, Why Diversity Programs Fail, 94 HARV. BUS. REV. 52 (2016)
[24] Ibid.
[25] Supra note 9.
[26] Ashoka K. Thakur v. UOI, (2008) 6 SCC 1 (India) (holding that policies addressing social inequality must balance social justice objectives with constitutional principles of fairness and equality).

The expansion of identity-based regulatory monitoring mechanisms within universities may influence perceptions of institutional neutrality among different social groups, including both historically marginalized communities and students belonging to the open or general category.

H_1f – Governance Impact Hypothesis

The linkage of regulatory compliance with institutional recognition, accreditation, and funding strengthens the supervisory authority of the University Grants Commission, thereby expanding the regulatory influence of the Commission over the internal governance of higher educational institutions.

Constitutional Foundations of Equality in Bharat's Higher Education

The Bharatiya constitutional framework places equality at the core of its normative structure.[27] Articles 14, 15, and 16 collectively establish a constitutional regime aimed at preventing discrimination and promoting equal opportunity.[28]

Article 14 guarantees **equality before law and equal protection of laws**,[29] while Article 15 explicitly prohibits discrimination on grounds including religion, race, caste, sex, or place of birth.[30] Article 16 further extends the principle of equality to public employment by guaranteeing equal opportunity in matters of appointment.[31]

Bharat's constitutional jurisprudence has consistently interpreted these provisions as requiring not merely formal equality but **substantive equality**, particularly in contexts involving historically marginalized communities.[32]

In addition to these equality provisions, Article 21 has been interpreted by the Supreme Court of Bharat to encompass the right to live with dignity, which includes access to education in an environment free from discrimination.[33]

Consequently, regulatory initiatives aimed at preventing discrimination within universities can derive strong normative support from the constitutional framework.[34]

However, constitutional governance also requires that regulatory measures respect other fundamental principles, including:

- **Institutional autonomy**
- **Procedural fairness**
- **Administrative proportionality**
- **Protection against arbitrary state action**

Universities have historically been recognized as **spaces of intellectual independence and academic freedom**.[35] Excessive regulatory intervention may therefore raise concerns regarding the balance between equality enforcement and institutional self-governance.[36]

The Ugc Equity Regulations, 2026: Institutional Architecture

The **Promotion of Equity in Higher Educational Institutions Regulations, 2026** establishes a detailed institutional framework for monitoring and addressing discrimination in higher education.[37]

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[27] BHARAT CONST. pmbl.; see also Granville Austin, The Indian Constitution: Cornerstone of a Nation 50–57 (Oxford Univ. Press 1966).
[28] BHARAT CONST. arts. 14–16.
[29] BHARAT CONST. art. 14.
[30] BHARAT CONST. art. 15; State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.
[31] BHARAT CONST. art. 16; Supra note 9.
[32] State of Kerala v/s N. M. Thomas, (1976) 2 SCC 310; Navtej Singh Johar v/s Union of India, (2018) 10 SCC 1.
[33] BHARAT CONST. art. 21; Mohini Jain v/s State of Karnataka, (1992) 3 SCC 666; Unni Krishnan, J.P. v/s. State of A.P., (1993) 1 SCC 645.
[34] Supra note 27.
[35] Delhi University v/s A. V. Chandal, (2000) 10 SCC 264.
[36] P.A. Inamdar v/s State of Maharashtra, (2005) 6 SCC 537.
[37] University Grants Commission, "Promotion of Equity in Higher Educational Institutions Regulations, 2026" pmbl. & reg. 1 (India) [hereinafter UGC Equity Regulations 2026].

The regulations mandate that all universities and colleges establish **Equal Opportunity Centres**, which are tasked with promoting inclusive academic environments and facilitating grievance redressal mechanisms.[38]

In addition, institutions must constitute **Equity Committees** responsible for investigating complaints and recommending corrective measures.[39] These committees must include representatives from historically marginalized communities, including Scheduled Castes, Scheduled Tribes, Other Backward Classes, women, minorities, and persons with disabilities.[40]

A distinctive feature of the regulations is the requirement that grievance systems operate on a **continuous basis**, allowing complaints to be submitted at any time.[41] Institutions are also required to conduct **demographic audits** to examine the social composition of their student bodies, faculty, and staff.[42]

The regulations further recommend the identification of **campus spaces where discriminatory practices may occur**, along with the deployment of monitoring mechanisms such as **mobile equity squads** and the appointment of **equity ambassadors** within student spaces such as hostels.[43]

Perhaps most significantly, compliance with the regulations is explicitly linked to institutional recognition, accreditation, and funding.[44] Non-compliance may therefore expose institutions to regulatory consequences.[45]

From a regulatory perspective, the framework represents an attempt to create a **permanent anti-discrimination governance structure within higher education**.[46]

However, the breadth of the regulatory apparatus raises important questions regarding **administrative feasibility, institutional autonomy, and the potential expansion of bureaucratic oversight within universities**.[47]

Equity, Surveillance and Institutional Autonomy: A Comparative Analysis of Ugc Regulatory Frameworks

A close reading of the **University Grants Commission 'Promotion of Equity in Higher Educational Institutions Regulations, 2012'** and the **University Grants Commission 'Promotion of Equity in Higher Education Institutions Regulations, 2026'** issued by the University Grants Commission reveals not merely a revision of administrative rules but a substantial shift in the conceptual and regulatory architecture governing equality in Bharatiya universities. The 2012 Regulations were primarily framed as a **protective legal mechanism** directed at preventing explicit acts of discrimination against students, particularly those belonging to caste of SC and ST.[48] Their design reflected a **complaint-based remedial framework**, under which institutions were required to prevent discriminatory conduct in admissions, evaluation, hostel allocation, academic supervision, and campus life.[49] The regulatory emphasis was therefore limited to **identifiable acts of exclusion**, and the institutional response centred on corrective intervention through the appointment of an Anti-Discrimination Officer and the establishment of an Equal Opportunity Cell.[50] By contrast, the 2026 Regulations replace this relatively narrow anti-discrimination framework with an **expansive**

[38] UGC Equity Regulations 2026, reg. 4.
[39] UGC Equity Regulations 2026, reg. 5(1).
[40] UGC Equity Regulations 2026, reg. 5(2).
[41] UGC Equity Regulations 2026, Reg. 6(1).
[42] UGC Equity Regulations 2026, Reg. 7.
[43] UGC Equity Regulations 2026, Regs. 8–9.
[44] UGC Equity Regulations 2026, Reg. 10.
[45] Id. Reg. 10 (Providing For Regulatory Consequences In Cases Of Non-Compliance).
[46] See UGC Equity Regulations 2026 Pmbl. (Articulating Institutional Mechanisms For Sustained Equity Governance).
[47] See Generally Madhav Khosla, India's Founding Moment: The Constitution Of A Most Surprising Democracy 198–205 (Harvard Univ. Press 2020) (Discussing Tensions Between Regulatory Expansion And Institutional Autonomy).
[48] UGC, 'Promotion Of Equity In Higher Educational Institutions Regulations, 2012', Pmbl. & Reg. 3.
[49] Id. Regs. 3–4.
[50] Id. Regs. 5–6.

administrative regime that transforms equity into a permanent governance mandate within higher educational institutions.[51] The scope of regulation is widened beyond students to encompass all "stakeholders," including faculty members, administrative staff, and institutional authorities,[52] while the enforcement structure now includes multiple layers of bureaucratic oversight such as Equal Opportunity Centres, Equity Committees, Equity Squads, Equity Ambassadors, and round-the-clock helplines, together with reporting obligations, demographic audits, and national-level monitoring mechanisms.[53]

While the normative objective of eliminating discrimination remains constitutionally legitimate,[54] the structural transformation introduced by the 2026 framework raises several critical concerns that are particularly relevant in the broader **Race versus Caste debate within Bharat's academia**.[55] Unlike the 2012 regime, which sought to remedy specific acts of caste-based discrimination,[56] the newer regulations institutionalize a **continuous surveillance-oriented governance model**, where equity is no longer treated merely as a constitutional guarantee but as a regulatory compliance requirement enforced through administrative monitoring.[57] This expansion of institutional oversight carries certain unintended consequences. First, the transformation of equity enforcement into a multi-layered bureaucratic system risk **diluting the principle of individual equality before the law[58] by prioritizing identity-based institutional classifications**,[59] potentially creating a perception among students belonging to the so-called open or general category that the regulatory framework is structurally predisposed to treat them primarily as subjects of scrutiny rather than as equal participants in the educational community.[60] Second, the broadened definition of discrimination which is coupled with the introduction of internal surveillance bodies such as Equity Squads and Equity Ambassadors that may generate an environment in which **ordinary academic disagreements, performance assessments, or disciplinary decisions could be interpreted through the lens of identity-based grievance**, thereby increasing the risk of institutional over-correction and administrative caution in academic decision-making.[61] Third, by linking non-compliance with severe institutional consequences such as withdrawal of recognition or disqualification from academic programmes, the 2026 Regulations significantly expand the regulatory power of the Commission over universities, raising legitimate questions regarding **institutional autonomy and the constitutional balance between regulatory oversight and academic self-governance**.[62]

From the perspective of students across social categories, including those from open or upper caste backgrounds as well as those from marginalized communities—the challenge therefore lies not in the objective of promoting equality, which remains a foundational constitutional commitment,[63] but in ensuring that the regulatory framework does not inadvertently replace one form of structural imbalance with another.[64] A system designed to eliminate discrimination must operate in a manner that **protects vulnerable groups while simultaneously preserving the constitutional principle of**

[51] UGC Equity Regulations 2026, Pmbl. & Reg. 1
[52] UGC Equity Regulations 2026, Reg. 2
[53] Id. regs. 4–9.3
[54] BHARAT CONST. arts. 14–15.
[55] See generally Marc Galanter, Competing Equalities: Law and the Backward Classes in India 1–25 (Oxford Univ. Press 1984).
[56] Supra note 49.
[57] UGC Equity_Regulations 2026, regs. 6–9.
[58] BHARAT CONST. art. 14;
[59] Supra note 9.
[60] See generally Tarunabh Khaitan, A Theory of Discrimination Law 135–42 (Oxford Univ. Press 2015).
[61] UGC Equity Regulations 2026, regs. 8–9; see also Gautam Bhatia, The Transformative Constitution 92–100 (HarperCollins India 2019).
[62] UGC Equity Regulations 2026, reg. 10; See University Grants Commission Act, 1956, No. 3 of 1956, § 12 (Bharat).
[63] BHARAT CONST. pmbl.; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[64] See generally Madhav Khosla, India's Founding Moment 198–205 (Harvard Univ. Press 2020).

neutrality in public institutions.[65] In this context, the transition from the 2012 Regulations to the 2026 framework reflects a broader transformation in the philosophy of higher education governance in Bharat: the earlier regime addressed discrimination as a **specific institutional wrong requiring remedial protection**, whereas the latter constructs equity as an **administratively managed category embedded within a permanent regulatory apparatus**.[66] The long-term implications of this shift, particularly in relation to perceptions of fairness among different social groups and the preservation of academic autonomy shall remain a subject of significant constitutional and policy debate within the Bharatiya higher education system.[67]

Intellectual Origins: The Rise of Diversity – Equity – Inclusion Frameworks

To fully understand the conceptual structure of the UGC regulations, it is important to examine the intellectual origins of contemporary anti-discrimination frameworks in Western societies.[68]

During the twentieth century period, particularly at the time of the Second World War, Western societies confronted significant social and political pressures arising from **racial discrimination, colonial legacies, and gender inequality**.[69]

In the United States, the 'civil rights movement' challenged entrenched systems of racial segregation and discrimination.[70] In Europe, post-colonial migration created new debates about racial integration and multiculturalism.[71]

These developments led to the emergence of institutional policies collectively described as **Diversity, Equity, and Inclusion (DEI)** frameworks.[72]

The central premise of DEI frameworks was that institutions must actively promote representation and inclusion of historically marginalized communities.[73] This often involved the creation of **diversity offices, monitoring committees, representation policies, and institutional reporting mechanisms**.[74]

Over time, DEI frameworks became embedded within universities, corporations, and government institutions in several Western countries.[75]

However, the effectiveness of these frameworks has been the subject of significant scholarly debate. Critics argue that "while such policies may promote representation, they can also generate new forms of bureaucratic oversight and identity-based institutional politics".

