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ABOUT THE JOURNAL

GALGOTIAS JOURNAL OF LEGAL STUDIES

As part of our pursuit for the academic excellence and to contribute to the body of knowledge, School of Law, Galgotias University announces its forthcoming launch of its Galgotias Journal of Legal Studies. It shall be an interactive online peer reviewed journal. The Journal shall focus on the dynamic role and effect of law on the society and how it helps to engineer the changes within the society. It shall aim to have an interdisciplinary approach and provide a platform for thoughts, opinions, ideas, concepts and suggestions from various fields and sections of people. It shall intend to publish articles on various contemporary issues such as confluence and congruence of science, technology and law, legal and political efforts to combat the ecological imbalance without sacrificing and further harnessing globalised development, issues related to the intellectual proprietary rights and their contribution in protecting and encouraging research, development, creativity and its ultimate contribution to the society, the legal recognition of victims in the criminal justice system, the present day hurdles of business corporations as well as their active contribution towards fulfilling their corporate social responsibility etc. The journal shall not limit the scope of the article. It shall be entirely author's autonomy to pen down his thoughts relating to legislations, legal policies, treaties, conventions, law commission reports etc which has a direct impact on the society and its transformation.

Message from the Chancellor

It gives me immense pleasure to present this legal journal published by the School of Law, Galgotias University. I am sure this Journal would give all its stakeholders an insight into the recent developments and the challenges that the society is being plagued with and the legal response to tackle such menances. This Journal has given the perfect opportunity to academicians both at national and international level to share the thoughts, the issues they find pertinent. School of Law has tried to showcase itself as a pioneer in legal research and is striving to achieve excellence in identifying concerns that require deliberation. This bi-annual publication is another step in the directions from where thoughts of many legal luminaries from across the legal field including academicians and practitioners have been brought forth to also help identify the scope of future research and study. I acknowledge and appreciate the efforts of Dean and the editorial board and wish them success for future issues in the noble aim that they seek to attain.

Best wishes,
Mr. Sunil Galgotia,
Chancellor,
Galgotias University

Message from the CEO

The changing dimension of legal research and development makes it imperative for all the stakeholders to not only take note of the situation but also make others aware of the way the society is responding to the legal scenario. The research is given a lot of impetus by various organisations but only encouraging interdisciplinary studies can help us to identify the pragmatic solutions to problems that once can get which are viable also. With this vision in mind the team of School of Law, Galgotias University has taken this initiative which is not only enormous but also onerous in trying to shape the innovative ways in which research can be carried out so as to achieve the desired results. The contributions from such a diverse background on the issue of law and examining them from the lens of society, economy, gender and other variables make this a very important piece of literary work. The school being aware of the need of the hour has taken up multi-disciplinary approach while selecting and publishing work in this Journal.

I congratulate the editorial team of the School of Law for this task and wish them great success for their upcoming issues as well.

Best wishes,
Dr. Dhruv Galgotia,
Chief Executive Officer,
Galgotias University

Message from Director Operations

We are pleased to release the Galgotias Journal of Legal Studies, which is a bi-annual journal released by School of Law, Galgotias University. The journal primarily aims to foster legal research and writing and aims to promote and publish quality research by not just limiting the research in the field of law but promotes the research from a multi-disciplinary standpoint as it is a well-known fact that law constantly intersects with other disciplines and doesn't operates in vacuum and therefore it is extremely critical to adopt an inter-disciplinary lens to look at the legal issues and to search for feasible solutions to current legal problems. The purpose of the journal is to present the readers with quality publications focusing on the national and global legal issues and present viable solutions through detailed research and writing with an aim to simplify the complex legal problems in order to present the readers with a standpoint which is not just novel but also informative and thought provoking. Through this journal the endeavor of the Galgotias School of Law is to present the research which is essentially analytical and which encourages critical thinking making it an interesting read for the readers of the journal. The importance of research and writing can't be stressed enough in the times when the society is grappling with newer legal and societal challenges wherein a well-structured and informed research simplifies the complex legal issues and provides for an effective solution to those issues thereby facilitating knowledge creation by simplifying the existing principles.

I take this opportunity to congratulate the Dean, School of Law along with the members of Editorial Board and Journal Secretaries for their tireless effort in curating and finalizing the journal.

