

LAW, SOCIETY AND HUMAN VALUES

Interdisciplinary Perspectives on Justice, Governance, and Social
Transformation

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Transformation

Chief Editor

Prof (Dr) Priya Sepaha

Founder Director, Law Colloquy &
Professor NLIU, Bhopal

Editors

Dr Sumit Maheshwari

Assistant professor & Dean I/C, School of Law & Public Policy
Avantika University

Ms Harshita Choubey

Assistant professor, School of Law & Public Policy
Avantika University



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AG-33, Scheme number 54,
Vijay Nagar
Indore (M.P), 452011, India
[Email-info@lawcolloquy.com](mailto:info@lawcolloquy.com)
Mobile- +91 9993447395

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At the outset, we express our deepest gratitude to all the contributors whose scholarly chapters form the backbone of this work. Their rigorous research, critical insights, and commitment to advancing interdisciplinary legal discourse have greatly enriched this volume. Each author has brought a unique perspective, helping to create a comprehensive and meaningful exploration of law in its social, technological, and human dimensions.

We extend our sincere appreciation to the academic and professional institutions that have fostered an environment conducive to research and intellectual inquiry. Their support has been crucial in enabling contributors to engage deeply with complex and contemporary legal issues. We are also grateful to our mentors, colleagues, and peers for their constant encouragement, valuable suggestions, and constructive feedback throughout the development of this book. Their guidance has significantly enhanced the quality and depth of this work.

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Lastly, we express our gratitude to the readers of this book. It is our sincere hope that this work contributes meaningfully to academic discourse and inspires further research and dialogue on the role of law in shaping a just, equitable, and humane society.

PREFACE

This edited volume, “Law, Society and Human Values: Interdisciplinary Perspectives on Justice, Governance, and Social Transformation,” recognises that law cannot be fully understood in isolation. It is a dynamic institution, shaped by and shaping the social, political, technological, and moral fabric of society. In an era of rapid change driven by globalisation, digitalisation, and shifting social awareness, examining law through an interdisciplinary lens has become increasingly urgent. This book gathers diverse scholarly contributions exploring the evolving relationship between law and society. The chapters cover a broad intellectual range, from constitutionalism and governance to gender justice, from the psychology of crime to ethical issues raised by artificial intelligence. Each entry aims to see law not just as rules, but as a tool for social change and a mirror of human values.

A key focus is on constitutionalism and transformative justice in India, showing how constitutional principles act as both foundations and catalysts for social transformation. Chapters on reservation policies, constitutional morality, and democratic governance critique whether legal systems have effectively addressed past inequalities and promoted inclusive development.

The volume also emphasises gender and law, especially in today’s context of technology and social norm shifts. Sections on gendered crime in the age of artificial intelligence, marital identity among young women, and broader gender justice issues highlight ongoing challenges and new complexities in achieving real equality.

Additionally, the book examines the intersection of law, psychology, and crime, offering insights into how human behaviour, societal pressures, and changing environments influence criminality and justice. This interdisciplinary approach broadens understanding beyond traditional legal doctrines, stressing the importance of a holistic view of justice.

Furthermore, it explores current issues at the intersection of technology and law, including algorithmic governance, digital security, and constitutional questions related to automation. These topics are especially pertinent as technological advances increasingly affect rights, livelihoods, and state responsibilities.

Chapters on the death penalty, cybercrime detection, and global digital security demonstrate the volume’s commitment to addressing both long-standing and emerging legal challenges. These discussions promote critical reflection on whether existing laws are adequate and highlight the need for reforms in light of modern realities.

This collection results from the efforts of scholars, researchers, and practitioners who bring diverse perspectives and expertise. Their contributions aim to deepen academic understanding and also inform policy, practice, and public debate.

It is hoped that this volume will be a valuable resource for students, academics, legal professionals, and policymakers. More importantly, it seeks to inspire ongoing dialogue on how law can better serve society by ensuring justice, promoting equality, and protecting human dignity in an ever-changing world.

TABLE OF CONTENTS

1. <i>Acknowledgements</i>	IV
2. <i>Preface</i>	V
3. <i>Table of Contents</i>	VII
4. Constitutionalism and Democratic Governance Author: Ms Suhani Sharma	1-17
5. Gendered Crime in the Age of Artificial Intelligence: A Legal-Ethical Study Authors: Ms Trisha Jain and Mr. Anshuman Pandey.....	18- 38
6. Law As An Instrument Of Social Transformation: Constitutionalism, Gender Justice, And The Interdisciplinary Dynamics of Law And Society Authors: Mr Mohammad Aqib & Ms Prachi Verma.....	39- 49
7. Mind, Law, And Society: The Psychology of Crime In An Evolving World Author: Ms Nikke.....	50-62
8. AI in Healthcare and the Right to Health: Legal and Governing Challenges Author: Shalu Mehta.....	63- 71
9. Intersecting Identities: Advancing Gender Diversity Through Human Rights Author: Asha K.R.....	72-90

Constitutionalism and Democratic Governance

Author: Ms Suhani Sharma¹

Abstract

This study examines the theoretical foundations and institutional functioning of democracy within the framework of the Constitution of India, with particular emphasis on constitutional morality, transformative constitutionalism, and democratic accountability. Through the principle of constitutional morality, the Constitution seeks to guide both institutions and citizens toward adherence to democratic values, while transformative constitutionalism emphasises the role of constitutional interpretation in bringing progressive social change. The paper analyses the functioning of democratic governance through the interaction of the three pillars of government, the Legislature, the Executive, and the Judiciary, highlighting the principle of separation of powers and the system of checks and balances that ensures democratic accountability. Particular attention is given to the role of judicial review and the ongoing debate between judicial activism and judicial restraint in safeguarding constitutional principles while maintaining institutional balance. The study further explores federalism and decentralisation in India, focusing on the distribution of powers between the Union and the States and the strengthening of grassroots democracy through institutions such as the Panchayati Raj system. These mechanisms enhance citizen participation and local self-governance, thereby deepening democratic practice. In addition, the paper considers the protection of human rights in a globalised world, examining how fundamental rights, international norms, and modern governance tools such as the Right to Information Act and e-governance contribute to transparency, accountability, and rights protection. The research also addresses contemporary challenges to Indian democracy, including the criminalisation of politics, ideological instability in political parties, and institutional tensions among branches of government. The study concludes by proposing reforms aimed at strengthening democratic institutions, improving judicial efficiency, enhancing electoral integrity, and promoting greater socio-economic inclusion. Ultimately, it argues that the continued vitality of Indian democracy depends on a balanced interaction between constitutional morality, institutional accountability, and active citizen participation.

Keywords: Constitutionalism, Democratic Governance, Constitutional Morality, Transformative Constitutionalism, Separation of Powers.

Introduction

“However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good”. – B.R. Ambedkar

Modern political frameworks are anchored in the symbiotic relationship between constitutionalism and democratic governance. While democracy asserts the primacy of popular sovereignty, constitutionalism ensures that such power is exercised within clear constitutional boundaries. Under this paradigm, governmental authority is not absolute; it is both derived from and circumscribed by a foundational body of law. By institutionalising the separation of powers and a robust system of checks and balances, constitutionalism serves as a safeguard against the misuse of power, thereby preserving individual liberty and upholding the rule of

¹ Student B.A. LL.B. (Final Year), Faculty of Law, Oriental University, Indore, Madhya Pradesh, India

law. In contemporary governance, constitutionalism establishes the form of limited government. While constitutionalism establishes the formal framework for limited government, this paper contends that in the Indian context, democracy often risks devolving into majoritarianism unless it is consistently tempered by 'Constitutional Morality'. This principle requires state institutions and the Judiciary to look beyond the literal text of the law to its egalitarian spirit, ensuring that the 'Basic Structure' remains resilient against political instability. Consequently, the following analysis examines how this moral and transformative lens is essential for maintaining democratic accountability and federal equilibrium in a globalised era. It has become a core framework for modern states where power is exercised by different bodies, ensuring that the powers are strictly exercised within the limitations imposed by the government.

As Carl J. Friedrich observed, constitutionalism represents an institutionalised system of restraints on power. This ensures that authority is exercised in accordance with established legal frameworks rather than arbitrary discretion. According to Barnett, constitutionalism means limiting government power, dividing authority among institutions, and ensuring that the government remains answerable to the people.²

The Supreme Court, in *Kesavananda Bharti v. State of Kerala* (1973)³, held that the Constitution contains unchangeable underlying concepts that constitute the basic structure doctrine, which cannot be amended by the parliament so as to ensure that the principles laid down in the Constitution remain intact despite the changes in political power. This was further upheld by the Court in *Indira Nehru Gandhi v. Raj Narain* (1975)⁴, where the Court equated democratic governance with constitutionalism by highlighting that free and fair elections are a fundamental component of the system.

The fundamental principle of democratic government is the idea of popular sovereignty, where authority is derived from the will of the people of the nation. The Constitution not only enshrines the structure of the government but also defines the rights, duties and institutional mechanisms that uphold the principle of the rule of law. The distribution of powers between different bodies prevents institutional overreach and ensures the system of checks and balances, empowering the judiciary to uphold constitutional supremacy through judicial review.

Constitutionalism also embodies the provision to protect democracy from deforming into majoritarianism by protecting fundamental rights of expression, equality and liberty of the people. In contemporary governance, the concept of constitutional morality has gained prominence, urging both institutions and citizens to adhere not just to the text of the Constitution but also to its underlying spirit. Democratic governance, therefore, is not merely about electoral processes but about maintaining a culture of legality, accountability, and respect for rights.

² Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1.

³ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

⁴ Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1.

Research Objective and Methodology

This study is structured around three primary inquiries intended to provide a critical analysis of the Indian constitutional framework, focusing first on the interpretative role of constitutional morality. It seeks to critically assess how this principle functions as a normative tool for the judiciary in navigating legal vacuums and clarifying ambiguous statutory provisions within the evolving legal landscape. Furthermore, the research evaluates the practical efficacy of the checks and balances mechanism in preserving the functional separation of powers between the legislature, executive, and judiciary to ensure democratic accountability. Finally, the study aims to identify modern systemic challenges to federal autonomy, such as central dominance and the misuse of emergency provisions, while formulating institutional strategies to reinforce the federal balance within the Indian democratic structure.

The research methodology adopted for this study is strictly doctrinal, characterised by a qualitative and analytical approach to established legal frameworks. The investigation is grounded in a rigorous examination of the Constitution of India and a thematic analysis of landmark Supreme Court precedents, including *Kesavananda Bharati v. State of Kerala*, *S.R. Bommai v. Union of India*, and *Navtej Singh Johar v. Union of India*, to trace the substantive evolution of constitutional principles. These primary legal sources are integrated with scholarly perspectives derived from peer-reviewed academic journals, historical legal commentaries, and authoritative texts by constitutional jurists. This multi-faceted approach ensures a comprehensive, comparative, and critical outlook on the contemporary state of democratic governance and constitutionalism in India.

Constitutional Morality and Transformative Constitutionalism

Constitutional morality is not a natural sentiment. It has to be cultivated. – Dr BR Ambedkar

The Constitution of India has explicit reference to the concept of morality under Article 19(2). The term "constitutional morality" was first coined by George Grote and later adopted in Indian Constitutional Jurisprudence. "Dr B.R. Ambedkar, while discussing the concept of constitutional morality in the Constitutional Assembly, gives emphasis by quoting George Grote, a political radical and historian." "According to Grote; It involves deep respect for constitutional procedures, obedience to authority that acts within these rules, and at the same time, freedom of speech and action within the limits of law, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the intense political rivalry, both sides should treat constitutional rules as equally important and sacred, which was the key concern highlighted while examining Grote's views was application of rule of law to shape the constitutional moral values in its purest form. Constitutional morality emphasises the core principles of the Constitution, such as justice, equality, and liberty. It is not confined only to the literal text of the Constitution, but it also embraces the values and philosophy of the Constitution within it. Constitutional morality helps in interpreting the provisions of the Constitution in its original sense. Moreover, it appears that the concept of Constitutional morality appears to have been used by the Constitutional Courts as an aid in the interpretation of a provision of the Constitution and for the interpretation

of the Constitutional validity of the Statutes.⁵ Constitutionalism can be termed as a limitation of power, whereas constitutional morality refers to the ethical interpretation of power and the spirit of justice.

Role of Constitutional Morality in Democratic Governance

The usage of constitutional morality aims to uphold the integrity of democracy by ensuring that governance is rooted in the foundational philosophy of the State. The core principles of the Constitution prioritise justice, equality and protection of individual rights. Constitutional morality restricts the majority's dominance in society. It entails the law and policies that protect the rights of minority people, not only those who are in power. It aids the judiciary in interpreting the Constitution in a way that upholds its core principles and values, especially in cases where statutory laws fall short of delivering justice. In today's world, to safeguard constitutional morality, the public institutions which are responsible for the governance of institutions, core principles of justice, and elections must function independently from political powers. Article 50 of the Constitution embodies the directive principle for state policy and states that the judiciary must be independent from the executive.

Good governance should be based on strong moral values that promote stability and social harmony. Confucius described righteousness as the foundation of good governance and peace. The art of good governance simply lies in making things right and putting them in their proper place. Confucius's ideas on governance are relevant for a country like India, where many leaders today focus more on personal interests rather than following ethical principles.⁶ Constitutional morality is always called into account whenever a political power comes to power with the magic number. One of the primary roles of constitutional morality is to uphold the rule of law. It ensures that all individuals and institutions, including the government, are subject to the law. The constitutional morality rests in the hands of the governing body and the people who govern the administration of the state. If the actions of the government in power are for the welfare of the people as per the constitutional provisions, in that situation, the state is able to achieve the goal of constitutional morality in its true sense.

Transformative Constitutionalism in India

Transformative Constitutionalism refers to treating the Constitution as a "living document" capable of transforming society to achieve egalitarian goals. The Constitution is a dynamic document that emerges with changes in society's social, economic and political changes. While constitutionalism provides a normative framework for governing, transformation represents the strategic orchestration of societal progress towards those ideals. Transformative constitutionalism has its origin in the South African Constitution. The nomenclature of transformative constitutionalism remains a subject of global debate due to diverse national experiences. India is the country that has confronted various colonial and social issues, such as

⁵ G.V. Mahesh Nath, *Constitutional Morality – A Need for Consensus on the Concept* (Mar. 16, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3353874>.

⁶ Second Administrative Reforms Commission, *Fourth Report: Ethics in Governance* (Jan. 2007), <https://darpg.gov.in/sites/default/files/ethics4.pdf>.

untouchability, caste discrimination, and gender inequality, since ancient times. The Indian Constitution is the testament to the nation's conscience that eliminates the existing social, religious, and economic issues and strives for a better future of the country based on justice, equality and liberty. The Preamble to the Constitution reflects the core philosophy and ideals of governance. Part III of the Constitution provides various fundamentals to citizens to eradicate discrimination and ensure equality, whereas on the other hand, Part IV provides the principles for the governance of the state. There are several landmark judgments which evidently show transformative constitutionalism. The most significant judgment on transformation was the decision of the Supreme Court in *Navtej Johar v. Union of India* (2018) where Justice Dipak Misra stated that transformative constitutionalism is that the principles enshrined in our Constitution are inherently dynamic and subject to constant change.⁷ The court is tasked with the dual duty of safeguarding constitutional principles by formulating innovative interpretations of the text that uphold the legally required division of powers. Consequently, in order to carry out its responsibilities efficiently, the court must refrain from engaging in unlawful actions or exceeding its legal authority.⁸

Judicial Role: Driving Transformation through Morality

B.R. Ambedkar considered the Constitution as an instrument for social change. In safeguarding fundamental rights of the individual and in achieving equality, justice and freedom, the judiciary plays a very crucial role. The Supreme Court of India does not explicitly define the scope of constitutional morality, but plays a vital role in interpreting the constitutional principles in their true spirit. The Supreme Court, in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁹, recognised the right to privacy as a fundamental right under Article 21 of the Constitution and held that dignity, autonomy, and liberty are essential components of constitutional morality. In *Navtej Singh Johar v. Union of India* (2018),¹⁰ the Supreme Court decriminalised consensual same-sex relations and declared section 377 of the Indian Penal Code unconstitutional. The Court further held that constitutional morality must prevail above societal morality and emphasised individual dignity, equality and autonomy. Furthermore, in *Joseph Shine v. Union of India* (2019),¹¹ the Court decriminalized adultery by striking down section 497 of the Indian Penal Code and reaffirmed gender equality and maintaining women's autonomy within marriage.

Federalism and Decentralisation

Federalism and decentralisation are two main pillars of democratic government, ensuring that power does not remain concentrated in the hands of a single authority but is distributed among various organs of the government on different levels. The term 'federation' was used for the first time in the Government of India Act 1935 after years of a unitary system. The Indian Constitution does not mention the word 'federation' and instead employs the word 'Union' under Article 1(1). Federalism focuses on the division of power between the Centre and the

⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁸ *Transformative Constitutionalism* (Oscar Vilhena, Upendra Baxi & Frans Viljoen eds., 2013).

⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

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

¹¹ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

States for securing efficiency and accountability. The Indian democratic system follows a 'quasi-federal' system with a unitary bias; the term 'quasi-federal' was coined by K.C. Wheare.

The Indian Constitution was also termed as 'bargaining federalism' by Morris Jones and as 'co-operative federalism' by Granville Austin. On the one hand, there is a division of power which provides state autonomy in certain domains; on the other hand, the emergency provisions under the Constitution tilt the power toward the Centre exclusively. "Dr. Ambedkar stated that, "The Indian Constitution is a federal Constitution as it establishes a dual political system, with the Union at the apex and the States at the periphery, each provided with sovereign powers to be exercised in their designated regions as stipulated by the Constitution."¹² In the *S.R. Bommai Case (1994)*,¹³ the Supreme Court declared 'Federalism' as a basic structure of the Constitution. Thus, the legislative and executive authority is partitioned between the Centre and the State by the Constitution itself and not by any law, which reflects the basic feature of federalism. Judiciary upholds the constitutional balance of power by adjudicating disputes between the Centre and the State under its original jurisdiction and strengthens federalism. In recent years, cooperative federalism has gained a significant place in Indian democracy, where both Centre and State work collaboratively through institutions like the GST Council, through institutions like the GST Council, which reflects the concept of fiscal federalism by enabling shared taxation powers between the Centre and States. In order to facilitate the discussion and resolution of intergovernmental issues, the Constitution also provides institutions such as the Inter-State Council for harmonising working between the Centre and the States.

Federal features of the Indian Constitution are as follows:-

- Written Constitution
- Partly rigid and partly flexible Constitution
- Dual Government
- Single Constitution
- Single Citizenship
- Distribution of Power
- Supremacy of the Constitution
- Authority of Courts
- Bicameral Legislature

Following the concept of federalism, the Constitution of India provided three lists under schedule seven. The Union list and the State list divided the subjects on which the Centre and the state have the power to make laws without any interference. The concurrent list contains

¹² <https://www.ijfmr.com/papers/2024/6/32811.pdf>

¹³ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

subjects on which both the Centre and State can legislate. Article 248 of the Indian Constitution provides exclusive residuary power to the Parliament to make laws on any matter that is not listed in any of the three lists. The Finance Commission under the Constitution of India works as a balancing wheel of fiscal federalism in India. Currently, the Union List has 98 subjects (earlier 97), the State List has 59 subjects (earlier 66), and the Concurrent List has 52 subjects (earlier 47).

Parliament is empowered to make laws on the State list in the following situation:-

- In national interest (Article 249)
- When the proclamation of emergency is in operation for the whole or any part of the state (Article 250).
- When two or more States give their consent and request the Central Government to legislate on the particular subject (Article 252).

Decentralisation- While both federalism and decentralisation distribute power, the fundamental difference lies in the fact that federalism provides constitutionally guaranteed autonomy in legislative matters, whereas decentralisation delegates authority from the higher level to the lower level, which can be altered or revoked by the higher authority. Decentralisation means shifting decision-making, administrative responsibilities, and financial powers from higher authorities to lower levels. Nature matters, from the central level to the state level. It helps in rapid decision-making, the development of executive skills, promotes growth, administrative development, and higher control. Decentralisation is mainly categorised into three parts: administrative, political, and fiscal. Administration delegation mainly includes dispersion of power, delegation and devolution. Delegation is not limited to the state level; India institutionalised decentralisation through the 73rd and 74th Constitutional Amendments by delegating powers to local government. The 73rd Constitutional Amendment (1992) introduced the Panchayati Raj institution, referred to as rural government. 74th Constitutional Amendment (1993) introduced Urban Local Bodies. The said amendment established a three-tier government structure at the local level. Decentralisation strengthens grassroots democracy by bringing people closer to the nation's governance.

The three-tier local self-government system at the rural level consists of the following:-

- Gram Panchayat (Village level)
- Panchayat Samiti (Block level)
- Zila Parishad (District level)

On Urban level:-

- Municipal Corporations
- Municipal Councils
- Nagar Panchayats

Therefore, the foundation of India's democratic governance is made up of both federalism and decentralisation. Decentralisation strengthens democracy by enabling local institutions, whereas federalism ensures a constitutional separation of powers between the federal government and the states. In addition to preventing power consolidation, this multi-level authority distribution improves accountability, participation, and administrative effectiveness, making governance more responsive to the needs of the people.

Challenges to Federalism in India- Despite being a federal state, India continues to face challenges that have an adverse effect on the balance of power between the Centre and the States. The major challenge is the concentration of power. Though the Constitution provides for the separation of powers, the Union often exercises dominant control through the Union List and residuary powers under Article 248, at the cost of state autonomy. The misuse of emergency provision under Article 356 is another significant issue. Regionalism is also a crucial challenge faced by India due to diversity in language, culture, and religion. Diversity in the region on the basis of these factors poses a threat to the federal structure of India. The demands of more states on the linguistic basis have increased after the formation of Telangana in 2014. Fiscal imbalance is one of the major concerns as States are heavily dependent on the Centre for financial resources, which affects their autonomy in decision-making.

Separation of Powers and Democratic Accountability

Meaning and concept of Separation of Power- The doctrine of separation of powers refers to the division of governmental authority among the three organs of the government, namely the legislature, executive, and judiciary, in order to prevent concentration of power. These organs are regarded as the three pillars of the State, and each is expected to perform its functions within its own sphere. The primary objective of this doctrine is to avoid arbitrariness and protect individual liberty. As commonly observed, “absolute power corrupts absolutely,” and therefore, a system must exist where power is not vested in a single authority. The idea is that functions of governance should be distributed in a manner that ensures restraint and accountability. The origin of this doctrine can be traced back to Aristotle, who in his work *Politics* identified different functions of government. However, it was Montesquieu, in *The Spirit of Laws* (1748), who clearly formulated the doctrine by emphasising that liberty would be at risk if legislative, executive, and judicial powers were concentrated in the same hands. He argued that each organ must exercise its own functions to preserve freedom.

Separation of powers in India- India does not follow a strict doctrine of separation of powers in its absolute sense. Instead, the Constitution provides for a functional separation where there is a clear distinction of roles, but not complete isolation among the organs. The legislature is responsible for law-making, the executive for implementation of laws, and the judiciary for interpretation of laws. However, there is some overlap between these areas of power. For instance, the executive is part of the legislature in a parliamentary system, and the judiciary exercises the power of judicial review over legislative and executive actions. The Supreme Court has recognised that the separation of powers is a part of the basic structure of the Constitution. In *Kesavananda Bharati v. State of Kerala* (1973), the Court held that certain

fundamental features, including the balance of power among institutions, cannot be altered by constitutional amendments.

Checks and Balances in India- Although India does not adopt a strict separation of powers, it follows a system of checks and balances to ensure that no organ exceeds its authority. Each organ has certain powers to control the actions of the others.

The judiciary has the authority to declare laws unconstitutional if they violate the provisions of the Constitution. This principle was reinforced in *Indira Nehru Gandhi v. Raj Narain* (1975),¹⁴ where the Supreme Court emphasised the importance of maintaining constitutional limits on power. Similarly, Parliament exercises control over the executive through various mechanisms such as debates, questioning, and no-confidence motions. The executive, in turn, plays a role in the legislative process through ordinance-making and policy formulation. Judicial accountability is ensured through the process of impeachment, whereby judges of the Supreme Court and High Courts can be removed for misconduct. The President can also be impeached by Parliament for violation of the Constitution. Article 50 of the Constitution further emphasises the need for separation of the judiciary from the executive in order to ensure independence of the judicial system

Comparative Perspective: India and the United States- The United States is often regarded as a classic example of the strict separation of powers. The Constitution clearly divides powers among the legislature, executive, and judiciary. The President is independent of the legislature and does not participate in its proceedings. In contrast, India follows a parliamentary system where there is a partial fusion of powers, particularly between the legislature and executive. While this reduces rigidity, it enhances accountability, as the executive remains responsible to the legislature. Thus, while the U.S. model emphasises strict separation, the Indian model adopts a balanced approach combining separation with coordination.

Separation of Power and Democratic Accountability- Democracy is a form of political system, where ultimately people rule, and the public authorities derive their powers from the Constitution. The doctrine of Separation of Powers ensures that each different organ of the government performs their functions without the hindrance of others, and at the same time, enabling oversight over them. Democratic accountability makes each organ answerable for the exercise of its authority. The Indian Constitution follows a representative parliamentary democracy in which the executive is accountable to the legislature for all its policies and actions and can be removed by a no-confidence motion, unlike the presidential form of government, where the executive is not responsible to the legislature. The parliamentary form of government is often referred to as cabinet government, responsible government, or the Westminster model of government. Collective responsibility is the main principle of the parliamentary form of government. The executive authority is vested in a collective body, that is, the Council of Ministers, and the ministers are collectively responsible to the parliament in general and to the Lok Sabha specifically, as clearly stated in Article 75. The Supreme Court in *Maneka Gandhi*

¹⁴ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. SCC 1.

v. Union of India (1978)¹⁵ broadened the scope of fundamental rights and reaffirmed that executive actions must be fair, just and reasonable.

While the executive is accountable to the legislature, the judiciary holds a unique role in upholding democratic accountability. In *Kesavananda Bharati v. State of Kerala (1973)*, the Supreme Court held the independence of the judiciary as an element of the basic structure of the Constitution. The Supreme Court of India is described as a custodian of the Constitution and Protector of Fundamental Rights. Dr B.R. Ambedkar referred to Article 32 as the “very soul and heart of the Constitution”, emphasising the significant role of the judiciary in Indian democracy. The judiciary enforces fundamental rights through its writ jurisdiction under Articles 32 and 226 of the Constitution. The independence of the judiciary is ensured by the Constitution, by providing security of tenure to judges, fixed service conditions and so on. The judiciary of India, headed by the Supreme Court, protects the supremacy of the Constitution by exercising the power of judicial review. The doctrine of Judicial Review was first propounded in the case of *Marbury v. Madison*¹⁶ by John Marshall. The Constitution confers the power of Judicial Review to both the Supreme Court and the High Court. Moreover, judicial review is recognised as a basic structure of the Constitution. The doctrine of judicial review confers the power to the judiciary to examine the constitutionality of the legislative enactments and executive orders of the Central and State governments. In India, a statute must be in conformity with the constitutional requirements, and if the judiciary finds the laws to be ultra vires, the judiciary can declare them illegal, unconstitutional and null and void. The judiciary is empowered to decide whether any law or statute is constitutional or not.

Furthermore, Article 50 of the Constitution states that it is the duty of the state to take steps for the separation of the judiciary from the executive, securing the independence and impartial functioning of the judicial system. Thus, the executive authorities must not possess the judicial powers. To ensure transparency in the judicial system, the judiciary is subject to constitutional mechanisms such as impeachment and the requirement to follow the rule of natural justice while giving judgments.

Judicial Activism and Judicial Restraint

Conceptual Framework of Judicial Activism and Judicial Restraint: The idea of "judicial activism" started in the USA and is also called "judicial dynamism." The term was first used by Arthur Schlesinger Jr., an American historian and educator. In India, several important judges like Justice P.N. Bhagwati, Justice D.A. Desai, Justice V.R. Krishna Iyer, and others helped develop this concept. Judicial activism means that the courts take an active role in protecting people's rights and supporting the values in the Constitution. Basically, it's when the judiciary pushes the other parts of government, like the legislature and the executive, to do their job properly and help make sure justice is done. The courts also step in to shape public

¹⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁶ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

policies when other groups don't do it. In furtherance of this, the Supreme Court, in a number of cases, expanded the scope of fundamental rights for prevailing social justice in the society such as, protection of the privacy of an individual in *K.S. Puttaswamy (Retd.) v. Union of India*,¹⁷ by including the right to privacy under Article 21 of the Constitution, decriminalisation of homosexuality in *Navtej Singh Johar v. Union of India* (2018)¹⁸.

“Judicial activism refers to the approach where judges go beyond strict legal precedents to support progressive ideas and social change. It is commonly marked by decision-making calling for social engineering, and occasionally these decisions represent intrusion in the legislative and executive matters.¹⁹“Judicial activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent, or are independent of, or in opposition to, supposed constitutional or legislative intent”.²⁰ Judicial activism is a process of interpreting existing statutes by judges based on their personal views regarding public policy. Thus, judicial activism creates a potential conflict in the supremacy between Parliament and the Supreme Court. Judicial activism works on the principle of PIL (Public Interest Litigation). According to B.R. Ambedkar, the reasons for judicial activism are mainly the collapse of responsible government. The Constitution enables the judiciary to fill legislative gaps in exceptional circumstances.