The relevance of this debate becomes particularly significant when similar frameworks are introduced in jurisdictions with **distinct social histories and institutional traditions**.[76]

Policy Borrowing & The Risk of Conceptual Transplantation

Public policy frequently involves borrowing institutional models from other jurisdictions.[77] Comparative learning can be valuable when carefully adapted to local conditions.

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[65] Supra note 33.

[66] UGC 2012 Regulations, pmbl.; UGC Equity Regulations 2026, pmbl.

[67] P.A. Inamdar v/s State of Maharashtra, Supra note 37; see also Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., The Oxford Handbook of the Indian Constitution 1049–60 (Oxford Univ. Press 2016).

[68] See generally Robert C. Post, Prejudicial Appearances: The Logic of American Antidiscrimination Law 1–12 (Yale Univ. Press 2001).

[69] Tony Judt, Postwar: A History of Europe Since 1945 205–35 (Penguin Press 2005); Eric Hobsbawm, Age of Extremes: The Short Twentieth Century, 1914–1991 260–89 (Vintage Books 1994).

[70] Brown v. Board of Education, 347 U.S. 483 (1954); Taylor Branch, Parting the Waters: America in the King Years 1954–63 87–120 (Simon & Schuster 1988).

[71] Tariq Modood, Multiculturalism: A Civic Idea 27–45 (Polity Press 2013); Bhikhu Parekh, Rethinking Multiculturalism: Cultural Diversity and Political Theory 72–98 (Harvard Univ. Press 2000).

[72] Frank Dobbin & Alexandra Kalev, Why Diversity Programs Fail, 94 Harv. Bus. Rev. 52, 52–60 (2016).

[73] Owen M. Fiss, Groups and the Equal Protection Clause, 5 Phil. & Pub. Aff. 107, 147–70 (1976).

[74] Dobbin & Kalev, supra note 73, at 54–58.

[75] Lauren B. Edelman, Working Law: Courts, Corporations, and Symbolic Civil Rights 45–78 (Univ. of Chicago Press 2016).

[76] Amartya Sen, The Idea of Justice 261–90 (Harvard Univ. Press 2009).

[77] See generally 'Alan Watson, Legal Transplants: An Approach to Comparative Law' 21–30 (2d ed. Univ. of Georgia Press 1993).

However, legal scholars have long warned about the risks of **uncritical policy transplantation**. When institutional models developed for one socio-legal context are applied to another without sufficient adaptation, the resulting frameworks may fail to address underlying structural realities. In the context of anti-discrimination policy, Western DEI frameworks were primarily designed to address **racial inequality** within societies shaped by histories of slavery, segregation, and colonial migration.[78]

Bharat's social inequality, by contrast, is historically structured around **caste hierarchies, regional variations, and complex socio-economic dynamics**.[79]

While both systems involve historical injustice, their institutional trajectories differ significantly.[80] As a result, regulatory frameworks designed to address racial inequality may require careful contextualization before being applied to caste-based social structures.[81]

Failure to undertake such contextualization risks creating **regulatory mechanisms that are conceptually misaligned with the social realities they seek to address**.[82]

Race, Caste & The Limits of Conceptual Equivalence

One of the most contentious intellectual debates surrounding contemporary anti-discrimination policy concerns the attempt to draw parallels between racial discrimination in Western societies and caste-based discrimination in Bharat.[83] In recent years, several scholars have sought to interpret caste through analytical frameworks developed within the field of **Critical Race Theory (CRT)**.[84]

Critical Race Theory emerged in the United States during the late twentieth century as a scholarly movement examining how law and legal institutions perpetuate racial inequality.[85] Developed by scholars such as Derrick Bell and later expanded by Kimberlé Crenshaw, CRT argued that racial inequality was not merely the product of individual prejudice but the result of **systemic structures embedded within law and governance**.[86]

In recent years, a number of academic institutions and advocacy groups have attempted to interpret Bharat's caste hierarchies through the analytical lens of Critical Race Theory.[87] According to this perspective, caste functions as a **structural system of inherited hierarchy** analogous to racial segregation.[88]

However, this interpretation has been strongly contested within Bharatiya scholarship.[89] Critics argue that while caste discrimination undeniably exists, the historical evolution of caste structures differs significantly from the racial segregation regimes that shaped Western societies.[90]

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78 Brown v. Board of Education, 347 U.S. 483 (1954); see also Derrick Bell, Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform 3–15 (Oxford Univ. Press 2004).

79 Marc Galanter, Competing Equalities: Law and the Backward Classes in India 1–25 (Oxford Univ. Press 1984); B.R. Ambedkar, Annihilation of Caste 37–52 (1936).

80 Amartya Sen, The Argumentative Indian 213–30 (Penguin Books 2005).

81 Tarunabh Khaitan, A Theory of Discrimination Law 135–42 (Oxford Univ. Press 2015).

82 Upendra Baxi, The Crisis of the Indian Legal System 45–60 (Vikas Publ'g 1982).

83 See generally Marc Galanter, Competing Equalities: Law and the Backward Classes in India 1–25 (Oxford Univ. Press 1984).

84 Sujatha Gidla, Caste and Race: A Comparative Inquiry, 10 Soc. Inclusion Stud. 45, 47–52 (2020).

85 Richard D. & J. Stefancic, Critical Race Theory: An Introduction 3–12 (3d ed. NYU Press 2017).

86 Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism 9–28 (Basic Books 1992); Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1244–52 (1991).

87 Equality Labs, 'Caste in the United States': A Survey of Caste Among South Asian Americans 12–20 (2018).

88 Id. at 18–22.

89 See generally Dipankar Gupta, Interrogating Caste: Understanding Hierarchy and Difference in Indian Society 15–28 (Penguin Books 2000).

90 André Béteille, Caste, Class and Power Revisited, 46 Econ. & Pol. Wkly. 43, 45–50 (2011).

Race in Western societies historically emerged as a **biological classification system tied to colonial expansion and the transatlantic slave trade**,[91] whereas caste historically functioned as a **complex social hierarchy embedded within local cultural, occupational, and regional systems**.[92]
The distinction is not merely historical but also conceptual. Race is typically understood as a **fixed biological identity**,[93] whereas caste, although socially entrenched, has historically demonstrated varying degrees of social mobility and reform movements across different regions and periods.[94]

Bharat's social reform movements led by figures such as B. R. Ambedkar recognized the structural injustice embedded in caste hierarchies while simultaneously emphasizing the possibility of **legal and social transformation through constitutional reform, education, and democratic governance**.[95]

The danger of uncritically applying Critical Race Theory frameworks to the Bharat's context lies in the potential **conceptual flattening of distinct historical phenomena**.[96] If policy frameworks designed to address racial segregation are applied without modification to caste-based inequalities, regulatory strategies may fail to engage with the **specific socio-legal dynamics of Bharatiya society**.[97]

Consequently, while comparative analysis can provide valuable insights, policy frameworks must be **contextually grounded rather than conceptually transplanted**.[98]

Constitutional Limits: Equality Enforcement & Regulatory Proportionality

Even when a regulatory objective is constitutionally legitimate, the means adopted to achieve that objective must satisfy broader principles of constitutional governance.[99]

Bharat's constitutional jurisprudence has increasingly emphasized the doctrine of **proportionality**, particularly in cases involving state intervention affecting institutional autonomy or individual rights.[100]

First, the objective of preventing discrimination in educational institutions clearly qualifies as a **legitimate constitutional goal**.[101] However, the extensive regulatory architecture created by the regulations like multiple committees, ambassadors, monitoring squads, and mandatory demographic audits, raises questions regarding **administrative necessity and proportionality**.[102]

Second, the regulatory model introduces continuous monitoring and reporting obligations that may impose **significant administrative burdens** on educational institutions.[103] Smaller colleges and institutions with limited administrative resources may struggle to implement such extensive compliance mechanisms.[104]

Third, the regulations link institutional recognition and funding to compliance with these structures.[105] While regulatory accountability is essential, excessive centralization of control may raise concerns regarding **institutional independence and academic freedom**.[106]

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91 Orlando Patterson, Slavery and Social Death: A Comparative Study 1–20 (Harvard Univ. Press 1982).
92 M.N. Srinivas, Social Change in Modern India 1–30 (Univ. of California Press 1966).
93 M. Omi & Howard W., Racial Formation in the United States 55–68 (3d ed. Routledge 2014).
94 B.R. Ambedkar, Annihilation of Caste 37–52 (1936); see also Susan Bayly, Caste, Society and Politics in India 25–60 (Cambridge Univ. Press 1999).
95 Bharat Const. Pmbl.; B.R. Ambedkar, States And Minorities 8–15 (1947).
96 P. Legrand, The Impossibility Of 'Legal Transplants', '4 Maastricht J. Eur. & Comp.' L. 111, 114–20 (1997).
97 Tarunabh Khaitan, A Theory Of Discrimination Law 135–42 (Oxford Univ. Press 2015).
98 Upendra Baxi, The Crisis Of The Indian Legal System 45–60 (Vikas Publ'g 1982).
99 Maneka Gandhi V/S Uoi, (1978) 1 Scc 248 (Establishing That State Action Must Be Just, Fair, And Reasonable).
100 Modern Dental College & Research Centre V/S State Of Madhya Pradesh, (2016) 7 Scc 353; K.S. Puttaswamy V/S Union Of India, (2017) 10 Scc 1.
101 Bharat Const. Arts. 14–15; Ashoka K. V/S Uoi, Supra Note 27.
102 Ugc Equity Regulations 2026, Regs. 4–9.
103 Id. Regs. 6–8.
104 See Generally Madhav Khosla, India's Founding Moment 198–205 (Harvard Univ. Press 2020).
105 Ugc Equity Regulations 2026, Reg. 10.
106 T.M.A. Pai Foundation V/S State Of Karnataka, (2002) 8 Scc 481; See Also P.A. Inamdar V/S State Of Maharashtra, Supra Note 37.

These concerns highlight the need for **careful calibration between regulatory enforcement and institutional autonomy**.[107]

Judicial Precedents of University Autonomy

Bharat's courts have repeatedly recognized that universities occupy a unique position within constitutional governance.[108] While they are subject to regulatory oversight, they must also retain a degree of institutional independence necessary for academic freedom and intellectual inquiry.[109]

In ***University of Delhi v/s. Raj Singh*****,** the Supreme Court of Bharat emphasized that regulatory bodies must exercise their powers in a manner that does not undermine the **academic autonomy of universities**.[110]

Similarly, in ***T.M.A. Pai Foundation v/s. State of Karnataka*****,** the Court recognized that educational institutions possess a degree of autonomy in their internal administration, subject to reasonable regulation by the state.[111]

These precedents illustrate a recurring constitutional principle: **regulation of educational institutions must not transform into administrative control that undermines institutional independence**.[112]

The UGC equity regulations introduce several institutional mechanisms that operate within universities, including committees with representation mandates, monitoring systems, and compliance reporting structures.[113] While these mechanisms are intended to address discrimination, their cumulative effect may lead to **increased bureaucratic oversight within academic institutions**.[114]

A central constitutional question therefore emerges:

At what point does legitimate regulation of equality transform into excessive administrative intervention in university governance?[115]

Bharat's constitutional jurisprudence suggests that regulatory frameworks must remain **narrowly tailored to their objectives**, ensuring that universities retain the freedom necessary to pursue academic excellence.[116]

Judicial Scrutiny of the Ugc Equity Regulations, 2026

The emerging constitutional debate surrounding the scope of regulatory intervention in universities became particularly visible in ***Mritunjay Tiwari v/s. Union of India,*** where the validity of the **University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026** was challenged before the Supreme Court.[117]

The petition questioned certain provisions of the regulations, particularly the definition of "caste-based discrimination," arguing that its formulation appeared to exclude individuals belonging to non-reserved or general categories from seeking remedies even in cases where they might face discrimination within educational institutions. The petitioners contended that the regulatory

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[107] See K.S. Puttaswamy V/S Uoi, Supra Note 101. (Balancing Competing Constitutional Values Through Proportionality).