Best Wishes,

Aradhana Galgotia
Director- Operations
Galgotias University

Message from Vice Chancellor

With immense pleasure and pride, I put-forth before you the bi-annual publication of the School of Law, Galgotias University comprising of articles from academicians, scholars and legal practitioners forming part of the diverse legal community. The journal is released in an appropriate time where we are witnessing enormous changes around us owing to the advancement of society and therefore this journal, through its diversified publications, provides the readers an opportunity to delve into contemporary issues that have come up while we are shifting gears to cater to the needs of these changing times. I am grateful in stating that out of the several quality publications that were submitted, the editorial team has put-in an enormous effort to carve-out and select those which had a multi-disciplinary approach to contribute to the existing bank of knowledge not from the siloed disciplinary boundaries but from an inter-disciplinary lens thereby making the journal an interesting read. I express my gratitude to the Dean, School of Law who has been a backbone for the entire process of the journal publication and would further like to congratulate the editorial team for their tireless effort in putting forth this version of journal which resonates with the founding purpose of the law school to make the institution a one stop destination for global educational research.

Best Wishes,
Prof. (Dr.) K Mallikarjuna Babu
Vice Chancellor,
Galgotias University

Message from Dean, School of Law

It is an honour and a privilege to welcome you to the first issue of the thirteenth volume of the Galgotias Journal of Legal Studies (GJLS). It is a biannual journal covering a variety of contemporary legal and policy issues. As the journal's editor-in-chief, I am ecstatic to welcome you to our community of academicians and professionals dedicated to advancing the knowledge and understanding of law and allied subjects. Your contributions to our publication are invaluable, and we appreciate your support.

We are honoured to publish contemporary areas of research in law, which is the result of your diligence, commitment, and knowledge. Our objective is to provide a forum for the dissemination of high-quality research that addresses significant concerns and obstacles in the field. Your research would not only contribute to the development of law but would also influence policy and practice in a variety of sectors.

I believe that the most essential aspect of a journal's success is submitting high-quality manuscripts. I would like to take this opportunity to express our appreciation to the reviewers who volunteered their time and expertise to evaluate the manuscripts submitted to our journal. Their feedback and suggestions helped guarantee the quality and integrity of the research published in our journal.

I would like to thank the journal secretaries for their dedication and expertise in ensuring that this journal remains consistently published. I would like to take this opportunity to thank the entire editorial board for their unwavering commitment, diligence, and support.

Lastly, I would like to thank our readers for their sustained interest and support in our journal. We trust you have found our publications to be informative and thought-provoking, and we look forward to your continued participation.

Again, thank you for your contributions to the discipline of law and for contributing to the Galgotias Journal of Legal Studies (GJLS). We anticipate working with you in the near future.

Sincerely
Prof. (Dr.) Aditya Tomer
Dean, School of Law,
Galgotias University

Content Page

Freedom of Religion and Anti-Conversion Laws in India

~ Siddhartha Fuller*

ABSTRACT

Anti-conversion laws have always remained a question that has generated extensive jurisprudential discussion. This research paper will analyse the statutory architecture and terminology of different states, typically criticised for being vague and broad, consequentially leading to varying interpretations. The discussion evaluates whether these laws genuinely safeguard the freedom of religion or function as a mechanism of state control. It further examines parallelism, differences, and effect on religious freedom, particularly for marginalised communities. Additionally, it studies the intent behind the laws, how they are used, and if they are fair in their application. It further analyses the varying enforcement of the legislations, and their impact on marginalised groups, alongwith the judicial scrutiny they have faced. The study seeks to determine whether a real equilibrium exists between protecting religious freedom and addressing state priorities, or whether the laws tilt too heavily toward limiting individual freedoms.

I. INTRODUCTION

Article 25 of the Indian Constitution guarantees freedom to practice, profess, and propagate any religion. It also grants all religious communities the right to control their religious affairs, subject to public morality, health and order. As of date twelve Indian states have enacted anti-conversion laws, also known as 'Freedom of Religion' laws. These legislations are enacted to regulate religious conversions and prevent forced or fraudulent conversions, often focusing on conversions related to marriage or through inducements. The following states have anti-conversion laws: Uttar Pradesh, Madhya Pradesh, and Chhattisgarh, Uttarakhand, Himachal Pradesh, Jharkhand, Odisha, Arunachal Pradesh, Rajasthan (passed but not implemented), Gujarat, Haryana and Karnataka. These laws vary from state to state but generally require individuals wishing to convert and those conducting conversions to notify the authorities. This paper does a comparison with different states on the practice of freedom of religion under the following grounds: similarities, differences and terminology.