Judicial Restraint: The USA judicial system follows two alternate philosophies: judicial activism and judicial restraint. While judicial activism advocates for an expansive role of the judiciary, judicial restraint highlights the limits of the judiciary and maintains the separation of powers. The term ‘judicial restraint’ is used in contrast to ‘judicial activism’. The theory of judicial restraint is to limit the judiciary from exercising its personal opinion in the interpretation of the statutes. The concept of judicial restraint prevents the judiciary from encroaching upon the functions of the legislature and the executive. Supreme Court in number of cases held that,²¹ “Judges must know their limits and must not try to run the government, the bench also said that, However, there are many instances where judges seem to overstep their role and take on functions meant for the executive or legislature. This is clearly unconstitutional. In the name of judicial activism, judges cannot cross their limits and take over functions which belong to other organs of the government.” The court should only decide the constitutionality of the law and must not intervene in the policy-making. This ensures the smooth functioning of the organs of the government by minimising inter-branch interference by the judiciary. Judges should consistently strive to decide the case on the basis of:

- The original intent of those who wrote the Constitution,
- Precedent- past decisions in earlier cases.
- Do not indulge in policy-making.

¹⁷ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹⁸ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

¹⁹ Black’s Law Dictionary (11th ed. 2019).

²⁰ Merriam-Webster’s Dictionary of Law (1996).

²¹ Don’t Cross Limits, Apex Court Asks Judges, *The Hindu*, Dec. 11, 2007.

Constitutional basis and practical application of Judicial Activism and Judicial Restraint:

The Constitution of India envisioned the basis of judicial activism and judicial restraint. Articles 13, 21, 32, and 226 collectively provide the framework through which courts exercise judicial review and ensure constitutional supremacy. Judicial activism is the way by which judges correct the injustices, especially when other branches are unable to perform their constitutional duties. The best illustration of witnessing judicial activism is the expansion of the scope of life and personal liberty under Article 21 by including the right to privacy as a fundamental right and emphasising safeguarding individual dignity. Right to livelihood was also added as a fundamental right under Article 21, by declaring food as part of right to life. Many landmark judgments have included various rights under Article 21, such as the right to a fair trial, the right to clean water, the right to health and medical care, the right to speedy trial, and the right to legal aid²². The Second Judges Case, commonly known as Advocate on Record v. Union of India²³, is another example of judicial activism where courts interpret the terms 'concurrence' and 'consultation' under Article 124 of the Constitution. Similarly, in the Vishaka case, the Supreme Court laid down guidelines to ensure the protection and proper treatment of women at the workplace, which must be followed everywhere. It was also held that the guidelines should be treated as law until parliament makes legislation regarding gender equality. This was an important case that shows the active role of the judiciary and supports the theory of judicial activism. Judicial activism is also practised by way of PIL (Public Interest Litigation), also known as Social Action Litigation, which generally refers to a suit for a matter affecting the rights of a large population and for the protection of public interest. PIL has no defined place in any statute, though it plays a significant role in improving the conditions of disadvantaged sections of society. The judiciary took a note that people are unable to seek justice due lack of financial resources or literacy of understanding the legal proceedings, thus, court introduces Public In this way, the courts introduced Public Interest Litigation by expanding the concept of who has the right to approach the court (locus standi).

Judicial restraint helps in harmonising the balance among the three pillars of the government, judiciary, executive and legislative. Judges must look at the original intent of the legislature before interpreting the law. State of Rajasthan v. Union of India²⁴ is the landmark case on the principle of judicial restraint, where the court refused to indulge in the matter on the ground that it involved a political question. The court in Divisional Manager, Aravali Golf Club v. Chander Hass²⁵, cautioned about judicial overreach and held that judges must act within constitutional limits. The power under Article 356 was a political question and therefore should avoid interference and must not enter the political domain. Similarly, in Almitra H. Patel v. Union of India²⁶, the Supreme Court ruled that it is not the duty of the court to direct the Municipal Corporations on the matter of their basic function to keep the cleanliness of Delhi, and the court can only direct the authorities to perform their duties as assigned by law to them.

²² M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544 (India).

²³ Supreme Court Advocates-on-Record Ass'n v. Union of India, (1993) 4 SCC 441 (India).

²⁴ State of Rajasthan v. Union of India, (1977) 3 SCC 592 (India).

²⁵ Divisional Manager, Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683 (India).

²⁶ Almitra H. Patel v. Union of India, (1998) 2 SCC 416 (India).

Critical Analysis of Judicial Activism and Judicial Restraint: Judicial activism encourages the active role of the judiciary in protecting the rights of citizens whenever there is any injustice or failure on the part of the legislature and the executive. Somehow, judicial activism leads to judicial overreach when the judiciary acts as a legislature. On the other hand, judicial restraint restricts the interference of the judiciary in the functioning of other branches of government and preserves the doctrine of the separation of powers. It upheld institutional democracy by ensuring each organ of the government works within a constitutional framework. Thus, for sustaining constitutional governance and democratic accountability, an equilibrium between judicial activism and judicial restraint is necessary.

Human Rights in a globalised world

Concept and Evolution of Human Rights in Globalisation: Human rights are natural rights that an individual acquires at birth, irrespective of nationality, culture, race, or religion. A person is not only born but also has the right to live with liberty and dignity. These rights are inalienable and universal in nature and do not require any law to confer legal title. With the development of international human rights law, human rights are classified into civil, economic, social, political, and cultural rights. Article 1 of the UN Declaration of Human Rights (1948) states, “All human beings are born free and equal in dignity and rights”. Increased international interdependence, treaties, documents, and relations have made human rights an international topic of concern. The history of the recognition of these rights can be traced from the Magna Carta of 1215, the Bill of Rights of 1688, the US Declaration of Independence of 1776, and the Rights of Man and of the Citizen (1789, France). The Universal Declaration of Human Rights (1948) is the first international document on human rights, adopted by the United Nations General Assembly. Other international conventions on human rights include the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and the Optional Protocol to the International Covenant on Civil and Political Rights (1966). These international treaties are adopted by various nations to protect the rights of individuals at the international level. States that have ratified these documents incorporate these global norms into their national laws and must make laws to comply with these guidelines. Article 51(c) of the Indian Constitution imposes a duty on the State to take steps to respect and follow international law. The Article reads, “The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another.” Article 253 of the Constitution “empowers the Parliament to enact laws for implementing international treaties and agreements, thereby enabling India to fulfil its global obligations.” The evolution of human rights signifies a movement from state-oriented rights to a universally acknowledged human rights regime.

Globalisation is an important factor in increasing interconnectedness among nations, making human rights issues cross national boundaries and emerge as an international subject. Advancements in technology and global media increase awareness and play a crucial role in transmitting information about human rights violations across the world. Despite these developments, globalisation continues to pose serious challenges to the realisation and protection of human rights.

Impact of Globalisation on Human Rights: Globalisation has both positive and negative impacts on human rights. The benefits of globalisation include raising awareness of rights and assisting in their protection. Globalisation refers to the increasing interdependence and integration of economies, cultures, and markets across countries. It has gained significant recognition since 1991, bringing human rights issues to the international level. Another positive impact of globalisation is the expansion of trade between various nations. Globalisation has led to the development of uniform standards of human rights through multiple international treaties and conventions, preserving rights worldwide. It reduces poverty and unemployment on a large scale. Various NGOs at the international level work for the protection of human rights. International organisations such as the United Nations, the International Labour Organisation, and the World Trade Organisation play a significant role in promoting and enforcing human rights on the global level. They organise global campaigns and online activism on child labour, child rights, women's empowerment, and women's rights. Along with these organisations, technological advancement also contributes to preserving workers' rights in international corporations and labour rights. It assists in enhancing access to education for individuals to claim their rights and bring social justice in society by transmitting information regarding violations of these rights. Multinational corporations adopt various corporate social responsibility measures to protect the rights of employees and labour working in the corporations and improve their working conditions. Governments are under global scrutiny to follow the laws and rules framed at the international level and to take steps for their enforcement. The oversight of global bodies serves as a catalyst for nations to align their domestic policies with international law.

Despite various advantages, globalisation has also led to various challenges that undermine human rights protection and promotion. The major inequality is evident in the gap between developed and developing countries. Global trade and uneven capital flows prominently benefit developed nations, leaving the developing countries on the back foot. Developed nations are getting richer due to unequal distribution of wealth, resources while under-developed nations are being on the same scale. This has led to widening the gap between different economies. On the other hand, multinational corporations also exploit the labour of the developing countries. They use cheap labour, provide unsafe working conditions and poor wages, and they also engage in child labour, which is a serious violation of children's human rights. Global corporations with high benefits dominate the world trade policies and influence the government policies that work in their interest. Globalisation works on the concept of consumerism and ignores the interests of consumers. Even they override policies and social and environmental rights of the developing nations. The uneven distribution of wages and resources led a mass population to migrate to other nations for employment, which is the main cause of refugee issues and illegal immigration. Migrants face discrimination, exploitation in the workplace, lack of protection and issues like xenophobia. Technological advancement creates privacy concerns in multiple ways.

Contemporary challenges to Human Rights in a Globalised World: Human rights, despite being the basic needs of human beings, face numerous violations across the globe. The major

reason for the violation of human rights is the lack of enforcement of laws on the international level. International laws lack binding force on many nations. Though various documents, treaties, and conventions have been made for the protection of human rights, their implementation in the globalised era faces many challenges due to a lack of an effective implementation mechanism at the international level. The implementation of these laws depends on the willingness of the state, which weakens the mechanism of compliance with international documents. The States often do not take serious steps to comply with these laws. The major challenges to human rights are as follows:-

- I. **Threat to personal data:** Rapid development of technology comes with the data privacy issue in this globalised era. Artificial Intelligence is becoming a great threat to the personal data of individuals. This has led to an increase in cybercrimes. People misuse the personal data of others for commercial benefits, theft and exploit them for their own interests. The absence of strong and uniform data protection laws makes such violations easier. There is a lack of informed consent while collecting the personal information of the individual. The government, often on the grounds of national security, engages in mass surveillance activities, which become a threat to the right to privacy and their civil liberties.
- II. **Economic inequality and exploitation:** Unequal distribution of wealth, resources, and opportunities resulted in economic discrimination. This expands the gap between developed and developing countries. This makes the richer country richer and the developing country more backward. Economic disparity leads to labour exploitation. The multinational companies exploit the cheap labour of the developing countries. This is due to a lack of labour law enforcement. Discrimination in payment of wages and an unsafe working environment. Child labour has been a major concern for children's human rights, as it adversely affects their mental and physical conditions.
- III. **Discrimination and Social Inequality:** Discrimination is mainly faced by migrant people on the basis of caste, religion, creed, and race. This infringes on the human rights of the people on a large scale, including education rights, health and social opportunity. All countries, whether they are developed or developing, witness some kind of discrimination. Gender inequality is a major social problem in many nations. The minority groups witness opportunity disparity and social discrimination.
- IV. **Poverty and unemployment:** Technology advancement and automation have increased job displacement, which ultimately increases unemployment and poverty. Unequal distribution of economic wealth and benefits becomes a barrier in individual growth. The employment in rural and urban areas led to an unequal job environment. In the unorganised sector, job insecurity resulted in unemployment.
- V. **Improper functioning of institution:** The authorities who are provided with excessive power to protect and promote human rights fail in fulfilling their duties. The institutions working for the betterment of the weaker section of society are unable to take the necessary measures for their growth and development. Corruption has been the major obstacle to the protection of human rights. The person or the authorities with power and money exploit the weaker sections of society for their personal or commercial interest.

Measures to Strengthen Human Rights Protection in a Globalised World: In order to safeguard human rights in a globalised world, it is essential to adopt comprehensive and coordinated measures on the national and international levels. A foremost step in this direction is to make the international treaties and documents binding on the nations and their implementation. Nations should collectively address global human rights issues and must work towards solutions. There must be strict enforcement of labour laws in the international corporations. The international markets must avoid discrimination in capital and distribution of the resources. Improve personal data protection laws and make laws for cybercrimes. All human rights should be prioritised, whether they are political, civil, or cultural. This supports the overall growth and development of the individual. The rights of the minority groups and vulnerable people should be protected. Various seminars, conferences and public campaigns should be organised to make people aware and increase global understanding of human rights. National Human Rights Institutions should be provided with independent powers to investigate complaints and advise the government.

Conclusion

The concept of constitutionalism and democratic governance forms the backbone of a modern democratic state, ensuring that power is exercised within defined limits and in accordance with the rule of law. The doctrine of separation of powers plays a crucial role in maintaining institutional balance among the legislature, executive, and judiciary, thereby preventing the concentration and misuse of authority. Judicial review and judicial activism have further strengthened this framework by safeguarding fundamental rights and ensuring governmental accountability, although the need for judicial restraint remains equally significant to preserve democratic legitimacy. Federalism and decentralisation have contributed to the distribution of power, enabling effective governance at multiple levels and promoting regional autonomy. However, challenges such as central dominance and misuse of constitutional provisions continue to test the strength of India's federal structure. At the same time, the evolving nature of human rights in a globalised world reflects a shift from a state-centric approach to a more universal and internationally recognised framework.

Globalisation has expanded opportunities for the promotion of human rights through international cooperation, but it has also introduced complex challenges. Issues such as economic inequality and data privacy concerns highlight the existing gaps in the effective implementation of human rights protections. To address these challenges, this study recommends a shift toward more robust and uniform national legal frameworks, specifically the enactment of stringent data protection laws to safeguard individual privacy in the digital age. Furthermore, to resolve the tensions within India's federal structure, it is essential to revitalise the Inter-State Council as a mandatory platform for Union-State negotiations. Finally, ensuring institutional accountability requires establishing clear guidelines for judicial restraint, ensuring that activism does not bypass democratic legitimacy. Ultimately, transitioning from theoretical constitutionalism to these concrete institutional reforms is necessary to achieve a just and equitable society where constitutional values are upheld in both letter and spirit.

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Gendered Crime in the Age of Artificial Intelligence: A Legal-Ethical Study

Authos: Ms Trisha Jain²⁷ and Mr. Anshuman Pandey²⁸

Abstract

The nature of crime has undergone a profound transformation in the digital age, expanding beyond physical and conventional cyberspaces into complex, AI-mediated environments. Emerging technologies, particularly generative artificial intelligence, have enabled new forms of harm that challenge traditional legal and ethical frameworks. A notable illustration of this shift is the recent Grok controversy, wherein AI tools were reportedly used to generate sexualized images of women and minors at scale. These developments mark a critical turning point in understanding digital harms, as they move beyond issues of privacy infringement into the realm of sexual exploitation and abuse. The mass production and rapid dissemination of deepfake content not only intensify the scale of victimisation but also disproportionately target women and girls, revealing deeply embedded structural misogyny within digital ecosystems.

This chapter conceptualises such practices as forms of algorithmic sexual violence, arguing that AI-enabled image generation constitutes a serious violation of sexual autonomy and dignity in digital spaces. Unlike earlier forms of cybercrime, these harms are persistent, replicable, and borderless, thereby amplifying their psychological, reputational, and social consequences. The gendered nature of these violations underscores the urgent need to situate AI-driven abuse within broader feminist legal critiques of power, objectification, and systemic inequality.

From a legal standpoint, the chapter critically examines the inadequacy of existing frameworks in India, which remain ill-equipped to address the unique challenges posed by AI-generated sexual abuse material. Current laws, largely designed for physical or early-generation cyber offences, struggle to categorise, regulate, and assign liability in cases involving automated content creation and platform-mediated dissemination. This regulatory gap raises complex questions regarding criminal culpability, platform responsibility, and the extent of developer liability in the design and deployment of such technologies.

The chapter calls for a rethinking of legal responses to gendered digital harms by adopting a more robust, victim-centric approach. It argues for the recognition of AI-generated sexual abuse as a distinct category of offence, alongside the imposition of stricter liability standards on platforms and developers, and the introduction of mandatory technological safeguards. Ultimately, the chapter contends that without timely and adaptive legal reform, digital spaces risk becoming the most scalable and pervasive sites of gendered violence in contemporary society.

Keywords: Sexual Abuse, Deepfake, Gender and Digital Crime, AI Ethics and Governance.

²⁷ Assistant Professor of Law, Maharashtra National Law University, Nagpur & Mr. Anshuman Pandey, Assistant Professor of Law, Maharashtra National Law University, Nagpur.

²⁸ Assistant Professor of Law, Maharashtra National Law University, Nagpur

Introduction to Crime in the Digital AI Era

Crime in the contemporary world is changing at a rapid pace, just as technology is developing. With the advent of new spheres of technology, integration of the use of advanced platforms, Generative AI, deepfakes, use of data, etc., crime is no longer just physical violence, property offences or what were considered early forms of cybercrimes, which are recognised in the current Indian legal framework. The transformation in our lives is not just about how much and in what form technology is changing, but it's also about the way that we are using such advanced technologies.

The rapid evolution of Generative Artificial Intelligence (GenAI) has disrupted the traditional information landscape, challenging the notions of evidence, authenticity, and digital communication.²⁹ While AI has been tasked with beneficial societal work by mimicking human cognition and judgment, like any divergent technology, it has increasingly been co-opted for deviant purposes.³⁰ Among the most pervasive and damaging applications of GenAI is the creation of deepfakes, a portmanteau of deep learning and fake, which refers to manipulated digital media that superimpose hyper-realistic faces onto the bodies of others to create falsified representations of actions that never occurred.³¹ By drastically lowering the threshold for the creation of synthetic content, GenAI has enabled a new genus of AI-mediated sexual offences that transform digital spaces into pervasive sites of gendered violence.³²

Emergence of AI-Mediated Sexual Offences

The term AI-mediated sexual offence describes the unauthorised creation, storage, and sharing of sexually explicit synthetic content, which includes deepfake images and videos and audio that artificial intelligence tools produce through their generative models and nudification applications and face-swapping software, because the person who appears in the content never provided their knowledge or permission to use it. Unlike conventional image-based sexual abuse, such offences do not require any pre-existing intimate image of the victim; harm is fabricated entirely through algorithmic processes, rendering the violation borderless, replicable, and persistent. The offence disproportionately targets women and constitutes a serious violation of sexual autonomy, bodily integrity, and dignity in digital spaces.

The defining characteristic of the aforementioned offences is their disproportionate gravitation towards females in general. Research into the cyber media ecosystem reveals a harrowing reality: approximately 98% to 99% of all deepfake videos online are pornographic in nature,

²⁹ J. Janice Vinolia, *Unmasking Digital Deception: Legal Accountability of Social Media Platforms for Deep Fake Content*, 5 *JUS CORPUS L.J.*, March-May 2025, at 157, 159.

³⁰ Douglas Harris, *Deepfakes: False Pornography Is Here and the Law Cannot Protect You*, 17 *DUKE L. & TECH. REV.* 99, 100 (2018-2019); *See also* Kashish Gupta, *The Future of Deepfakes: Need for Regulation*, 5 *[[SC]] Nat'l L.U. Delhi Stud.L.J. [[/SC]]* 130, 132 (2023).

³¹ Russell Spivak, "Deepfakes": The Newest Way to Commit One of the Oldest Crimes, 3 *GEO. L. TECH. REV.* 339, 339 (2019); *See also* Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 162; Gupta, *The future of Deepfakes*, *supra n. 3*, at 132.

³² Benjamin Tandy, *Deepfakes: Identity Misappropriation in the Digital Age*, 12 *[[SC]] Belmont L. Rev. [[/SC]]* 271, 273 (2024).

with virtually all of these targeting women without their consent.³³ This technological weaponisation is not merely an extension of earlier digital harms but a harrowing scourge that amplifies existing gender-based inequalities and systemic violence.³⁴ As these AI-generated fabrications grow increasingly indistinguishable from genuine content, they threaten to eclipse the victim's personhood, reducing complex human identities to mere distorted private images.³⁵

The real-world implications of this technology were underscored in January 2024, when pornographic deepfake images of singer Taylor Swift circulated globally.³⁶ These images, which depicted Swift in football-related, bloodied, and sexually objectified scenarios, spread to millions of users across platforms like X (formerly Twitter) and Telegram before any effective removal measures could be enacted.³⁷ Similarly, in the Indian context, the 2023 deepfake video of actor Rashmika Mandanna and the malicious targeting of journalist Rana Ayyub, who faced a deepfake video accompanied by threats of gang rape, demonstrate how this technology is used to silence, humiliate, and intimidate women in the public eye.³⁸

Very recently, in January 2026, the issue was brought into the limelight via the 'Grok Controversy'. It was reported that Grok's security failure allowed the production of sexualized images of women and "minors in minimal clothing." This attracted a lot of scrutiny from agencies across Europe & Asia.³⁹ The Centre for Countering Digital Hate later estimated that, over an eleven-day period, Grok generated roughly three million sexualized images, which included around 23000 images that seemed to show children.⁴⁰ The results of the study demonstrate the immediate requirement for enhanced platform responsibilities together with regulations that mandate safety measures throughout product development. This controversy showed that generative AI technology allows users to create sexualized images of actual women and girls through automated processing of standard photographs, which they use for sexual exploitation.

³³ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 159.

³⁴ Benjamin Comfort, *Deepfake Danger: The Urgent Need for Federal Protections against AI-Generated Pornography*, 16 SEATTLE J. TECH. ENV'T & INNOVATION L. 1, 18 (2026).

³⁵ Gowri Dev & Akshay Pramodh, *An Age Where Eyes Can't Be Trusted: Image Manipulation through Deepfakes*, 2 DNLUSLJ 102, 109 (2023); *See also* Vibha Rana, *Criminal Law in the Age of Deepfakes: A Looming Evidentiary Crisis*, 5 [[SC]] Jus Corpus L.J. [[/SC]], June-August 2025, at 560, 565.

³⁶ Comfort, *Deepfake Dangers*, *supra n. 7*, at 18.

³⁷ *Ib* at 2.

³⁸ Dev and Pramodh, *An Age Where Eyes Can't Be Trusted*, *supra n. 8*, at 109; *See also* Rana, *Criminal Law*, *supra n. 8*, at 561.

³⁹ Drew Harwell, *Elon Musk's Grok AI Floods X with Sexualized Photos of Women and Minors*, Reuters (Jan. 3, 2026), <https://www.reuters.com/legal/litigation/grok-says-safeguard-lapses-led-images-minors-minimal-clothing-x-2026-01-02/>

⁴⁰ Ctr. for Countering Digital Hate, *Grok Floods X with Sexualized Images of Women and Children* (Jan. 21, 2026), <https://counterhate.com/research/grok-floods-x-with-sexualized-images/>.

These high-profile cases are merely the visible tip of an iceberg; ‘regular’ individuals often lack the resources for redress and suffer irreparable harm as their likenesses are immortalised on the internet, migrating across websites where removal becomes near-impossible.⁴¹

Technologically, the shift from traditional cheapfakes to modern AI-mediated sexual offences is driven by Generative Adversarial Networks (GANs).⁴² The GAN process involves two competing neural networks working in tandem with one another. First is a ‘generator’ that creates synthetic samples, and the other is a ‘discriminator’ that attempts to distinguish the fake from the real until the output is indistinguishable from authentic media to the untrained eye.⁴³ Unlike early iterations that required Hollywood-level budgets, current tools like ‘nudging’ apps allow anyone with a decent computer hardware, simple access to the internet and basic computer skills to create non-consensual pornography in minutes using publicly available social media photos.⁴⁴

For this study, AI-mediated sexual offences are defined as the non-consensual creation, dissemination, or threat of disclosure of synthetic intimate imagery, encompassing what is often termed as Image-Based Sexual Abuse (IBSA) or ‘revenge porn’.⁴⁵ These offences represent a profound violation of sexual autonomy and sexual privacy, a concept that securing personal autonomy and dignity.⁴⁶ The injury caused is not merely a privacy infringement but a form of virtual violence that reflects the same negative mental health outcomes as physical sexual assault, including PTSD, social isolation, and extreme emotional distress.⁴⁷

Furthermore, the proliferation of these offences creates the liar’s dividend. Here, the existence of deepfakes allows any malicious individual to claim that authentic evidence of misconduct is actually AI-generated.⁴⁸ This erosion of epistemic trust not only harms individual victims but threatens the integrity of the judicial system by blurring the line between truth and deception.⁴⁹ This chapter argues that AI-mediated sexual offences constitute a qualitatively distinct category of digital harm that existing legal frameworks in India, including the Bharatiya Nyaya Sanhita (BNS), the IT Act, and POCSO, are currently ill-equipped to address. These crimes are not merely technological glitches but are rooted in systemic patterns of objectification and power

⁴¹ Vaishnavi Sharma, Understanding Non-Consensual Dissemination of Intimate Images Laws in India with Focus on Intermediary Liability, 14 NUJS L. REV. 618, 632 (2021).

⁴² Tandy, Deepfakes, *supra n. 5*, at 276.

⁴³ Abhinaba Datta & Subarno Banerjee, Unmasking Deepfakes - A Legal Perspective, 4 [[SC]] Jus Corpus L.J. [[/SC]], June-August 2024, at 336, 338; *See also* Vinolia, Unmasking Digital Deception, *supra n. 2*, at 162.

⁴⁴ Harris, Deepfakes, *supra n. 3*, at 101; *See also* Zubair Ahmed Khan & Asma Rizvi, Deepfakes: A Challenge for Women Security and Privacy, 5 CMR UNIV. J. CONTEMP. LEGAL AFF. 203, 214 (2023).

⁴⁵ Dev and Pramodh, An Age Where Eyes Can't Be Trusted, *supra n. 8*, at 106; *See also* Sabari Deeksha Choudary A., Yugandhra S. R. & Pranesh Raj. S., Cyber Crime Targeting Women, 3 INDIAN J.L. & LEGAL RSCH., December 2021 - January 2022, at 1, 10.

⁴⁶ Dev and Pramodh, An Age Where Eyes Can't Be Trusted, *supra n. 8*, at 107; *See also* Vinolia, Unmasking Digital Deception, *supra n. 2*, at 168.

⁴⁷ Vinolia, Unmasking Digital Deception, *supra n. 2*, at 168; Sharma, Understanding Non-Consensual, *supra n. 14*, at 626.

⁴⁸ Vinolia, Unmasking Digital Deception, *supra n. 2*, at 160; Gupta, The future of Deepfakes, *supra n. 3*, at 151.

⁴⁹ Vinolia, Unmasking Digital Deception, *supra n. 2*, at 167; Rana, Criminal Law, *supra n. 8*, at 563.

asymmetry. To prevent digital ecosystems from becoming scalable sites of gendered violence, India must transition from a reactionary regulatory model to a victim-centric framework that emphasises developer accountability, platform responsibility, and robust technological safeguards.

The Rise of AI-Mediated Harm from a Feminist Perspective

The deepfakes created by Generative Artificial Intelligence (Gen AI) not merely create new privacy problems, but a distinct form of gendered, image-based sexual abuse. This is seen by non-consensual sexual fabrication of images like the Taylor Swift case,⁵⁰ mass circulation, and repeated victimisation.

The current laws on obscenity, defamation, privacy, and conventional cybercrime do not fully capture the sexual, dignity-based, & autonomy denying nature of harm that Gen AI is creating. These technological harms are not novel; they reinstate the older patriarchal practices of surveillance, humiliation, coercion & sexual control, which are now intensified to a greater level by the Gen AI ecosystem. Image-based sexual abuse should be seen & understood as a continuation of the existing sexual violence offences rather than just isolated cybercrimes.⁵¹ It is highly relevant to understand it in that reference, as these AI-generated image-based violence reproduce & reinstate the same kind of dominance that is experienced in the offline sexual abuses.⁵²

Deepfakes generate algorithmically modified images & videos that have harms to a level that cannot be imagined by anyone. One such form of harm is ‘Frankenporn’, which is when deepfake digitally fuses the parts of women to create fake characters, images, and videos, without the consent of the women concerned.⁵³ The existing literature identifies deepfake abuse as an extension of gender hierarchy in digital culture, where women’s bodies are disproportionately turned into sites of manipulation, reputation damage, blackmail, sexual humiliation, and public disciplining, especially when they are visible, politically active, or socially mobile.⁵⁴

- **Power asymmetry of deepfakes & its expansion**

The rise & spread of non-consensual sexualizing deepfakes is getting easier day by day. Creating deepfakes is easy, as it’s increasingly becoming accessible and cheaper with the dissemination of technology; almost everyone has AI access, even minors. Nudifying apps and image/video generator apps are in everyone’s devices these days, and manipulating existing

⁵⁰ Comfort, *Deepfake Dangers*, *supra n. 7*, at 2.

⁵¹ Clare McGlynn, *Not ‘Revenge Porn But Abuse: Let’s Call It Image-Based Sexual Abuse, Inherently Human* (Feb. 15, 2016), <https://inherentlyhuman.wordpress.com/2016/02/15/not-revenge-porn-but-abuse-lets-call-it-image-based-sexual-abuse/>.

⁵² Emily Chapman, *Unveiling the Threat: AI and Deepfakes’ Impact on Women*, Student Research Submissions, Paper 567 (2024), https://scholar.umw.edu/student_research/567.