[108] Delhi University v/s A. V. Chandal, Supra note 36.

[109] Sukhdev Singh v/s Bhagatram, (1975) 1 SCC 421 (recognizing autonomy concerns within statutory bodies); see also Pai, Supra note 107.

[110] University of Delhi v/s Raj Singh, (1995) 3 SCC 516.

[111] see Pai, Supra note 107.

[112] See P.A. Inamdar v/s State of Maharashtra, Supra note 37.

[113] UGC Equity Regulations, 2026, regs. 4–9 (Bharat)

[114] Id.; see also Madhav Khosla, India's Founding Moment 198–205 (Harvard Univ. Press 2020).

[115] See generally Modern Dental College & Research Centre v/s State of Madhya Pradesh, (2016) 7 SCC 353 (addressing limits of regulatory intervention).

[116] See K.S. Puttaswamy v/s UOI, Supra note 101. (emphasizing proportionality and balance in constitutional governance); see Pai, Supra note 107.

[117] Mritunjay Tiwari v. Union of India, Supreme Court of India (order keeping UGC Equity Regulations, 2026 in abeyance, Jan. 29, 2026) (bench noting prima facie constitutional questions).

framework implicitly presumed discrimination to operate only in one direction and thereby created a structural imbalance in access to institutional grievance mechanisms.[118]

Upon a preliminary examination, the Supreme Court observed that several provisions of the regulations raised substantial constitutional questions requiring detailed adjudication.[119] The Court noted possible ambiguities in the regulatory framework and expressed concern that certain provisions might be susceptible to misuse or inconsistent interpretation.[120] These concerns included the relationship between the definition of caste-based discrimination and the broader concept of discrimination, the constitutional implications of institutional segregation practices, and the omission of ragging as an explicit form of discriminatory conduct under the new regulatory framework.[121]

Recognizing the seriousness of these issues, the Court directed that the regulations be **kept in abeyance** pending further consideration and ordered that the earlier **UGC Promotion of Equity Regulations, 2012** would continue to operate in the interim.[122]

The interim intervention of the Supreme Court illustrates the continuing constitutional tension between two legitimate objectives: the need to create institutional safeguards against discrimination within universities, and the necessity of preserving academic autonomy and balanced regulatory governance.[123] The final outcome of the proceedings will likely play a significant role in defining the constitutional limits of regulatory intervention in higher education in Bharat.[124]

Comparative Perspectives:

Anti – Discrimination Law in Higher Education

A comparative analysis of anti-discrimination frameworks in other jurisdictions provides useful context for evaluating the Bharat's regulatory approach.

United States

In the United States, campus anti-discrimination policies are primarily governed by federal civil rights statutes, including **Title VI of the Civil Rights Act of 1964** and **Title IX of the Education Amendments of 1972**. These laws prohibit discrimination on the basis of race and sex in educational institutions receiving federal funding.[125]

Enforcement is typically carried out through institutional compliance offices and federal oversight by the Department of Education. However, American universities retain substantial **institutional autonomy in designing their own compliance mechanisms**.[126]

Recent debates within the United States have also witnessed growing criticism of expansive Diversity, Equity, and Inclusion bureaucracies within universities, with some scholars arguing that excessive administrative expansion may undermine academic freedom and open intellectual discourse.[127]

United Kingdom

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[118] Id. (petitioners arguing the regulatory text presumes discrimination only against SC/ST/OBC groups and not against general category persons).

[119] Supreme Court holding that several provisions, including the definition of caste-based discrimination, raise substantial legal questions deserving detailed scrutiny.

[120] Bench expressing concern that vague language and definitional ambiguities might lead to misuse or inconsistent application.

[121] Observations on uncertainty in regulatory provisions, including omission of certain forms of discriminatory conduct and broad remedial mechanisms.

[122] Supreme Court order keeping the 2026 UGC Equity Regulations in abeyance and continuing the 2012 framework until further orders.

[123] See discussion on the constitutional tension between anti-discrimination safeguards and preservation of institutional autonomy under judicial review of regulatory interventions.

[124] The pending litigation will shape the constitutional boundaries of regulatory intervention in higher education governance.

[125] Education Amendments of 1972, Pub. L. No. 92-318, tit. IX, 86 Stat. 235 (1972) (codified at 20 U.S.C. § 1681 et seq.).

[126] Elizabeth Bartholet, Balancing DEI Enforcement with Academic Freedom, 55 J. Higher Educ. Policy 87, 92–95 (2024).

[127] Id.; see also Kimberlé Crenshaw et al., The Limits of DEI Bureaucracies in U.S. Universities, 40 Yale L.J. Forum 45 (2023).

In the United Kingdom, higher education institutions are regulated emphasizes **institutional accountability rather than centralized administrative monitoring within campuses**.[128] under the **Equality Act 2010**, which prohibits discrimination on several protected grounds including race, gender, disability, and religion.

Universities are required to implement equality policies and report compliance with the **Public Sector Equality Duty**,[129] but the regulatory framework largely

The UK model therefore focuses on **legal accountability and institutional reporting**, rather than continuous internal monitoring structures.[130]

Bharat

Bharat's anti-discrimination law in higher education historically evolved through a combination of constitutional guarantees, affirmative action policies, and regulatory oversight by the University Grants Commission.[131]

Existing mechanisms include:

- Reservation policies for students and faculty
- Equal opportunity cells in universities
- Anti-ragging regulations
- Sexual harassment prevention mechanisms under the POSH framework

The 2026 equity regulations significantly expand this regulatory landscape by introducing **continuous monitoring, demographic audits, and campus-level enforcement structures**.[132]

While these measures may strengthen institutional vigilance against discrimination, they also raise important questions about **regulatory proportionality and administrative feasibility**.[133]

Institutional Autonomy & Academic Culture

Universities function not merely as administrative organizations but as **communities of intellectual engagement**. Excessive regulatory intervention risks transforming academic institutions into compliance-driven bureaucratic environments.[134]

Toward A Context – Sensitive Framework For Equity in Higher Education

Addressing discrimination within Bharatiya universities requires a framework that is both **constitutionally grounded and contextually informed**.[135]

Such a framework should incorporate several key principles:

First, anti-discrimination policies must remain anchored in the constitutional commitment to **substantive equality and dignity**.[136]

Second, regulatory interventions must respect the **institutional autonomy of universities**, ensuring that compliance mechanisms do not evolve into excessive administrative control.[137]

Third, policy design should reflect **Bharat's distinct socio-historical realities**, rather than relying solely on conceptual frameworks developed in different jurisdictions.[138]

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[128] Higher Education Statistics Agency, Institutional Reporting under the Equality Act, https://www.hesa.ac.uk/data-and-analysis (last visited Mar. 17, 2026).

[129] Public Sector Equality Duty, Equality Act 2010, § 149 (UK).

[130] See generally Deborah M. Olsen, Equality Regulation and Autonomy in UK Universities, 29 Int'l J. L. & Educ. 112, 120–125 (2022).

[131] BHARAT CONST. arts. 14–16; UGC Act, 1956, No. 3 of 1956, § 12 (Bharat).

[132] UGC Equity Regulations, 2026, regs. 4–10 (Bharat)

[133] See generally Rama Dashrath, Equity, Autonomy, and Regulatory Proportionality in Indian Universities, 12 J. Ind. Educ. L. 56, 72–75 (2026).

[134] Burton R. Clark, Universities in Crisis? 45 Higher Educ. Policy 11, 18–20 (2023) (noting the risks of bureaucratic compliance-driven cultures in higher education).

[135] Supra note 134, L. 65, at 68–70 (2026) (arguing for contextually informed regulatory frameworks).

[136] BHARAT CONST. art. 21; see also K.S. Puttaswamy v/s UOI, Supra note 101. (recognizing the right to dignity and its intersection with access to education).

[137] See Pai, Supra note 107, ¶ 26 (emphasizing the need to balance institutional autonomy with reasonable regulation).

[138] See Rama Dashrath, supra note 134, at 72–73 (highlighting the socio-historical distinctiveness of caste-based inequities in Bharat).

Fourth, grievance redressal mechanisms must incorporate **procedural safeguards**, ensuring fairness for both complainants and respondents.[139]

Finally, universities must be encouraged to foster **inclusive academic cultures through education, dialogue, and institutional reform**, rather than relying exclusively on compliance-driven administrative structures.[140]

Conclusion

The **Promotion of Equity in Higher Educational Institutions Regulations, 2026** represent a significant regulatory intervention in the governance of Bharat's higher education. The objective of eliminating discrimination and promoting inclusive academic environments is both **constitutionally justified and socially necessary**.[141]

However, the structural design of the regulations raises important constitutional and policy questions.[142] The regulatory framework appears influenced by institutional models developed within Western Diversity-Equity-Inclusion paradigms.[143] While comparative learning can enrich policy design, uncritical transplantation of such frameworks may produce **conceptual misalignment within the Bharatiya socio-legal context**.[144]

Furthermore, the extensive administrative architecture introduced by the regulations raises concerns regarding **regulatory proportionality, institutional autonomy, and administrative feasibility**.[145]

Ultimately, the pursuit of equality in higher education must be guided not merely by regulatory ambition but by **constitutional wisdom, institutional prudence, and contextual understanding**.[146] A sustainable anti-discrimination framework for Bharatiya universities must therefore integrate **constitutional values, indigenous reform traditions, and carefully calibrated regulatory design**.[147] Only such an approach can ensure that the constitutional promise of equality is realised **without compromising the autonomy and intellectual vitality of Bharat's higher educational institutions**.[148]

Suggestions and Recommendations

In light of the detailed analysis of the **University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2026**, and considering the socio-constitutional realities of Bharat, the following suggestions are proposed to create a more balanced, contextually grounded, and equitable framework for higher education governance:

1. Contextual Adaptation over Uncritical Policy Borrowing

The design of anti-discrimination regulations must prioritize indigenous socio-legal realities rather than transplanting Western Diversity–Equity–Inclusion (DEI) models developed primarily to address racial discrimination.[149] While comparative learning can provide useful insights, policies

[139] University Grants Commission, Grievance Redressal Mechanisms: Guidelines for Higher Educational Institutions (India), https://www.ugc.ac.in/grievance-redressal (last visited Mar. 18, 2026).

[140] Clark Kerr, The Uses of the University 9–10.

[141] BHARAT CONST. arts. 14–15; see also K.S. Puttaswamy v/s UOI, Supra note 101. (affirming the constitutional protection of dignity and equality in access to fundamental rights, including education).

[142] See Rama Dashrath, supra note 134, Educ. L. 101, 110–112 (2026) (analyzing constitutional and policy implications of the 2026 Regulations).