India's anti-conversion laws are too broad, with vague terms like 'force', 'inducement', and 'allurement', making it hard to define illegal conversions. Articles 18 and 19 of International Covenant of Civil and Politica Rights, 1966 protect the freedom to practice and share religious beliefs. However, these laws criminalise a wide range of religious speech, even without intent to convert. Simple acts like praying for healing or offering aid could be seen as inducement,

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restricting the charitable activities of religious groups and violating the freedom to hold and adopt beliefs.[1]

II. HISTORICAL EVOLUTION OF ANTI-CONVERSION LAWS

Indians have been welcoming and tolerant for the people belonging to the other faiths as evident by the fact that today it boasts one of the most religious diverse population in the world in terms of population, hosting the second largest population of Muslims, approximately 17.2 Crore as per the census of 2011[2] and about 2.7 Crore Christians. This toleration is entrenched in India's society and culture from time unbeknownst. The land has not only been the host for the other religions, but also the birthplace of four of the major religions in the world, namely Hinduism, Sikhism, Jainism and Buddhism.

In the initial period of the British East India Company, missionaries weren't allowed to operate in the company-ruled areas, as it feared that such conversions might provoke the indigenous community, causing disruptions in the Company's trade.[3] The Charter Act of 1813, as enacted by the Parliament of United Kingdom, gave official right to Christian missionaries to kickstart the evangelism in the Indian subcontinent, including present-day Myanmar, erstwhile Burma, Sri Lanka (Ceylon), Pakistan, Bangladesh and Singapore and other British territories coming under the Raj. This enactment led to open preaching and conversions on a mass scale.[4] The goal was to completely vanish the faith of people from the their religious affiliations, not just to assimilate Christianity in the subcontinent, as in the words of evangelist leader William Carey, The mission was, "not to accommodate Christianity to the long-winded idolatries and puerile superstitions of Asia", but rather facilitate their "entire abolition", from this mission in mind it can be easily surmised that the goal of missionaries was to change the demography of the complete subcontinent under the British rule as to make the population more devoted towards the church and the king. The Christians were given preferential treatment in a tacit manner, Pt. Jawaharlal Nehru criticised "The policy of the East India Company and the early British Raj administrators in creating a kind of moral bases for the propagation of the Christian religion in India."

In the early 1800's there were concerted efforts to systematically change the religious identity of the people belonging, especially, to Hinduism. These practices were given the symbol of modernism in the garb of abolishing despicable practices like *sati.* Hindu Pundits were publicly demeaned as carriers of evil or satanism. Dalits were the most favourable targets of the missionaries as already oppressed classes were easy to allure by highlighting the extreme ends of the faith while promising the kind of salvation which was not possible in their own faith, the

[1] U.N. Human Rights Committee, General Comment No. 22, The Right to Freedom of Thought, Conscience and Religion, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993), https://www.refworld.org/docid/453883fb22.html
[2] Registrar General & Census Commissioner, India, 2011. Census of India 2011: Provisional Population Totals. Government of India.
[3] Shaw, G. W. (2015). A Slow, Not Swift, Battle of the Books: Christian Literature in Nineteenth-Century India. Mémoires du livre / Studies in Book Culture, 6 (2). https://doi.org/10.7202/1032709ar
[4] India Foundation, 25 March, 2024. The transition from Christianisation of India to Indianisation of Christianity in colonial India. Chintan. Available at: https://chintan.indiafoundation.in/articles/the-transition-from-christianisation-of-india-to-indianisation-of-christianity-in-colonial-india/ (Accessed: 19 August 2025).

conversion of Dalits was also motivated by the baseless myth that, people belonging to the lowest strata of the caste being descendants of Jews who were forced into paganism. Children belonging to non-conducive economic backgrounds and orphans were often allured or forced, systematically inducted into missionary residential schools for imparting to them Christian education and protecting them from 'idolatrous' native upbringing.[5]