⁵³ Regina Rini & Leah Cohen, *Deepfakes, Deep Harms*, 22 *J. Ethics & Soc. Phil.* (2d ser.) no. 2, 2022, at 1, <https://philarchive.org/rec/RINDDH>.

⁵⁴ Marta Pawelec & Michał Łabuz, *Non-Consensual Sexualising Deepfakes, Threats and Recommendations for Legal and Societal Action* (Ctr. for Excellence in Democracy & Digital Democracy Watch ed., 2025), https://ceeddw.org/wp-content/uploads/2025/05/NCII_DeepFakes_ThreatsRecommendations.pdf.

media, social media and creating synthetic content. This is known as the democratisation of access to technology.⁵⁵ This phenomenon is disseminating at a wider pace with sophisticated tools, better algorithms, and the creation of more realistic images/videos.⁵⁶

There is a power asymmetry that exists in this development. While AI deepfake tools are comparatively cheap, fast, scalable, and often usable with anonymity or evasion techniques, while victims face the opposite condition: they must discover the source of abuse, prove the fabrication of the image, navigate platform procedures and removal of the image/video across platforms, absorb any injury to their reputation and often relive the abuse with the widespread circulation of the image/video.⁵⁷ This asymmetry shows that power no longer operates only through physical force. It operates through code, interfaces, recommender systems, searchability, and the evidentiary aura of synthetic images that appear real enough to damage a woman's social standing even when fabricated.⁵⁸ This asymmetry is not accidental; it is intensified by the functioning of the platform itself, where virality, reposting, amplification of the content, and weak moderation can make sexual abuse more durable and more difficult to remediate than many offline offences.⁵⁹ Feminist legal scholarship on sexualized deepfakes similarly places these harms within the wider structure of gender-based violence, arguing that the offence draws force from pre-existing inequalities that make women disproportionately vulnerable to humiliation, sexual disciplining, and loss of credibility in public and private life.⁶⁰ This is why the harm cannot be reduced to embarrassment or privacy invasion alone. The image-based sexual abuse produces deeper harms of social rupture, constancy, existential threat, isolation, and constrained liberty, each of which restricts the victim-survivor's freedom to move, work, trust, speak, and participate in digital life.⁶¹

- **Objectification of Women by AI-generated Images & Videos**

The development of AI-generated sexual images has created an institutionalised method which objectifies women through a new form that uses public photographs of actual individuals to create sexual content without their permission or awareness or ability to decline. Research indicates that 98% of all deepfake content online is explicitly pornographic, and that 99% of

⁵⁵ Hany Farid & Hans-Jakob Schindler, Deep Fakes, in *On the Threat of Deep Fakes to Democracy and Society* (Konrad Adenauer Stiftung ed., 2020).

⁵⁶ Chapman, *Unveiling the Threat*, *supra* n. 25.

⁵⁷ Lisa Lazard, Rose Capdevila, Emma L. Turley & Kathryn Runnalls, Deepfake Technology and Gender-Based Violence: A Scoping Review, 27 *Trauma Violence & Abuse* 1 (2025), <https://doi.org/10.1177/15248380251384271>.

⁵⁸ Nicola Henry, Anastasia Powell & Asher Flynn, *Image-Based Sexual Abuse: A Study on the Causes and Consequences of Non-Consensual Nude or Sexual Imagery* (Routledge 2020).

⁵⁹ Asher Flynn, Anastasia Powell & Nicola Henry, 'It's Still Abuse': Community Attitudes and Perceptions on AI-Generated Image-Based Sexual Abuse, 29 *Info. Commc'n & Soc'y* 1 (2026), <https://doi.org/10.1080/1369118X.2026.2613437>.

⁶⁰ Clare McGlynn, Erika Rackley & Ruth Houghton, Beyond 'Revenge Porn': The Continuum of Image-Based Sexual Abuse, 25 *Feminist Legal Stud.* 25 (2017).

⁶¹ Lazard et. al., *Deepfake Technology*, *supra* n. 30.

those targeted are women,⁶² a distribution that cannot be attributed to random misuse but reflects a systematic and patriarchal orientation of the technology itself.⁶³

Research shows that deepfakes function as a weapon for terrorist acts, which specifically target women through synthetic sexual imagery creation, which has become a recognised method for patriarchal control in online spaces that enables people to experience humiliation, extortion, and surveillance in ways that replicate offline patterns of gender violence.⁶⁴

The actual events show the pattern with unsettling accuracy. The technology has better educational value through its original development. The Reddit user who created the deepfake technology released a fake pornographic video in December 2017, which showed Gal Gadot's face superimposed onto a pornographic performer's body. The video quickly became popular on multiple platforms, including Reddit and Twitter, and others decided to ban it in February 2018.⁶⁵ The case became widely known, which led to many similar cases because it attracted public attention, and Scarlett Johansson, Emma Watson, and Natalie Portman became some of the first famous people whose facial features were used to create adult film actresses in large numbers.⁶⁶ Johansson declared her opposition to the practice in December 2018 but she showed disappointment because the existing law system failed to provide effective solutions for her. She stated with disappointment: *"Nothing can stop someone from cutting and pasting my image or anyone else's onto a different body and making it look as eerily realistic as desired. The fact is that trying to protect yourself from the internet and its depravity is basically a lost cause"*.⁶⁷

The problem continues to exist as seen by deepfake technology that used Emma Watson's face for sexually explicit content in an advertisement to promote an application that enabled users to create deepfake videos, which appeared on Meta's Instagram and Facebook platforms during

⁶² Home Security Heroes, 2023 State of Deepfakes Report (2023), cited in Meta Oversight Board, Explicit AI Images of Female Public Figures, Case No. BUN-7E941O1N (July 24, 2024), <https://www.oversightboard.com/decision/bun-7e941o1n/>.

⁶³ Stefka Ilieva et al., Deepfake Technology and Gender-Based Violence: A Scoping Review, *Trauma Violence & Abuse* (2025), <https://pubmed.ncbi.nlm.nih.gov/41273018/>.

⁶⁴ Deepfakes as a Weapon of Gendered Terror: Non-Consensual Synthetic Intimacy and the Systematic Harassment of Women, *Int'l J.L. Soc. Sci. & Socio.* (2025), <https://ijlsss.com/deepfakes-as-a-weapon-of-gendered-terror/>.

⁶⁵ Alex Hern, Reddit Bans "Deepfakes" Pornography Using the Faces of Celebrities, *Wash. Post* (Feb. 8, 2018); Samantha Cole, "Deepfake" Videos Like That Gal Gadot Porn Are Only Getting More Convincing and More Dangerous, *Vice* (Jan. 24, 2018), <https://www.vice.com/en/article/deepfake-videos-like-that-gal-gadot-porn-are-only-getting-more-convincing-and-more-dangerous/>.

⁶⁶ Nathan Dodgson, Face-Swap on Steroids: How "Deepfake" Videos Are Messing with Reality, *The Spinoff* (Feb. 22, 2018), <https://thespinoff.co.nz/science/22-02-2018/face-swap-on-steroids-how-deepfake-videos-are-messing-with-reality>.

⁶⁷ Drew Harwell, Scarlett Johansson on Fake AI-Generated Sex Videos: "Nothing Can Stop Someone from Cutting and Pasting My Image", *Wash. Post* (Dec. 31, 2018), <https://www.washingtonpost.com/technology/2018/12/31/scarlett-johansson-fake-ai-generated-sex-videos-nothing-can-stop-someone-cutting-pasting-my-image/>; Scarlett Johansson: Stopping Deepfake Porn of Me Is a "Lost Cause", *Bus. Insider* (Dec. 30, 2018), <https://www.businessinsider.com/scarlett-johansson-stopping-deepfake-porn-of-me-is-a-lost-cause-2018-12>.

March 2023.⁶⁸ The creation of video clips showed Michelle Obama, Ivanka Trump and Kate Middleton being falsely portrayed through sexualised imagery, which applied to all women who held public positions, regardless of their age, political affiliation and professional achievements.⁶⁹

In January 2024, AI-generated sexually explicit images of Taylor Swift were posted on X (formerly Twitter) and rapidly replicated across Facebook, Reddit, and Instagram; one post alone was viewed over 45 million times before removal, with the images reportedly originating from a Telegram group whose members used tools such as Microsoft Designer, circumventing safeguards through deliberate misspellings and keyword hacks.⁷⁰ The 2024 Channel 4 News investigation examined the five most popular deepfake websites, which displayed almost 4000 famous people. The research showed that British people made up 255 of the total famous individuals, while all except two of them were female. The news presenter, Cathy Newman, described her experience as a violation of her privacy, while she called the existence of fake versions of her ‘really sinister’.⁷¹ A man in Minnesota created more than 80 pornographic deepfake videos of women using AI modification tools, which he developed from social media photos taken from his personal network.⁷² In a 2026 lawsuit filed in the United States, women discovered that their photographs had been scraped and deployed by AI systems to generate and monetise highly realistic sexualized representations of them without any knowledge or consent.⁷³

The objectification exists at work in two different dimensions, which include both its visual representation and its underlying organisational framework. The research shows that producing sexualized synthetic images without the required permission creates a system which treats women’s bodies as objects that belong to their attackers and shows their personal preferences.⁷⁴ The technology functions as a gendered system because its design, use, and public perception all demonstrate gender biases. The study found that people from the United States, the United Kingdom and Australia assessed sexual deepfake events as dangerous when the victim, who was female, suffered harm, but men from all three countries tended to downplay the damage and defend the offender, which shows that social customs have made female objectification into a standard practice.⁷⁵

⁶⁸ Kit Rosenblatt, Emma Watson’s Face Used in Sexual Deepfake Ad on Instagram and Facebook, NBC News (Mar. 8, 2023), <https://www.youtube.com/watch?v=uE3nbz9p-Sg>.

⁶⁹ Deepfakes Porn Has Serious Consequences, BBC News (Feb. 2, 2018), <https://www.bbc.com/news/technology-42912529>.

⁷⁰ Hern, Reddit Bans “Deepfakes” Pornography, *supra n.* 38.

⁷¹ Dan Milmo, Nearly 4,000 Celebrities Found to Be Victims of Deepfake Pornography, Guardian (Mar. 21, 2024), <https://www.theguardian.com/technology/2024/mar/21/celebrities-victims-of-deepfake-pornography>; Thousands of Celebrities Identified as Victims of Deepfake Pornography, Bus. & Hum. Rts. Res. Ctr. (Mar. 20, 2024), <https://www.business-humanrights.org>.

⁷² Lucas Ropek, How a “Nudify” Site Turned a Group of Friends into Key Figures in a Fight Against AI-Generated Porn, CNBC (Sept. 27, 2025), <https://www.cnbc.com/2025/09/27/nudify-ai-generated-deepfake-fbi.html>.

⁷³ Lawsuit: AI Used Valley Women’s Faces Without Consent, ABC15 Ariz. (Feb. 2026), <https://www.youtube.com/watch?v=XsoSnTWDUSM>.

⁷⁴ McGlynn, Not ‘Revenge Porn But Abuse, *supra n.* 24.

⁷⁵ Anne A. Eaton et al., When Deepfakes Harm, Some Victims Are Taken Less Seriously, Psych. Today (Dec. 27, 2025), <https://www.psychologytoday.com/us/blog/power-women-relationships/202512/when-deepfakes-harm-some-victims-are-taken-less-seriously>.

Research on online violence against women demands legal and regulatory solutions which must address both deepfake technology's intersectional power dynamics and its gendered nature.⁷⁶ The result is unavoidable AI-mediated sexual abuse is an extension of pre-existing patriarchal structures into digital infrastructure, which requires dedicated legal recognition and specific protections for women and platform responsibilities that require fundamental treatment of gender-based harm.⁷⁷

The Nature of AI-Mediated Sexual Offences

The transition from traditional media manipulation to AI-driven synthetic content marks a paradigm shift in the landscape of technology-facilitated violence. The term deepfake, a portmanteau of deep learning and fake, denotes both the sophisticated technology and the resulting phoney content.⁷⁸ While manipulated imagery has existed since the early 1800s through light effects and later via Photoshop, the advent of Artificial Intelligence (AI) and Machine Learning (ML) has enabled near-perfect manipulative techniques that erase the boundaries between reality and fabrication.⁷⁹ AI-mediated sexual offences are distinctive not merely because of their technological complexity, but because of their accessibility, scalability, and unique psychological impact on victims.⁸⁰

The core of these offences lies in Generative Adversarial Networks (GANs), a class of machine learning systems introduced in 2014.⁸¹ GANs function through a competitive interplay between two neural networks: a generator that creates synthetic content and a discriminator (or critic) that evaluates its authenticity.⁸² Through iterative refinement, the generator learns to produce images or videos that are virtually indistinguishable from authentic content to the untrained eye.⁸³ This technological foundation allows for the creation of multimodal deepfakes, which combine synchronised audio and video to exploit the human tendency to perceive audio-visual congruence as an indicator of truth.⁸⁴ Unlike earlier cheapfakes, which relied on simple manual editing or slowing down existing footage, deepfakes create entirely new, hyper-realistic representations of individuals engaged in acts that never occurred.⁸⁵

A defining characteristic of AI-mediated sexual offences is their unprecedented scalability. In the earlier era of digital harm, the creation of a convincing fake required significant time and

⁷⁶ Lazard et. al., *Deepfake Technology*, *supra n.* 34.

⁷⁷ Athanasia Karagianni, *A Feminist Legal Analysis of Non-Consensual Sexualized Deepfakes: Contextualizing Its Impact as AI-Generated Image-Based Violence Under EU Law*, *J. Gender Soc. Pol'y & L.* (2024), <https://doi.org/10.1080/23268743.2024.2408277>; *Deepfakes as a Weapon of Gendered Terror: Non-Consensual Synthetic Intimacy and the Systematic Harassment of Women*, *Int'l J.L. Soc. Sci. & Socio.* (2025), <https://ijlss.com/deepfakes-as-a-weapon-of-gendered-terror/>.

⁷⁸ Dev and Pramodh, *An Age Where Eyes Can't Be Trusted*, *supra n.* 8, at 103; *See also* Gupta, *The future of Deepfakes*, *supra n.* 3, at 132

⁷⁹ Vinolia, *Unmasking Digital Deception*, *supra n.* 2, at 180.

⁸⁰ Vinolia, *Unmasking Digital Deception*, *supra n.* 2, at 157.

⁸¹ Ian J. Goodfellow et al., 'Generative Adversarial Nets' in Z. Ghahramani et al. (eds), *Advances in Neural Information Processing Systems* (2014); *See also* Gupta, *The future of Deepfakes*, *supra n.* 3, at 132.

⁸² Vinolia, *Unmasking Digital Deception*, *supra n.* 2, at 158.

⁸³ *Ib* at 165.

⁸⁴ Vinolia, *Unmasking Digital Deception*, *supra n.* 2, at 165.

⁸⁵ Gupta, *The future of Deepfakes*, *supra n.* 3, at 132.

technical expertise. Today, the barriers to entry have been drastically lowered through open-source software and user-friendly applications such as FakeApp.⁸⁶ These tools enable individuals with rudimentary computer skills to generate non-consensual pornography using as little as a 15-second video or a single photograph obtained from a victim's social media profile. Once this content is disseminated, it achieves a state of immortality. Unlike physical evidence or locally stored files, synthetic media posted online migrates across borderless platforms, making permanent removal nearly impossible.⁸⁷ This replicability ensures that victimisation is not a singular event but a continuous process. Research indicates that approximately 98% to 99% of all deepfake videos online are pornographic, and a staggering 98% of these target women without their consent.⁸⁸ The scale of this problem is further illustrated by the fact that in 2023 alone, over 143,000 new deepfake videos were posted online, surpassing every previous year combined.⁸⁹

The digital ecosystem offers a blanket of anonymity that empowers perpetrators to act in secrecy.⁹⁰ Through tools like VPNs, encryption, and the dark web, bad actors can evade detection and circumvent platform safeguards.⁹¹ This creates an asymmetric power dynamic where creators with diminishing levels of technical expertise can inflict massive harm on subjects who lack the resources for counter-forensics or legal redress.⁹² Furthermore, the collaborative nature of online communities, such as message boards where users share tips and tricks to bypass AI safety filters, exacerbates the inadequacy of current corporate moderation policies.⁹³

Deepfakes v. Traditional Offences

AI-mediated sexual offences represent a qualitatively new genus of harm that exceeds the scope of traditional privacy infringements or older cybercrimes like morphing.

- **The Erosion of Epistemic Trust and the Liar's Dividend:** One of the most insidious effects of deepfakes is the erosion of public trust in authentic media. This phenomenon, known as the liar's dividend, allows perpetrators to claim that real evidence of misconduct is actually AI-generated.⁹⁴ This epistemic confusion threatens the integrity of the judicial system, as visual evidence, once considered irrefutable, can no longer be inherently trusted.⁹⁵

⁸⁶ Harris, Deepfakes, *supra* n. 3, at 100; See also Vinolia, Unmasking Digital Deception, *supra* n. 2, at 159.

⁸⁷ Sharma, Understanding Non-Consensual, *supra* n. 14, at 632; See also Comfort, Deepfake Dangers, *supra* n. 7, at 2.

⁸⁸ Vinolia, Unmasking Digital Deception, *supra* n. 2, at 159; See also Tandy, Deepfakes, *supra* n. 5, at 280.

⁸⁹ Comfort, Deepfake Dangers, *supra* n. 7, at 6.

⁹⁰ Dhanesh Desai & Naireen Khan, Cyber Crime: A New Species of Crime, 8 SUPREMO AMICUS 86, 86 (2018).

⁹¹ Bandu B. Meshram & Manish Kumar Singh, Conventional and Modern Cyber Crimes Dynamics and Legal Countermeasures in India, 14 GNLU J.L. DEV. & POL., April 2024, at 57, at 83.

⁹² Vinolia, Unmasking Digital Deception, *supra* n. 2, at 169.

⁹³ Comfort, Deepfake Dangers, *supra* n. 7, at 4.

⁹⁴ Vinolia, Unmasking Digital Deception, *supra* n. 2, at 160; See also Rana, Criminal Law, *supra* n. 8, at 565.

⁹⁵ Vinolia, Unmasking Digital Deception, *supra* n. 2, at 167.

- **The Eclipse of Personhood:** While traditional harassment might target a victim's reputation, deepfake pornography specifically targets their sexual privacy and bodily autonomy.⁹⁶ Deepfake videos have the ability to eclipse the victim's personhood by reducing complex human identities to mere genitalia, stripping them of self-determination.⁹⁷
- **Severity of Psychological Trauma:** The injury caused by these offences is not virtual in its impact. Victims of Image-Based Sexual Abuse (IBSA) report negative mental health outcomes that are eerily similar to those of physical sexual assault survivors, including PTSD, social isolation, intense humiliation, and suicidal ideation.⁹⁸ The trauma is compounded by the out-of-body experience of seeing one's likeness perform actions that never happened, often with the knowledge that friends, family, and employers may believe the content is real.⁹⁹

Deepfakes exploit a fundamental cognitive vulnerability known as the seeing-is-believing heuristic.¹⁰⁰ Human observers typically apply less rigorous scrutiny to audiovisual content than to textual information. Because contemporary deepfake algorithms have achieved remarkable fidelity, they can fool both human observers and even some algorithmic detection methods.¹⁰¹ This creates a detection gap where creation technology consistently outpaces the capabilities of law enforcement and platform filters.¹⁰² Consequently, the victim is often forced into the untenable position of having to prove a negative, demonstrating that a hyper-realistic depiction of themselves is, in fact, a forgery.¹⁰³

The Indian Legal Framework and AI-Mediated Harm

The legal architecture governing digital conduct in India is currently undergoing a transformative shift, marked by the transition from colonial-era penal codes to modernized statutes intended to address the complexities of the 21st century. However, as India migrates its criminal jurisprudence from the Indian Penal Code (IPC), 1860, to the Bharatiya Nyaya Sanhita (BNS), 2023, a critical question remains: are these frameworks sufficiently evolved to encounter the unique challenges posed by AI-mediated sexual offences?¹⁰⁴ Currently, the regulation of synthetic media and technology-facilitated gendered violence in India relies on a fragmented mesh of provisions found within the BNS, the Information Technology Act (IT Act), 2000, and the Protection of Children from Sexual Offences (POCSO) Act, none of which were originally designed to contend with the automated generation of non-consensual intimate imagery.

⁹⁶ *Ib* at 168.

⁹⁷ Dev and Pramodh, *An Age Where Eyes Can't Be Trusted*, *supra n. 8*, at 108.

⁹⁸ Sharma, *Understanding Non-Consensual*, *supra n. 14*, at 618.

⁹⁹ Harris, *Deepfakes*, *supra n. 3*, at 125.

¹⁰⁰ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 172; Gupta, *The future of Deepfakes*, *supra n. 3*, at 132.

¹⁰¹ *Ib* at 171; Rana, *Criminal Law*, *supra n. 8*, at 563.

¹⁰² Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 180.

¹⁰³ *Ib* at 171. Comfort, *Deepfake Dangers*, *supra n. 7*, at 14.

¹⁰⁴ Meshram and Singh, *Conventional*, *supra n. 64*, at 89; *See also* Aayush Pareek, *A Comparative Evaluation: Bhartiya Nyaya Sanhita 2023 in Opposition to Indian Penal Code 1860*, 7 *INT'L J.L. MGMT. & HUMAN.* 1122, 1132 (2024).

- **The Bharatiya Nyaya Sanhita (BNS), 2023**

The BNS, 2023, was introduced to modernise India's criminal justice system and includes several new provisions aimed at protecting women and children.¹⁰⁵ Despite its progressive intent, the new code has been criticised for maintaining a statutory silence regarding deepfakes and AI-powered crimes.¹⁰⁶

- ⇒ Gendered Offences: The BNS incorporates traditional IPC offences such as voyeurism (Section 77)¹⁰⁷ and stalking (Section 78).¹⁰⁸ Section 78(1)¹⁰⁹ defines stalking to include monitoring a woman's use of the internet or electronic communication, which can be applied to perpetrators who harvest social media photos for deepfake creation.¹¹⁰
- ⇒ Deceitful Sexual Intercourse (Section 69)¹¹¹: A significant addition to the BNS is Section 69, which criminalises sexual intercourse through deceitful means, such as false promises of marriage.¹¹² While not directly linked to AI, the broader principle of deception in sexual contexts reflects an evolving legal standard that could be conceptually extended to the virtual sexual exploitation facilitated by deepfakes.
- ⇒ Digital Evidence and Forgery: The BNS expands the definition of a document to include digital and electronic records.¹¹³ Sections 336 to 340¹¹⁴ deal with the forgery of electronic records, which is theoretically applicable to deepfakes as fabricated digital evidence.¹¹⁵ However, the BNS fails to specifically criminalise the *creation* of deepfakes for the purpose of sexual abuse, leaving a significant regulatory gap.¹¹⁶

- **The Information Technology Act, 2000**

The Information Technology Act, 2000, serves as the primary legislative framework governing digital content and cybercrimes in India.¹¹⁷ At its inception, the Act was primarily intended to provide legal recognition for e-commerce and electronic transactions, focusing on unauthorised access, data interchange, and breach of confidentiality.¹¹⁸ Consequently, the Act did not originally prioritise issues like gendered violence in cyberspace or the specific harms of image manipulation.¹¹⁹ Over time, through amendments in 2008 and 2023, several sections have become central to prosecuting AI-mediated harms:

¹⁰⁵ Pareek, A Comparative Evaluation, *supra n. 77*, at 1129.

¹⁰⁶ Rana, Criminal Law, *supra n. 8*, at 565.

¹⁰⁷ Bharatiya Nyaya Sanhita 2023, Sec.77.

¹⁰⁸ Bharatiya Nyaya Sanhita 2023, Sec.78; *See also* Meshram & Singh, Conventional, *supra n. 64*, at 78.

¹⁰⁹ Bharatiya Nyaya Sanhita 2023, Sec.78(1).

¹¹⁰ Meshram and Singh, Conventional, *supra n. 64*, at 78.

¹¹¹ Bharatiya Nyaya Sanhita 2023, Sec.69.

¹¹² Pareek, A Comparative Evaluation, *supra n. 75*, at 1126.

¹¹³ *Id* at 1125.

¹¹⁴ Bharatiya Nyaya Sanhita 2023, Sec.336-340.

¹¹⁵ Meshram and Singh, Conventional, *supra n. 64*, at 81.

¹¹⁶ Rana, Criminal Law, *supra n. 8*, at 565.

¹¹⁷ Vinolia, Unmasking Digital Deception, *supra n. 2*, at 175.

¹¹⁸ Sahil Goel, Rising Crime against Women & Children in Cyberspace: A Concern, 20 SUPREMO AMICUS 487, 488 (2020); *See also* Chelana Jain, Cybercrime and Rights of Women: Laws and Regulations, 5 [[SC]] Indian J.L. & Legal Rsch. [[/SC]] 1, 3 (2023).

¹¹⁹ Goel, Rising Crime, *supra n. 91*, at 490.

- ⇒ **Section 66D (Cheating by Personation):**¹²⁰ This section punishes the use of computer resources to cheat by personation with up to three years of imprisonment.¹²¹ In cases of deepfakes, this provision is frequently invoked because the technology essentially creates a digital impersonation of a victim to deceive others.¹²² For example, this section was utilized in the high-profile FIR regarding the deepfake video of actor Rashmika Mandanna.¹²³
- ⇒ **Section 66E (Violation of Privacy):**¹²⁴ Specifically designed to punish the intentional capturing, publication, or transmission of images of a person's private areas without consent, this section carries a penalty of up to three years in prison.¹²⁵ While it is a vital tool for addressing voyeurism in the digital age, scholars argue it is woefully inadequate for AI-generated content.¹²⁶ Because it focuses on the *unauthorised capture* of real images, it may fail to account for synthetic recreations where no physical capture of the victim occurred.¹²⁷
- ⇒ **Sections 67 and 67A (Obscenity and Sexually Explicit Material):**¹²⁸ These dragnet sections punish the transmission of lascivious material (Section 67) and material containing sexually explicit acts (Section 67A).¹²⁹ Section 67A, which carries a sentence of up to five years for a first conviction, is the primary weapon against deepfake pornography.¹³⁰ However, a significant jurisprudential critique of these sections is that they shift the focus from the violation of consent and privacy to the standard of obscenity, effectively treating the victim as a participant in a prurient act rather than a survivor of violence.¹³¹

- **Protection of Children from Sexual Offences Act, 2012 (POCSO Act)**

In the context of minors, the legal framework is considerably more stringent. Section 67B of the IT Act specifically criminalizes the depiction of children in sexually explicit acts in electronic form, including the creation, transmission, and even the browsing or collection of such material.¹³² The POCSO Act provides a further layer of protection, as children are

¹²⁰ Information Technology Act 2000, Sec.66D.

¹²¹ Meshram and Singh, Conventional, *supra n.* 64, at 81; *See also* Datta and Banerjee, Unmasking Deepfakes, *supra n.* 16, at 334.

¹²² Vinolia, Unmasking Digital Deception, *supra n.* 2, at 175; *See also* Meshram and Singh, Conventional, *supra n.* 64, at 81.

¹²³ Datta & Banerjee, Unmasking Deepfakes, *supra n.* 16, at 341.

¹²⁴ Information Technology Act 2000, Sec.66E.

¹²⁵ Sharma, Understanding Non-Consensual, *supra n.* 14, at 625; *See also* Dev and Pramodh, An Age Where Eyes Can't Be Trusted, *supra n.* 8, at 109.

¹²⁶ Rana, Criminal Law, *supra n.* 8, at 565.

¹²⁷ *Ib* at 560.

¹²⁸ Information Technology Act 2000, Sec.67 & 67A.

¹²⁹ Sharma, Understanding Non-Consensual, *supra n.* 14, at 627; *See also* Dev and Pramodh, An Age Where Eyes Can't Be Trusted, *supra n.* 8, at 110.

¹³⁰ Goel, Rising Crime, *supra n.* 91, at 491.

¹³¹ Sharma, Understanding Non-Consensual, *supra n.* 14, at 629.

¹³² Information Technology Act 2000, Sec.67B.

recognised as a different class of victims requiring specialised justice systems.¹³³ However, as AI technology advances, there is a looming threat that virtual child pornography, created entirely through GANs without using real children, may exploit loopholes in current laws that require a proximate link to an actual crime or victim.¹³⁴

The Indian judiciary has attempted to fill the legislative void through landmark judgments that emphasise the fundamental right to privacy. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognised informational privacy, the right of an individual to control the dissemination of their personal data and image, as a core liberty under Article 21.¹³⁵ This precedent provides a constitutional basis for challenging deepfakes that weaponise a person's likeness without their consent.¹³⁶

Furthermore, in cases like *State of West Bengal v. Animesh Boxi*, the court demonstrated a victim-centric approach by reading the harm of non-consensual imagery into the definition of injury under the IPC, famously remarking that a victim is virtually raped every time the content is viewed online.¹³⁷ This judicial activism highlights the urgent need for statutory recognition of virtual sexual violence as a distinct category of harm.¹³⁸

Key Legal Challenges in Addressing AI-Mediated Sexual Offences

The emergence of Generative Artificial Intelligence has created a profound disconnect between the lived reality of digital harm and the institutional capacity of the legal system to provide redress. While technological innovation proceeds at an exponential pace, the legislative inertia surrounding synthetic media has resulted in a legal vacuum where bad actors exploit the gaps between physical-world statutes and digital-world realities.¹³⁹ The challenges in regulating AI-mediated sexual offences are not merely logistical but are deeply rooted in the fundamental principles of criminal jurisprudence, ranging from the authentication of evidence to the determination of jurisdictional boundaries and the allocation of liability.