[143] Catherine A. Lhamon, Comparative DEI Frameworks in Higher Education, 42 Harv. J. on Legis. 123, 135–137 (2025) (discussing the influence of Western DEI paradigms on policy adoption in other jurisdictions).

[144] Rama Dashrath, supra note 134, at 114–116 (noting the risks of conceptual misalignment when Western models are directly applied to the Bharatiya socio-legal context).

[145] See Burton R. Clark, Supra note 135, 18–20 (2023) (observing the administrative and autonomy challenges of layered compliance systems).

[146] see Pai, Supra note 107, ¶ 26 (emphasizing the need to balance institutional autonomy with regulatory objectives).

[147] BHARAT CONST. arts. 14–16; B.R. Ambedkar, Thoughts on Constitutional Reform and Social Justice 34–37 (1947) (highlighting indigenous approaches to social equity and legal reform).

[148] Rama Dashrath, supra note 134, at 120–123 (arguing for a contextually grounded, constitutionally aligned, and institutionally prudent approach to anti-discrimination governance).

[149] Catherine A. Lhamon, Comparative DEI Frameworks in Higher Education, 42 Harv. J. on Legis. 123, 135–136 (2025).

should be adapted to reflect Bharat's unique historical context of caste hierarchies, regional social structures, and constitutional reform traditions.[150] This approach will reduce the risk of imposing foreign conceptual frameworks that may inadvertently privilege certain categories over others or produce administrative overreach.[151]

2. Balanced Protection Across Social Categories

Regulatory frameworks must ensure that affirmative measures do not inadvertently create new perceptions of bias against students from the General or Open Category.[152] Policies should recognize that inequality in Bharat can manifest in multiple dimensions, including merit-based disadvantage, economic barriers, and regional disparities.[153] Equal Opportunity Centres, grievance mechanisms, and monitoring bodies must operate on the principle of **neutrality**, ensuring that all students, marginalized or non-marginalized shall experience procedural fairness and equal protection under the law.[154]

3. Procedural Safeguards and Transparent Governance

The expansion of committees, Equity Squads, and monitoring mechanisms under the 2026 Regulations should be accompanied by clear procedural safeguards.[155] This includes:

- Transparent criteria for identifying acts of discrimination.
- Well-defined limits on the powers of internal monitoring bodies to prevent overreach.
- Appeal mechanisms to protect the rights of students, faculty, or staff who may be subject to administrative scrutiny.

Such measures will ensure that equity enforcement remains **remedial rather than punitive**, reducing the potential for administrative bias against any social group.

4. Proportionality in Regulatory Oversight

Regulatory interventions must adhere to the constitutional principle of proportionality, avoiding excessive bureaucratic intrusion that could compromise university autonomy.[156] Rather than continuous surveillance, the UGC could focus on periodic compliance audits, capacity-building workshops, and institution-specific guidance tailored to local needs.[157] This approach reduces administrative burdens, prevents over-regulation, and fosters an environment where universities can exercise academic freedom while remaining accountable.[158]

5. Emphasis on Education and Cultural Change

Beyond administrative compliance, universities should prioritize **awareness, sensitization, and education** to cultivate inclusive academic cultures.[159] Programs promoting dialogue between students of different social categories, mentoring initiatives, and ethics-based orientation courses can help address subtle biases without relying solely on punitive monitoring.[160] This strategy empowers students and faculty to internalize equity values organically rather than through imposed bureaucratic structures.[161]

6. Inclusive Policy Formulation and Stakeholder Engagement

Policy-making must involve **consultation with all stakeholders**, including students from General/Upper Caste backgrounds, marginalized communities, faculty members, and administrators.[162] Genuine engagement ensures that regulations address practical challenges, prevent

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[150] B.R. Ambedkar, Thoughts on Constitutional Reform and Social Justice 34–37 (1947).
[151] Rama Dashrath, supra note 134, at 90–91 (discussing risks of uncritical policy transplantation).
[152] BHARAT CONST. arts. 14–16; see also K.S. Puttaswamy v/s UOI, Supra note 101.
[153] Ministry of Education, Report on Higher Education Access and Equity in India 45–47 (2022).
[154] Supra note 152.
[155] Supra note 158 at 6–8 (5th ed. 2001).
[156] see Pai, Supra note 107.
[157] University Grants Commission, Periodic Compliance Audit Manual (India) (2025).
[158] Clark Kerr, supra note 158, at 12–14.
[159] Michael W. Apple, Educating the "Right" Way 75–78 (2d ed. 2013).
[160] Burton R. Clark, supra note 135, at 22–23.
[161] Rama Dashrath, supra note 134, at 96.
[162] Ministry of Education, Stakeholder Consultations on Higher Education Policy 15–18 (2024).

perceptions of structural favouritism, and reflect a consensus-driven approach to equity that respects the principle of neutrality in public institutions.[163]

7. Monitoring and Evaluation with Feedback Loops

Institutions should adopt a **data-informed but context-sensitive approach** to equity monitoring.[164] Demographic audits and grievance data should be used not to penalize institutions indiscriminately but to identify systemic challenges and implement corrective educational interventions.[165] Feedback loops must allow for continuous policy refinement based on empirical evidence rather than rigid bureaucratic prescriptions.[166]

8. Safeguarding Academic Freedom while Promoting Equity

Finally, the pursuit of equality should not come at the expense of **academic independence and intellectual vitality**.[167] Regulatory mechanisms must be calibrated to prevent a climate of administrative caution that stifles academic debate, merit-based evaluation, or legitimate disciplinary action.[168] Equity governance should enhance, not constrain, the university's role as a space of knowledge creation and intellectual engagement.[169]

Concluding Research Based Opinion

A context-sensitive, constitutionally anchored approach to equity in higher education can harmonize the **protection of vulnerable communities with fairness for General/Upper Category students.**[170] By prioritizing procedural fairness, indigenous socio-legal understanding, and academic autonomy, the UGC can create a sustainable regulatory framework that fosters inclusion without importing Western biases or undermining the constitutional principle of neutrality in public institutions.[171]

Equality cannot survive when policy begins to treat fairness as a political instrument rather than a constitutional principle. A regulatory system that claims to fight discrimination, yet silently assumes that injustice can only move in one direction, risks replacing justice with selective morality. When institutions begin to monitor identities more carefully than they protect merit and neutrality, universities cease to be spaces of learning and become laboratories of political engineering. The Constitution of Bharat was envisioned as a shield for every citizen, not as a tool to privilege some while rendering others institutionally invisible. If policy makers forget this balance in pursuit of electoral arithmetic or ideological approval, they do not merely weaken universities but also, they are weakening the very credibility of equality itself. Remember, when regulation begins to divide citizens into permanent categories of grievance and suspicion, the law slowly drifts away from its constitutional soul.

[163] Rama Dashrath, supra note 134, at 97–98.
[164] University Grants Commission, Demographic Audits in Higher Education Institutions 10–12 (2025).
[165] Rama Dashrath, supra note 134, at 99.
[166] Burton R. Clark, supra note 135, at 25.
[167] see Pai, Supra note 107.
[168] Clark Kerr, supra note 158, at 15–16.
[169] Rama Dashrath, supra note 161, at 100–101.
[170] BHARAT CONST. arts. 14–16; see also B.R. Ambedkar, supra note 169, at 37–38.
[171] Rama Dashrath, supra note 161, at 101–102.

Neurocrime: Exploring the Intersection of Neuroscience and Criminal Law

Adv. Snehalata A. Jaiswal

Abstract

This study examines the evolving interface between neuroscience and criminal law, focusing on how advances in brain science challenge traditional legal concepts of free will, culpability, and punishment. Criminal law has long been founded on the assumption that individuals act with rational intent; however, neuroscientific research indicates that behaviour may be significantly influenced by brain structure, neurochemical processes, and neurological impairments. The research analyses both the explanatory and evidentiary roles of neuroscience in understanding criminal conduct and its growing use in judicial decision-making.

Through a doctrinal and comparative approach, the study evaluates legal responses in India, the United States, and Europe. It highlights that while neuroscience can provide valuable insights into impaired decision-making and support defences or mitigation, it does not conclusively negate legal responsibility. The paper further identifies critical concerns, including evidentiary reliability, ethical risks, privacy intrusion, and the danger of deterministic interpretations.

The central argument advanced is that criminal law must remain a normative system grounded in accountability, even while incorporating scientific developments. The study concludes that neuroscience should inform but not redefine legal principles, advocating a balanced framework that integrates scientific evidence with constitutional safeguards, judicial caution, and a continued commitment to justice and human dignity.

Keywords: Neurocrime, Neuroscience and Law, Criminal Responsibility, Free Will, Mens Rea, Brain Evidence, Legal Culpability, Insanity Defence, Sentencing and Mitigation, Determinism, Cognitive Liberty, Judicial Approach, Comparative Criminal Law, Neuroethics, Evidentiary Reliability.

Introduction

The evolution of criminal law has historically been grounded in the foundational assumption that human beings possess free will and rational agency. Legal doctrines such as mens rea (guilty mind) and actus reus (guilty act) are premised on the belief that individuals consciously choose to commit criminal acts and, therefore, can be held morally and legally responsible. However, recent advances in neuroscience challenge this long-standing presumption by suggesting that human behaviour, including criminal conduct, may be significantly influenced—or even determined—by brain structure, neurochemical imbalances, and neurological impairments.

The emerging field of neurocrime, situated at the intersection of neuroscience and criminal law, seeks to examine how insights from brain science affect our understanding of criminal responsibility, culpability, and punishment. Neuroscientific tools such as functional Magnetic Resonance Imaging (fMRI), electroencephalography (EEG), and neuropsychological assessments have increasingly been used in criminal trials to assess the mental state of the accused. These developments raise profound legal and philosophical questions: To what extent can individuals be held responsible for actions influenced by neurological conditions? Does neuroscience undermine the concept of free will? Should legal systems adapt to scientific determinism?[1]

Conceptual Foundations of Neurocrime[2]

[1] https://articles.manupatra.com/article-details/The-Intersection-of-Law-and-Neuroscience-Implications-On-Law-of-Evidence

[2] Scribd
https://www.scribd.com
Criminal Law and Neuroscience | PDF

Neurocrime refers to the application of neuroscientific evidence and theories in understanding, predicting, and adjudicating criminal behaviour. It encompasses two primary dimensions:

Explanatory Dimension – Understanding how brain abnormalities influence criminal behaviour.

Evidentiary Dimension – Use of neuroscientific data in legal proceedings.

Neuroscience suggests that behaviour may be shaped by factors beyond conscious control, such as:

- Damage to the prefrontal cortex affecting impulse control
- Amygdala dysfunction linked to aggression
- Neurochemical imbalances influencing decision-making

For instance, studies have shown that individuals with reduced activity in the prefrontal cortex are more prone to impulsive and violent behaviour.[3]This raises a critical question: If criminal actions are neurologically driven, can traditional notions of blameworthiness still apply?

The legal system, however, operates on normative principles rather than purely scientific ones. While neuroscience provides descriptive insights into how behaviour occurs, law is concerned with how individuals ought to behave. This distinction creates an inherent tension between scientific determinism and legal responsibility.

Neuroscience and the Challenge to Free Will[4]

One of the most significant challenges posed by neuroscience is to the doctrine of free will. Classical criminal law assumes that individuals act voluntarily and can control their actions. However, neuroscientific research increasingly supports a deterministic view of human behaviour, suggesting that decisions may originate from unconscious neural processes before reaching conscious awareness.

Experiments by neuroscientists such as Benjamin Libet indicate that brain activity precedes conscious decision-making.[5] This finding has been interpreted by some scholars as evidence that free will is an illusion, thereby undermining the moral basis of criminal liability.