The unabated practise of conversion led to uproar among the Indian intellectuals, as the missionaries were engaging 'by hook or crook' methodology to convert illiterate Indians, Hindu revivalist groups started to gather and organised to counter the rampant conversions by missionaries and implicit support by the British Raj leading to contamination of Indian culture through systematic imperialist practices targeted towards converting the demography into Christian majority population. Hindu Mahasabha, Arya Samaj, and the Brahmo Samaj were established in the 19th and early 20th centuries. These organisations understood that Hinduism required a modern-day crusade in order to keep the religion, and thereby, the Indian culture alive. Contemporary Hindu leaders and champions of Indian culture like Swami Vivekanand, Swami Dayanand Sarswati and Aurobindo Ghosh had established a counter-flank to the Christian notion of 'civilised Indian society'; they revived the Hindu philosophical thought in a contemporarily palatable manner and countered distorted Hindu philosophical ideas propagated by missionaries to disorient people from their native religion.[6]

III. DEFINITION OF CONVERSION

The legislative framework of Chhattisgarh, Himachal Pradesh, Orissa and Madhya Pradesh defines religious conversion as follows: "Conversion means renouncing one religion and adopting another religion".[7] The architecture of Gujarat freedom of religion Act slightly differs in meaning it says "convert means to make one person renounce one religion and adopt another religion.[8] The Karnataka Protection of Freedom of Religion Act postulates, "Conversion", as, renouncing one's own religion and adopting another religion.[9] The general definition of anti-conversion is laws that are designed to prevent or prohibit the conversion of one religion to another. The definition of conversion varies from state to state.

IV. SIMILARITIES AMONG FREEDOM OF RELIGION ACTS

- **Objective**: The legislative intent forming the basis of these laws is to prevent religious conversions by means of fraud, coercion, undue influence, allurement and inducement;

[5] India Foundation, 25 March, 2024. The transition from Christianisation of India to Indianisation of Christianity in colonial India. Chintan. Available at: https://chintan.indiafoundation.in/articles/the-transition-from-christianisation-of-india-to-indianisation-of-christianity-in-colonial-india/

[6] Sinha, S. (2025) 'Understanding the Limited Impact of Christianity in India', Social Research Foundation Journal, 5(1), pp. 125-142.

[7] Section 2 (a), Himachal Pradesh Freedom of Religion Act 2006; Section 2(a), Orissa Freedom of Religion Act 1967; Section 2(b), Chhattisgarh Freedom of Religion Act 1968; Section 2(b), Madhya Pradesh Freedom of Religion Act 196.

[8] Section 2(b), Gujarat Freedom of Religion Act 2003.

[9] Section 2(C), Karnataka Protection of Right to Freedom of Religion Act 2022.

rendering the consent unacceptable by law. Most of these laws attempt to forestall the mass conversions.[10]

- **Notice & Permission requirements:** Ten states have anti-conversion laws that require a prior intimation to a specified government authority, mostly to the district magistrate or an authority appointed thereto, in the form of a formal notice. The notice is required to be furnished by both the parties, the person carrying on the conversion process, and the person going to be converted. The state of Gujarat is the one requiring prior permission from the specified authority appointed by the state.[11]

- **Punishments & Penalties**: The anti-conversion laws impose penalties and punishment ranging from violation of notification rules to the foreign funding or sponsorship of such conversion, the former attracting the lightest punishment to the latter, leading to the harshest.[12] States have imposed higher penalties and punishment for illegal conversion of people or groups which may have a vulnerable background, these groups include minors, women, people belonging to the Scheduled caste and Scheduled tribes.

- **Burden of Proof**: The laws restricting the illegal conversion often shift the general principle of burden of proof from the shoulders of prosecution to the party alleged to be involved in such cases.[13]

- **Mass Conversions**: Several states explicitly prohibit mass conversions; these violations attract harsher punishment.