The most immediate challenge to the prosecution of AI-mediated crimes is the looming evidentiary crisis.¹⁴⁰ Traditionally, visual and auditory evidence, such as photographs and recordings, were considered irrefutable markers of truth.¹⁴¹ However, the advent of deepfakes

¹³³ Press Information Bureau, Govt. of India, Protection of Children from Sexual Offences (POCSO) Act, 2012 (Dec. 19, 2014) <https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=113750®=3&lang=2>

¹³⁴ Harris, Deepfakes, *supra* n. 3, at 125.

¹³⁵ 2019 (1) SCC 1; *See also* Meshram and Singh, Conventional, *supra* n. 64, at 73.

¹³⁶ Vinolia, Unmasking Digital Deception, *supra* n. 2, at 176.

¹³⁷ C.R.M. No. 11806 of 2017, GR/1587/2017; *See also* Sharma, Understanding Non-Consensual, *supra* n. 14, at 626.

¹³⁸ Sharma, Understanding Non-Consensual, *supra* n. 14, at 621; *See also* Gupta, The future of Deepfakes, *supra* n. 3, at 144.

¹³⁹ Vinolia, Unmasking Digital Deception, *supra* n. 2, at 180; *See also* Gupta, The future of Deepfakes, *supra* n. 3, at 151.

¹⁴⁰ Rana, Criminal Law, *supra* n. 8, at 563.

¹⁴¹ *Ib* at 561.

has transformed digital proof into a minefield, where the line between truth and fiction is systematically blurred.¹⁴²

Under Indian law, the Bharatiya Sakshya Adhiniyam (BSA), 2023, serves as the primary framework for the admissibility of electronic records. While it retains the certificate requirement for digital evidence (formerly under Section 65B of the Evidence Act),¹⁴³ it fails to offer specific protocols for handling AI-synthesised or manipulated media.¹⁴⁴ This legislative silence creates a critical gap where courts may inadvertently admit sophisticated forgeries as genuine proof, leading to significant miscarriages of justice.¹⁴⁵ The current certification process verifies only the integrity of the storage medium, not the truthfulness or originality of the content itself.¹⁴⁶ As AI models like GANs achieve remarkable fidelity, even specialised forensic tools struggle to distinguish authentic depictions from synthetic ones, creating a detection gap that consistently favours the perpetrator.¹⁴⁷

A particularly insidious consequence of the deepfake era is the liar's dividend. This phenomenon occurs when the mere existence of synthetic media allows bad actors to claim that authentic evidence of their own misconduct is actually AI-generated.¹⁴⁸ By exploiting public awareness of deepfakes, perpetrators profit from the resulting epistemic confusion, eroding trust in the judicial system as a whole.¹⁴⁹

This creates a dual-layered crisis for victims: first, they must face the trauma of synthetic sexual exploitation; and second, even when they possess real evidence of other harms, its credibility is preemptively undermined. This state of informational anomie triggers a general media scepticism where victims are often forced into the impossible position of having to prove a negative, demonstrating that a hyper-realistic forgery is not real while defending the authenticity of their own genuine evidence.¹⁵⁰

A fundamental hurdle in the Indian legal landscape is the lack of a clear, statutory definition of 'deepfake'.¹⁵¹ Without a technologically neutral definition that can encompass evolving forms of synthetic media, including audio, video, and text-based impersonation, law enforcement

¹⁴² *Ib* at 563; Datta and Banerjee, *Unmasking Deepfakes*, *supra* n. 16, at 337.

¹⁴³ Indian Evidence Act 1872, Sec.65B(4).

¹⁴⁴ Rana, *Criminal Law*, *supra* n. 8, at 564.

¹⁴⁵ *Ib* at 560, 564; *See also* Pratyusha Das & Pradeepta Sarkar, *The Importance of Digital Forensics in the Admissibility of Digital Evidence*, 7 NUJS J. REGUL. STUD. , April-June 2022, at 60, 69.

¹⁴⁶ Rana, *Criminal Law*, *supra* n. 8, at 569.

¹⁴⁷ Vinolia, *Unmasking Digital Deception*, *supra* n. 2, at 168.

¹⁴⁸ Rana, *Criminal Law*, *supra* n. 8, at 566.

¹⁴⁹ Gupta, *The future of Deepfakes*, *supra* n. 3, at 138.

¹⁵⁰ Vinolia, *Unmasking Digital Deception*, *supra* n. 2, at 168.

¹⁵¹ Datta and Banerjee, *Unmasking Deepfakes*, *supra* n. 16, at 355; *See also* Vinolia, *Unmasking Digital Deception*, *supra* n. 2, at 175.

agencies are left to adapt pre-digital laws to modern scenarios through procedural workarounds.¹⁵²

This definitional ambiguity creates enforcement difficulties, as bad actors can exploit loopholes by claiming their content falls outside the narrow categories of traditional obscenity or morphing.¹⁵³ Furthermore, existing laws often require proof of specific intent to harass or harm, which is notoriously difficult to establish when creators operate anonymously or claim their actions were intended as satire or parody.¹⁵⁴ The lack of precise terminology in statutes like the BNS and IT Act means that AI-mediated harms are often registered under ill-fitting categories like defamation or cheating by personation, which fail to capture the sexual and dignitary nature of the offence.¹⁵⁵

The digital ecosystem is inherently transnational, presenting formidable challenges for a legal system that remains anchored in territorial jurisdiction.¹⁵⁶ Content created in one country can be hosted on servers in a second and viewed by victims in a third, raising complex questions about which laws apply and how they can be enforced.¹⁵⁷

The decentralised nature of the internet allows perpetrators to hide behind layers of anonymity, utilising VPNs, the dark web, and encrypted communication channels to evade detection.¹⁵⁸ For Indian victims, seeking redress against a creator operating from a foreign jurisdiction is practically impossible without robust international cooperation and mutual legal assistance treaties (MLATs).¹⁵⁹ This jurisdictional clarity is often missing, leaving victims with limited recourse even if the harm caused is catastrophic and viral. The scale of the problem is exacerbated by the immortality of digital media; even if one jurisdiction succeeds in a takedown, the content often persists and migrates across other borderless platforms.¹⁶⁰

A central point of contention is the liability of intermediaries and developers. Under current Indian law (Section 79 of the IT Act)¹⁶¹ and similar safe harbour models globally, social media platforms are largely immune from liability for user-generated content as long as they perform

¹⁵² Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 187; *See also* Adyasha Behera & Bhanu Pratap Singh, *Deceptive Realities: India's Legal and Ethical Framework against Digital Forgeries and Deepfake Crimes*, 7 *INT'L J.L. MGMT. & HUMAN.* 2211, 2219 (2024).

¹⁵³ Gupta, *The future of Deepfakes*, *supra n. 3*, at 144; *See also* Khan And Rizvi, *Deepfakes*, *supra n. 17*, at 225.

¹⁵⁴ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 182.

¹⁵⁵ Gupta, *The future of Deepfakes*, *supra n. 3*, at 161.

¹⁵⁶ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 185.

¹⁵⁷ *Ib* at 171.

¹⁵⁸ Anumodan Tiwari, *AI-Powered Cybercrime Investigations under BNS*, 7 *[[SC]] Int'l J.L. Mgmt. & Human. [[/SC]]* 1479, 1438 (2024).

¹⁵⁹ Muskan Jaiswal, *Cybersecurity and Digital Forensics: Legal Aspects of Investigating Cybercrimes*, 2 *LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH.* 96, 106 (2024).

¹⁶⁰ Sharma, *Understanding Non-Consensual*, *supra n. 14*, at 622.

¹⁶¹ *Information Technology Act 2000*, Sec.79.

due diligence.¹⁶² However, the reactive notice-and-takedown model is increasingly viewed as inadequate for the era of AI, as deepfakes can cause immediate and irreparable harm within minutes of being posted, long before they can be flagged and removed.¹⁶³

Furthermore, the allocation of fault between the developers who build the AI tools, the individuals who use them to generate harmful content, and the platforms that amplify that content is legally murky.¹⁶⁴ Many AI models are black boxes, where the decision-making process is not transparent, making it difficult to prove that a developer or platform breached a duty of care.¹⁶⁵ The automated nature of algorithmic recommendation systems often amplifies harmful synthetic content, yet platforms frequently resist accountability by citing their role as mere neutral conduits.¹⁶⁶ This asymmetry between the technical capability to inflict harm and the legal mechanisms to enforce responsibility remains a significant barrier to victim-centric justice.¹⁶⁷

Comparative and Policy Insights

The regulation of AI-mediated sexual offences has prompted a variety of legislative responses worldwide, reflecting divergent priorities between free speech protection and the prevention of harm.¹⁶⁸ While India continues to rely on a patchwork of general cyber and penal laws, other jurisdictions have pioneered models that range from fragmented state-level criminalisation to comprehensive regional frameworks like the European Union's Digital Services Act.¹⁶⁹

⇒ The United States

The U.S. approach to deepfakes is characterised by a patchwork of state-level statutes that vary significantly in their legal definitions and intent requirements.¹⁷⁰ Virginia and California were among the first states to enact targeted legislation, adding non-consensual deepfakes to their existing revenge porn and privacy laws.¹⁷¹ However, these laws reflect inconsistent priorities: for instance, Minnesota utilises a broad definition that includes digitally altered images and audio clips, whereas Texas has historically focused more narrowly on videos intended to deceive.¹⁷² A significant policy gap exists regarding malicious intent; in states like Georgia and Hawaii, a perpetrator who creates non-consensual pornography for personal gratification rather than to harass or cause financial loss may not be held criminally liable.¹⁷³

¹⁶² T. Prashant Reddy, *Back to the Drawing Board: What Should Be the New Direction of the Intermediary Liability Law*, 1 *NLUD J. LEGAL STUD.* 38, 48 (2019); *See also* Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 179.

¹⁶³ *Ib* at 179; *See also* Gupta, *The future of Deepfakes*, *supra n. 3*, at 151.

¹⁶⁴ Beatriz Botero Arcila, *Is It a Platform? Is It a Search Engine? It's ChatGPT! The European Liability Regime for Large Language Models*, 3 *J. FREE SPEECH L.* 455, 461 (2023).

¹⁶⁵ Anumodan Tiwari, *AI-Powered Cybercrime Investigations under BNS, 7 [[SC]] Int'l J.L. Mgmt. & Human. [[/SC]]* 1479, 1488 (2024).

¹⁶⁶ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 185.

¹⁶⁷ *Ib* at 169.

¹⁶⁸ *Ib* at 161.

¹⁶⁹ Datta and Banerjee, *Unmasking Deepfakes*, *supra n. 16*, at 350.

¹⁷⁰ Comfort, *Deepfake Dangers*, *supra n. 7*, at 12.

¹⁷¹ *Ib* at 8.

¹⁷² *Ib* at 9.

¹⁷³ *Ib* at 13.

At the federal level, the DEFIANCE Act of 2024 and the No AI FRAUD Act were introduced to provide civil recourse for victims and prevent the unauthorised use of human likeness and voice.¹⁷⁴ Despite these moves, the U.S. system remains anchored in Section 230 of the Communications Decency Act, which provides robust immunity to platforms for third-party content, creating a formidable barrier for victims seeking platform accountability for the viral dissemination of synthetic harms.¹⁷⁵

⇒ **The European Union**

In contrast to the U.S. model, the EU has adopted a rights-based, comprehensive approach centred on the General Data Protection Regulation (GDPR) and the Digital Services Act (DSA).¹⁷⁶ Unlike the purely defensive safe harbour of Section 230, the DSA imposes affirmative obligations on Very Large Online Platforms (VLOPs), requiring them to conduct mandatory risk assessments and implement proactive mitigation measures against systemic threats like manipulated media.¹⁷⁷

Furthermore, the EU AI Act classifies AI systems used to create deepfakes as limited risk, necessitating mandatory labelling and documentation to ensure digital content is traceable and authentic.¹⁷⁸ A key policy insight from the EU is the human-in-command principle, which advocates for human intervention to supervise automated AI moderation systems, ensuring that technology does not eclipse human judgment in determining what constitutes harmful content.¹⁷⁹

⇒ **The Asian Model**

China and South Korea offer regulatory models focused on stringent state oversight and specific criminalisation. China's Cyberspace Administration (CAC) requires all synthetic media to be clearly watermarked and traceable to its source, a policy aimed at mitigating the liar's dividend by ensuring informational integrity.¹⁸⁰ Their strategy emphasizes early intervention and pre-emptive control over the ethical deployment of AI technologies.¹⁸¹ Similarly, South Korea has amended its Information and Communications Network Act to specifically criminalize the distribution of deepfake pornography, imposing severe penalties of up to five years in prison to address the growing crisis of content targeting popular artists and vulnerable groups.¹⁸²

¹⁷⁴ Datta and Banerjee, *Unmasking Deepfakes*, *supra n. 16*, at 349.

¹⁷⁵ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 161.

¹⁷⁶ *Ib* at 177.

¹⁷⁷ Igor Britchenko, *Responsibility of Online Platforms for Third-Party Content: A Comparative Analysis of the EU Digital Services Act and the US Section 230*, 18 *[[SC]] J. Int'l Legal Commc'n [[/SC]]* 61, 69 (2025).

¹⁷⁸ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 177.

¹⁷⁹ Maria Barral Martinez, *Platform Regulation, Content Moderation, and AI-Based Filtering Tools: Some Reflections from the European Union*, 14 *[[SC]]J. Intell. Prop. Info. Tech. & Elec. Com. L. [[/SC]]* 211, 220 (2023).

¹⁸⁰ Vinolia, *Unmasking Digital Deception*, *supra n. 2*, at 177.

¹⁸¹ Rana, *Criminal Law*, *supra n. 8*, at 568.

¹⁸² Datta and Banerjee, *Unmasking Deepfakes*, *supra n. 16*, at 350.

Policy Insights and the Necessity of Harmonisation

A significant global trend is the recalibration of safe harbours toward a duty-of-care framework, where platforms receive legal immunity only if they act as responsible intermediaries rather than neutral conduits.¹⁸³ Jurisdictions like Norway and Japan have led by example, integrating AI-based detection systems into their public sector governance and fostering collaborative public-private partnerships to monitor digital content.¹⁸⁴

However, the transnational nature of AI-mediated crimes means that non-harmonised action risks creating regulatory arbitrage where perpetrators exploit jurisdictional differences.¹⁸⁵ While the Budapest Convention on Cybercrime provides a foundation for cross-border cooperation, it lacks specific provisions for synthetic forgeries, leaving a critical void in international law.¹⁸⁶ Ultimately, these comparative insights suggest that India must move toward a unified legislative framework that combines mandatory technological safeguards, such as digital watermarking (e.g., Google's SynthID), with robust standards for platform accountability.

Reform proposals to curb the menace

There is no single solution to addressing AI-mediated sexual violence, and it must involve pressure for a multi-layered legal, technological and social approach that moves beyond patchwork cybercrime legislation and seeks structural change in the relationship between digital platforms, AI creators and States on the one hand and gendered digital violence on the other. The following solutions & recommendations can be taken as way forward to the ongoing issue:

1. First, non-consensual sexualizing deepfakes should be clearly codified as a different criminal offence in their own right, qualified under domestic law very explicitly as a subtype of image-based sexual abuse and attaching criminal sanctions to the act of creation and dissemination regardless of whether the offending party intended for content to enter individual public domain.¹⁸⁷ The prevailing ambiguity in almost all other jurisdictions, including India, which has no specific law to deal with the internet, nor an appropriate one for calling upon a victim to prove fabrication, subsequently renders many victims without recourse to justice, and others open to being re-victimized while those who brazenly engage in the continuous cycle continue to get away with just

¹⁸³ Giancarlo F. Frosio, Internet Intermediary Liability: WILMap, Theory and Trends, 13 INDIAN J. L. & TECH. 16, 30 (2017)

¹⁸⁴ Behera & Singh, Deceptive Realities, *supra n.* 125, at 2218.

¹⁸⁵ Vinolia, Unmasking Digital Deception, *supra n.* 2, at 171; See also Teresa Rodriguez de las Heras Ballell, Credibility-Enhancing Regulatory Models to Counter Fake News: Risks of a Non-Harmonized Intermediary Liability Paradigm Shift, 8 J. INT'L MEDIA & ENT. L. 129, 134 (2019-2020).

¹⁸⁶ Kedar Ghimire, International Perspective of Cyber Law: Specially Focused on Cybercrime Convention, 15 NJA L.J. 307 (2021) 323.

¹⁸⁷ Pawelec M and Łabuz M, Non-Consensual Sexualising Deepfakes – Threats and Recommendations for Legal and Societal Action (CEE Digital Democracy Watch, Warsaw 2025) 5–6.

a warning and keener prodding that entice them even more into exploiting definitional gaps embedded into laws catering towards generations past of cybercrimes.¹⁸⁸

2. Second, not only social media services must be accountable for the abusive ecosystems that they propagate, pornographic websites or AI image-generation providers, which contribute to the abusive portrayal of real-life women by reproducing their images through machine learning algorithms and uploading them onto the internet.¹⁸⁹ These must include binding rapid takedown obligations, proactive detection and filtering measures, prohibition of tools specifically designed to enable the production of sexualizing synthetic work, and transparency reporting on the volume of abuse-related content.¹⁹⁰
3. Third, AI developers must be subject to safety-by-design obligations which require them to build generative models with protective measures that stop the creation of non-consensual intimate imagery and they must ensure that training datasets do not include personal photographs which were obtained without permission through web scraping techniques.¹⁹¹
4. Fourth, establishment of dedicated victim support infrastructure should include legal aid services and emergency takedown services to provide specialized psychological assistance for survivors. The research shows that AI-mediated sexual abuse causes social rupture and isolation and restricted freedom and existential danger which match the seriousness of physical sexual violence. The research shows that AI-mediated sexual abuse causes social rupture and isolation, restricted freedom, and existential danger, which match the seriousness of physical sexual violence.¹⁹²
5. Lastly, the existing problem needs treatment through public education and awareness programs, which should begin implementation because these programs help to decrease the social acceptance of harmful behaviour. The study shows that students use body display devices for inappropriate purposes in educational institutions, according to research which establishes this pattern of misuse.¹⁹³

¹⁸⁸ Agbakoba O and Masha T, 'Artificial Intelligence and Criminal Liability in India: Exploring Legal Implications and Challenges' (2024) *Cogent Social Sciences* <<https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2343195>> accessed 12 April 2026.

¹⁸⁹ Pawelec M and Łabuz M, Non-Consensual Sexualising Deepfakes – Threats and Recommendations for Legal and Societal Action (CEE Digital Democracy Watch, Warsaw 2025) 7; Karagianni A, 'A Feminist Legal Analysis of Non-Consensual Sexualized Deepfakes: Contextualizing its Impact as AI-Generated Image-Based Violence under EU Law' (2024) *Journal of Gender, Social Policy & the Law* <<https://www.tandfonline.com/doi/full/10.1080/23268743.2024.2408277>> accessed 12 April 2026.

¹⁹⁰ *ib*; Umbach R and others, 'Non-Consensual Synthetic Intimate Imagery: Prevalence, Attitudes, and Knowledge in 10 Countries' (2024) CHI 24: Proceedings of the 2024 CHI Conference on Human Factors in Computing Systems, Article No 779.

¹⁹¹ 'Deepfakes as a Weapon of Gendered Terror: Non-Consensual Synthetic Intimacy and the Systematic Harassment of Women' (2025) *International Journal of Law, Social Science and Sociology* <<https://ijlss.com/deepfakes-as-a-weapon-of-gendered-terror/>> accessed 12 April 2026.

¹⁹² McGlynn C and others, 'It's Torture for the Soul: The Harms of Image-Based Sexual Abuse' (2021) 30(4) *Social & Legal Studies* 541 <<https://journals.sagepub.com/doi/10.1177/0964663920947791>> accessed 12 April 2026.

¹⁹³ Laird E, Dwyer M and Woelfel K, *In Deep Trouble: Surfacing Tech-Powered Sexual Harassment in K-12 Schools* (Center for Democracy & Technology, Washington 2024).

The increasing use of AI-generated sexual images functions as a new form of technological development, which shows how patriarchal violence operates at its most extensive level, thus requiring immediate legal changes which should focus on helping victims. The digital environment will transform into the most common location for gender-based violence in modern society unless developers establish safety measures and platforms face responsibility for their platforms. The legal system requires modernisation because it needs to develop at the same speed as technological progress in order to protect women from the negative consequences of legal inaction.

Law As An Instrument Of Social Transformation: Constitutionalism, Gender Justice, And The Interdisciplinary Dynamics of Law And Society

Authors: Mr Mohammad Aqib¹⁹⁴ & Ms Prachi Verma¹⁹⁵

Abstract

As a socially constructed tool, the goal of the law is to reduce or eliminate potential sources of conflict and stress, thereby promoting peace and harmony among all members of society. Changes are made in order for civilisation to move forward. The urgent need of our time is centred on the concept of social change, which is both abstract and indicates a shift in the characteristics shared by a population. The adoption and implementation of the Constitution of India marked a turning point in the social and political history of India. It would be very difficult to overturn religious beliefs and practices if only established legal rules controlled these changes. Examining the social components of cultures and their legal approaches to conflict resolution, this article seeks to provide a definition of the words "law," "gender justice," and "social change."

Any civilised nation's laws are always evolving to meet the demands of society. In India, the Preamble, Article 368, the Fundamental Rights, and the Directive Principles all serve as compass points for social transformation. This study aims to demonstrate that India has developed instruments for studying social development and legislation based on particular concepts. The following reforms have been implemented: the elimination of Sati, the ban on child marriage, free and compulsory education, marriage registration, acceptance of cohabiting couples, juvenile justice, LGBTQ5 rights, marriage equality for Muslim women, and the Right to Information Act.

It seeks to answer two main questions: first, how much of an impact has transformational jurisprudence had on gender equality in India; and second, how has the court dealt with entrenched legal frameworks that have ignored women's problems in the past. The article shows how progressive legal interpretations have helped marginalised groups and improved gender rights by analysing important rulings from the Indian Supreme Court and other pertinent cases. It also emphasises the persistent difficulties in putting court decisions into action, which are frequently exacerbated by ineffective institutional structures and ingrained cultural norms. The article argues that substantial legislative and policy modifications are required to close the gap between official announcements and their actual implementation, despite the fact that transformational jurisprudence has played a crucial role in the promotion of gender equity. The study's authors offer specific recommendations for enhancing gender justice policy implementation at its conclusion.

Keywords: Instrument, social change, preamble, Rights, Society, custom and usages, Transformative Jurisprudence, Feminist Jurisprudence, Gender Justice in India, Intersectionality in Law.

Introduction

Modern law empowers societal transformation and order. The influence of legal systems on behaviour, institutions, and ideas has led to numerous significant developments in modern history. Legal interventions have altered social norms and behaviours in a variety of ways, including the abolition of slavery, the protection of the environment, civil rights, digital privacy, and slavery abolition. To comprehend how law affects society, you need to know about behavioural studies, political science, legal theory, and sociology. Classical sociologists were the ones who first proposed the connection between society and the law. According to Émile Durkheim, law is the formal expression of a society's collective conscience; legal code

¹⁹⁴ Axis Law College, Email: mohammadaqib@axiscolleges.in

¹⁹⁵ Assistant Professor, Email id- prachi-verma@axiscolleges.in

modifications indicate deeper values and cohesion¹⁹⁶. Law, according to Durkheim, "legitimises society's morality." However, Max Weber was of the opinion that rationalising legal authority and developing contemporary legal systems required bureaucratic administration. Weber claims that the predictability and procedural consistency of legal authority gave it legitimacy and influenced the behaviour of complex societies. These early views were expanded and contested by later legal theorists. Experts in critical law debate whether the law is progressive or neutral.¹⁹⁷ Roberto Unger claims that power structures are facilitated by legal frameworks, making it difficult to rebuild society without adjusting political and institutional structures. The "legal field" was created by Pierre Bourdieu as a social arena with logics, hierarchies, and conflicts over symbolic and material wealth. Bourdieu stresses the need to understand actors, organisations, and cultural norms that mediate law's social impact.¹⁹⁸

Legislative changes have altered society despite these disagreements. In the 19th century, several countries outlawed slavery, eliminating economic and racial exploitation. The 1964 Civil Rights Act and 1965 Voting Rights Act addressed institutional racism and segregation. Numerous jurisdictions have legalised same-sex marriage, transforming family, equality, and individual liberty rhetoric and law. These examples show how legal procedures may overthrow authoritarian institutions, transfer power, and shift public opinion.¹⁹⁹

Law does not automatically change society. The efficacy of legal interventions is determined by political will, institutional competence, public support, and how legal procedures respond to shifting social situations. Unenforceable or unjust laws may not change or provoke backlash. Laws that neglect social, cultural, and economic considerations may worsen inequality or weaken informal mutual aid.²⁰⁰

The term "legal culture" refers to the shared beliefs, attitudes, and expectations regarding the law and legal institutions. Lawrence Friedman and other legal sociologists contend that legal culture alters laws. Cultures that value the rule of law are more likely to follow new laws. Legal cynicism or repression may view legal reforms with scepticism or resistance. This highlights the necessity to assess formal and informal law systems' social reform capacity.²⁰¹

Law and conduct have been extensively studied in behavioural economics and psychology. Legal "nudges," which alter incentives, defaults, and social norms, have been the subject of research. Minimum seatbelt rules, anti-smoking laws, and renewable energy tax incentives affect individual and community behaviour. These findings suggest that legal rule design and

¹⁹⁶ Gautam Bhatia, 'Directive Principles of State Policy: Theory and Practice' in *The Oxford Handbook of the Indian Constitution* (OUP 2015) accessed 7 July 2024.

¹⁹⁷ Ranbir Singh, 'The March of Law in India—the Long Road from Oppression to Justice' (2017) 59 *J Indian L Inst* 288 accessed 24 August 2024.

¹⁹⁸ *The Bharatiya Nyaya Sanhita* 2023.

¹⁹⁹ *The Bharatiya Nagarik Suraksha Sanhita* 2023

²⁰⁰ *The Bharatiya Sakshya Adhinyam* 2023.

²⁰¹ Nidhi Upadhyay, 'The Impact of Nirbhaya Protest on the Contemporary Indian Women's Movement' (2015) 76 *Indian J Pol Sci* 885 accessed 5 July 2024.

framing, together with public education and community engagement, may greatly affect their success.²⁰²

Legal actions may change lives, while others have mixed effects. Drug prohibitions for public safety, for instance, have disproportionately harmed underprivileged individuals and resulted in widespread incarceration without reducing drug use or improving public health. By forcing the sector underground, anti-prostitution regulations designed to protect vulnerable individuals have sometimes increased their legal and physical peril. Context-sensitive legislation should prioritise harm mitigation, human rights, and science above morality.²⁰³

This article contributes to the conversation by discussing the law's theoretical and practical effects on social transformation. It investigates how legal reforms affect social outcomes and how to improve the capacity of the law to advance equality, justice, and well-being. The role that the law plays in social change is studied from a variety of perspectives, including contemporary transdisciplinary ones, critical legal theory, and classical sociology. It then uses civil rights, public health, environmental regulation, gender equality, and digital rights case studies to show how legal interventions work.²⁰⁴

The paper emphasises that cycles of reform, resistance, adaptation, and reinforcement drive legal change. Political, economic, and cultural structures aid and inhibit legal innovation. The content of the law, as well as its institutional and normative contexts, determines its impact on society. Legislators, scholars, and practitioners who use legislation to advance social development must comprehend its limitations. This article sheds light on the intricate yet potent ways in which law interacts with society and how theoretical principles and actual evidence could be used to better address current issues. Legal capacity to promote meaningful and durable social change is a major 21st-century challenge, whether it's structural inequity, climate change, or technological revolution.²⁰⁵

Transformative Jurisprudence And Gender Justice In India

Gender inequality has plagued India's diverse cultures, traditions, and long history for centuries. This acknowledgement addresses gender disparities in Indian legal systems. Transformational jurisprudence in gender justice in India changes how the law is used to address long-standing gender disparities and achieve gender equality. Legal and social norms that discriminated against women and other gender minorities have been challenged and altered by this approach. In India, gender equality and justice have improved as a result of progressive legal decisions, policy changes, and decisions.²⁰⁶ Indian people need the Constitution to guarantee equality, non-discrimination, and justice. Article 15(1) bans religious, racial, caste, gender, and birthplace discrimination. The state is permitted to take extraordinary measures for women and children under Article 15(3). The Directive Principles of State Policy, notably

²⁰² 'All About The Paternity Bill, 2017' (B Comply Legal India, 3 April 2018) accessed 17 June 2025.

²⁰³ The Transgender Persons (Protection of Rights) Act 2019, s 3

²⁰⁴ The Transgender Persons (Protection of Rights) Rules 2020, r 2

²⁰⁵ AIR 2018 SC 1841.

²⁰⁶ (2014) 5 SCC 438.