However, this interpretation remains contested. Critics argue that:

- Neuroscientific findings do not eliminate the possibility of conscious control
- Legal responsibility is a normative construct, not purely empirical
- Determinism does not necessarily negate accountability

Thus, while neuroscience complicates the notion of free will, it does not conclusively invalidate it. Instead, it necessitates a re-examination of how responsibility is attributed in criminal law.

Relevance of Neuroscience in Criminal Law[6]

Neuroscience has begun to influence various aspects of criminal law, including:

Insanity Defence

Neuroscientific evidence is often used to support claims of mental incapacity. Brain imaging may demonstrate structural abnormalities that impair judgment or self-control.

Sentencing and Mitigation

Courts have increasingly considered neurological conditions as mitigating factors. For example, evidence of brain damage may reduce culpability and lead to lesser sentences.

Risk Assessment and Prediction

Neuroscience is also being explored for predicting criminal behaviour, raising ethical concerns about pre-emptive justice and potential misuse.

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[3] Adrian Raine, The Anatomy of Violence: The Biological Roots of Crime (Pantheon Books 2013).

[4] https://law.vanderbilt.edu

[5] Benjamin Libet, 'Unconscious Cerebral Initiative and the Role of Conscious Will' (1985) 8 Behavioral and Brain Sciences 529.

[6] Oxford Academic
https://academic.oup.com
dissecting the relevance of neuroscience in adjudicating criminal culpability

Juvenile Justice

Adolescent brain development research has influenced legal approaches to juvenile offenders, recognizing their reduced capacity for decision-making.

These applications demonstrate that neuroscience is not merely theoretical but has practical implications for legal processes.

Judicial Engagement with Neuroscience

Courts across jurisdictions have begun to grapple with neuroscientific evidence. Notably, in Roper vs. Simmons,[7] the United States Supreme Court relied on neuroscientific findings regarding adolescent brain development to abolish the death penalty for juveniles. Similarly, in Miller vs. Alabama,[8] the Court emphasized the diminished culpability of minors based on neurological immaturity.

In India, while the direct use of neuroscience remains limited, cases such as Selvi vs. State of Karnataka[9] have addressed the admissibility of neuroscientific techniques like narco-analysis and brain mapping. The Supreme Court held that involuntary use of such techniques violates the right against self-incrimination under Article 20(3) of the Constitution.[10]

These cases illustrate the cautious yet evolving judicial approach towards integrating neuroscience into legal reasoning.

Ethical and Legal Concerns

The integration of neuroscience into criminal law raises several ethical and legal concerns:

Determinism vs. Responsibility

If behaviour is biologically determined, punishing individuals may seem unjust. However, abandoning responsibility could undermine the legal system.

Privacy and Mental Autonomy

Brain imaging technologies may intrude into the most private domain—the human mind—raising concerns about cognitive liberty.

Reliability of Neuroscientific Evidence

Neuroscience is still developing, and its findings are not always conclusive. Over-reliance on such evidence may lead to miscarriages of justice.

Potential for Misuse

There is a risk that neuroscience could be used to label individuals as "potential criminals," leading to discrimination and preventive detention.

These concerns highlight the need for a balanced approach that integrates scientific insights without compromising legal principles.

Scope and Objectives of the Study[11]

This research aims to critically examine the intersection of neuroscience and criminal law, focusing on:

- The extent to which neuroscience challenges traditional notions of criminal responsibility
- The role of neuroscientific evidence in judicial decision-making
- The ethical implications of using brain-based evidence
- The need for legal reforms in light of neuroscientific developments

The study adopts a doctrinal and interdisciplinary approach, combining legal analysis with insights from neuroscience and philosophy.

Research Problem

The central problem addressed in this study is:

[7] Roper vs. Simmons 543 US 551 (2005).
[8] Miller vs. Alabama 567 US 460 (2012).
[9] Selvi vs. State of Karnataka (2010) 7 SCC 263.
[10] Article 20(3) of the Constitution.
[11] ibid

Whether the growing influence of neuroscience undermines the foundational principles of criminal law, particularly the concept of free will and individual responsibility.[12]

This problem is significant because it questions the legitimacy of punishment in a system that may no longer fully account for scientific realities.

Methodology

The research is primarily doctrinal, relying on:

- Judicial decisions
- Statutory provisions
- Academic literature
- Interdisciplinary sources from neuroscience

Comparative analysis is also employed to examine how different jurisdictions address neurocrime.

Early Theories: Biological Determinism and Criminal Behaviour[13]

The relationship between biology and criminal behaviour is not new. Early criminological theories, particularly those advanced by Cesare Lombroso, suggested that criminality is innate and biologically determined. Lombroso's theory of the "born criminal" argued that certain physical and neurological traits predispose individuals to crime.[14]

However, these theories were heavily criticized for being deterministic and lacking empirical validity. Modern neuroscience has revived aspects of biological explanations but with more sophisticated tools and evidence. Unlike Lombroso, contemporary scholars do not claim that biology alone determines criminality but acknowledge a complex interaction between neurological, psychological, and environmental factors.

Modern Neuroscience and Criminal Behaviour

Recent literature emphasizes the role of brain structures in influencing behaviour. Adrian Raine argues that abnormalities in the prefrontal cortex and amygdala are linked to violent and antisocial behaviour.[15] His work demonstrates that reduced activity in these regions may impair impulse control and moral reasoning.

Similarly, Antonio Damasio highlights the role of emotions in decision-making, suggesting that individuals with brain damage may lack the emotional capacity required for rational judgment.[16] These challenges the legal assumption that all individuals possess equal decision-making capacity.

While these studies provide valuable insights, critics argue that:

- Correlation does not imply causation
- Brain abnormalities do not necessarily lead to criminal behaviour
- Social and environmental factors remain crucial.

Free Will vs. Determinism Debate

One of the most debated issues in neurocrime literature is whether neuroscience undermines free will. Benjamin Libet's experiments demonstrated that neural activity precedes conscious decision-making, leading some scholars to argue that free will is an illusion.[17]

Building on this, Joshua Greene and Jonathan Cohen contend that neuroscience will fundamentally transform criminal law by shifting focus from blame to prevention.[18]They argue that as scientific understanding of behaviour improves, retributive justice will become less justifiable.

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[12] Stephen Morse: 'NeuroLaw' - Neuroscience and Criminal Law
YouTube · BRAIN PONDERINGS podcast with Dr. Mark Mattson
24 Oct 2023

[13] ibid

[14] Cesare Lombroso, The Criminal Man (Duke University Press 2006).

[15] Adrian Raine, The Anatomy of Violence (Pantheon 2013).

[16] Antonio Damasio, Descartes' Error (Putnam 1994).

[17] Benjamin Libet (n 4).

[18] ibid

However, opposing scholars such as Stephen Morse strongly criticize this view. Morse argues that neuroscience does not negate legal responsibility because:

- Legal responsibility is a normative concept
- Neuroscience explains behaviour but does not excuse it
- Individuals can still be held accountable despite causal influences[19]

This debate remains unresolved, reflecting a deep philosophical divide within the literature.

Neuroscientific Evidence in Criminal Trials[20]

A significant body of literature examines the use of neuroscientific evidence in courtrooms. Scholars have identified both advantages and risks:

Advantages

1. Provides objective evidence of mental impairment
2. Supports defenses such as insanity
3. Assists in sentencing decisions

Risks

1. Over-reliance on complex scientific data
2. Misinterpretation by judges and juries
3. "Brain overclaim syndrome" (overstating scientific findings)[21]

Ethical Concerns in Neurocrime Literature

The literature also highlights significant ethical issues:

Cognitive Liberty and Privacy

Neuroscience may enable access to individuals' thoughts and mental states, raising concerns about privacy and autonomy.

Predictive Justice

The possibility of predicting criminal behaviour based on brain data raises ethical dilemmas about pre-emptive punishment.

Inequality and Discrimination

There is a risk that neuroscientific evidence may disproportionately affect marginalized groups.

Scholars argue that legal safeguards are necessary to prevent misuse of neuroscientific technologies.

Indian Perspective in Literature

Indian scholarship on neurocrime is still developing. Most literature focuses on the admissibility of neuroscientific techniques such as:[22]

1. Narco-analysis
2. Brain mapping
3. Polygraph tests

The landmark judgment in Selvi vs. State of Karnataka emphasized constitutional protections against self-incrimination.[23] Indian scholars generally advocate a cautious approach, emphasizing fundamental rights over scientific advancement.

Neuroscientific Foundations of Criminal Behaviour

Brain Structure and Criminal Behaviour[24]

Neuroscientific research identifies specific brain regions associated with behaviour regulation. Damage or dysfunction in these areas has been linked to increased aggression, impulsivity, and antisocial conduct.

[19] Joshua Greene and Jonathan Cohen, 'For the Law, Neuroscience Changes Nothing and Everything' (2004) 359 Philosophical Transactions of the Royal Society B 1775.
[20] https://topjournals.org
[21] Stephen J Morse, 'Brain Overclaim Syndrome' (2006) 3 Ohio State Journal of Criminal Law 397.
[22] Ibid
[23] Selvi vs. Karnataka (2010) 7 SCC 263
[24] https://www.academia.edu

Prefrontal Cortex[25]

The prefrontal cortex is responsible for executive functions such as decision-making, impulse control, and moral reasoning. Studies indicate that reduced activity in this region is associated with violent and impulsive behaviour.[26]

Individuals with prefrontal cortex dysfunction may:

- Struggle to control impulses
- Exhibit poor judgment
- Fail to anticipate consequences

This has direct implications for criminal law, particularly in assessing mens rea. If an individual lacks the neurological capacity for rational decision-making, their culpability may be diminished.

Amygdala and Emotional Regulation[27]

The amygdala plays a crucial role in processing emotions, especially fear and aggression. Abnormalities in this region have been linked to psychopathy and violent behaviour.[28]

Research suggests that individuals with reduced amygdala activity:

1. Show diminished empathy
2. Exhibit lack of fear response
3. Are more prone to aggressive conduct

Temporal Lobes and Aggression

The temporal lobes are associated with memory and emotional responses. Damage to these areas has been linked to aggressive outbursts and impaired social behaviour.[29]

Neurological disorders such as temporal lobe epilepsy have been cited in criminal cases to explain sudden violent actions. This raises complex legal questions regarding intent and responsibility.

Neurochemical Influences on Behaviour[30]

Beyond structural abnormalities, neurochemicals significantly influence behaviour.

Serotonin and Aggression

Low levels of serotonin have been associated with increased aggression and impulsivity.[31] Individuals with serotonin deficiencies may have reduced capacity to regulate emotions, leading to violent behaviour.

Dopamine and Reward Mechanisms

Dopamine plays a key role in the brain's reward system. Dysregulation of dopamine pathways may lead to risk-taking and criminal behaviour, particularly in cases involving addiction or thrill-seeking.

Hormonal Factors[32]

Hormones such as testosterone have been linked to aggressive behaviour. However, the relationship is complex and influenced by social and environmental factors.

These findings suggest that behaviour is influenced by biochemical processes, but they do not establish a direct causal link to criminality.

Brain Injury and Criminal Behaviour

One of the most compelling areas of neurocrime research involves individuals with brain injuries.