V. VARIATIONS IN STATE LAWS ON FREEDOM OF RELIGION

- **Scope of Law**: States like Uttar Pradesh and Madhya Pradesh have recently shone the light on the systematic conversions under the garb of false identity by a spouse belonging to a different religion, revealed only just before the marriage raising the question of validity of consent before marriage, as it may ultimately be obtained through undue influence reaped through fraudulent manner. Such marital relations often require the female spouse to convert to the husband's religion, leaving them with no choice but to convert. These laws contain the special provisions, having overriding authority over general laws, to nullify marriages done through such practices colloquially named 'love jihad'. Other states like Chhattisgarh and Odisha have anti-conversion laws with a narrower scope, limited to just religious conversions through conventional means explicitly prohibited by the law.

- **Notification Requirements**: The requirements for conducting conversions vary greatly from state to state, as states such as Uttar Pradesh explicitly require permission from the appointed authority before the conversion, whereas states like Chhattisgarh and Odisha

[10] Sinha, S., 2025. Understanding the limited impact of Christianity in India. Social Research Foundation Journal, 5(1), pp.125–142.
[11] United States Commission on International Religious Freedom (USCIRF), 2023. Issue update: India's State-Level Anti-Conversion Laws.
[12] s. 5(2), Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.
[13] ss. 8(1)–(5), 9, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.

require the person getting converted and the facilitator of such conversion to notify the designated authority.

- **Amendments and Additions**: Some states have made the punishment more punitive by increasing the jail terms. Uttar Pradesh has introduced punishment of up to 20 years for the gravest cases like threat to life/property, force, marriage/promise of marriage and trafficking.[14] Uttarakhand has also increased the jail term for facilitators involved in illegal conversions of minors, children, SC/ST and disabled, and it also made it an offence to promote such religious conversions through the digital media.[15] The Gujarat Freedom of Religion (Amendment) Act, 2021, brought marriage within the purview of fraudulent conversion and made it a cognizable and non-bailable offence.[16]

VI. KEY TERMS RELATED TO RELIGIOUS CONVERSION

- **Force**: Anti-conversion laws broadly define force as a physical compulsion or threat of harm, but also threats to social goodwill and reputation or spiritual injury.
- **Fraud**: The laws define fraud ('fraudulent means/misrepresentation') as false statements, concealment of identities or facts or any deceptive manner or device engaged to induce religious conversion.
- **Inducement or Allurement**: Across states, inducement or allurement is defined broadly to include any external form of benefit or temptation or any promise of future benefit, material or otherwise, as a consideration for converting into another religion.
- **Marriage as a Means of Conversion**: Several states like Uttar Pradesh & Madhya Pradesh have amended state statutes to include conversion by means of marriage as unlawful and separate offences, empowering courts to declare such marriages as void and unlawful.

VII. DIFFERENCES IN TERMINOLOGY ACROSS ANTI-CONVERSION LAWS

- **Inducement vs. Allurement** – Inducement denotes any external measure engaged to persuade conversion, while allurement encompasses a wider meaning, including the promise of divine blessings or social upliftment pursuant to getting converted. States like Odisha and Madhya Pradesh use the terminology in the ambit of the term 'inducement', while states like Gujarat and Uttarakhand prefer a wider course for determining the illegal conversions encompassing the meaning as defined under the word 'allurement'. While some states like Odisha and Arunachal Pradesh do not include inter-faith marriages in the purview of anti-conversion laws.[17]
- **Force vs. Coercion** – The term 'coercion' is relatively new expression used in the new amendments and laws in States like Uttar Pradesh, Madhya Pradesh, Uttarakhand etc.,

[14] ss. 8(1)–(5), 9, s. 5(2), Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.
[15] ss. 3, 5, 8–9, 12, Uttarakhand Freedom of Religion Act, 2018.
[16] ss. 3–4, Gujarat Freedom of Religion (Amendment) Act, 2003.
[17] Orissa Freedom of Religion Act, 1967.

while states with older legislations like Odisha and Arunachal Pradesh only incorporate wider terms like Force and misrepresentation, the legislative intent was tacit in including the meaning of 'coercion' within the glossary of the act without separating it from the general meaning. Laws in states like Chhattisgarh and Karnataka use force to denote physical or psychological compulsion.[18] These differences in terminology impact the interpretation and enforcement of anti-conversion laws, shaping legal proceedings and constitutional debates.