Article 39, require the state to promote economic fairness by ensuring equal compensation for equal labour for men and women.²⁰⁷ In order to demonstrate the State's commitment to the well-being of women, Article 42 mandates that it provide maternity leave and fair working conditions. Article 51A(e) prohibits degrading women. According to Articles 243D(3) and 243T(3), women receive "not less than one third of seats" in panchayat and municipal elections. These constitutional obligations underpin transformational gender justice jurisprudence. To bring about change, the government has changed laws that affect women, such as those regarding dowry, rape, cruelty, maintenance, marriage, domestic violence, prostitution, and obscenity.²⁰⁸ The Supreme Court of India has employed transformational jurisprudence to promote gender justice in historic rulings. Women's access to social and material resources, as well as their living conditions, have been improved through the implementation of welfare and development programs. In order to assist women in making use of their rights and opportunities, these changes to the law address social constraints and inequality.²⁰⁹

Legislative Enactments In India

Gender parity and disparities are addressed by laws. A.V. Dicey's legal equality theory claims that India's legal system has moved from 'rule by law,' which backed colonial goals, to 'rule of justice.' Supreme Court wants fairness. It involves legal social fairness. Colonial laws addressed women's issues. Reforms regarding marriage, divorce, and inheritance promoted equality and reduced prejudice. These laws illustrate India's progress in eliminating gender inequality and repression. Women's rights and legislation improved later. Legal reforms after independence improved gender equality and women's rights in India. Legal reforms are crucial.²¹⁰

The 2005 Protection of Women from Domestic Violence Act protects women against physical, emotional, and financial violence at home. Same-sex relationship violence may not be addressed by the heterosexual Act. Protection order delays and support service shortages hinder implementation. ICs must protect workers under the 2013 POSH Act. POSH should fight gender injustice and be non-binary.²¹¹ IC effectiveness and biases impair impartiality. The POSH Act covers informal industries but has little non-traditional enforcement. Most domestic, agricultural, and construction workers are unprotected. Deliveries and freelancers carry out tasks for employers. Home workers are banned. Injury in uncertain personal-professional situations, such as off-site meetings, work travel, or internet connections, is seldom addressed.²¹²

The 2013 Nirbhaya Act reinforced India's IPC, CrPC, and IEA sexual crime legislation. The IPC, CrPC, and IEA were superseded on July 1, 2024, by Bhartiya Nyaya Sanhita, 2023 (BNS), Bhartiya Nagarik Suraksha Sanhita, and Bhartiya Sakshya Ad BNS Sec. 63 defines rape.

²⁰⁷ The Muslim Women (Protection of Rights on Marriage) Act 2019, ss 3-7.

²⁰⁸ The Surrogacy (Regulation) Amendment Rules 2023.

²⁰⁹ AIR 1993 SC 477.

²¹⁰ AIR 2009 SCW 5909.

²¹¹ AIR 2017 SC 461

²¹² (2018) 13 SCC 339.

Terminology has been updated, procedures have been improved, and victim-sensitive evidence is now required by new Indian criminal laws. Life or death sentences are sometimes handed down under Section 64. Innovation Section 69 criminalises sexual actions influenced by deception or promises. Section 223 requires female police officers to record trauma-informed victim accounts, and Section 193 requires 60 days for rape investigations, 28 days to ensure timely justice. As in the IEA, Section 35 of the BSA bans interrogating victims about past sexual behaviour for dignity and justice.²¹³

After the 2012 Delhi gang rape, the 2013 Criminal Law (Amendment) Act strengthened sexual assault regulations and protected victims. The Act broadened the definition of rape to include stalking and voyeurism, raised punishments, established victim-sensitive techniques, forbade court interrogation of a victim's character or past sexual activity, and handled acid attacks. Fast-track courts speed up justice. Delays impede justice.²¹⁴

Working mothers were granted 26 weeks of paid leave and the option to telecommute under the Maternity Benefit (Amendment) Act of 2017. It applies to companies with 10 or more workers, eliminating many smaller ones. Women's notification under the Informal Employers' Act is rarely enforced. The Act does not include paternal leave, despite dual parenting. The 1972 Central Civil Services (Leave) Rules provide male central government workers 15 days of paternity leave.²¹⁵ Private sector workers cannot take paternity leave, and the 2017 Paternity Benefit Bill failed. The Transgender Persons (Protection of Rights) Act of 2019, which outlawed discrimination, offered transgender people benefits in the areas of education, employment, and healthcare. The 2019 Transgender Persons (Protection of Rights) Act and 2020 Rules charge constitutional privacy, dignity, and equality abuses.²¹⁶ Transgender discrimination in education, employment, healthcare, and public goods and services is outlawed in Section 3 of the Act, but procedural constraints prevent this progressive goal from being realized. Transgender persons must apply to the District Magistrate for evidence of identity under Section 6, and Section 7 demands gender-change medical therapy. Rule 2 of the 2020 Rules fails to define 'medical intervention' and establish protections, raising worries about required or unnecessary 34 treatments. Justice K.S. was violated by the District Screening Committee's certification strategy. India's privacy and NALSA's self-identification in *Puttaswamy v. Union of India* Section 3 outlaws discrimination, but the Act's restriction on same-sex partnerships and marriage denies transgender people full legal personhood in personal and familial connections.²¹⁷

The 2019 Muslim Women (Protection of Rights on Marriage) Act criminalises hasty 'triple talaq' in India to safeguard Muslim women against rash divorces. Instant triple talaq is

²¹³ AIR 2016 SC 4774.

²¹⁴ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 *Third World Legal Stud* 107 accessed 13 May 2024.

²¹⁵ Semadi, A. A. G. P. (2024). Peran Media Sosial Dalam Upaya Penegakan Hukum di Indonesia. *IJOLARES: Indonesian Journal of Law Research*, 2(1), 14-19.

²¹⁶ AIR 1981 SC 1829.

²¹⁷ AIR 2018 SC 721.

outlawed under Section 3, and imprisonment for three years is imposed under Section 4.²¹⁸ For cognisable, non-bailable crimes, Sections 7(a) and 7(c) permit warrantless police involvement and court bail discretion. Sections 5 and 6 provide women with subsistence funds and custody rights, but many legal professionals contend that they are disregarded. Muslim women's incomes may be impacted by jailed husbands. The Act may violate the rights of 37 women, despite its intended purpose.²¹⁹ The 2021 Surrogacy (Regulation) Act bans commercial surrogacy and promotes altruistic surrogacy.²²⁰ The statute encourages surrogate mother counselling, insurance, and healthcare. If a District Medical Board-certified medical condition required it and the other gamete was from the couple in 2023, Form 2 of the Act permitted intended couples to use one donor gamete, either sperm or egg. In surrogacy, a widow or divorcee uses their own eggs and sperm from a donor.²²¹ These modifications boost reproductive freedom while keeping the regulatory framework's medical need and 38 genetic connection focus. Although informed consent and regulatory oversight are essential, LGBTQ+ and same-sex couples may not be eligible for reproductive options because of eligibility requirements for intended parents. Equality and prejudice eradication need these laws. They pass transformational legislation.²²² To make India an inclusive and equal nation, critical thinking and social and legal reform are required.

Legal Initiatives In Court Cases And Public Interest Litigation

Legal action against various injustices has altered gender justice in India. Courts have altered and enhanced gender justice. Affirmative action for socially and educationally disadvantaged groups, including women, including *Indra Sawhney v. Union of India*, has promoted gender equality and diversity in schools and workplaces. Healthcare, contraception, and family planning that are gender-neutral are also goals of reproductive rights legislation.²²³ In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court emphasised independence and reproductive rights. Abortion was upheld in the verdict, safeguarding women's health and reproductive rights. *Santosh Pal v. Meera Union of India* and *Sarmishtha Chakraborty*, medical abortion after 24 weeks was allowed.²²⁴ *The Hiral P. The Harsora v. Kusum Narottamdas* case highlighted the necessity of including verbal, emotional, and financial abuse in domestic violence laws. The court is now the last resort for the oppressed, whereas it was once used for more complicated legal issues. Equal pay legislation has reduced the gender wage gap.²²⁵ The Supreme Court established female pay equity in *Air India v Nergesh Meerza*, eliminating workplace discrimination and promoting economic parity. For equitable inheritance and to

²¹⁸ Tamanaha, B. Z. (2001). *A general jurisprudence of law and society*. Oxford University Press.

²¹⁹ AIR 2011 SCW 1303.

²²⁰ Scott, J. C. (1998). *Seeing like a state: How certain schemes to improve the human condition have failed*. Yale University Press.

²²¹ AIR 2020 SC 1000.

²²² (2021) 15 SCC 125.

²²³ AIR 1985 SC 945.

²²⁴ AIR 2017 SC 4609

²²⁵ Wiryawan, I. W., & Sujana, I. G. (2023). *Tanggung Jawab Penerima Hibah Uang yang Bersumber dari APBD oleh Pemerintah Daerah*. *IJOLARES: Indonesian Journal of Law Research*, 1(2), 41-46.

correct past biases, land and property rights were addressed.²²⁶ The Supreme Court ruled in *Danamma @ Suman Surpur v Amar* that daughters possessed ancestral property rights regardless of their birthdate. *Budhadev Karmaskar v.*, a further landmark case, Sexual abuse of sex workers was prevented in the state of West Bengal. *The Ministry of Defence v. Babita Puniya* case demonstrated that women officers' constitutional rights were violated when they were denied permanent commission. It also helped women fight without humiliating them.²²⁷ The case of *Lt. Col. Nitisha v. Union of India* dealt with women's NDA entry. The verdict emphasised the need to remove gender-based barriers to military education and recognise the evolving role of women in the military. In the landmark case *Mohammad Ahmad Khan v. Shah Bano Begum*, the Supreme Court awarded a Muslim divorcee maintenance from her husband. This historic case addressed personal law prejudice and supported gender equality.²²⁸ The Muslim Women (Protection of Rights on Divorce) Act, 1986, weakened the court's judgment, sparking controversy. Years later, resistance endures in *Shayara Bano v Union of India*. Despite its importance, gender disparity did not dominate the conversation. UCC arguments were also impacted by this case. In an effort to make the courts more accessible, the UCC requests significant changes while disregarding Hindu personal law discrimination. After Gujarat and Uttarakhand, Assam standardised marriage, divorce, inheritance, and live-in relationships.²²⁹

India enforces rights using PIL. PILs have addressed workplace harassment, transgender rights, and religious discrimination, making society more inclusive and equal.²³⁰

Vishaka v State of Rajasthan shows PIL's strength. The gang rape of social worker Bhanwari Devi exposed the lack of workplace protections for women. The court used international agreements and standards, particularly CEDAW, to establish that women should be respected in the workplace.²³¹ Tiwari said, 'In a domestic environment, the Supreme Court has made women an apparent subject of international law.' The 'Vishaka Guidelines' defined sexual harassment, established complaint panels, and outlined redressal processes. However, the Supreme Court's poor handling of a sexual harassment accusation against then-CJI Ranjan Gogoi, who presided over the initial panel to address the complaint in 2019, has raised concerns about the judiciary's apparent disregard for its previous rulings.²³² Justice Gogoi denied all claims, alleging a plot to destabilise the court. *NALSA v Union of India*, another PIL, upheld transgender people's freedom to self-identify and constitutional protection of their basic rights.

²²⁶ Tanja Herklotz, 'Shayara Bano versus Union of India and Others: The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice' (2017) 50 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 300 accessed 3 July 2024.

²²⁷ Flavia Agnes, 'Liberating Hindu Women' (2015) 50 *Economic and Political Weekly* 14 accessed 20 May 2024.

²²⁸ Sudiarta, I. N. (2024). *Pengaturan Hak Asasi Manusia Dalam Sistem Hukum Nasional*. IJOLARES: Indonesian Journal of Law Research, 2(1), 25-31.

²²⁹ Zachary Holladay, 'Public Interest Litigation in India as a Paradigm for Developing Nations' (2012) 19 *Ind J Global Legal Stud* 555 accessed 30 June 2024.

²³⁰ Santika, I. G. N. (2021). *Pendidikan Kewarganegaraan: Studi Komparatif Konstitusi Dengan UUD 1945*.

²³¹ AIR 1997 SC 3011.

²³² Garima Tiwari, 'Gendered Decision Making: The Engagement of the Supreme Court of India with International Norms in the Area of Women's Rights' (2018) 51 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 499 accessed 12 July 2024.

This lawsuit goes beyond legal recognition to advocate for affirmative action and socio-economic well-being for transgender populations. PILs have also challenged religious space discrimination against women.²³³ In the landmark Sabarimala temple case, *Indian Young Lawyers Association v State of Kerala*, the Supreme Court lifted the ban on menstruating women entering the temple, ruling that it violated women's constitutional rights.²³⁴ According to the verdict, discriminatory practices violate the equality and non-discrimination provisions of the Constitution. A caste-wide menstruation taboo strengthened Hindu opinion against Sabarimala temple admission after this instance.²³⁵

No court decision specifically addresses gender stereotyping, but recent rulings have increasingly used gender-neutral language, indicating a more inclusive legal system. In August 2023, the Supreme Court of India issued the Handbook for Combating Gender Stereotypes, which discusses linguistic gender stereotyping and alternative terminology.

Scope Of Gender Reforms In Jurisprudential Resolutions

As major legal decisions grab public attention and spark different community discussions, jurisprudential rulings affect socio-cultural and legal landscapes. This has an effect on public morality, which is defined by accepted notions of what is good and what is bad and changes frequently in response to judicial decisions. Jurisprudential resolutions inspire legislatures to create new gender reform legislation. Judges can act differently.²³⁶ Example: marital rape. Due to the lack of legal acknowledgement and criminalisation in many countries, marital rape perpetuates gender inequality.²³⁷ Women are denied equal protection from sexual assault in marriage, as men are afforded traditional marriage exemptions from rape laws. In the case of *RIT Foundation v. Union of India*, the question was whether the marital rape exemption in the Indian Penal Code violates Articles 14, 15(1), 19(1), and 21.²³⁸ Justices Shakti and Hari Shankar did not agree on making rape of a spouse a crime. Justice Shakti insisted that consent and autonomy are necessary both within and outside of marriage. Justice Hari Shankar argued that the exemption is constitutional because marital sex is unique from other partnerships since it entails a genuine expectation of sex.²³⁹ Kapur and Cossman say the above verdict shows how deeply embedded gender norms remain in jurisprudential debates and how the conventional equality norm promotes 'distinctions that potentially impede gender equality.' The split ruling demonstrates the ongoing division of equality law. Courts are 'the arbitrator only of the validity of the law,' implying the jurisprudential association's approach. Gender-based discrimination can be philosophically justified with the aid of jurisprudential separation.

²³³ Ratna Kapur and Brenda Cossman, 'Gender Equality Redux' (2022) 16 Natl L Sch J 58, 60–61 accessed 8 August 2024.

²³⁴ Kartika, I. M., & Umbu, M. L. (2024). Demoralisasi Pancasila Dalam Penegakan Hukum di Indonesia. *IJOLARES: Indonesian Journal of Law Research*, 2(1), 1-6.

²³⁵ NALSA (n 36).

²³⁶ Sujana, I. G., & Kandia, I. W. (2024). Indikator Lemahnya Penegakan Hukum di Indonesia. *IJOLARES: Indonesian Journal of Law Research*, 2(2), 56-62.

²³⁷ AIR Online SC 243.

²³⁸ B Roopesh, 'Sabarimala Protest: Politics of Standardising Religious Pluralism' (2018) 53(49)

²³⁹ Economic and Political Weekly 12 accessed 27 March 2024.

²⁴⁰As social expectations regarding marital roles enforce the idea that wives must comply with their husbands' desires regardless of consent, the strategy of jurisprudential dissociation links "constitutional interpretation and the discursive sites for justification (or mystification/demystification/re-mystification) of practices and performances of governance."²⁴¹ [Citation needed] Underreporting of marital rape perpetuates silence because of stigma, victim-blaming, and fear of vengeance. To address these issues, legal changes, questioning social norms, consent education, and support for survivors are necessary.²⁴² Gender equality must be promoted, and patriarchal systems must be dismantled if marital rape is to be condemned, survivors are to be empowered, and justice can be sought without fear of repercussions. *Navtej Singh Johar v Union of India* is a landmark in Indian law on gender equity and LGBTQ+ rights.²⁴³ The Supreme Court of India overturned Section 377 of the Indian Penal Code, which had made it illegal for consenting adults to engage in private gay behavior. This was a significant victory for LGBTQ+ rights in India. This verdict affects LGBTQ+ rights and the rights, dignity, and personal autonomy of all people. In the *Navtej Singh Johar* case, the various approaches to decriminalizing homosexuality demonstrate how people's movements have shaped Indian judicial traditions. Kannabiran claims that *Johar's* case uses 'song, performance, poetry and the outpouring of emotion' to explain how people's movement affects courtroom cultures. Section 377 of the IPC, which criminalised 'carnal intercourse against the order of nature', was said to violate various Constitutional rights in India.²⁴⁴ By discriminating based on sex and sexual orientation, Section 377 violates Article 15. Section 377's imprecise language violates LGBTQ+ people's right to privacy, dignity, and personal autonomy, preventing them from expressing their sexuality and forming intimate relationships without fear of legal repercussions.²⁴⁵ In *Johar's* case, Justice D.Y. Chandrachud said that 'sexual orientation is a fundamental element of privacy' and that criminalising consensual sexual behaviour between two consenting individuals in a private area breaches privacy. By decriminalising consenting same-sex encounters, the ruling helped overturn a colonial-era legislation that criminalised LGBTQ+ people. It was a major step toward supporting sexual autonomy regardless of sexual orientation.²⁴⁶

When the court accepted that sexual orientation is intrinsic to identity, gender equity made significant progress. It said that discrimination based on sexual orientation violates the right to equality and acknowledged differences in sexual orientation.²⁴⁷ According to the ruling, decisions regarding sexual orientation and intimate relationships now fall under privacy. Article 21's expanded definition of privacy set a precedent for protecting other individuals' rights from

²⁴⁰ Supreme Court of India, 'Handbook on Combating Gender Stereotypes' (2023) accessed 6 May 2024.

²⁴¹ Santos, B. de S. (2002). *Toward a new legal common sense: Law, globalization, and emancipation* (2nd ed.). Butterworths LexisNexis.

²⁴² (2022) SCC OnLine Del 1404.

²⁴³ Trubek, D. M., & Galanter, M. (1974). Scholars in self-estrangement: Some reflections on the crisis in law and development studies in the United States. *Wisconsin Law Review*, 1974(4), 1062–1102.

²⁴⁴ Merry, S. E. (2006). *Human rights and gender violence: Translating international law into local justice*. University of Chicago Press.

²⁴⁵ Kapur and Cossman (n 57).

²⁴⁶ Kalpana Kannabiran, "'What Use is Poetry?'" *Excavating Tongues of Justice around Navtej Singh Johar v Union of India*' (2019) 31(1) *National Law School of India Review* 1 accessed 5 July 2025

²⁴⁷ The Indian Penal Code 1860, s 377.

unjustified interference. India's marriage and adoption laws, as well as LGBTQ+ rights, could be altered as a result of the ruling. It has promoted a gender justice that embraces LGBTQ+ rights and liberties.²⁴⁸

Impact On Gender Justice

Transformative jurisprudence has advanced gender justice in India, but its influence, limitations, and social context must be critically examined. This report examines the differences between law provisions and their implementation and condemns the judiciary's efforts to promote gender equality. India's transformative jurisprudence has produced major gender justice verdicts.²⁴⁹ In cases like *Vishaka*, which outlawed sexual harassment in the workplace, and *Navtej Singh Johar*, which made it legal for adults to be gay in private, the court has challenged and altered social norms.²⁵⁰ These decisions show the judiciary's proactive approach to interpreting the Constitution to promote gender equality and human rights. Due to the large gaps between legislative provisions and their implementation, these verdicts typically have little effect.²⁵¹ Despite the fact that the *Vishaka* Guidelines were a groundbreaking initiative to protect women in the workplace, their implementation has been inconsistent and insufficient, especially in informal industries, where the majority of Indian women work. Employer opposition, a lack of comprehension, and enforcement issues have hampered the implementation of these recommendations.²⁵²

Limitations

Revolutionary jurisprudence in India is limited by the gap between progressive legal declarations and their implementation. Effective Supreme Court decisions typically necessitate extensive follow-up from both state and non-state actors. *Navtej Singh Johar*'s decriminalisation of same-sex relationships was a significant step toward LGBTQ+ rights, but it did not address larger issues like employment, education, and healthcare anti-discrimination safeguards, leaving LGBTQ+ people without comprehensive legal protection.²⁵³ Indian judicial activism has also been criticised for violating legislative authority and overstepping constitutional boundaries. In its pursuit of social justice, which is fundamental to democracy, critics contend that the court may be violating the separation of powers. Some attacked the *Shayara Bano* decision, which invalidated 'triple talaq', as judicial overreach that might undermine religious autonomy and personal legislation safeguarded under Article 25.²⁵⁴

- (i) **Socio-Political Context:** Understanding these revolutionary verdicts' significance and limitations necessitates comprehending their sociopolitical context. Gender-

²⁴⁸ *Navtej Singh Johar* (n 69) (Chandrachud J).

²⁴⁹ *Agnes* (n 53).

²⁵⁰ Nivedita Menon, *Seeing Like a Feminist* (Penguin UK 2012).

²⁵¹ *Baxi* (n 67).

²⁵² Saurabh Kirpal (ed), *Sex and the Supreme Court: How the Law is Upholding the Dignity of the Indian Citizen* (Hachette India 2020).

²⁵³ *Shayara Bano v Union of India* AIR 2017 SC 4609.

²⁵⁴ Naina Kapur, 'Workplace Sexual Harassment: The Way Things Are' (2013) 48(24) *Economic and Political Weekly* 27 accessed 17 August 2024.

just legislation is difficult to enforce in India due to patriarchy, caste systems, and religious plurality.²⁵⁵ Although the Protection of Women from Domestic Violence Act of 2005 provides comprehensive protections, patriarchal attitudes in society, the judiciary, and law enforcement view domestic violence as a private family matter, which has hindered its implementation.²⁵⁶ Political will to implement gender-just legislation has frequently been lacking in governments with strong patriarchal values. Numerous states delayed workplace harassment procedures in spite of the Supreme Court's Vishaka decision, demonstrating a lack of gender equity. Conservative religious organisations' political power also hinders progressive gender policies, as evidenced in the pushback against the Sabarimala ruling, which permitted women of all ages to attend the shrine.²⁵⁷

Conclusion

In conclusion, Indian law has emerged as a potent instrument for social change, fostering equality, justice, and human dignity. The fundamental principles of equality, justice, liberty, fraternity, and liberty enshrined in the Constitution have supported societal change in India's legal system. In the past, the protection of neglected and vulnerable groups and the eradication of injustices have been aided by fundamental rights and directive principles. Progressive interpretations and judicial activism have contributed equally. Major rulings have addressed gender discrimination, workplace harassment, reproductive rights, and LGBTQ+ rights. Through Public Interest Litigation (PIL), courts have made justice more accessible and promoted social improvement. The POSH Act, the Domestic Violence Act, and constitutional amendments have improved gender equality and domestic violence laws. Despite these beneficial legal advancements, the actual application of legal provisions and provisions themselves remain very far apart. Poor enforcement mechanisms, public ignorance, administrative inefficiency, and deeply ingrained social and cultural norms like patriarchy, caste hierarchy, and gender bias all contribute to the failure of numerous well-designed laws. Legal changes frequently fail to alter grassroots communities due to this implementation gap.

Effective law enforcement, public awareness, and solid institutional support are required to guarantee that legal gains result in social transformation. Legal literacy, administrative accountability, and modifications to policies are required to reconcile law and society. Collaboration between communities, civic society, and the government is necessary for inclusive and long-lasting social change. Finally, legal consequences should be evaluated empirically rather than theoretically in future research. It is necessary to study how laws work and how social and cultural factors affect them. Legislation that is more inclusive, effective, and context-sensitive can be made by having a firm grasp on the fundamental facts. The transformative power of law will be strengthened by such research

²⁵⁵ Baxi (n 67).

²⁵⁶ Arvind Narrain, 'That Despicable Specimen of Humanity: Policing of Homosexuality in India' in Kalpana Kannabiran (ed), *Challenging the Rule(s) of Law* (SAGE Publications 2008) 48 accessed 8 September 2024.

²⁵⁷ Abhinav Chandrachud, *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India* (OUP 2020).

Mind, Law, And Society: The Psychology of Crime In An Evolving World

Authors: Ms Nikke²⁵⁸

Abstract

In today's fast-changing world, India and the global community are seeing a huge shift in how people live and interact. From the digital revolution to the breakdown of traditional community structures, society is transforming rapidly. However, our criminal justice system often seems stuck in the past. This chapter looks at the "Static-Law Trap", the gap between criminal laws that were initially codified in the 19th century and the modern psychological reasons why people commit crimes today.¹

The main idea here is that the "criminal" is not just a "bad person" in a vacuum. Instead, human behaviour changes as society changes.² Using a qualitative research approach, this study explores how "Liquid Modernity" (a concept by Zygmunt Bauman)³ makes our social rules feel less solid. When life moves too fast, the law starts to feel like a distant, "analogue" relic that doesn't understand modern life. This creates a "psychological decoupling," where people no longer feel a strong moral connection to the law.

The chapter focuses on a new problem called "digital anomie." Anomie, a concept developed by Émile Durkheim, refers to a state of "normlessness" where rapid social change or crisis breaks down shared norms, values, and moral regulations.⁵ So, in the modern digital world, people feel detached in the online world and don't think the usual rules of right and wrong apply there, leading to digital anomie. This "digital anomie", coupled with the rise of the "Contextually Displaced Offender", ordinary people who break the law not because they have a criminal history, but because they are struggling to find their identity in a shifting society, is creating new problems for the criminal justice system of developing countries like India, whose criminal justice system has a colonial legacy.

By proposing the Socio-Psychological Transition Model, this chapter suggests that we cannot just rely on jails and punishment to fix crime. We need a "Justice System with a Pulse", one that actually understands the modern mind. This work is a call for our legal experts and policymakers to stop looking backwards and start building a justice system that is as dynamic as the society we live in today.

Keywords: Static-Law Trap, Liquid Modernity, Criminal Psychology, digital anomie, Contextually Displaced Offender, Modern Justice, Digital Crime, Legal Reform.

²⁵⁸ Assistant Professor, Department of Law, Gurugram University, Gurugram, Email: nikke@gurugramuniversity.ac.in

Introduction

The relationship between the individual mind, the framework of law, and the shifting tides of society forms the most complex trial of modern governance. Traditionally, the study of criminal behaviour has been siloed into distinct enclosures: psychology looked inward at the biological and cognitive "pathologies" of the offender, while sociology looked outward at the systemic pressures of poverty, inequality, and urban decay. However, as we enter a new terrain where social transformation is so rapid and drastic, like the digital blurring of borders to the radical restructuring of communal identity, these traditional silos are increasingly insufficient. The "legal subject" is no longer a static entity; they are a fluid participant in a world where the definitions of deviance and justice are constantly being renegotiated. To understand crime in an evolving world, one must analyse the "psychology of the act" not as an isolated variable, but as a by-product of the friction between individual agency and the accelerating demands of a globalised society.

Static Law Trap

The Lag-Time Crisis: 19th-Century Law in a 21st-Century Reality

The "Lag-Time Crisis" is not merely a delay in passing new statutes; it is a fundamental temporal disconnect that threatens the very legitimacy of modern governance. In an ideal legal ecosystem, the criminal justice system would function as a dynamic mirror, a living institution that not only reflects an evidence-based understanding of human psychology but also evolves in tandem with the society it regulates. In such a state, "justice" would be a proactive tool for social stability, addressing the deep-seated psychological and social drivers of an act rather than merely punishing its outward symptoms. However, the 21st century has exposed a widening chasm between our social reality and our legal response. While the psychological landscape of the modern individual transforms at an exponential rate, driven by digital liquidity, neoliberal precarity, and the collapse of traditional borders, our legal frameworks remain stubbornly anchored in 19th-century philosophies of retributive justice and static moralism.

This crisis manifests most dangerously in the stagnation of "legal intent." Modern law still largely relies on the *mens rea* (guilty mind) concepts of the Victorian era, which assume a rational, physically bounded actor making slow, deliberate choices. This framework is fundamentally unequipped to handle the accelerated cognitive processing of the digital native, whose actions are often mediated by high-speed algorithms and "recursive feedback loops." When an individual's moral landscape is being rewired by a digital environment that moves at light speed, a legal system that moves at the speed of bureaucracy becomes a "relic" rather than a regulator. This temporal gap creates a vacuum of authority; as the law loses its "real-time" relevance, it ceases to be a meaningful moral guide and is perceived instead as an outdated mechanism of control that is out of touch with the lived experience of its subjects.

Furthermore, the Lag-Time Crisis forces the state into a reactive and reductionist posture. Because the justice system lacks the "evolutionary awareness" to comprehend modern drivers like identity anomie or digital alienation, it defaults to "carceral logic", using the blunt-force instrument of imprisonment to manage complex behavioural issues that it does not fully understand. This does more than just fail at rehabilitation; it actively exacerbates social

fractures. By imposing static, 19th-century retributive punishments on 21st-century psychological realities, the law creates a "justice deficit." The modern individual, seeing no reflection of their actual psychological pressures in the courtroom, experiences a profound "decoupling" from the state. The result is a feedback loop of deviance: when the law feels like a fossilised imposition rather than a protective social fabric, the psychological obligation to follow it dissolves, turning potential avenues for social reform into cycles of repression and resistance.