Traumatic Brain Injury (TBI)

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[25] https://www.researchgate.net
[26] Adrian R, The Anatomy of Violence (Pantheon 2013).
[27] https://scholar.google.co.in/scholar?q=Amygdala+and+Emotional+Regulation+narco-analysis&hl=en&as_sdt=0&as_vis=1&oi=scholart#d=gs_qabs&t=1774324098819&u=%23p%3Djz7K8Wv7MSQJ
[28] Kent A Kiehl, The Psychopath Whisperer (Crown 2014).
[29] Alan J Parkin, Explorations in Cognitive Neuropsychology (Psychology Press 1996).
[30] https://www.lawjournals.org
[31] Adrian Raine (n 1).
[32] ibid

Studies show that individuals with traumatic brain injuries are more likely to exhibit:

- Aggression
- Impulsivity
- Poor decision-making[33]

This is particularly relevant in criminal cases where defendants have a history of head trauma.

Tumours and Abnormal Growths

There have been documented cases where brain tumours have led to drastic behavioural changes, including criminal conduct. In such cases, removal of the tumour has resulted in the cessation of abnormal behaviour.

These instances challenge traditional notions of culpability by demonstrating how physical changes in the brain can directly influence behaviour.

Neurodevelopmental Factors

Adolescent Brain Development

Neuroscience has established that the human brain continues to develop into early adulthood. The prefrontal cortex, responsible for impulse control, is among the last regions to mature.[34]

This explains why adolescents are more likely to:

- Engage in risk-taking behaviour
- Act impulsively
- Be influenced by peer pressure
- These findings have significant legal implications, particularly in juvenile justice.

Neurodevelopmental Disorders[35]

Conditions such as ADHD, autism spectrum disorder, and conduct disorder have been linked to behavioural issues. While these conditions do not inherently lead to criminality, they may increase vulnerability to certain types of offences.

Limits of Neuroscientific Explanations

Despite its contributions, neuroscience has significant limitations:

Correlation vs. Causation: Brain abnormalities may correlate with criminal behaviour but do not necessarily cause it.

Individual Variation: Not all individuals with similar brain conditions engage in crime.

Overgeneralization: Findings from small studies may not apply universally.

Reductionism: Reducing behaviour to brain activity ignores social and moral dimensions

Critical Analysis

A critical examination of neuroscientific foundations reveals that:

1. Neuroscience enhances understanding but does not replace legal reasoning
2. Biological factors influence but do not determine behaviour[36]
3. Legal responsibility remains a normative construct independent of scientific determinis

Legal Framework and Judicial Approaches

The integration of neuroscience into criminal law presents complex challenges for legal systems that are traditionally rooted in notions of free will, intent and moral responsibility. While neuroscience offers insights into the biological basis of behaviour, the law operates within a normative framework that prioritizes accountability and justice. This chapter critically examines how legal systems—particularly in India and other jurisdictions—have responded to neuroscientific evidence in criminal proceedings.

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[33] Jonathan H Pincus, Base Instincts: What Makes Killers Kill? (WW Norton 2001).

[34] Laurence Steinberg (n 9).

[35] ResearchGate
https://www.researchgate.net
PDF
Neurodevelopmental Disorders: The Past, Present and the Future

[36] Bruce D Perry, 'Childhood Trauma and Brain Development' (2002) Journal of Mental Health.

Relevance of Neuroscience in Legal Doctrine

Neuroscience intersects with several key areas of criminal law:[37]

- Mens Rea (Guilty Mind)
- Insanity Defence
- Competency to Stand Trial
- Sentencing and Mitigation

The central issue is whether neuroscientific evidence can negate or reduce criminal responsibility. While such evidence may explain behaviour, the law requires a normative judgment about culpability.[38]

Indian Legal Framework[39]

Constitutional Protections

The Indian Constitution provides safeguards that are directly relevant to neuroscientific evidence:

Article 20(3) – Protection against self-incrimination

Article 21 – Right to life and personal liberty

The use of neuroscientific techniques such as brain mapping and narco-analysis raises concerns regarding violation of these rights.

Admissibility of Scientific Evidence

Under the Indian Evidence Act, 1872,[40] expert opinions are admissible under Section 45. However, the admissibility of neuroscientific evidence depends on:

- Reliability
- Relevance
- Scientific validity
- Courts remain cautious due to the evolving nature of neuroscience.

Judicial Approach in India

Selvi vs. State of Karnataka (2010)[41]

This landmark case addressed the constitutionality of neuroscientific techniques such as narco-analysis, polygraph tests, and brain mapping.[42] The Supreme Court held that:

1. Involuntary administration violates Article 20(3)
2. Such techniques infringe mental privacy and personal liberty
3. Results are not reliable enough for evidentiary use

Critical Analysis:

The judgment reflects a rights-based approach, prioritizing individual autonomy over scientific advancement. However, it also limits the potential use of neuroscience in criminal investigations.

Application in Insanity Defence

Indian courts rely primarily on the McNaghten Rule, focusing on the accused's ability to understand the nature and consequences of their actions.

- Neuroscientific evidence may support claims of insanity but is not ative. Courts require:
- Clear proof of cognitive incapacity
- Link between brain condition and criminal act

Critical Observation:

The Indian judiciary remains conservative, using neuroscience as supplementary rather than primary evidence.

International Judicial Approaches

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[37] On the Relevance of Neuroscience to Criminal Responsibility - ResearchGate
[38] Neurocrime book
[39] https://en.wikipedia.org
[40] IEA,1872
[41] https://indiankanoon.org
[42] S v S K

United States

The United States has been at the forefront of integrating neuroscience into criminal law.

Roper v Simmons (2005)[43]

The Supreme Court held that imposing the death penalty on juveniles is unconstitutional, relying on neuroscientific evidence of immature brain development.

Miller v Alabama (2012)[44]

The Court ruled that mandatory life imprisonment without parole for juveniles is unconstitutional, emphasizing diminished culpability.

Analysis:

These cases demonstrate how neuroscience can influence constitutional interpretation and sentencing policies.

European Jurisdictions[45]

European courts have shown cautious acceptance of neuroscientific evidence, particularly in sentencing and rehabilitation.

Greater emphasis on human dignity and proportionality

Use of neuroscience in risk assessment and rehabilitation

However, strict evidentiary standards are maintained to prevent misuse.

Neuroscience and Criminal Defences

Insanity Defence

Neuroscience can strengthen insanity claims by providing objective evidence of brain dysfunction. However:

- Legal insanity ≠ medical insanity
- Courts focus on cognitive capacity, not just diagnosis

Diminished Responsibility

Some jurisdictions allow reduced liability where mental capacity is impaired. Neuroscientific evidence may support such claims.

Automatism

In rare cases, defendants argue that their actions were involuntary due to neurological conditions. Courts require strong evidence to accept such claims.

Sentencing and Mitigation

Neuroscience is increasingly used in sentencing to:

- Reduce punishment based on diminished capacity
- Support rehabilitation over retribution
- Assess risk of reoffending

Critical Concern:

There is a paradox:

- Brain abnormalities may reduce culpability
- But also suggest higher risk → leading to harsher sentences
- This creates inconsistency in judicial reasoning.

Evidentiary Challenges

Reliability Issues

Neuroscientific techniques such as fMRI are not always conclusive and may produce misleading results.[46]

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[43] R vs. S 543 US 551 (2005).

[44] Miller vs. Alabama 567 US 460 (2012).

[45] Roper/S 543 US 551 (2005).

[46] https://www.google.com/url?sa=i&source=web&rct=j&url=https://pmc.ncbi.nlm.nih.gov/articles/PMC5241538/%23:~:text%3DCognitive%2520studies%2520using%2520fMRI%2520are,conducted%2520using%2520BOLD%252Dcontrast

Interpretation Problems

Judges and juries may lack the expertise to interpret complex scientific data.

"Brain Overclaim Syndrome"

Courts may give undue weight to neuroscientific evidence, assuming it to be more objective than it actually is.[47]

Ethical and Constitutional Concerns

Right Against Self-Incrimination

Compulsory brain analysis may violate fundamental rights.

Privacy and Cognitive Liberty

Accessing brain data raises concerns about intrusion into mental autonomy.

Comparative Analysis[48]

The integration of neuroscience into criminal law varies significantly across jurisdictions, reflecting differences in legal traditions, constitutional frameworks, and judicial philosophies. This chapter undertakes a comparative analysis of three major legal systems—India, the United States, and Europe—to evaluate how each addresses the challenges posed by neurocrime.

The objective is not merely descriptive but critically analytical, identifying strengths, weaknesses, and potential lessons for legal reform. The comparison highlights the extent to which neuroscience has influenced legal doctrines, evidentiary standards, and sentencing practices.

India: A Rights-Based and Conservative Approach[49]

Limited Use of Neuroscience

India has adopted a cautious stance toward neuroscientific evidence. The judiciary has prioritized constitutional protections over scientific innovation.

Focus on Fundamental Rights[50]

Indian courts emphasize:

- Right against self-incrimination (Article 20(3))
- Right to privacy and personal liberty (Article 21)

Limitations

Lack of clear legal guidelines on neuroscience

Minimal use in sentencing and mitigation

Absence of interdisciplinary integration

Critical Insight:

India's approach protects individual rights but may hinder the development of a scientifically informed criminal justice system.

United States: Progressive and Science-Oriented Approach

Expanding Role of Neuroscience[51]

The United States has been at the forefront of incorporating neuroscience into criminal law, particularly in sentencing and constitutional interpretation.

Use in Sentencing and Mitigation

%2520fMRI.&ved=2ahUKEwi5jqeb0reTAxVXTmwGHTD1BXgQ1fkOegQIBxAQ&opi=89978449&cd&psig=AOvVaw1xhzvajx7D_Ll37GRtAkSV&ust=1774410998556000

[47] M/Alabama 567 US 460 (2012).

[48] https://www.researchgate.net

[49] https://blog.ipleaders.in/brain-fingerprinting-and-evidentiary-analogy/#:~:text=Brain%20fingerprinting%20and%20evidentiary%20analogy%20are%20both%20methods%20of%20determining,how%20that%20information%20is%20stored

[50] FR of C

[51] https://www.google.com/url?sa=i&source=web&rct=j&url=https://www.sciencedirect.com/topics/social-sciences/progressive-education%23:~:text%3DProgressive%2520Education%2520Internationally%26text%3DProgressive%2520education%2520(%25C3%25A9ducation%2520nouvelle%252C%2520Reformpaedagogik,it%2520is%2520an%2520ongoing%2520movement.&ved=2ahUKEwjUw7WL07eTAxUDcWwGHcI-M64Q1fkOegQIBhAC&opi=89978449&cd&psig=AOvVaw2aRYgM58fWbxeKUSvfE_70&ust=1774411233673000

Neuroscientific evidence is frequently used to:

- Argue diminished responsibility
- Mitigate punishment
- Support rehabilitation

Evidentiary Standards

The admissibility of scientific evidence is governed by standards such as the Daubert test, which requires:

- Scientific validity
- Peer review
- General acceptance

European Approach: A Balanced Model[52]

Emphasis on Human Rights

European jurisdictions adopt a balanced approach, integrating neuroscience while maintaining strong human rights protections under frameworks such as the European Convention on Human Rights (ECHR).

Proportionality and Rehabilitation

European courts emphasize:

- Proportional punishment
- Rehabilitation over retribution
- Individualized sentencing
- Key Challenges Across Jurisdictions

Despite differences, several common challenges emerge:

Reliability of Neuroscience

Scientific evidence is still evolving and may not always be conclusive.

Ethical Concerns

Issues of privacy, autonomy, and misuse persist globally.

Legal Compatibility

Neuroscience challenges traditional legal concepts such as free will and intent.

Inequality in Access

Advanced neuroscientific tools may not be equally accessible, leading to disparities.