VIII. PROCEDURE FOR CONVERSION

Different states have laid down different procedures to be duly followed to get the conversion legal in the eyes of the law. These procedures are discussed in the following paragraphs: **Uttar Pradesh –** The law mandates prior notification of not less than 60 days to be given by the prospective converting individual.[19] The conversion facilitator individual needs to provide a prior notification of not less than 30 days to the designated authority.[20] The designated authority needs to initiate a Police inquiry in the matter for assessing the intention, purpose and cause of such conversion.[21] A mandatory public declaration by the individual within 60 days of such conversion and a mandatory appearance before the designated authority within 21 days to confirm the identity details of the converted individual.[22]

Madhya Pradesh – State laws state that the converting individual, as well as the conversion facilitator, needs a 60 prior declaration to be given to the designated authority; the designated authority's sanction is required for courts to entertain matters related to violation of such procedure.[23]

Karnataka – The Karnataka legislation mandates a prior notification of not less than 30 days from the date of conversion to be duly submitted to the designated authority, the designated authority then publishes a public notice for submission of public objection if any, if the authority receives any objection, it triggers an inquiry to be duly conducted by revenue officials or social welfare official. In case no objection is received within the stipulated timeframe no inquiry is required in that case, within the 30 days of conversion the converted individual is required to submit a declaration for which again a public notice is published inviting objections if any, in case objection(s) is received it triggers similar mechanism of inquiry as discussed and if no objection is received the designated authority approves the conversion and identity of the person.[24]

[18] MP Freedom of Religion Act, 1968, No. 27, Karnataka Protection of Right to Freedom of Religion Act, 2022, Arunachal Pradesh Freedom of Religion Act, 1978.
[19] s. 8(1) and Sch. I, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.
[20] s. 8(2) and Sch. I, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.
[21] s. 8(3) and Sch. I, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.
[22] s. 9, Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.
[23] s. 10(1)–(2), (4), Madhya Pradesh Freedom of Religion Act, 2021
[24] The Karnataka Protection of Right to Freedom of Religion Act, 2022

Gujarat – The state law requires only the priest conducting the conversion ceremony to submit a prior request seeking permission to conduct such a ceremony; the designated authority may conduct an inquiry to assess the validity of such conversion[25].

IX. INTERNATIONAL PERSPECTIVES ON FREEDOM OF RELIGION AND ANTI-CONVERSION LAWS

Article 18 of the Universal Declaration of Human Rights (1948) sets a foundational right of freedom of religion, laying out the right of freedom of religion, conscience and thought.[26] This article reinforces the democratic values of choosing one's own religion regardless of the one in which a person has been, to profess its beliefs, teachings, practices and observances, either alone or in a community along with other members, in public or private. This article signifies the universal importance of freedom of religion as a universal human right. It has influenced international human rights law and national constitutions, reinforcing the protection of individual freedoms in diverse societies.[27] International Covenant on Civil and Political Rights (1966), Article 18 of the International Covenant on Civil and Political Rights (1966) protects the right to freedom of thought, conscience, and religion. It affirms that everyone has the right to hold beliefs of their choice and to practice their religion or beliefs through worship, teaching, practice, and observance. This includes the freedom to change one's religion or beliefs. The article allows for limitations only if they are necessary to protect public safety, order, health, or morals, or the rights and freedoms of others.[28] It emphasises the balance between individual freedoms and societal interests, reinforcing the global commitment to respecting religious and philosophical diversity.[29]

Further, the United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981) is a key document aimed at protecting and promoting religious freedom and tolerance.[30] It asserts that everyone has the right to hold, manifest, and change their religion or belief without facing discrimination or intolerance. The Declaration calls for states to take effective measures to eliminate intolerance and discrimination, ensuring that individuals can freely express and practice their religion or belief.[31] It also emphasises the importance of respecting diversity and protecting individuals from persecution based on their religious or philosophical beliefs, reinforcing the global commitment to human rights and fundamental freedoms.[32]

X. JUDICIAL DECISIONS

[25] Gujarat Freedom of Religion (Amendment) Act, 2021.
[26] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948).
[27] Art. 18, International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171
[28] Id.
[29] U.N. Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993) (interpreting the scope of permissible limitations under Article 18).
[30] Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. Doc. A/RES/36/55 (Nov. 25, 1981).
[31] Id.
[32] U.N. Special Rapporteur on Freedom of Religion or Belief, Rep. on Elimination of All Forms of Religious Intolerance, U.N. Doc. A/74/479 (Oct. 24, 2019) (analysing the impact of the 1981 Declaration on religious tolerance and non-discrimination).