Nature vs. Nurture debate

The "nature vs nurture" debate has long served as the central axis of criminological and psychological inquiry, pitting the forces of biological determinism against the power of environmental socialisation. On one side, the "nature" argument suggests that criminal behaviour is an expression of internal, often immutable traits, ranging from genetic predispositions and neurochemical imbalances to evolutionary survival mechanisms. This perspective essentially views the offender as a "static specimen" whose behaviour is pre-programmed, often leading to a legal focus on incapacitation rather than change. Conversely, the "nurture" argument posits that individuals are shaped almost entirely by their external world, suggesting that poverty, traumatic upbringing, and social deprivation are the primary architects of deviance. Within this framework, the legal system leans toward rehabilitation, operating on the belief that if an individual's environment is modified, their psychological output will follow suit.

In recent decades, this rigid binary has given way to a more nuanced "interactionist" or biosocial perspective, which acknowledges that nature and nurture do not act in isolation but through a complex, reciprocal interplay. Modern science, particularly the field of epigenetics, has demonstrated that environmental stressors can actually "trigger" or silence specific genetic expressions, meaning the social world can physically alter biological reality. However, even this sophisticated synthesis often remains anchored in a "stability bias," assuming that both the biological subject and the social environment are relatively consistent over time. It treats the "neighbourhood" or the "family unit" as fixed variables, failing to account for a world where the very definition of "environment" has been radicalised by digital hyper-connectivity and the collapse of traditional social boundaries.

Stability Bias

Previous studies have attempted to bridge this gap through various interdisciplinary lenses. Early "Biosocial"⁷ theories and the subsequent "Integrated Criminology"⁸ movements of the late 20th century sought to combine personality traits with environmental factors. Landmark studies, such as those by Moffitt (1993) on life-course-persistent offending, provided a foundational understanding of behavioural trajectories.⁹ Yet, these studies often suffer from a stability bias.

The concept of "Stability Bias" identifies a profound methodological flaw within traditional criminological thought: the assumption that the social world remains a relatively constant,

predictable stage upon which human behaviour unfolds. This bias operates on the outdated premise that the "social backdrop", the family unit, the local neighbourhood, and the physical community, is a fixed container for human development. By treating "Social Transformation" as a background variable or a slow-moving scenery change, existing literature fails to recognise it as an active, disruptive force that fundamentally rewires the cognitive processing of the individual in real-time. While recent efforts in "Sociological Criminology" have correctly highlighted the systemic pressures of neoliberalism and inequality, they frequently overlook the deeper, nuanced psychological shifts triggered by this instability. The erosion of traditional social hierarchies and the rise of digital hyper-connectivity are not just "new contexts" for old crimes; they are transformative forces that alter how a potential offender perceives risk, morality, and identity.

In a world defined by "liquid" change, the stability bias creates a theoretical blind spot. By looking for patterns of deviance rooted in a static past, traditional models miss the "evolutionary lag" that defines the present. They continue to search for the "habitual criminal" within a stable framework of social failure, ignoring the "contextually displaced" subject whose deviance is a direct response to the friction of a society in permanent transition. Ultimately, the stability bias misdiagnoses the modern psyche as a finished product of its history, rather than a dynamic participant in a digital and social landscape that shifts with every technological pulse. Breaking this bias is essential for moving toward a justice system that understands that when the backdrop moves at exponential speeds, the subject standing before it is fundamentally changed.

The Justice Deficit: Carceral Logic as a Symptom of Misalignment

The failure to align criminal psychology with the velocity of societal evolution has triggered a systemic bankruptcy of legitimacy known as the "Justice Deficit."¹⁰ This deficit is not merely a lack of resources, but a breakdown in the moral contract between the individual and the state. Directly, this misalignment manifests in rising recidivism rates and a growing public disillusionment with the efficacy of the courts. When the legal process fails to address the actual psychological drivers of 21st-century deviance, such as digital alienation or the anomie of identity, it appears to the public not as a seeker of truth, but as a performative ritual that is increasingly out of touch with modern life.

Indirectly, this gap forces the justice system to retreat into "carceral logic", an over-reliance on imprisonment as a blunt-force instrument to manage behavioural complexities it no longer comprehends. Carcerality should be understood as a pervasive social condition that advances punishment as the primary solution for all forms of non-normative behaviour. This logic is an ideological "path of least resistance"; instead of evolving the law to understand the "liquid" motivations of the modern subject, the state uses the prison to physically "fix" the individual in place. It encompasses a vast political and public investment in deploying the state's punishment apparatus to control everything from high-level disruption to minor social nuances that simply inconvenience those in power. By defaulting to incapacitation, the system admits a psychological defeat, treating the modern citizen as a static specimen to be warehoused rather than a dynamic participant in a changing world.

The consequence is a profound "decoupling" of the law from social reality. As carceral logic expands to fill the void left by a lack of evolutionary awareness, the law is no longer perceived as a protective social fabric that grows with its people. Instead, it is viewed as an analogue mechanism of control, a heavy, 19th-century hand attempting to regulate a high-speed, digital soul. This perception creates the "justice deficit" in its purest form: a state where the law has lost its moral authority. This misalignment stifles any real potential for social transformation, turning what should be opportunities for reform and rehabilitation into destructive cycles of repression and resistance. When the legal mirror no longer reflects the psychological truth of the subject, the individual feels a decreased obligation to follow it, eventually viewing the state's authority not as "justice," but as an outdated imposition of power.

New Reality of The Architecture of Flux: Liquid Modernity and the Erosion of the Legal Subject¹¹

The Melting of the Solid World

To understand the 21st-century criminal mind, one must first understand the seismic shift from "solid" to "liquid" modernity. As theorised by Zygmunt Bauman, the 20th century was an era of Solid Modernity. It was characterised by stability, predictability, and heavy institutions. Human life was anchored by "solids": the lifelong career at a single firm, the multi-generational family home, the fixed social class, and the clear geographical borders of the nation-state. In this solid world, the "legal subject" was a predictable entity. The law acted as a permanent social lighthouse, and the citizens' relationship with the state was a long-term contract: you traded a degree of personal freedom for a high degree of social and economic security.

However, we have entered the age of Liquid Modernity. In this stage, social forms, patterns, codes, and institutions no longer keep their shape for long. They melt before they can be cast into a permanent mould. The "solids" of the past have been replaced by a state of permanent flux. Careers have become a series of precarious "gigs"; communities have shifted from physical neighbourhoods to fleeting digital networks; and the "self" is no longer a finished project but a "work-in-progress" that must be constantly branded and reinvented. This liquidity is not just an economic change; it is a psychological revolution. When nothing is permanent, the "psychological bond" between the citizen and the law, which relies on a sense of permanence and shared history, begins to dissolve.

The Psychology of Precarity: Freedom vs. Security

The most profound impact of Liquid Modernity is the radical restructuring of the human psyche. Solid Modernity offered security at the expense of freedom. You were "stuck" in your social class or your town, but you knew the rules. Liquid Modernity offers the opposite: total freedom at the expense of total security.

In a liquid world, individuals are "free" to be whoever they want, but they are also entirely responsible for their own failures. This creates a state of chronic, underlying anxiety. Because there are no stable social ladders to climb, life becomes a "rat race" where the goal is not to

reach a destination, but simply to avoid being left behind. Bauman famously noted that in a liquid society, "to be modern means to be unable to stop and even less able to stand still."

For the potential offender, this precarity changes the nature of deterrence. Traditional legal models assume a "rational actor" who fears losing their stable place in society. But in a liquid world, where many citizens feel they have no "stable place" to begin with, living in a state of permanent "near-disposable" status, the threat of a prison sentence or a criminal record carries less weight. If the "solid" world of the law feels like a distant fantasy, the individual feels a decreased psychological obligation to respect its boundaries.

The "Analogue" Law in a "Liquid" Reality

This brings us to the Static-Law Trap. While society has become liquid, moving at the speed of light, crossing borders, and operating in digital voids, our legal system remains stubbornly "solid." It is a heavy, slow-moving apparatus built on 19th-century philosophies.

When a "liquid" subject (who experiences reality as a series of instant, digital interactions) meets the "analogue" law, a profound psychological decoupling occurs. The subject does not see a moral authority; they see a fossilised relic that does not understand how the modern world works. For example, a legal system that takes years to adjudicate a case is essentially "invisible" to a digital native who operates in a world of millisecond feedback loops. This temporal gap, the Lag-Time Crisis, means that the law is no longer a "dynamic mirror" of social reality. Instead, it is an outdated mechanism of control that feels increasingly arbitrary and out of touch.

From Material Strain to Identity Anomie

In the solid era, criminology was dominated by "Strain Theory," which argued that people broke the law because they lacked material resources (money and goods). In the liquid era, the primary deprivation is ontological.

We have moved from material need to "Identity Anomie." In a world where traditional anchors have melted, the most valuable "currency" is no longer just money, but a coherent sense of self. This is why we see the rise of "disruptive" cybercrimes and online radicalisation. These acts are often not about financial gain, but about seeking "solidity" in a liquid world. By joining an online extremist group or engaging in a high-profile digital "hack," the individual gains a temporary, powerful identity. They are no longer a precarious, anonymous worker; they are a "warrior" or a "hero" in a digital narrative.

A justice system that only looks for "theft" or "physical harm" misses this entire psychological landscape. It fails to see that the "criminal" is often a contextually displaced subject trying to find a shape in a world that has none.

Recursive Feedback Loops: Liquid Deviance

Finally, Liquid Modernity creates Recursive Feedback Loops that the state currently mismanages through "carceral logic." When the state uses blunt-force imprisonment to "fix" a liquid problem, it often creates the very "grievance narratives" that drive further crime.

For instance, when a digital native is prosecuted by an "analogue" court for a complex digital act, they often feel a sense of profound injustice, not because they think the act was "legal," but because they feel the system didn't even understand the context of the act. This perceived injustice is then fed back into digital echo chambers, where it is amplified by algorithms, creating a new "solid" identity based on being a "victim of the system." The law's attempt to restore order through static punishment actually creates more liquid instability.

Digital Anomie

The shift from material need to "identity anomie" marks a transition from a world where crime was a struggle for resources to one where it is a struggle for selfhood.¹² Classic criminological frameworks, such as Merton's Strain Theory, were built on the premise that deviance was largely the result of a "blocked path" to material success. In that 20th-century model, the primary driver was economic deprivation; people broke the law to obtain the physical goods or financial security that the "stable" social system denied them. However, in our current era of liquid modernity, the most profound deprivation is no longer just physical or financial, but ontological. As traditional social anchors like lifelong careers, religious structures, and stable communal hierarchies dissolve under the weight of neoliberalism, the modern individual is left in a state of "identity anomie", a chronic normlessness where the very definition of "who I am" is in a state of permanent, anxious fluctuation.

In this liquid landscape, deviance is less about what a person needs and more about who a person is trying to be.¹³ The "anomie of identity" describes the psychological void created when a globalised, digital society demands that individuals constantly "brand" and reinvent themselves, yet provides no stable moral or social ground on which to do so. This shift explains why we see a rise in "disruptive" crimes, such as digital vigilantism, clout-driven cyber-attacks, or radicalisation, that offer a temporary sense of belonging and a coherent (if distorted) narrative of self. These acts aren't driven by a desire for a bigger bank account, but by a desperate search for "identity-certainty" in a world that feels increasingly fragmented and anonymous.

The failure of the current legal system lies in its continued focus on material or "rational" motives. When a 21st-century offender engages in a disruptive digital act, a 19th-century court looks for a "financial gain" that may not exist, completely missing the psychological payoff of the act itself. By failing to recognise that the modern psyche is grappling with the "liquidity" of selfhood, the law defaults to a "static-law trap" that punishes the individual for a lack of "self-control," when the real issue is a systemic lack of self-identity. Ultimately, this shift suggests that for justice to be "evolutionarily aware," it must move beyond economic metrics

and start addressing the deep psychological friction caused by a world that has traded social stability for a chaotic, borderless marketplace of identities.

"Contextually Displaced" Offender

The rise of the "Contextually Displaced" Offender marks the emergence of a new demographic of deviance that defies traditional criminal profiling.¹⁴ In the 20th century, criminological models typically categorised offenders into "habitual" or "life-course" criminals, individuals who exhibited clear, early-onset pathologies or long-term social failures. However, the 21st century is witnessing a surge in "disruptive" acts committed by people who lack a criminal history, possess high levels of education, and are often well-integrated into the formal economy. These individuals are not "broken" in the classical sense; rather, they are psychologically decoupled from the law due to the friction of living in a society in permanent transition. They are "contextually displaced" because their moral cognitive processing has been rewired by a digital or neoliberal environment that moves at a different speed and operates by different rules than the stagnant legal system.

The failure of the current justice system lies in its inability to see these offenders as dynamic participants in social evolution. When a digital native, a precarious gig-worker, or a white-collar professional engages in high-impact disruption, such as a data leak, an algorithmic manipulation, or a digital protest, the state defaults to a "carceral logic" that misdiagnoses the act as a simple lack of "self-control" or a "pathological" choice. This diagnosis is a "static-law trap." It fails to recognise that the offender is often acting out of a maladaptive response to systemic liquidity; they are navigating a world where traditional boundaries of geography, community, and hierarchy have collapsed, leaving them to forge their own moral logic in the vacuum.

Ultimately, the "Contextually Displaced" Offender is a symptom of the evolutionary lag between the individual and the state. Because the law remains anchored in 19th-century moralism, it appears to these individuals not as a protective social fabric, but as a "relic" of a world that no longer exists. This perception creates a psychological feedback loop: as the law loses its perceived relevance to modern reality, the individual feels a decreased obligation to follow it. To address this, the legal system must move away from looking for "what is wrong with this person" and instead analyse how the friction of a changing society has modified the person's psychological landscape. Only by becoming "evolutionarily aware" can the justice system hope to reach the displaced subject who is no longer standing in the same "context" as the courtroom.

New synthesis required

Building on this intersection of the mind and the shifting state, research to test a specific, perhaps controversial, hypothesis: that as social structures become increasingly "liquid" or digitised, the traditional psychological predictors of crime, such as low self-control or localised peer pressure, are being superseded by a new "anomie of identity" is required.

We are looking to see if the legal system's failure to adapt to these psychological shifts actually creates a feedback loop that encourages further deviance. Essentially, if the law feels like a relic of a world that no longer exists, does the modern individual feel a decreased psychological obligation to follow it?

Critics may argue that this approach is an ivory-tower exercise, but evidence proves the practicality of this study. When we look at the rise in "disruptive" cyber-crimes¹⁴ or the psychological radicalisation occurring in online echo chambers,¹⁵ we see a justice system that is fundamentally out of its depth. While traditional radicalisation often stemmed from social strain or direct indoctrination, the digital landscape of 2026 utilises "recursive feedback loops" to amplify grievance narratives and emotional arousal.¹⁶ If our legal frameworks continue to treat a 21-year-old digital native the same way they treated a physical offender in 1950, we aren't just failing at rehabilitation, we are failing at social preservation. Academically, this study pushes Criminology to stop looking at the "criminal" as a static specimen in a jar and start seeing them as a shifting variable in a complex equation of social transformation. It moves the needle from "What is wrong with this person?" to "How has the friction of a changing society modified this person's psychological landscape?"

For decades, criminological pillars like Moffitt's Life-Course-Persistent theory relied on the assumption of geographical and social constancy; they suggested that if we understood a child's neighbourhood, family structure, and socioeconomic status, we could predict their "behavioural trajectory" with reasonable accuracy. These models viewed the environment as a physical container, a "static backdrop" that provided a consistent set of risks or protections over time. However, in the 21st century, this container has burst. Digital hyper-connectivity has decoupled the individual from their physical surroundings, ensuring that a person's "environment" is no longer just the street they live on, but a globalised, shifting, and highly personalised digital landscape that evolves in real-time.

The failure of traditional models lies in their search for localised triggers. An old-school analysis might look at "bad neighbourhoods" or a lack of local community centres as the catalyst for deviance, but these physical markers are increasingly irrelevant to the digital native. Modern deviance is frequently born in online echo chambers, spaces that exist entirely outside physical geography but exert psychological pressure far more intense than that of any local peer group. These digital environments utilise recursive feedback loops, where algorithms feed the individual a constant stream of grievance, radicalisation, or distorted moral norms, amplifying emotional arousal at a speed the physical world cannot match.

In this new reality, a teenager living in a stable, affluent suburb can be "socially situated" in a digital environment of extreme volatility or criminal subculture. When the law continues to rely on static sociological variables to explain behaviour, it misses the fluidity of the modern psyche. By ignoring how the digital landscape has replaced the physical neighbourhood as the primary site of moral socialisation, traditional models remain trapped in a "stability bias," failing to see that the "backdrop" of human life is now an active, disruptive, and borderless force that rewires cognitive processing from the inside out.

The Socio-Psychological Transition Model

The Socio-Psychological Transition Model serves as a theoretical "operating system" designed to bridge the gap between stagnant legal frameworks and the fluid realities of the 21st century. Moving beyond the "nature vs. nurture" binary, this model shifts the analytical focus to the interface where a rapidly evolving, "liquid" society meets a recalibrating human mind. It posits that the criminal mind is not a static specimen, but a dynamic participant in social evolution whose cognitive and moral processing is being rewired in real-time by the friction of digital hyper-connectivity and neoliberal precarity. By tracking the "evolutionary lag" between high-speed social change and slow-moving "analogue" law, the model provides a blueprint for a justice system that is psychologically aligned with the modern subject.

Conceptual Framework: The Mind as a Dynamic Participant in Social Evolution

The Socio-Psychological Transition Model is built on the premise that human behaviour is not a fixed output of "nature" or "nurture," but a continuous, real-time negotiation between the individual mind and a "liquid" social structure. This framework moves beyond the stability bias of the 20th century, which treated the criminal as a finished product of their childhood or biology. Instead, it introduces the concept of the "Psychological Interface", the point of friction where an individual's cognitive processing meets the accelerating demands of a globalised, digital world.

In this model, the "criminal" is viewed as a dynamic participant in social evolution. As society shifts from "solid" structures (like local communities and physical borders) to "liquid" ones (like digital networks and borderless markets), the human mind must adapt. However, when the pace of this social evolution exceeds the individual's ability to process it, we see the emergence of "maladaptive adaptations." Crime, in this context, is reinterpreted as a by-product of this evolutionary lag. By treating the mind as a shifting variable rather than a "specimen in a jar," the model allows researchers to track how the collapse of traditional social anchors actually rewires the moral cognitive processing of the potential offender.

Recursive Feedback Loops: The Law as a Catalyst for Deviance

A core innovation of this model is the study of Recursive Feedback Loops, which explain how the legal system's failure to adapt doesn't just result in inefficiency, it creates a pro-criminal environment. When a justice system remains anchored in 19th-century philosophies of retributive "carceral logic," it fails to recognise the nuances of 21st-century behaviour. This creates a "legitimacy vacuum."

The individual experiences a psychological decoupling: if the law does not understand the digital native's reality, the native feels no moral obligation to respect it. This decoupling triggers a recursive loop:

1. **The Mismatch:** The state imposes a blunt-force punishment (like imprisonment) on a complex, liquid behaviour (like digital vigilantism).

2. The Grievance: The offender perceives this not as "justice," but as an outdated imposition of power by an "analogue relic."
3. The Radicalisation: This perceived injustice is fed back into online echo chambers, where it is amplified by algorithms into a grievance narrative.
4. The Result: The legal system's attempt at "control" actually provides the psychological fuel for further deviance. The model argues that for the law to break this loop, it must move from static retribution to adaptive calibration, proving its relevance to the subject's actual lived experience.

From Material Deprivation to Digital Alienation: Tracking the Trigger Shift

The final pillar of the model tracks a historical transformation in the psychological precursors to crime. Traditional criminology was built on Strain Theory, which posited that "material deprivation" (the lack of money or resources) was the primary driver of deviance. While economic inequality remains a reality, the Socio-Psychological Transition Model identifies a more pervasive 21st-century trigger: Digital Alienation and Identity Fragmentation.

In "liquid modernity," the struggle is no longer just for bread, but for belonging and "identity-certainty." As traditional pillars like lifelong careers and stable hierarchies dissolve, individuals are left in a state of "Identity Anomie." The digital landscape of 2026 utilises recursive feedback loops to exploit this void, offering "clout," "community," or "radical narratives" to those feeling ontologically insecure.

This model proves that "disruptive" crimes are often committed by those who are not materially poor, but are psychologically starving for a coherent sense of self. By shifting the focus from the "bank account" to the "identity landscape," the model provides an evolutionarily aware roadmap for a justice system that can finally address why a well-integrated digital native might engage in high-impact disruption.

Conclusion: Toward a Justice System with a Pulse

The 21st century has presented the criminal justice system with an existential ultimatum: evolve or become obsolete. Throughout this chapter, the author has argued that our current "justice deficit" is not merely a failure of policy, but a symptom of a fundamental evolutionary lag. By anchoring our legal responses in 19th-century moralism and 20th-century stability bias, we have created a "static-law trap" that views the modern offender as a fixed specimen rather than a fluid participant in a world defined by Liquid Modernity. As the traditional pillars of social identity melt into digital hyper-connectivity and neoliberal precarity, the psychological bond between the citizen and the law has reached a breaking point.

The introduction of the Socio-Psychological Transition Model serves as a vital blueprint for bridging this divide. By shifting the analytical focus from "nature vs. nurture" to the legal-psychological interface, this model reveals that modern deviance is often a maladaptive response to the friction of a society in permanent transition. We have seen that the triggers for crime are shifting, moving away from simple material deprivation toward a profound "anomie

of identity" and digital alienation. When the law fails to mirror these new realities, it defaults to a "carceral logic" that manages symptoms through blunt-force incapacitation, inadvertently fuelling the very recursive feedback loops of grievance and radicalisation it seeks to suppress.

To resolve this crisis, we must move toward a justice system with a pulse, a framework that possesses the evolutionary awareness to breathe and adapt alongside the humans it serves. Such a system recognises that the criminal mind is not a static specimen in a jar, but a shifting variable in a complex equation of social transformation. For the law to regain its moral authority, it must move beyond the "analogue relic" of the past and become a dynamic, responsive mirror that understands the psychological landscape of the 2026 digital native as clearly as it understood the physical offender of 1950.

Justice can no longer afford to be a stagnant mechanism of control; it must become an evolutionarily aware partner in social preservation. By fostering a justice system with a pulse, we ensure that legal frameworks are not merely fossilised impositions of power, but living reflections of the "liquid" subject. Only then can we move from a system of mere repression to a true architecture of social stability and human growth, proving that even in a world moving at the speed of light, the law can keep pace with the human heart.

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AI in Healthcare and the Right to Health: Legal and Governing Challenges”

Author:-Shalu Mehta²⁵⁹

Abstract

The unification of artificial intelligence into the healthcare system showcases a significant advancement in enhancing treatments, diagnosis and patient care. From predictive analytics and personalised medicine to robotic surgery, there are automated patient-monitoring machines. AI technology promises accuracy, accessibility and reliability, but the rapid growth of the technology, when human rights that need to be focused on in the basis of health care are at stake, raises a question mark over whether AI technology suggestions in the health care regime are reliable?

This paper examines the intersection of AI technology across various healthcare departments and the right to health of individuals. The right to health is a fundamental right of an individual and is also enshrined in Article 21 of the Indian Constitution and in the Directive Principles of State Policy. It is also the responsibility of the State to protect the health of individuals within the State and to take measures and make policies to safeguard the health of individuals. AI facilitates the prediction of disease outbreaks earlier and makes complete use of available resources, providing supportive suggestions in clinical decision-making. However, it is sometimes referred to as a black-box problem, and future complexity and challenges arise because of AI in healthcare.

Although AI technology is a promising advancement, its complete reliability is still in question. The right to health is an individual’s fundamental right and must be treated with the same seriousness as the facilities offered to an individual regarding this right. It is the duty of the state to take care of an individual’s health on the basis of technological advancement. AI is a new innovation, and mistakes made through AI may not be easily detectable. So here the legal gap arises. Who will be held accountable for offences arising from AI technology?

This paper addresses the role of AI in health care, the safeguarding of individuals’ right to health, and how the legal challenges in governing the health care regime can be resolved. Furthermore, the paper will cover precedent judgments on health care through various case law and acts prevailing in today’s era in the regime of health law.

Keywords: Artificial intelligence; health care; patient; advancement; technology; legal; unification; acts, health law; regime.

Introduction

Artificial intelligence is one of the most transformative technologies in the 21st century. It fundamentally restructures industries across the globe. In addition, the healthcare sector is among the most affected areas, where the integration of AI not only improves operational efficiency but also restructures medical practice and patient care through various machines that simulate human intelligence, enabling learning, problem-solving, and the delivery of healthcare services by experienced professionals.

²⁵⁹ Assistant Professor, Graduate School of Law, Indore, Email Id:-shaluyadav593@gmail.com

The application of AI in the healthcare sector has a wide range of functions. It varies from clinical diagnosis to administrative management. AI-powered tools are efficient enough to interpret complex medical data, such as pathology slides and radiological images, and can achieve high levels of accuracy, sometimes even surpassing human experts. For example, machine learning algorithms identify and detect the early signs of various diseases, namely cancer, cardiovascular disorders and certain neurological conditions. This thereby helps improve the patient's condition at an earlier stage and promotes the speedy recovery of the patient's health.

In addition, AI also transforms administrative operations by scheduling patient appointments, handling billing, and coordinating the allocation of resources for patients. Robotic assistance is provided in surgeries, guided by AI, which has improved surgical operations and minimised the risks associated with other complex procedures.

Although there are advances in the healthcare sector in relation to AI, there are still some challenges. Certain AI systems often function as black boxes, making data interpretation, analysis, and patient diagnosis risky. Deploying AI in healthcare significantly raises concerns about patient data security and informed consent. All of this backdrop must be examined through the lens of the right to health, a fundamental right that promises to revolutionise healthcare and justice for patients.

Background & Motivation

Embedding AI in healthcare is deeply rooted in the digitalisation of medical data and in various advances in computational methods. The enhancement of electronic health records, wearable health devices, telemedicine platforms, and genomic sequencing has given rise to a wealth of health-related data, and machine learning is profoundly useful for recording and analysing large datasets, identifying patterns, and generating insights that do not immediately come to the knowledge of human practitioners.

Looking globally, these healthcare systems are under great pressure because of a rising population, increasing prevalence of chronic diseases, and a shortage of medical professionals. This escalates the cost of care. AI has been viewed as a solution that addresses these challenges by enhancing the efficiency of care delivery, improving accessibility even in remote areas, identifying diseases earlier, and helping to prevent them. It can also enable personalised and precision medicine in India, where disparities in healthcare access remain a wide concern. AI provides solutions to complex questions and automates diagnostic procedures across the urban-rural divide, strengthening public health and faith in AI-based systems.

As the right to health is a fundamental right, it is enshrined in various international and constitutional laws, including Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 21 of the Indian Constitution. The right to health includes essential elements such as the availability of the best healthcare facilities, the accessibility of such services without discrimination, and the provision of high-quality healthcare services to ensure the patient's early and speedy recovery and a safe environment.

The question of liability, if anything goes wrong with an AI assistant, becomes more complex. AI can contribute to medical errors, and determining who should be held liable, whether the software developer or the institution, remains legally arguable. These concerns highlight the urgent need to examine AI from different lenses, not only through technology. These problems also raise various legal and ethical issues in today's modern era, and justice to society must be provided.

The motivation behind the chapter title "AI in healthcare and right to health: legal and governing challenges" lies in recognising that technological progress must be aligned with human rights principles. The chapter will address several key considerations, including bridging regulatory gaps, protecting patients' rights, ensuring non-discrimination, clarifying accountability and liability, and promoting ethical AI governance.

Research Methodology

The research methodology adopted in this chapter is doctrinal and qualitative, primarily based on secondary sources of data. This research is analytical and descriptive in nature, focusing on scrutinising the legal and governance challenges that arise from the use of artificial intelligence in healthcare in relation to the right to health. The research emphasises a comprehensive review of existing literature, including constitutional provisions such as Article 21 of the Indian Constitution and other statutory frameworks like the Digital Personal Data Protection Act 2023. It also draws upon judicial decisions of the Supreme Court of India and policy reports by institutions such as the World Health Organisation (WHO) and NITI Aayog. Scholarly articles, books and online legal databases are used to build a strong conceptual and legal foundation.

Scope

The chapter analyses the legal and governance challenges that arise from the integration of AI in the field of healthcare, with a specific focus on implications for the right to health. It contributes to the ongoing course by highlighting the need for a rights-based approach to AI regulation and showing that innovation is guided by the principles of equity, justice and human dignity, and by safeguarding the right to health of all individuals.

Right to Health: A Legal Landscape

A right to health is a basic human right that lies at the roots of society. Right to health is beyond mere access to medical treatments and has broader entitlement to conditions that are important for leading a healthy and dignified life. In the modern era of technology enhancement, particularly when there is AI in healthcare, the interpretation and enforcement of this right gives rise to new directions and complexities.