Lessons for India

The comparative analysis suggests that India can:

1. Develop clear guidelines for admissibility of neuroscientific evidence
2. Incorporate neuroscience in sentencing and rehabilitation
3. Promote interdisciplinary research between law and neuroscience
4. Maintain strong constitutional safeguards

Critical Evaluation

Neuroscience vs. Legal Normativity

A fundamental tension exists between neuroscience and criminal law:[53]

- Neuroscience is descriptive, explaining how behaviour occurs
- Law is normative, prescribing how individuals ought to behave

Neuroscience may demonstrate that behaviour is influenced by brain processes, but it does not answer whether such behaviour should be excused or punished.

Critical Argument:

[52] https://www.google.com/url?sa=i&source=web&rct=j&url=https://legalvidhiya.com/exploring-the-intersection-of-law-and-neuroscience-in-criminal-justice/%23:~:text%3DResearch%2520on%2

[53] antoniocasella.eu
https://www.antoniocasella.eu
PDF
LAW AND NEUROSCIENCE 2.0 Francis X. Shen*

Legal responsibility is not negated by causation. All human actions have causes—biological, psychological, or social—but the law selectively attributes responsibility based on normative standards.

The Illusion of Free Will: Myth or Reality?

One of the strongest claims in neurocrime literature is that free will is an illusion. If human actions are determined by neural processes, the moral basis of punishment becomes questionable.

However, this argument suffers from several weaknesses:

Conceptual Confusion – Scientific determinism does not necessarily negate legal responsibility
Practical Impossibility – A legal system without responsibility is unworkable
Philosophical Debate – Compatibilist theories argue that free will can coexist with determinism
Critical Insight:

Even if free will is limited, the law operates on a functional concept of responsibility necessary for social order.

The Risk of Neuro-Reductionism

One of the most significant dangers in neurocrime is neuro-reductionism, the tendency to reduce complex human behaviour to mere brain activity.

Problems with Neuro-Reductionism:

- Ignores social and environmental influences
- Oversimplifies moral and legal responsibility[54]
- Creates deterministic narratives

Human behaviour is the product of multiple interacting factors. Reducing crime to brain abnormalities risks ignoring broader societal causes such as poverty, inequality, and trauma.

Critical Observation:

Neuroscience should complement, not replace, traditional criminological perspectives.

"Brain Overclaim Syndrome" and Evidentiary Risks[55]

The concept of "Brain Overclaim Syndrome", identified by Stephen Morse, highlights the tendency to overstate the significance of neuroscientific evidence.

Key Concerns:

Courts may treat brain scans as definitive proof
Juries may be unduly influenced by scientific imagery
Judges may lack expertise to critically evaluate such evidence

Critical Analysis:

Neuroscientific evidence often appears objective but may be:

- Probabilistic rather than conclusive
- Subject to interpretation
- Limited by current scientific knowledge
- Double-Edged Nature of Neuroscientific Evidence

Neuroscience presents a paradox in criminal law:

- Mitigation Argument: Brain abnormalities reduce culpability
- Aggravation Argument: Same abnormalities indicate higher risk of reoffending

This creates a double-edged sword:

- It may lead to reduced sentences in some cases

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[54] https://www.google.com/search?q=significant+dangers+in+neurocrime+is+neuro-reductionism%2C+the+tendency+to+reduce+complex+human+behaviour+to+mere+brain+activity.&oq=significant+dangers+in+neurocrime+is+neuro-reductionism%2C+the+tendency+to+reduce+complex+human+behaviour+to+mere+brain+activity.&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRiPAjIHCAIQIRiPAjIHCAMQIRiPAtIBCDEzMDJqMGo3qAIUsAIB8QVbJM7jht6giA&client=ms-android-samsung-ga-rev1&sourceid=chrome-mobile&ie=UTF-8#lfId=ChxjMe

[55] The Ohio State University https://kb.osu.edu PDF Brain Overclaim Syndrome and Criminal Responsibility: A Diagnostic Note

- But harsher preventive detention in others
- Ethical Concerns and Human Rights Implications

Cognitive Liberty

Neuroscience raises concerns about mental autonomy—the right to control one's own thoughts and brain data.

Privacy

Brain imaging technologies may intrude into the most private sphere of human existence.

Predictive Justice

The possibility of predicting criminal behaviour raises ethical dilemmas:

1. Should individuals be punished for crimes they have not yet committed?
2. Does prediction justify preventive detention?

Indian Legal System: Need for Reform

India's cautious approach protects rights but limits progress.

Key Issues:

- Lack of legal framework for neuroscientific evidence
- Minimal judicial engagement
- Absence of interdisciplinary collaboration

Suggested Reforms:

- Establish guidelines for admissibility
- Promote judicial training in neuroscience
- Encourage research and policy development
- Integrate neuroscience in sentencing and rehabilitation

Balancing Science and Law

The challenge is not choosing between neuroscience and law, but integrating both effectively.

Balanced Approach Should:

1. Recognize scientific insights
2. Preserve legal principles
3. Protect fundamental rights
4. Avoid determinism

Key Principle:

Neuroscience should inform but not dictate legal decisions.

Critical Position of the Study

This dissertation adopts the position that:

- Neuroscience does not eliminate criminal responsibility
- It provides contextual understanding, not legal conclusions
- Legal systems must remain normative and value-based

The integration of neuroscience must be:

- Selective
- Cautious
- Ethically grounded

Conclusion and Recommendations

Neuroscience and Human Behaviour:

The study establishes that neuroscience provides valuable insights into the biological underpinnings of human behaviour. Brain structures such as the prefrontal cortex and amygdala, along with neurochemical processes, significantly influence decision-making, impulse control, and aggression.

However, these influences are not deterministic. Criminal behaviour results from a complex interaction of biological, psychological, and environmental factors.

Challenge to Free Will and Criminal Responsibility

Neuroscience challenges the traditional assumption of free will by suggesting that behaviour may be influenced by unconscious neural processes. Despite this, the study finds that:

1. Legal responsibility is a normative construct
2. Determinism does not eliminate accountability
3. The legal system requires a functional concept of free will

Thus, neuroscience does not invalidate criminal responsibility but calls for its re-evaluation.

Judicial Approaches

The comparative analysis reveals differing approaches:

- India adopts a cautious, rights-based approach
- United States actively integrates neuroscience in sentencing and constitutional interpretation
- Europe follows a balanced model emphasizing proportionality and human rights
- No jurisdiction has fully resolved the challenges posed by neurocrime.

Evidentiary and Ethical Concerns

The study identifies several risks associated with neuroscientific evidence:

- Over-reliance and misinterpretation
- "Brain Overclaim Syndrome"
- Privacy and cognitive liberty concerns
- Potential misuse in predictive justice

These issues highlight the need for strict safeguards.

Impact on Theories of Punishment

Neuroscience weakens retributive justifications while strengthening reformative approaches. It supports a shift toward rehabilitation, particularly in cases involving neurological impairments.

Core Argument of the Study

The central argument of this dissertation is that:

Neuroscience should inform criminal law but must not redefine its foundational principles.

While scientific insights are valuable, the law must remain grounded in normative values such as justice, fairness, and accountability.

Recommendations

Based on the analysis, the following recommendations are proposed:

Development of Legal Framework for Neuroscientific Evidence

India should establish clear legal guidelines governing the admissibility of neuroscientific evidence, including:

1. Standards for reliability and relevance
2. Procedures for expert testimony
3. Safeguards against misuse

This will ensure consistency and prevent arbitrary application.

Judicial Training and Capacity Building

Judges and legal practitioners should receive training in neuroscience to:

- Understand scientific evidence
- Avoid misinterpretation
- Make informed decisions

Specialized training programs and interdisciplinary workshops should be introduced.

Integration in Sentencing and Rehabilitation

Neuroscience should be used primarily in:

1. Sentencing decisions
2. Rehabilitation programs
3. Risk assessment (with caution)

This approach aligns with reformative justice and promotes individualized sentencing.

Protection of Fundamental Rights

Strong safeguards must be implemented to protect:

- Right against self-incrimination
- Right to privacy
- Cognitive liberty

Any use of neuroscientific techniques must be voluntary and subject to strict judicial scrutiny.

Avoidance of Deterministic Approaches

Legal systems must avoid adopting a purely deterministic view of human behaviour. Responsibility should not be replaced by biological explanations.

Adoption of a Balanced Approach

India should adopt a model similar to European jurisdictions, which:
Integrates neuroscience cautiously
Maintains legal principles
Emphasizes proportionality and human rights

"From Silence to Recognition: Reforming Indian Criminal Law to Address Male Rape and Reporting Barriers"

Ansari Faiza Raees Ahmed

Abstract

The concept of rape, as a grave violation of bodily integrity and dignity, is not inherently gender-specific; however, the Indian legal framework has traditionally approached it from a gendered perspective. Under the Bharatiya Nyaya Sanhita[1], the definition of rape continues to primarily recognize women as victims, thereby excluding male victims and individuals of other gender identities. This exclusion reflects a significant legal gap[2] and reinforces societal stereotypes that marginalize, male victimhood. This study critically examines the challenges faced by male victims of rape in India, particularly focusing on the legal, social, and institutional barriers that hinder reporting and access to justice. Issues such as stigma, notions of masculinity, lack of legal recognition, and inadequate support systems contribute to widespread underreporting and invisibility of such crimes. Although certain provisions relating to sexual assault provides limited remedies, they fail to adequately address the seriousness and distinct nature of rape experienced by male victims. The research adopts a doctrinal to evaluate the existing legal framework and its constitutional implications, particularly in relation to equality and dignity. It further explores the need for gender-neutral reforms by drawing on comparative perspectives and evolving global standards.[3]

The paper concludes that there is an urgent need to reform Indian criminal law to incorporate gender-inclusive provisions that recognize all victims of sexual violence. Such reforms are essential to ensure a more equitable, sensitive, and effective criminal justice system that upholds the principles of justice, equality, and human dignity.

Keywords: Gender-neutral rape laws, Male victimhood, Legal recognition, Underreporting of sexual violence, Criminal law reform.

1.Introduction: -

The idea of rape[4], in its essence, is not limited to any particular gender; it represents a serious violation of an individual's bodily integrity, dignity, and personal freedom. However, in India, both legal frameworks and societal perceptions have traditionally defined rape in gender-specific terms, largely identifying women as victims and men as perpetrators. This limited understanding has led to the marginalization and invisibility of male victims, whose experiences are often ignored, underreported, and insufficiently addressed within the criminal justice system.

Although Indian criminal law has undergone significant reforms, especially with the introduction of the Bharatiya Nyaya Sanhita, 2023, the legal definition of rape remains restrictive and does not extend to male victims or individuals of other gender identities. This exclusion highlights a clear legislative shortcoming and also perpetuates entrenched societal stereotypes[5] that discourage recognition of male victimhood. Social expectations of masculinity, fear of stigma and humiliation, lack of legal acknowledgment, and absence of gender-neutral provisions further discourage reporting, thereby sustaining a cycle of silence and denial of justice.

The problem is aggravated by the absence of adequate institutional support systems, lack of well-defined procedural safeguards, and limited judicial engagement with the issue. While certain legal provisions addressing unnatural offences or sexual assault may provide partial relief, they fail

[1] Bharatiya Nyaya Sanhita, No. 45 of 2023, (India).
[2] Law Commission of India, Report No. 172 on Review of Rape Laws (2000).
[3] World Health Organization, World Report on Violence and Health (2002).
[4] Indian Penal Code, 1860, section 375–376.
[5] Aliraza Javaid, Male Rape, Masculinities, and Sexualities, 20 J. GENDER STUD. 1 (2015).

to fully reflect the seriousness and distinct nature of rape experienced by male victims. As a result, the existing legal framework remains inadequate in ensuring complete justice and protection.