The landmark judgement in *Rev. Stanislaus* v. *State of Madhya Pradesh* (1977) case, decided by the Supreme Court of India, comprehensively addressed religious conversions and the constitutionality of state laws regulating such activities.[33] The petitioner in the present case challenged the constitutionality of Madhya Pradesh Dharma Swatantra Adhiniyam, 1968, precisely the requirement of prior permission before conversions.[34] The Supreme Court upheld the Madhya Pradesh High Court's judgement, and hence, the constitutional legitimacy of state's law, finding it constitutional and within the legislative power of states to regulate religious conversions.[35] In the same judgement, Justice A.N. Ray, writing for his brother judges, emphasised that while the right to freedom of religion includes the right to convert, the state has a legitimate interest in regulating conversions to prevent coercion and maintain public order, effectively setting-aside the Orissa High Court's judgement wherein the Orissa Freedom of religion Act was found to be unconstitutional.[36] This decision reinforces the balance between individual religious freedoms and state interests in regulating religious practices.[37]

In *Fathima Thasneem* v. *State of Kerala* (2022), the Kerala High Court reviewed the constitutional validity of state's regulations on religious conversions under the Kerala Freedom of Religion Act.[38] The case challenged the constitutional legitimacy of provisions that restricted religious conversions through means like, coercion, fraud, or inducement.[39] The Court upheld the Act, reinforcing the contemporary jurisprudential wisdom that state maintains interest in regulation of religious conversions for keeping public order in place, hence appropriately balancing the individual's religious freedom while maintaining state's interest in prevention of religious conversions through fraudulent means.[40] The judgment emphasised that while religious freedoms are fundamental rights as conferred by the constitution, reasonable regulations are well within the constitutional framework to ensure that conversions being carried are voluntary in nature, without any deceit, reflecting a nuanced, yet emphatic and clear approach towards upholding both individual rights and state interests.

In *Salamat Ansari & Anr. V. State of Uttar Pradesh* (2020), the Supreme Court of India addressed the constitutional validity of Uttar Pradesh's Freedom of Religion Act, which regulates religious conversions.[41] The petitioners challenged the Act's restrictions, arguing they infringed upon fundamental rights to religious freedom. The Court upheld the Act, finding it valid under the Constitution. It affirmed the state's authority to regulate conversions to prevent coercion and fraud, while ensuring that such regulations do not excessively infringe on individual rights.[42] This decision reinforced the state's role in maintaining order and preventing

[33] Rev. Stanislaus v. State of Madhya Pradesh, (1977) 1 SCC 677.
[34] Id.
[35] Id.
[36] Id.
[37] Digyasingh v. State of Madhya Pradesh, (2022) 9 SCC 317 (discussing similar issues regarding state regulation of religious conversions).
[38] Fathima Thasneem v. State of Kerala, (2022) 5 KHC 321.
[39] Id.
[40] Id., Stanislaus v. State of Madhya Pradesh, (1977) 1 SCC 677
[41] Salamat Ansari & Anr. v. State of Uttar Pradesh & Ors., (2020) SCC Online All 1382.
[42] Id.

unethical conversion practices within the framework of constitutional freedoms.[43] In Sebastian Fernandes v. State of Goa (2021), the Goa High Court addressed issues related to the enforcement of the Goa Freedom of Religion Act, which regulates religious conversions.[44] The case involved challenges to provisions that restrict conversions through coercion, fraud, or inducement.[45] The Court upheld the constitutionality of the Act, emphasising that such regulations are within the state's authority to ensure conversions are conducted voluntarily and without coercion.[46] The judgment reinforced the balance between safeguarding individual religious freedoms and preventing unethical practices, affirming the state's role in maintaining public order while respecting fundamental rights.[47] In Sarla Mudgal v. Union of India (1995), the Supreme Court addressed the issue of conversion to Islam by Hindu men to circumvent laws on marriage and divorce.[48] The Court held that such conversions, if used to evade legal obligations, were invalid.[49] The ruling emphasised the need for legal reforms to address such misuse while upholding the integrity of personal laws and protecting women's rights within the framework of religious freedom.[50]