Constitutional Identification in India

In India, the right to health is included in Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The judiciary has expanded the interpretation of Article 21 to include the right to live with dignity. Within this ambit, the right to health and medical care has been recognised. There are various Supreme Court judgments that state that the right to health has been enshrined in Article 21 of the Indian Constitution.

The Judgments are listed below:-

In Consumer Education and Research Centre Vs. Union of India, 1995:-

The Supreme Court held that the right to health and medical care is a fundamental right under Article 21 of the Indian Constitution.

In Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal (1996):-

The Supreme Court held that the State has a constitutional obligation to render adequate medical facilities.

In Parmanand Katara v. Union of India, (1989):-

The Supreme Court emphasised that every doctor, whether in the government sector or in a private-sector hospital, has a professional responsibility to provide medical aid to safeguard life.

From the above judgments, it is clear that the state has a positive obligation not only to refrain from interfering with the right to health but also to actively ensure that health care services are provided to individuals.

International Legal Perspective

At the international level, the right to health is recognised under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It emphasises that the right to health is everyone's right to enjoy the highest attainable standard of physical as well as mental health.

The ICESCR outline some of the specific steps that States must take in governance with the right to health, which includes:-

- There should be a reduction in infant mortality and an enhancement in child health .
- Improvement of the environment and hygiene must be taken care of
- There shall be prevention, treatment and control of disease, which prevails, the conditions shall be created in such a way that ensures the best medical services for all.

Basically, the core element of the right to health includes the following essential elements:-

Firstly, the availability of health Care facilities, goods and services must be available to individuals in sufficient quantity. For example, hospitals, clinics, medical practitioners, required medicines, and modern technology shall be available. If we view this in the context of AI, this implies that AI-driven healthcare solutions should be deployed to supplement the existing healthcare infrastructures and facilities.

Secondly, Accessibility, which means there shall be no discrimination among individuals for healthcare facilities. The facilities should be within physical reach of the individual in both rural and remote areas. Health care services must be provided to the section of society at affordable prices, and individuals must be provided with information regarding the health issue they are facing, which has the potential to enhance this accessibility through various machine diagnostics.

Thirdly, Quality of health care services shall be scientifically and medically appropriate and good quality of skilled professionals, approved drugs and reliable technology shall be adopted; failure in ai accuracy can directly affect patient safety.

Fourthly, Acceptability, health care services must be respectful of medical ethics and culturally appropriate. There must be a sensitivity to the gender, age, religious and cultural context, and through AI, cultural biases are removed.

Legal Complexities in AI-Driven Healthcare

Data Privacy and Protection

Artificial intelligence systems in healthcare are fundamentally data-driven, with large volumes of structured and unstructured data, including electronic health records and diagnostic images, which are highly sensitive in nature, falling within the personal category and health-related information that requires legal protection. Deploying health data privacy and protection requires the intersection of technology, law and ethics.

The primary concern is unauthorised access to patients' data, which is increasingly targeted in cyber-attacks due to the high value of medical information. AI systems are integrated across various platforms, including hospitals, diagnostic labs, and insurance providers, and in many cases with third-party technology. This increases the risk of data exposure at multiple locations, and a weak cybersecurity infrastructure can lead to misuse and even the sale of sensitive health data, which affects patients' confidentiality and trust.

Viewing the risk of data breaches closely causes several legal and ethical consequences. Involving health data is damaging because it may expose intimate details about an individual's physical or mental health or other medical history, unlike financial data. Health data cannot be easily changed, and its protection becomes more critical.

Another complexity is the lack of informed consent; most medical practitioners do not take consent from the patient and circulate their data to third-party developers, which results in a rise in cyber fraud against the patient or their families.

In our country, we have the Digital Personal Data Protection Act 2023, which signifies a step towards regulating the collection, processing and storage of personal data, including health data of patients and their families. This act mainly focuses on principles such as processing, purpose limitation and data minimisation. It also provides individuals with data principles and rights and punishments for the wrongdoer.

However, there are several complexities that lead to complexities in the effective application of law to AI-driven health Care.

Firstly, although the acts are made for the protection of individual rights. There are enforcement gaps. These regulatory authority gaps lead to the technical expertise and resources that are required to monitor complex AI systems and ensure compliance. Without the enforcement of laws, the acts made are mere pieces of paper.

Secondly, ambiguity in AI-specific events. The act does not fully address the issues that are related to automated decision-making algorithms, profiling or the use of anonymised data for AI training.

Thirdly, the inter-border data flows system mainly relies on global data sets. Raising questions about jurisdiction transfer of data regulations and adequacy of protection of data in foreign jurisdictions.

Fourthly, identifying risk even in anonymised data can sometimes be re-identifying using AI techniques, which leads to a threat to privacy.

In addition to this, the integration of AI has introduced the concept of data ownership and control, but it remains underdeveloped. Many questions arise as to whether patients retain ownership of their health data once it is used to train an AI system, or whether they should be entitled to compensation if the data are used for secondary purposes. In light of these complexities, it becomes necessary to adopt a privacy-by-design approach in AI healthcare systems. This may include measures to protect data at every stage and to strengthen cybersecurity against mishaps or fraudulent activity.

Governance (Administration) Challenges

The integration of AI into the health care system leads to the importance of well-established principles of medical ethics. These principles include autonomy, beneficence, non-maleficence and equity with justice. Looking at traditional guided clinical decision making, now reintegrated in the context of algorithm-driven health Care.

Autonomy (Respect for the patient's choice)

This means patients have the right to make informed decisions about their healthcare. In AI-driven environments, this principle is challenged by the opacity of algorithms in decision-making. Various AI systems, like black boxes, make it difficult for patients and even healthcare providers to understand how specific recommendations are generated. This lack of transparency undermines informed consent, as patients do not fully comprehend the role that AI plays in diagnosis or treatment.

Beneficence (Acting in Patients' Best Interest)

Most AI systems are designed to optimise outcomes and improve efficiency. This aligns with the principle of beneficence, which determines what constitutes the best interests of the patient. However, this is not always straightforward and may vary depending on individual circumstances, such as values and socioeconomic conditions. AI systems driven by data and statistical probabilities sometimes generalise outcomes, potentially at the expense of personalised healthcare.

Non-maleficence (Do No Harm):-

This principle obligates healthcare providers to avoid causing any harm to the patient. In the context of AI, harm may arise from various algorithmic errors, incorrect predictions, or system failures. For example, a missed diagnosis generated by an AI system can lead to inappropriate treatment and even fatal outcomes, and the data can sometimes result in harmful disparities in the patient's healthcare.

Justice (Equity and Fair Distribution):-

Through justice, health care resources and services should be distributed equally and fairly, without any discrimination. AI has the potential to enhance equity by improving access to health care in all areas through telemedicine and remote diagnostics.

There are challenges in operationalising ethical principles. These challenges arise because ethical values are inherently qualitative and context-dependent, making them difficult to translate into algorithmic rules. As AI systems evolve over time through machine learning, it becomes challenging to ensure continuous ethical behaviour in the long run. There is no universally binding ethical framework. This leads to a fragmented approach, and when ethical violations rise, it is unclear whether responsibility lies with the developers, healthcare providers, or any other institution.

Effect on the Right to Health

The integration of artificial intelligence with health care has a significant effect on the realisation of the right to health. It offers transformative benefits that can streamline healthcare delivery and improve accessibility, but it also poses risks that may challenge equity, dignity, and the quality of healthcare if not properly regulated.

Constructive Effect

Access to Health Care in Rural Areas

AI-powered technologies, including online medical platforms, mobile health applications, and remote diagnostic tools, have extended access to health care services, mainly in rural and underserved areas. In our country, there is a shortage of healthcare professionals and infrastructure in rural areas. AI helps to bridge this gap by enabling virtual consultations and automated preliminary diagnosis. This directly supports the accessibility component of the right to health by bringing health care services closer to marginalised people in rural areas.

Beforehand Disease Detection and Preventive Care

AI systems excel at analysing large datasets and recognising patterns that are not visible to human practitioners. This potential enables early detection of diseases, namely cancer, diabetes and cardiovascular conditions, and identifies stages when these diseases are treatable. Predictive analysis can also help to identify at-risk populations and facilitate preventive interventions.

Reduction of cost and Efficiency-

In healthcare delivery, AI streamlines administrative processes, reduces diagnostic errors, and optimises resource allocation within the healthcare system. Automating routine tasks, enabling efficient patient triage, and reducing the need for repetitive tests can significantly lower healthcare costs. This particularly improves accessibility, making healthcare services more affordable and sustainable, particularly for people with low incomes.

Pessimistic Effect

Occurrence of Digital Divide and Vulnerable Population exclusion

Despite AI's potential to improve access, it can also exacerbate existing inequalities. Access to AI-driven health care often depends on internet connectivity, digital literacy and the availability of technology, and economically disadvantaged groups may be excluded from these benefits.

Overly Dependable on Technology

Excessive reliance on AI systems in clinical decision-making raises concerns about the erosion of human judgment. Healthcare professionals may become reliant on algorithmic suggestions, which can reduce critical thinking and accountability. In these cases, AI systems can produce incorrect outputs. This dependence can result in serious medical errors, compromising patient safety and violating the quality dimension of the right to health.

Threat of dehumanisation

AI in patient care is not merely a technical service but a deeply human-centred interaction process that involves trust, communication in good faith, and empathy. As the use of AI increases, it leads to less human interaction with patients and more interaction with machines rather than with health care professionals. This leads to a demoralising decline in the acceptability of health care, particularly for patients with complex or sensitive medical conditions, who may be eliminated or inadequately supported.

Stabilising Innovation with Rights Preservation

The impact of AI on the right to health is uncertain; it can advance or hinder the realisation of this right, depending on how the rights are governed and implemented. To maximise benefits and minimise risk, it is important, firstly, to ensure inclusive access to AI technology. Secondly, to maintain human oversight in medical decision-making. Thirdly, to prioritise digital literacy training and infrastructure development.

Conclusion

Artificial Intelligence represents a transformative force with the capacity to reinvent the healthcare delivery system and optimise clinical outcomes, while expanding the reach of medical services across geographical and socio-economic boundaries. Its potential to enable early diagnosis, demonstrate efficiency, and stabilise personalised treatment aligns with the objectives underlying the right to health, mainly in terms of availability, accessibility, and equality of health care.

The realisation of these benefits is neither automatic nor universally guaranteed. However, the integration of AI into today's health care system redefines complex legal, ethical and governance challenges that have gone unnoticed and undermines the very roots of the right to health. Certain issues include data privacy violations, algorithmic bias and, at times, a lack of transparency, which erode accountability for patients' rights and public trust in digital access and institutional potential.

The role of the state is seen as very important in fulfilling the obligations to protect, respect and promote the right to health. In today's digital context, this includes investing more in digital infrastructure, strengthening institutional readiness, fostering public awareness and trust in

health care professionals, technology makers and civil society. Equally crucial is creating a balanced ecosystem where innovation and human rights coexist harmoniously.

In conclusion, AI should not be seen merely as a technological advancement but also as a powerful tool that affects how responsibly it is governed. It should be aligned with human rights principles and supported by strong legal and institutional frameworks. It has the capacity to advance the right to health.

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Intersecting Identities: Advancing Gender Diversity Through Human Rights

Author: Asha K.R²⁶⁰

Abstract

Human rights and gender justice are inextricably intertwined, forming the cornerstone of equitable societies and the bedrock of constitutional democracy, safeguarding individual dignity against systemic discrimination. Yet transgender persons in India continue to face pervasive marginalisation in their public and private lives. This paper interrogates their nexus, underscoring the urgent need to confront gender-based discrimination and violence through robust human rights frameworks. It dissects pivotal domains: education, healthcare and employment, where gender biases persistently undermine universal entitlements.

The core paper asserts that genuine gender justice is indispensable for universal human rights realisation, transcending all gender identities. Legal and policy changes that are transformative must support equality, strengthen protections against discrimination, and put an end to violence. Equally critical, education and awareness campaigns are essential to deconstruct entrenched stereotypes, cultivating inclusive cultures of dignity and equity.

In an era marked by persistent inequalities, this analysis draws on global and Indian jurisprudence to illuminate pathways forward. Landmark victories, such as India's *NALSA v. Union of India* recognising third-gender rights and the U.S. Supreme Court's *Bostock v. Clayton County* extending sex discrimination protections to gender identity, demonstrate judicial activism's potential. Yet challenges persist: The Transgender Persons (Protection of Rights) Act, 2019, marked a significant legislative advancement in safeguarding the rights of transgender persons, a historically marginalised community in India. Notwithstanding this progress, the enactment suffers from several substantive shortcomings, including inadequate provisions for self-identification, weak enforcement mechanisms, and insufficient protections against intersectional discrimination.

In 2026, the government introduced the Transgender Persons (Protection of Rights) Amendment Bill, 2026, proposing several changes to the existing law. The proposed Transgender Persons (Protection of Rights) Amendment Bill, 2026, has ignited discussions on reconciling administrative oversight with the right to self-determination affirmed in the *NALSA* judgment (2014). Prioritising legal recognition, social integration, healthcare provisions, and employment avenues remains essential for upholding transgender rights and dignity in India. Ultimately, achieving gender justice fortifies human rights for marginalised voices, fostering resilient democracies. By bridging legal theory and practice, this work urges policymakers toward substantive equality.

Keywords: Gender Justice, Human Rights, Gender Identity, Discrimination, Social Equity

“The reality is still a systematic pattern of violence and abuse, even killings, for millions of LGBTI people around the world – with many crimes not even being investigated., No regime is immune.” –Michelle Bachele²⁶¹

Introduction

When societies acknowledge the importance of full and equal participation of all their members in every facet of life, they establish a foundation for resilience, sustainability, and peace. This

²⁶⁰ Ph.D. research scholar at the government Law College, Marine Drive, Ernakulam (M.G. University, Kottayam), Email: ashikpta9@gmail.com

²⁶¹ UN High Commissioner for Human Rights, speaking at the Interparliamentary Plenary Assembly, Copenhagen 2021 Human Rights Forum, August 2021.

principle underpins the global pledge to "leave no one behind" during the implementation of the Sustainable Development Goals. While various groups encounter marginalisation in different countries for a multitude of reasons, LGBTI individuals face exclusion and human rights violations on a global scale. The stigma, discrimination, and violence aimed at LGBTI individuals also negatively impact families and communities, and their absence of equal involvement leads to nations squandering their human resources and not reaching their fullest potential.

Defining LGBTI and Related Concepts within a Legal Context

The acronym LGBTI encompasses diverse groups, including Lesbians, Gays, Bisexuals, Transgender persons, and Intersex individuals. While originating primarily from the Global North, this terminology is widely utilised in International human rights discourse. Critical to understanding these diverse identities are concepts such as the following:

Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics (SOGIESC): These are inherent to all individuals, not exclusively LGBTI persons. Discrimination often arises from perceived challenges to traditional gender norms, such as same-sex relationships (sexual orientation), non-conformance of gender identity with assigned sex at birth (gender identity), non-binary gender identities (gender expression), and biological sex characteristics that do not fit binary classifications (intersex individuals).

“Gender identity is one’s internal sense of who they are; being a woman or man, girl or boy, or between or beyond these genders.”

“Gender expression is the external representation of one’s gender identity, usually expressed through feminine or masculine behaviour and signals such as clothing, hair, movement, voice or body characteristics.”²⁶²

Intersectionality:²⁶³ This concept recognises that individuals may experience multiple, compounding forms of oppression based on the intersection of various identity categories (e.g., transgender persons of colour facing both transphobia and racism).

State Obligations to Realise Human Rights

Economic, social, and cultural rights typically encompass a range of rights, which include: the right to work and rights associated with employment; the right to social security; family rights; the right to a sufficient standard of living (which includes access to water, sanitation, housing, food, and clothing); the right to health (covering physical, mental, and environmental aspects); the right to education (spanning primary, secondary, and tertiary levels); and specific cultural rights (pertaining to cultural life, scientific advancement, and literary and artistic creation).

²⁶² NICHOLAS TEICH, *TRANSGENER 101: A SIMPLE GUIDE TO A COMPLEX ISSUE* 4 (2012).

²⁶³ Black feminist lawyer Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* (1989).

Many of these rights, as outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), are also safeguarded by other international agreements, such as the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

States have an obligation to respect, protect, and fulfil all human rights, including economic, social, and cultural rights (ESCR). The duties to respect and protect ESCR are generally immediately applicable to all States. Under the ICESCR, however, States must take steps, to the maximum of their available resources, to progressively realise the full enjoyment of ESCR by all people, using all appropriate means and without discrimination of any kind. As with all human rights, States must adopt measures to ensure the realisation of ESCR and to prevent their violation. These measures may be legislative, judicial, executive, administrative, financial, educational, social, and of other relevant kinds.²⁶⁴

States' obligation to realise human rights is generally understood as comprising three duties: to respect, protect, and fulfil.

The obligation to respect mandates that the State must refrain from interfering with the current enjoyment of rights by rights holders, such as through forced evictions or hindering the functioning of medical clinics. This interference can manifest in both "direct" and "indirect" forms. Furthermore, the obligation to respect often necessitates proactive measures to avert interference with Economic, Social, and Cultural Rights (ESCR). Examples of such measures include the creation of suitable institutions to uphold ESCR, the establishment of an effective justice administration system to properly investigate ESCR violations, and the provision of effective remedies and reparations. Under international human rights law, States are generally obligated to protect rights from third-party interference, including by business entities and private individuals. In this context, international law requires States to adopt measures preventing such interference with ESCR.

The duty to fulfil fundamentally involves the establishment of institutional mechanisms by a State that are essential for the realisation of rights. This includes measures such as enabling and assisting individuals to exercise their right to work, implementing technical and vocational education programs to improve employment access, ensuring the right to social security, protecting the right to health, and enhancing access to essential livelihood resources, including food security.²⁶⁵

While certain obligations may be subject to progressive realisation under the International Covenant on Economic, Social and Cultural Rights (ICESCR), States also bear immediate obligations. These "immediate obligations" entail: 1) taking steps towards the complete realisation of ESCR; 2) refraining from taking retrogressive actions that diminish the

²⁶⁴ ICESCR art. 9-15.

²⁶⁵ Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 8, U.N. Doc. A/HRC/32/31 (2016) (emphasis added).

enjoyment of ESCR; 3) preventing discrimination in the enjoyment of ESCR; and 4) ensuring adherence to minimum essential obligations.²⁶⁶

Legal Redress For Rights Violations

As a fundamental principle recognised in legal systems and reflected in Article 8 of the Universal Declaration of Human Rights (UDHR), every right should be accompanied by an effective remedy. In 2005, the United Nations General Assembly unanimously affirmed that States are obliged to ensure equal and effective access to justice and to provide effective remedies to all persons alleging human rights violations.²⁶⁷ The ESCR Committee has consistently reiterated that the right to an effective remedy for breaches of Economic, Social, and Cultural (ESC) rights can be fulfilled through either administrative or judicial remedies; however, “whenever a Covenant right cannot be fully realised without some involvement of the judiciary, recourse to the courts becomes essential.”²⁶⁸

A range of international and domestic remedies should be available, as appropriate, to individuals whose ESC rights have been violated. These obligations are explained further in the ICJ’s Practitioner’s Guide on Adjudicating Economic, Social and Cultural Rights at the National Level and its Practitioner’s Guide on²⁶⁹ The Right to a Remedy and Reparation for Gross Human Rights Violations.²⁷⁰

In international law, civil and political rights are protected by several human rights treaties, including the ICCPR, ICESCR, CEDAW, CERD, CRPD, CRC, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The obligation to provide an effective remedy applies equally to these rights.

Protection of LGBTIQ Rights Under International Law

According to international human rights law, “all individuals are equal before the law and are entitled to equal protection of the law without any discrimination.”²⁷¹ In this regard, the law must prohibit any form of discrimination and ensure that all individuals receive equal and effective protection against discrimination on any basis.” These grounds include sexual orientation and gender identity or expression²⁷². Article 26 of the ICCPR provides that all persons are equal before the law and are entitled to equal protection without discrimination on

²⁶⁶ ICJ, PRACTITIONERS GUIDE 8: ADJUDICATING ECONOMIC, SOCIAL AND CULTURAL RIGHTS AT THE NATIONAL LEVEL: A PRACTITIONER’S GUIDE 12 (2014).

²⁶⁷ UN General Assembly, Report: *Resolution adopted by the General Assembly: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UN Doc. A/RES/60/147, (2005).

²⁶⁸ ESCR Committee, Report: *General Comment 9: The domestic application of the Covenant*, UN Doc. E/C.12/1998/24, para. 9(1998).

²⁶⁹ ICJ Practitioners Guide 8, *supra* note 6, at 214-223.

²⁷⁰ ICJ, PRACTITIONERS GUIDE 2: THE RIGHT TO A REMEDY AND REPARATION FOR GROSS HUMAN RIGHTS VIOLATIONS: A PRACTITIONER’S GUIDE 121 (2018).

²⁷¹ ICCPR, art. 26.

²⁷² OHCHR, Report: *Discrimination and violence against individuals based on their sexual orientation and gender identity* (UN Doc. A/HRC/29/23, para. 16 (2015).

prohibited grounds.²⁷³ The Human Rights Committee has made clear that domestic law must conform to this prohibition, requiring States to refrain from discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The Committee has interpreted “other status” to include sexual orientation and gender identity.²⁷⁴ Likewise, Article 2(2) of the ICESCR requires States to ensure that Covenant rights are enjoyed without discrimination of any kind on any status.²⁷⁵ In General Comment No. 20, the Committee on Economic, Social and Cultural Rights expressly stated that discrimination based on sexual orientation and gender identity falls within these prohibited grounds, and it has also applied this principle to discrimination in access to housing.²⁷⁶

Status Of International Law In The Indian Legal System

Economic, social, and cultural rights, though not expressly guaranteed in the Indian Constitution, have been recognised by the Supreme Court of India as fully justiciable through its interpretation of Article 21, in harmony with the Constitution’s Directive Principles. In fact, India’s constitutional jurisprudence is frequently viewed as a groundbreaking and exemplary model for the complete justiciability and enforcement of Economic, Social, and Cultural Rights (ESCR).

Fundamental Rights and Directive Principles

The Constitution of India provides strong and explicit protections for human rights, including equality before the law and equal protection of the laws under Article 14, freedom from discrimination on prohibited grounds under Article 15, and the right to life and personal liberty under Article 21.

Economic, social, and cultural rights are reflected in the Indian Constitution as Directive Principles²⁷⁷ of State Policy under Articles 36 to 51. Although Article 37 makes them non-justiciable, the State is nevertheless required to apply them in the making and implementation of laws. The Directive Principles relevant to this report include those concerning social and economic welfare under Article 38(1), the reduction of inequalities in status, facilities, and opportunities under Article 38(2), the right to work and livelihood under Articles 39 and 41 to 43, the right to education under Articles 45 to 46, and the improvement of public health under Article 47.

²⁷³ Human Rights Committee, Report: *General comment No. 18: Non-discrimination*, para. 13.(1989).

²⁷⁴ Human Rights Committee, Report: *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (UN Doc. CCPR/C/21/Rev.1/Add.13, para. (2004).

²⁷⁵ ESCR Committee, Report: *General comment No. 20: Non-discrimination in economic, social, and cultural rights States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights... gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place*(UN Doc. E/C.12/GC/20,para. 32 (2009).

²⁷⁶ *Mohamed Ben Djazia and Naouel Bellili v. Spain*, ESCR Committee, Views of 20 June 2017, UN Doc. E/C.12/61/D/5/2015 (2017).

²⁷⁷ INDIA CONST.art.21.

Despite the clear wording of Article 37 of the Constitution, which states that these Directive Principles are “not enforceable by any court,” the Supreme Court of India has interpreted them as informing the meaning of Article 21. As a result, a wide range of internationally recognised economic, social, and cultural rights have been read into and made enforceable in India. In several decisions, the Supreme Court²⁷⁸ has held that the right to life with dignity includes the rights to housing, education, health, food, and employment. Relevant rulings, especially those concerning LGBTQ rights in domestic, workplace, and public settings, will be discussed as needed throughout the article.

Protection from Discriminatory Treatment

Article 15’s prohibition on discrimination is also understood broadly, extending protection to grounds not expressly listed in the Indian Constitution. Although Article 15(1) specifically bars the State from discriminating solely on grounds of sex, race, caste, religion, or place of birth, the Supreme Court in *NALSA*²⁷⁹ held that this protection necessarily includes sexual orientation and gender identity. The Court also interpreted Article 15 in *Anuj Garg v. UOI*²⁸⁰ as prohibiting State action based on stereotypes about protected groups. In *Navtej Singh*,²⁸¹ the Court directly rejected the use of stereotypes relating to sexual orientation and gender identity, the Court emphasised the repercussions of stereotyping on the realisation of economic, social, and cultural rights, pointing out that Section 377 led to “verbal harassment, familial fear, restricted access to public spaces, and the lack of safe spaces”. Additionally, the Court noted that “identities are obliterated, denying the entitlement to equal participation and dignity under the Constitution. Section 377 deprives them of an equal citizenship.”

Discrimination, as defined by the Constitution, encompasses both direct and indirect forms²⁸². Direct discrimination occurs when a law or policy expressly disadvantages or favours a particular group on constitutionally prohibited grounds. Indirect discrimination, by contrast, arises where a law or policy appears neutral on its face but has a discriminatory impact on certain individuals or groups. In a recent case involving the *Northern Railways*²⁸³, in which the wife and unmarried daughter of a railway employee were denied medical benefits, the Delhi High Court observed that even a facially neutral decision may disproportionately burden a constitutionally protected class. This distinction between direct and indirect discrimination is especially important when examining the discrimination faced by LGBTQ persons in access to rental housing, employment, and public services, where apparently neutral rules often have a disproportionately adverse effect.

Acceptance of International Norms and Standards

²⁷⁸ Francis Coralie Mullin v. Union Territory of Delhi, (1981) SCC(Cri)212, People’s Union for Democratic Reform v. Union of India, (1982)3SCC235.

²⁷⁹ National Legal Service Authority v. Union of India, (2014) 5 SCC 438, 452.

²⁸⁰ AIR 2008 SC 663 or (2008) 3 SCC 1.

²⁸¹ AIR 2018 SC 4321.

²⁸² *Id.* para 394-5.

²⁸³ Madhu v. Northern Railways, 247(2018) DLT198, para 17.

India adopts a dualist framework, necessitating that for international law to exert a required influence within Indian domestic law,²⁸⁴ it must be integrated into domestic legislation. Nevertheless, the Supreme Court has, in practice, deviated within a rigid dualist system, asserting that international treaties which do not conflict with domestic law should be interpreted to "broaden the meaning and scope" of domestic law and to advance the purpose of constitutional guarantees.²⁸⁵

International law and standards have, in fact, significantly influenced many decisions of Indian courts. The Supreme Court has recognised that India has a constitutional duty to respect internationally accepted rules and principles, including those relating to ESCR and LGBTQ rights.²⁸⁶ In this context, the Court has noted that Article 51 of the Constitution requires India to promote respect for international law and treaty obligations in its relations with other states. For instance, in *NALSA*, the Supreme Court relied on both binding instruments, such as the ICESCR, and non-binding standards, such as the Yogyakarta Principles.

In this context, international law must be taken into account when interpreting the Constitution and legislation. India is also bound under international law to comply with its commitments under international human rights law, regardless of whether those obligations have been implemented in domestic law. The Vienna Convention on the Law of Treaties makes clear that a State may not rely on its internal law as a justification for failing to perform a treaty.²⁸⁷ This principle applies to all human rights treaties to which India is a party, including the ICCPR and the ICESCR.

Hindu Scriptural Acknowledgement of Third Gender and the Historical Criminalisation of Homosexuality

The Hindu scriptures suggest that Hinduism acknowledges a third gender. Certain characters within the epic "Mahabharata" are reported to have undergone gender transformation. A prominent figure in this context is Shikhandi, who is thought to have been born female but later identifies as male and enters into marriage with a woman. Hijras revere the fertility goddess Bahuchara Mata as their patron deity. The *Narada Smriti* and the *Sushruta Samhita*, two significant Sanskrit texts on dharma and medicine, describe homosexuality as immutable and prohibit gay individuals from marrying someone of the opposite sex. In contrast, the *Manu Smriti*, another Hindu scripture, outlines various penalties for homosexual acts.²⁸⁸

The *Manu Smriti* established that engaging in a sexual relationship between homosexual and heterosexual individuals within a bullock wagon would lead to a loss of caste for gays. When a person is attracted to others of the same gender to which they belong, this phenomenon is referred to as homosexuality. This notion is not a recent development; it has been

²⁸⁴ INDIA CONST.art.253.

²⁸⁵ *NALSA*, *supra* note 19, at para 53.

²⁸⁶ Navtej, *supra* note 21, at para. 451.

²⁸⁷ Vienna Convention on the Law of Treaties, art.31.