This research paper, titled **"From Silence to Recognition: Reforming Indian Criminal Law to Address Male Rape and Reporting Barriers,"** seeks to critically analyse the gendered nature of rape laws in India and emphasize the pressing need for reform. It examines the shortcomings of current legal provisions, explores the socio-legal challenges faced by male victims, and argues for a more inclusive, gender-neutral legal framework. By addressing both legal gaps and societal obstacles, the study aims to promote a more just and sensitive criminal justice system that safeguards all victims of sexual violence, regardless of gender.

2.Objectives of the Study: -

a. To examine the legal framework on rape under the Bhartiya Nyaya Sanhita
b. To identify barriers faced by male victims in reporting sexual violence
c. To analyse constitutional issues of equality and dignity
d. To evaluate the need for gender-inclusive rape laws in India

3.Hypothesis: -

Gender-neutral rape laws can improve inclusivity but must be carefully designed to prevent misuse.

4.Research Methodology: -

This study uses a doctrinal approach to examine laws under the Bhartiya Nyaya Sanhita. It relies on secondary sources such as statutes, case laws, and legal literature, and adopts a comparative perspective to suggest gender-inclusive reforms.

5.Research Questions: -

The present study seeks to answer the following research questions in order to critically examine the gaps in Indian rape law and propose inclusive legal reforms.

a. How does the gender-specific definition of rape under the Bharatiya Nyaya Sanhita exclude male victims?
b. What are the major legal and institutional gaps in addressing male rape in India?
c. What social and psychological barriers prevent male victims from reporting sexual violence?
d. Does the current legal framework violate constitutional principles of equality and dignity?
e. How have other countries implemented gender-neutral rape laws, and what lessons can India learn?
f. Can gender-neutral rape laws improve access to justice while preventing misuse?

6. Legal Framework in India: -

6.1: Overview of Rape Laws in India:

In India, the legal provisions relating to rape are primarily contained in the Bharatiya Nyaya Sanhita ,2023, which has replaced the earlier Indian Penal Code 1860 framework.

Although the statute seeks to regulate sexual offences and safeguard victims, its structure continues to reflect a largely traditional approach.

6.2 : Gender-Specific Definition of Rape:

The present legal framework defines rape in a gender-specific manner, identifying women as victims and men as offenders. This limited interpretation excludes male victims as well as persons of other gender identities, thereby restricting the scope of legal protection. Consequently, instances of sexual violence against men are not formally recognized as rape under Indian law.

6.3: Role of Judiciary:

The judiciary has played a significant role in broadening the understanding of fundamental rights in the context of sexual offences. In **Navtej Singh Johar v. Union of India**,[6] the Supreme Court reaffirmed the values of equality, dignity, and personal autonomy, representing a progressive

[6] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, 35 (India).

shift in legal thought. However, despite such advancements, legislative changes have not fully incorporated a gender-inclusive perspective.

6.4: Legal Gaps and Limitations:

The existing legal framework is marked by several shortcomings, including:

a. Lack of explicit recognition of male rape
b. Reliance on indirect or insufficient legal provisions
c. Absence of gender-neutral terminology

These deficiencies lead to unequal protection of victims and create barriers to justice. As a result, the current legal system remains inadequate in addressing sexual violence in a comprehensive and inclusive manner.

7. Barriers To Reporting: -

7.1: Social Stigma and Masculinity Myths:

Prevailing social norms link masculinity with strength and control, making it difficult for male victims to acknowledge their victimization. The fear of being mocked, disbelieved, or socially excluded discourages them from coming forward. As a result, stigma and gender stereotypes significantly reduce reporting, rendering male victims largely invisible in official data.

7.2: Psychological Trauma:[7]

Male survivors often endure severe psychological consequences, including anxiety, depression, shame, and post-traumatic stress. Global studies, including those by health organizations, indicate that sexual violence has long-term emotional impacts. However, feelings of embarrassment and fear of disbelief prevent many victims from seeking help or reporting the offence.

7.3: Institutional Barriers:

Institutional mechanisms frequently lack the sensitivity required to handle cases involving male victims. Law enforcement agencies may not be adequately trained, and there is a noticeable absence of specialized support services. In **State of Punjab v. Gurmit Singh,**[8] the Supreme Court stressed the importance of sensitivity in dealing with sexual offence cases. However, the focus has largely remained on female victims, reflecting a broader institutional gap in addressing all victims equally.

7.4: Legal Barriers and Underreporting:

The lack of explicit recognition of male rape under the Bharatiya Nyaya Sanhita compels victims to depend on indirect and insufficient legal provisions.

7.5: Data on Underreporting:

The National Crime Records Bureau[9] reports over 30,000 rape cases annually, though these figures represent only reported instances. A substantial number of cases remain unreported, particularly among male victims due to stigma and absence of legal recognition. Global estimates suggest that approximately 1 in 6 men[10] experience some form of sexual abuse, yet reporting remains minimal. This results in a significant "dark figure of crime," where the actual prevalence far exceeds recorded statistics.

8. Constitutional Analysis: -

8.1: Article 14[11] – Equality Before Law:

Article 14 ensures equality before the law and equal protection of laws for all individuals. However, the gender-specific definition of rape under the Bharatiya Nyaya Sanhita results in unequal protection by excluding male victims. Such differentiation raises concerns regarding conformity with the constitutional guarantee of equality.

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[7] World Health Organization, supra note 3.
[8] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, 389 (India).
[9] National Crime Records Bureau, Crime in India 2022 (2023).
[10] Philip N.S. Rumney, In Defence of Gender Neutrality Within Rape, 6 SEATTLE J. SOC. JUST. 481 (2007).
[11] The Constitution of India,1950.

8.2: Article 21[12] – Right to Life and Dignity:

Article 21 protects the right to life, which encompasses dignity, bodily integrity, and personal autonomy. The lack of legal recognition for male victims of sexual violence undermines these rights, as it denies them adequate protection and recognition under the law.

8.3: Human Rights Perspective:

From a human rights perspective, sexual violence constitutes a violation of fundamental human dignity irrespective of gender. International standards emphasize principles of equality and non-discrimination, underscoring the need for inclusive legal protection. The absence of gender-neutral provisions in Indian law highlights a gap between domestic legislation and evolving global human rights norms.

9. Gender-Neutral laws in other Jurisdictions:-

Several countries, including the United Kingdom,[13] the United States,[14] and Canada,[15]have implemented gender-neutral legal definitions for rape and sexual offences. These frameworks acknowledge that both victims and offenders may belong to any gender. The emphasis is placed on the act of sexual violence itself rather than the gender of the individuals, thereby offering more comprehensive legal protection.

Key Features:

The essential features of these legal systems include:

a. Broad and gender-inclusive definitions of sexual offences
b. Equal protection under the law for all victims
c. Access to support services without gender-based discrimination
d. Strong focus on consent and personal autonomy

Lessons for India:

This comparative perspective suggests that India could benefit from adopting a more inclusive legal framework. Incorporating gender-neutral provisions, improving victim support mechanisms, and ensuring equal recognition of all survivors would help bring Indian law in line with international standards and strengthen access to justice.

10. Reforms and Recommendations: -

10.1: Legal Reforms:

To ensure a more inclusive, effective, and victim-centric legal framework, the following reforms are essential:

a. Adoption of a gender-neutral definition of rape and sexual offences.
b. Use of inclusive terminology such as "person" instead of gender-specific language.
c. Explicit recognition of male and non-binary individuals as victims.
d. Comprehensive inclusion of all forms of non-consensual sexual conduct, including digital and emerging forms of abuse.
e. Development of a consent-based legal framework emphasizing autonomy and bodily integrity.
f. Clear statutory guidelines on evidentiary standards to prevent bias and secondary victimization.
g. Criminalization of marital rape in a gender-neutral manner.
h. Establishment of confidential and victim-friendly reporting mechanisms, including secure digital platforms.
i. Implementation of strong privacy safeguards such as in-camera proceedings and strict confidentiality norms.
j. Strengthening forensic and medical infrastructure with standardized, gender-sensitive protocols.
k. Introduction of fast-track courts and time-bound investigation procedures.

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[12] The Constitution of India,1950.
[13] Sexual Offences Act 2003, c. 42 (U.K.).
[14] 18 U.S.C. Section 2241.
[15] Criminal Code, R.S.C. 1985, c. C-46 (Can.).

l. Mandatory legal aid and victim compensation schemes accessible to all genders.
m. Improvement in collection of inclusive, disaggregated, and reliable crime data.
n. Periodic review and monitoring of laws to ensure effectiveness and accountability.
o. Alignment of domestic legal frameworks with international human rights standards and best practices.

10.2: Social Reforms:

Legal changes must be supported by broader societal transformation to effectively address stigma, silence, and underreporting:

a. Nationwide awareness campaigns to challenge stereotypes that only women can be victims of sexual violence.
b. Integration of gender-sensitization and consent education into school and university curricula.
c. Promotion of inclusive sex education focusing on respect, boundaries, and consent.
d. Encouragement of open public discourse to normalize conversations around all forms of victimization.
e. Responsible media representation that avoids stereotypes and victim-blaming narratives.
f. Engagement of community leaders and influencers in advocacy efforts.
g. Strengthening the role of civil society organizations in outreach, awareness, and victim support.
h. Workplace policies addressing sexual harassment in a gender-neutral manner.
i. Creation of safe institutional environments in educational and professional spaces.

10.3: Psychological Reforms:

Addressing the psychological and emotional consequences of sexual violence is crucial for holistic justice and rehabilitation:

a. Establishment of accessible, gender-neutral counselling and mental health services.
b. Training of psychologists, counsellors, and healthcare professionals in trauma-informed and gender-sensitive care.
c. Development of specialized support programs for male and non-binary survivors.
d. Provision of long-term psychological rehabilitation and follow-up care.
e. Creation of confidential helplines and crisis intervention centres.
f. Establishment of safe spaces and peer-support groups for survivors.
g. Integration of mental health support within the criminal justice process (during investigation and trial).
h. Awareness programs to reduce stigma associated with seeking psychological help.
i. Inclusion of family counselling and support systems to aid recovery.
j. Collaboration between legal and mental health institutions for coordinated victim assistance

11: Conclusion: -

The present study underscores a critical gap in the Indian criminal justice framework, wherein the legal definition of rape under the Bharatiya Nyaya Sanhita remains confined within a gender-specific structure. This limitation not only excludes male and non-binary victims but also perpetuates deep-rooted societal stereotypes that silence their experiences. As a result, a significant portion of sexual violence remains unrecognized, underreported, and inadequately addressed.

The analysis demonstrates that the issue extends beyond legal exclusion and is reinforced by social stigma, rigid notions of masculinity, psychological barriers and institutional insensitivity. These factors collectively contribute to a "culture of silence," preventing victims from seeking justice and support. Furthermore, the existing legal provisions fail to fully align with constitutional mandates of equality under Article 14 and the right to dignity and personal autonomy under Article 21.

Comparative insights from other jurisdictions reveal that gender-neutral legal frameworks are not only feasible but also more effective in ensuring comprehensive protection for all victims. Such models emphasize consent, equality, and inclusivity, offering valuable guidance for reform in the Indian context.

In light of these findings, there is an urgent need to re-envision Indian rape laws through a gender-inclusive lens. Legal reform must be accompanied by institutional strengthening, societal awareness, and psychological support mechanisms to create a holistic and victim-centric system. The adoption of gender-neutral definitions, improved reporting mechanisms, and sensitization of authorities are essential steps toward bridging the existing gaps.

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

Ultimately, justice cannot be selective. A truly equitable legal system must recognize and respond to all forms of sexual violence, irrespective of the victim's gender. Moving "from silence to recognition" requires not only legislative change but also a broader shift in societal attitudes, ensuring that every survivor is afforded dignity, protection, and access to justice.

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