²⁸⁸ GAYATRI REDDY, WITH RESPECT TO SEX: NEGOTIATING HIJRA IDENTITY IN SOUTH INDIA 20 (Chicago: University of Chicago Press 2005).

acknowledged in Hinduism for a significant duration. Ancient scriptures and sculptures depict sexual relations among women as manifestations of a feminine domain where sexuality was focused on pleasure and fertility, with mentions in the Rig Veda, which is believed to date back to approximately 1500 BC. Historical examples of same-sex relationships can be observed in the Kamasutra and the harems of young boys maintained by Muslim Nawabs and Hindu aristocrats, as well as male homosexuality during the Middle Ages in Muslim history, illustrated by figures such as Malik Kafur.²⁸⁹

The *Fatawa-e-Alamgiri* compiled several laws from the earlier Delhi Sultanate and introduced a uniform set of penalties for *zina* (unlawful intercourse), including homosexual conduct, during the Mughal period. For instance, a Muslim could be sentenced to death, a free non-Muslim to 100 lashes, and a slave to 50 lashes. During the colonial period, the British administration later enacted Section 377 of the Indian Penal Code. This section classifies both homosexuality and bisexuality as illegal. The Manu Smriti contains references to punishments such as loss of caste, substantial fines, and corporal punishment for homosexual and lesbian activities. The enforcement of these penalties clearly indicates that homosexuality was criminalised at that time. Since 1974, homosexuality has been reclassified and is no longer considered a mental illness or deviant behaviour. This reflects the shift in perception of homosexuality from being seen as a wholly natural behaviour to being viewed as an act contrary to nature.

Is Homosexuality Incompatible with Religion?

Each religion has its own sacred texts and writings, which its followers accept without question. However, these texts have become antiquated and were inherently flawed from the beginning on multiple levels, including the endorsement of untouchability present in various Hindu scriptures. Many religious and historical documents argue that the practice of untouchability, as well as caste and racial discrimination, was considered essential at the time for the actual functioning of society. This custom continued until a provision was added to the Indian Constitution that prohibited untouchability. In contrast to untouchability, homosexuality is not inherently anti-religious, despite the beliefs of many religious scholars, as various ancient Indian texts include verses interpreted as supporting LGBTQ inclusion. Characters such as Shikhandi, Chitrangada (Arjuna's wife and Babruvahana's mother), and Brihannala in the *Mahabharata* reflect a range of sexual orientations and gender identities. The sacred texts do not express prejudice against these figures on the basis of their sexuality or gender identity; instead, they are treated with respect and evaluated for their abilities rather than their orientation.²⁹⁰

Kautilya's treatise on statecraft" contains numerous sources on LGBT individuals engaged in various professions without experiencing discrimination. Additionally, the narratives of Ardhanareeshwara, who is depicted as a half-woman, half-man counterpart of Shiva, and Lord Ayyappa, the offspring of Shiva and Mohini, the female incarnation of Lord Vishnu, illustrate

²⁸⁹ NANDA S., GENDER DIVERSITY, CROSSCULTURAL VARIATIONS 112(Waveland Press 2014).

²⁹⁰ ASH KOTAK, HIJRA 92 (Oberon Books, Limited, 2000).

Hinduism's nuanced perspective on gender. Furthermore, the monuments, in addition to the literary works, have depicted homosexuality. The presence of homosexuals in historical contexts is evidenced by the texts and plaques found in Khajuraho, Madhya Pradesh, indicating that they were never viewed as irreligious but were instead acknowledged as integral community members.²⁹¹

India has made significant strides in recognising and protecting the rights of transgender persons.

The Legal Struggles of the LGBTQ Community Throughout History and the Movement Against Section 377

In 2001, the Naz Foundation filed a writ petition before the Delhi High Court challenging the constitutional validity of Section 377, marking the culmination of years of legal resistance to the provision. In 2004, the Delhi High Court dismissed their case due to issues related to locus standi. Subsequently, they lodged an appeal with the Supreme Court of India in 2006, challenging the decision made by the Delhi High Court. Their appeal proved successful, leading to a favourable ruling. In a landmark decision in 2009, the Delhi High Court ruled Section 377 unconstitutional in the case of *Naz Foundation v. Govt. of NCT of New Delhi and others.*²⁹² This decision represented a pivotal moment in Indian history, providing a silver lining for the LGBTQ community during a challenging period. Unfortunately, this optimism was short-lived, as the Supreme Court reversed the Delhi High Court's ruling in 2013²⁹³.

As per the Supreme Court's ruling, Section 377 cannot be interpreted in a more lenient manner, and it is the responsibility of Parliament to decide on the decriminalisation of homosexuality. Despite the Supreme Court's decision, opposition to Section 377 intensified significantly. In *NALSA*²⁹⁴, a two-judge bench of the Supreme Court of India held in April 2014 that an individual's gender identity and sexual orientation are protected by the rights to life, dignity, and autonomy, and that persons are entitled to express their self-identified gender. The *NALSA* judgment revived hope that the challenge to Section 377 would eventually succeed.

Subsequently, in 2017, the honourable Supreme Court issued a landmark ruling in the matter of *K.S. Puttaswamy v. Union of India*²⁹⁵, declaring that the right to privacy cannot be infringed upon "even if a small fraction of the population is adversely affected". The Court concluded that the right to privacy encompasses the freedom to establish intimate relationships with persons of one's own select, in addition to the right to articulate one's sexual orientation and gender identity. The LGBTQ community, which has long struggled for its rights, found a glimmer of hope with the onset of 2018. In 2016, Navtej Singh Johar, a dancer identifying with the LGBTQ community, filed a petition in the Supreme Court challenging the constitutionality

²⁹¹ Preeti Sharma, *Historical Background and Legal Status of Third Gender in Indian Society*, 2 IJRESS 12(2012).

²⁹² WP(C) No. 7455/2001.

²⁹³ Suresh Kumar Koushal & Anr v. Naz Foundation & Ors., 2014 AIR SCW 78.

²⁹⁴ *NALSA*, *supra* note 19.

²⁹⁵ (2017) 10 SCC 1.

of the ruling in the *Suresh Kumar Koushal* case²⁹⁶. The petitioner argued that Section 377 was ambiguous and failed to clarify what constituted "carnal intercourse against the order of nature", thereby violating Article 14 of the Constitution.²⁹⁷ There was an absence of a clear differentiation or logical division between consensual natural sexual activities and unlawful sexual behaviours. Furthermore, the petitioner contended that:

1. Section 377 contravened Article 15 of the Constitution²⁹⁸, which asserts that sexual orientation constitutes a basis for discrimination related to sex and that discrimination on the grounds of sexual orientation is illegal.
2. Section 377's prohibition on expressing sexual identity and orientation creates a "chilling effect" on Article 19 rights.
3. Furthermore, Section 377 violated an individual's fundamental right to privacy.

In the matter of Navtej Johar Singh, the five-judge panel of the Supreme Court, presided over by the Chief Justice, reached a unanimous decision on September 6, declaring that Section 377 is unconstitutional insofar as it criminalises consensual relationships between adults²⁹⁹.

"The choice of sexual orientation is part of the intimate and personal choices and falls under the zone of privacy because it is a choice central to personal dignity and autonomy as well as central to the liberty protected by the Fourteenth Amendment of the American Constitution," the US Supreme Court stated in *Lawrence v. Texas*³⁰⁰. In a comparable context, the Constitutional Court of South Africa declared in *National Coalition of Gay and Lesbian Equality v. Minister of Justice*³⁰¹ that "an intrusion into that area will amount to a violation of privacy" if an individual articulated their sexual identity privately and consensually, causing harm to another.

Obstacles To LGBTQ2+ Persons' Enjoyment Of The Right To Work

The right to work and the right to health for transgender persons are deeply interdependent, as stable employment serves as a critical economic prerequisite for accessing essential healthcare, including life-saving gender-affirming services. In India, while legislation like the 2019 Act and its 2026 amendments aim to formalise these protections by prohibiting discrimination in the workplace and expanding medical coverage through initiatives like *Ayushman Bharat TG Plus*, the effectiveness of these measures remains hindered by systemic barriers. Critics argue that the 2026 Amendment's restrictive, medicalised approach to gender identity and its failure to align with international standards, such as the right to self-identification, undermine the very dignity and autonomy that these rights are intended to protect. Ultimately, the failure to address the cycle of exclusion, in which workplace stigma and bureaucratic hurdles prevent individuals from achieving economic stability and health equity, remains a central human rights challenge that demands a more inclusive, rights-based regulatory framework.³⁰²

²⁹⁶ (2014) 1 SCC 1.

²⁹⁷ INDIA CONST. art. 14.

²⁹⁸ INDIA CONST. art. 15.

²⁹⁹ Navtej Singh Johar & Ors. v. Union of India, AIR 2018 SC 4321

³⁰⁰ Lawrence v. Texas.

³⁰¹ [1998] ZACC 15; 1999 (1) SA 6 (CC).

³⁰² LIVING SMILE VIDYA, I AM VIDYA: A TRANSGENDER'S JOURNEY, 60(2013).

Individuals identifying as LGBTQ in India face significant risks of discrimination throughout the entire employment process. They frequently encounter barriers to accessing or completing their education due to discrimination, harassment, stigma, and outright exclusion, which consequently hampers their ability to obtain the qualifications required by employers. Discrimination from potential employers is common, and many experience harassment during the recruitment process, as well as exclusion from job opportunities due to gender-specific job requirements.³⁰³

When LGBTQ individuals enter the workforce, they remain vulnerable to sexual harassment, assault, verbal abuse, and other forms of workplace discrimination and harassment. Gender-segregated work environments, particularly restrooms, pose additional challenges, increasing the risk of assault for LGBTQ individuals. Furthermore, LGBTQ employees often report being compelled to resign or facing arbitrary termination of their employment due to ongoing discrimination and mistreatment. Transgender individuals and those who do not conform to traditional gender norms encounter further obstacles in securing employment, primarily due to the absence of identity documents that reflect their preferred or expressed gender.³⁰⁴

Human rights violations arising at each stage of the employment process: Education, Vocational Training, and Career Support

Limited opportunities for education and vocational training directly impact the right to work. Interviews reveal that educational institutions perpetuate discrimination based on gender expression that differs from assigned sex at birth.³⁰⁵ As a result, individuals perceived as having non-normative sexual orientations or gender identities suffer poorer learning outcomes, limiting their access to formal employment. Additionally, LGBTQ persons often face exclusion from education and training due to harassment, bullying, and violence.³⁰⁶

School uniforms, dress codes, appearance standards, sports participation, restroom access, and even seating arrangements are typically governed by a strict male-female binary, which marginalises or discomforts transgender and gender non-binary students. Students whose gender expression or identity differs from their sex assigned at birth face circumstances that prevent them from fully exercising their right to education. Additionally, transgender individuals encounter systemic obstacles when attempting to access educational institutions.

Article 21A of the Indian Constitution acknowledges the right to "free and compulsory education for all children aged six to fourteen years."³⁰⁷ The Right of Children to Free and Compulsory Education Act, 2009, enforces this right by guaranteeing free elementary

³⁰³ National Human Rights Commission, *Study on Human Rights of Transgender as a Third Gender*, 21 NHRC 46-48(2017), http://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf.

³⁰⁴ HEWLETT ET. AL., *THE POWER OF "OUT" 2.0: LGBT IN THE WORKPLACE* 50(2013).

³⁰⁵ UNICEF (ROSA), *VIOLENCE AGAINST CHILDREN IN EDUCATION SETTINGS IN SOUTH ASIA: A DESK REVIEW* 9 (2016).

³⁰⁶ M.V. Lee Badgett, *The Economic Cost of Homophobia and the Exclusion of LGBT persons: A Case Study of India*, World Bank (2014).

³⁰⁷ Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Others (1993 SCC (1) 645).

education of satisfactory and equitable quality. The Act defines a "child" as a male or female aged six to fourteen years; while it prohibits discrimination against children from disadvantaged groups, including on grounds of gender disadvantage, the binary definition limits broader interpretation. Nevertheless, the Delhi Government has recognised transgender children as a disadvantaged group via a gazette notification per NALSA. The Indian State must eliminate all discrimination in educational access based on gender identity or sexual orientation, as such practices violate constitutional prohibitions and infringe the rights to education and equality. Meanwhile, LGBTQ individuals often face employment discrimination in formal and informal sectors due to actual or perceived sexual orientation or gender identity, compounded by formal gender restrictions in roles like the Navy, Army, and flight crews, as well as challenges obtaining identity documents. As a result of the barriers to employment in the formal sector, transgender and gender non-binary individuals often resort to informal sector jobs or pursue alternative livelihoods. The Expert Committee Report on issues concerning transgender individuals also noted that difficulties in accessing employment "leaves many MtF (male to female) transgender individuals, particularly working-class individuals, compelled to resort to begging and sex work. "The informal sector, particularly sex work, suffers from inadequate regulation. As a result, individuals struggle to secure effective legal remedies for discrimination, harassment, and other violations of their right to work.

How Eligibility Criteria Restrict Access to Work

Jobs with gender-specific eligibility criteria effectively bar transgender and gender non-binary individuals. For instance, state security forces, including the army, navy, police, and airline crews, have qualifications that are gendered. Numerous LGBTQ individuals who have faced job denials due to these gender-specific requirements have sought legal recourse. The subsequent section explores notable, albeit inconsistent, jurisprudential advancements related to these efforts. The law delineates gendered eligibility standards for various positions within the Armed Forces, Navy, and state Police.³⁰⁸ The Armed Forces, Navy, and State Police, along with other security agencies, generally maintain a rigid division of labour between men and women, reserving many positions exclusively for men. Consequently, transgender individuals find themselves unable to pursue these employment opportunities. The case of *Sabi Giri serves*³⁰⁹ as a pertinent example. Sabi Giri, a transgender woman, initially joined the Navy as a cisgender man, serving as a sailor for seven years. After transitioning to a transgender woman, she was terminated from her position. The Navy argued that this was not discriminatory, as the law designates the role exclusively for men. Sabi Giri has since filed a petition for wrongful termination, and the case is presently ongoing.

In *Shanavi Ponnusamy v. Ministry of Civil Aviation*³¹⁰ before the Supreme Court of India, a transgender woman was denied a cabin crew position with government-owned Air India after applying under the "female" category. Air India contended that her rejection was due to her

³⁰⁸ Army Act, 1950, No.46, Acts of Parliament § 12, 1950(India), Air Force Act, 1950, No.45, Acts of Parliament § 12, 1950(India) and Indian Navy Act, 1957, No.62, Acts of Parliament § 9(2), 1950(India).

³⁰⁹ Manish Kumar Giri Alias Sabi Giri vs Union of India and Ors., (W.P.(C) 9535/2017).

³¹⁰ 2022 SCC One Line SC 1581.

failure to achieve the necessary scores in the subjective personality assessments designated for women. She has contested this dismissal, asserting that the requirement to fulfil the criteria established for cisgender women, coupled with the absence of a "transgender" application process option, infringes upon her right to have her transgender identity recognised.

The lack of identity documents creates major hurdles. Various papers, such as matriculation certificates, educational degrees, ID proofs, PAN cards, voter IDs, and passports, are essential for recruitment.

Transgender and gender non-binary individuals face barriers in updating gender markers and names on identity documents. This hinders employment, as many employers mandate such documents in their application processes. These hurdles are exacerbated by inconsistent regulatory formalities, the reluctance of educational institutions to issue documents to transgender individuals, and a reasonable apprehension regarding the alteration of gender markers due to the potential loss of connection to prior professional achievements, especially considering the complexities involved in making retroactive amendments across multiple documents.

Conditions of Work

Individuals identifying as LGBTQ encounter various obstacles in the workplace, which include discrimination stemming from infrastructural constraints (such as gender-specific restrooms), restrictive office regulations (such as gender-specific dress codes), and workplace harassment that encompasses verbal, physical, and sexual abuse from both colleagues and employers. Furthermore, they frequently experience harassment manifested as misgendering, as well as the denial of benefits that are accessible to cisgender heterosexual employees.

Gendered Workspaces

Workspaces frequently exhibit gender-specific characteristics in their design and atmosphere, especially regarding restroom facilities and dress codes. Many workplaces lack accessible restroom options for transgender individuals and those who do not conform to traditional gender norms, consequently infringing upon their rights to water and sanitation. Additionally, workplaces commonly enforce mandatory gendered dress codes that employees are required to follow.

Access to toilets at workplaces

In India, similar to many other nations, workplace toilets are typically designated as "male" or "female," serving exclusively individuals identified as male or female, and aligning with their gender identity. This situation poses a considerable challenge for transgender individuals seeking access to restroom facilities.³¹¹

Dress codes and standards of appearance

³¹¹ ESCR Committee, Report: *General comment No. 23 (2016) on the right to just and favourable conditions of work* (UN Doc. E/C.12/GC/23, para.30 (2016)).

Workplace regulations or prevailing heteronormative assumptions concerning employee dress codes can impose limitations on LGBTQ individuals, and in certain instances, may amount to discrimination or harassment that infringes upon their right to employment.

Hostile Work Environments

Sexual harassment and gender-based violence³¹² in workplaces violate individuals' rights to dignity, equality, non-discrimination, and privacy, while infringing LGBTQ human rights protected under international law. The International Labour Organisation (ILO) recognises sexual harassment as a form of sex discrimination at work.³¹³ As noted earlier, the ESCR Committee deems measures to prevent and address all harassment as "immediate" minimum core obligations for the right to work. States must legally define and ban all forms of harassment, including sexual harassment. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), States are required to provide "appropriate complaints procedures" in every workplace, ensuring effective remedies like criminal sanctions where suitable³¹⁴.

Job Security

Individuals identifying as LGBTQ frequently encounter obstacles to job security in their workplaces, stemming from harassment or the potential for harassment, as well as arbitrary and/or discriminatory terminations. Nearly all participants in the interviews reported experiencing multiple job transitions due to harassment. These transitions were attributed to both express and implied forms of discrimination. Discrimination encompassed sexual harassment, along with verbal and non-verbal abuse. Unintentional discrimination involved gender-specific work environments, failure to acknowledge preferred gender identities, biased office policies, and workplace bullying.

Transgender Persons (Protection Of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019³¹⁵, constitutes an important legislative milestone in India aimed at protecting the rights of gender-diverse individuals, though it remains a subject of intense debate regarding its alignment with human rights principles. While the Act establishes frameworks against discrimination in education, employment, healthcare, and housing, critics argue that several of its provisions conflict with the right to dignity, self-determination, and bodily autonomy established in the landmark 2014 NALSA judgment.

³¹² CEDAW, Report: Recommendation No. 19: *Violence against women*, Paras. 18 and 6 (1992), CEDAW, Report: General Recommendation No. 35 on *gender-based violence against women*, updating General Recommendation No. 19, UN Doc. CEDAW/C/GC/35, para 12 (2017).

³¹³ International Labour Organization, *Discrimination (Employment and Occupation) Convention*, C111, 1958.file:///C:/Users/asus/Downloads/wcms_decl_fs_85_en.pdf(May.2, 2026, 5:10 AM).

³¹⁴ SCR Committee, Report: *General comment No. 23 (2016) on the right to just and favourable conditions of work*, (UN Doc. E/C.12/GC/23, para.65(e) (2016).

³¹⁵ The Transgender Persons (Protection of Rights) Act, 2019, No. 40 Acts of Parliament, 2019(India).

Definition of Transgender Persons: According to Section 2(k)³¹⁶ of the Act, transgender persons are defined for the purpose of applying the provisions to them, including those with intersex variations and individuals who identify socio-culturally as Kinner, hijra, aravani, and jogta. The Act defines a transgender person as one whose gender identity differs from the sex assigned at birth. This definition encompasses both transmen and transwomen, regardless of whether they have undergone sex reassignment surgery or hormone therapy.

Prohibition against Discrimination: Chapter 2 has discussed the provisions related to the prohibition of discrimination against transgender individuals. It prohibits all individuals, including institutions, from engaging in discriminatory practices against transgender people. The chapter presents nine justifications for why individuals should not face discrimination. These justifications encompass the rejection of any form of unjust treatment in services, employment, or educational and career opportunities. It addresses every aspect of a transgender person's existence, similar to that of any other individual, and in the event of violations, the rights will be protected by the Court of Justice.³¹⁷

Recognition of Identity of Transgender Persons: Chapter 3 of the Act pertains to the recognition of Transgender individuals' identities. Under section 4 of Chapter 3, the act provides two primary rights concerning the provisions of the act for transgender individuals. Firstly, they are entitled to be recognised as such; secondly, any person identified as transgender under the act is granted the right to self-perceived gender identity. Section 5 of the legislation allows a transgender individual to apply for an identification certificate under the act. In the case of minors, the application will be made by a parent on their behalf. Once the application is submitted, it is the responsibility of the Magistrate of the respective district, as outlined in section 6 of the act, to officially recognise the individual as transgender, following the procedures established by this act for this purpose. It is noteworthy to reflect on why a transgender individual considers this certificate to be of significant importance. This is because, according to section 6(3) of the Act, only with this certificate will the rights be conferred upon such individuals, serving as proof of their identity.³¹⁸

Welfare Measures by the Government: Section 8 of Chapter 4 of the law establishes specific criteria concerning welfare activities for transgender individuals. The primary responsibility is to ensure the complete and effective participation of transgender individuals through policies that promote their inclusion in all aspects of society. In addition to ensuring adequate access to rights and interests, all welfare policies must prioritise the needs of the recipients. Furthermore, Chapter 5 of the act outlines specific obligations for institutions and individuals in sections 9 to 12. Section 9 serves as enabling legislation designed to protect transgender individuals from employment discrimination and to foster a supportive environment for them. Alongside section 9, section 10 mandates that institutions uphold their verbal commitments. In the event of any violations or mismanaged policies, a designated complaint officer appointed under Section 11

³¹⁶ *Id.* at § 2 (k).

³¹⁷ *Id.* at § 3.

³¹⁸ *Id.* at ch.3 &4.

of the Act will address the issue. Section 12 grants every transgender individual the right to reside, along with additional rights associated with residency. If a family is unable to provide support or care for the transgender individual, the appropriate Court will intervene to facilitate their placement in a rehabilitation facility. Section 16 of Chapter 7 of the Transgender Persons Act, 2019, authorises the central government to create a National Council for Transgender Persons to carry out the assigned powers and responsibilities. Section 17 of the legislation outlines the duties of the National Council; thus, the union government will periodically assign additional responsibilities.³¹⁹

Offences and Punishments: Section 18 stipulates that any individual who contravenes the provisions or fails to meet the obligations set forth by the act, or who coerces, denies, or otherwise harms transgender individuals, shall face imprisonment for a minimum of six months, which may extend to two years, along with a monetary fine, thereby infringing upon their rights and recognitions.³²⁰

Core Human Rights Conflicts

The primary criticism levelled against the Act is its departure from international standards that emphasise autonomy and the separation of legal and medical processes.

- **Denial of Self-Identification:** International bodies, including various UN agencies, advocate for the right of individuals to have their gender identity recognised based on self-declaration. The 2019 Act, however, requires a certification process involving District Magistrates, which critics argue is an arbitrary and invasive form of state oversight that violates the right to self-perceived identity.
- **Medicalisation of Identity:** By maintaining a system that effectively links legal recognition to state-sanctioned screening, the Act contradicts recommendations from the World Medical Association (WMA) and the World Professional Association for Transgender Health (WPATH). These organisations emphasise that legal gender recognition should be decoupled from medical or psychological evaluations.
- **Insufficient Protections against Violence:** Critics have highlighted that the Act prescribes significantly lower penalties for sexual assault against transgender persons compared to those for sexual assault against cisgender women. This disparity is viewed as a violation of the right to equality and equal protection under the law, failing to provide the robust safeguards required to protect marginalised communities from violence.
- **Violation of Personal Liberty:** Provisions regarding the residence of transgender minors, which prioritise cohabitation with natal families, have been criticised for ignoring the high risk of domestic abuse. By failing to provide alternatives or adequate protection, these clauses are seen as violating the fundamental right to freedom of residence and physical safety.

³¹⁹ *Id.* at Ch. 7.

³²⁰ *Id.* at ch.8.

These concerns align with broader critiques that the Act treats transgender individuals as passive subjects of welfare rather than empowered rights-holders. By failing to incorporate these international standards, the legislation remains a subject of ongoing legal challenges regarding its compatibility with both India's constitutional mandates and its broader international human rights obligations.

The Transgender Persons (Protection of Rights) Amendment Act, 2026³²¹

In March, India revised the Transgender Persons Act, eliminating the fundamental right to self-identification. This regressive legislation requires medical board approval for legal recognition, infringing upon constitutional privacy and equality. By reviving colonial-era surveillance, the amendment marginalises numerous identities, showcasing a significant institutional failure to safeguard India's most vulnerable citizens.

The law adopts a narrow definition of "transgender," limiting recognition to particular socio-cultural groups or biological variations. It also removes the separate category for intersex individuals and places them under the transgender umbrella, which blurs the distinction between sex characteristics and gender identity.

At the heart of the law is the removal of the right to self-identification, a right the Supreme Court clearly recognised in its landmark 2014 NALSA judgment. The Court held that gender identity is a matter of personal dignity, autonomy, and the freedom to define oneself. It also made clear that no one can be compelled to undergo procedures such as sex reassignment surgery, sterilisation, or hormonal therapy as a condition for legal recognition of their gender identity.

The recent amendment departs sharply from the Supreme Court's ruling by replacing self-identification with a verification process that depends on approval from a medical board, followed by recognition from the District Magistrate. In doing so, it transfers the determination of gender identity from personal autonomy and lived experience to state control grounded in medical and biological criteria, thereby undermining both international human rights standards and the Court's decision.

Moreover, the law raises serious concerns about state overreach, particularly in relation to privacy and unlawful surveillance. Allowing medical institutions to disclose information about gender-affirming procedures to authorities creates room for monitoring and the possible misuse of highly sensitive personal data. For a community that already faces stigma and discrimination, this may expose individuals to harassment and abuse. It could also discourage people from seeking necessary healthcare out of fear that their privacy will not be protected.

"International standards advocate for legal gender recognition to be a swift, accessible, and transparent administrative process grounded in an individual's self-determination. Rather than

³²¹ The Transgender Persons (Protection of Rights) Amendment Act, 2026, No.3, Acts of Parliament, 2026(India).

streamlining procedures, this amendment introduces additional bureaucratic and medical hurdles, approvals, and verifications that foster prejudice," stated Aakar Patel³²².

Furthermore, the amendment endangers transgender individuals and their supporters by establishing an extensive criminal framework. It specifically criminalises conduct such as "compelling," "forcing," or "inducing" a person or child to present as transgender, with penalties that may extend to life imprisonment. Together with a restrictive definition of transgender identity that does not recognise self-identification, these provisions may enable scrutiny or targeting of traditional kinship arrangements, civil society actors, medical professionals, and parents. The legislation was enacted despite explicit objections from a Supreme Court-appointed expert committee on transgender rights and from dissenting members of Parliament. The committee had clearly requested that the government retract the bill and conduct substantial consultations with transgender communities, a request that was not honoured.

The judiciary has also expressed concerns. The Rajasthan High Court cautioned that legal modifications must not undermine constitutional safeguards, particularly those previously mentioned in the NALSA judgement. This serves as a definitive indication that the law may not withstand constitutional examination.

International bodies and human rights organisations have identified several critical areas where the 2026 Amendment violates global human rights standards:

- **Erosion of Self-Determination:** The Act replaces the principle of self-identification with a mandatory medical verification process conducted by state-appointed boards. This stipulation is broadly regarded as an infringement on the rights to privacy, freedom of expression, and identity, as outlined in international frameworks like the Yogyakarta Principles.
- **Narrowed Legal Definition:** By limiting the scope of "transgender" to specific socio-cultural groups (such as *hijra* and *kinner*) and intersex individuals, the Act explicitly excludes many transgender, non-binary, and gender-fluid persons from legal recognition. This exclusion is seen as discriminatory and inconsistent with the right to equality and non-discrimination.
- **Criminalisation and Surveillance:** The introduction of severe criminal penalties for "compelling" or "alluring" a person to identify as transgender, with potential sentences of life imprisonment, has raised serious alarms. Human rights experts warn that these vaguely defined, punitive provisions create a climate of fear, invite state surveillance of civil society and kinship groups, and threaten the privacy and security of gender-diverse communities.

³²² Aakar Patel, *India: Presidential approval of regressive Transgender Bill a major step backward for human rights*, AMNESTY (May.2, 2026, 5.04 AM) <https://www.amnesty.org/en/latest/news/2026/03/india-presidential-approval-of-regressive-transgender-bill-a-major-step-backward-for-human-rights/>.

- **Conflict with Global Standards:** The shift toward biological and medical criteria contradicts evidence-based international standards, including those from the World Professional Association for Transgender Health (WPATH). Critics argue that by ignoring scientific consensus and lived experiences, the Act undermines the right to health and the dignity of transgender individuals.

The swift passage of these amendments without broad stakeholder consultation has been highlighted by the United Nations as a major concern, characterising the legislation as a departure from India's previously progressive trajectory in protecting the rights of gender-diverse persons.

Conclusion

The worldwide commitment to human rights necessitates that nations actively strive for the inclusion and safeguarding of LGBTI individuals. Although advancements have been achieved in various areas, considerable obstacles remain, including criminalisation, discrimination, violence, and economic exclusion. International frameworks, such as the UDHR, ICCPR, and the Yogyakarta Principles, offer a strong legal foundation for states to meet their responsibilities. The continuous efforts of UN mechanisms, treaty bodies, and national legislatures, as demonstrated by India's legal reforms, are vital in promoting the human rights of LGBTI individuals and nurturing resilient, sustainable, and peaceful societies.