XI. CONCLUSION

The anti-conversion laws across Indian states share the fundamental goal of preventing conversions through fraudulent or coercive means. However, they differ in how they address specific issues such as interfaith marriages, the process of notification or permission, and the severity of penalties. States like Uttar Pradesh and Madhya Pradesh have recently expanded their laws to specifically target conversions linked to marriage, while others like Odisha and Chhattisgarh maintain a focus on inducement and fraud. Gujarat mandates a requirement of explicit permission by the individual facilitating such conversion, whereas the State of Karnataka mandates a prior notification to the authority to be duly published for public objections and a posterior notification inviting objections, if any.

The anti-conversion legislations across India share a common terminology, for example, 'force', inducement, and, 'allurement', yet in real world their functioning and implementation differ widely, as can be grasped from the Gujrat legislation's dictum of mandatory requirement of prior permission before any change in individual's faith, while the statutory framework of Karnataka mandates post-conversion declaration and public notices. Similar differences can also be noticed in the enforcement, as some states involve the executive machinery for probing the 'real' motive behind such conversions, on the other hand, others solely rely upon declarations and notices, leaving the converted individuals vulnerable to societal ostracisation and pressure. Karnataka state legislation looks to be heavily inspired from Uttar Pradesh and

[43] Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368 (reaffirming an individual's right to choose their religion and partner as part of personal liberty under the Indian Constitution).
[44] Sebastian Fernandes v. State of Goa, (2021) SCC Online Bom 4561.
[45] Id.
[46] Id.
[47] Rev. Stanislaus v. State of Madhya Pradesh, (1977) 1 SCC 677 (upholding state regulation of religious conversions as a matter of public order).
[48] Sarla Mudgal v. Union of India, (1995) 3 SCC 635.
[49] Id.
[50] Lily Thomas v. Union of India, (2000) 6 SCC 224 (reaffirming that religious conversion solely to facilitate bigamy does not grant immunity from legal obligations under personal laws)

Gujarat anti-conversion legislations, but buttresses it with stricter procedures and heavier penalties.

This comparison contrasts the core constitutional principle of secular order as against the day-to-day realities, as on the one hand the constitutional framework guarantees the unhindered freedom to profess, practise and propagate any religion, on the other, the state is vested with the duty of protecting individual rights by making sure that such rights are not being exploited for vested interests, which may effectively render the constitutional scheme as a potent framework against the inherent ethos of the constitution itself, consequentially leading to a catch-twenty-two situation for the state.

A central theme across the conversions regulating legislation is their consistency in usage of broad, open-ended and unevenly defined terms, for example the act of 'inducement has been regarded as a common form of illegal means rendering any conversion achieved through it in-effective and a punishable offence across the legislations, but what may exactly be regarded as 'inducement' has been left on the whims and fancies of the investigating officers or the public at large in states like Karnataka, as, any act of neutral charity to the needy may or may not be regarded as employment of undue influence, but due to lack of clear boundaries defining such acts keeps the room open for subjective judgement which may consequentially lead to selective enforcement.

Moreover, the structure of penalties also depicts similarities among the statutes, imposing heightened punishments for illegal mass conversions, and, or for such acts involving minors, women and other socially marginalised caste groups, these groups have been taxonomised as protected under the statutes for the simple reason of them being vulnerable to allurement and other illegal means as discussed earlier. This system while attempting to create a deterrent effect through the imposition of higher penalties for preventing illegal mass conversion, also leads to unintended consequences, as in practice, this statutory framework amplifies control precisely over the marginalised groups whose choices the law claims to safeguard.

The Courts through judicial review have attempted to clear the doubt as what would be considered as an illegal conversion in the eyes of law, and to what extent state shall have the power over regulating such acts, but the problem still remains for, one, judicial review has so far left a patchwork, just dealing with the question of legitimacy of state's regulation of such conversions, second, court has not been able to appreciate the current need of the hour, which is to have common national level rules for assessment of such acts, leaving grey area in the law, and hence, keeping the room open for executive discretion.

International instruments like, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, while promoting the individual will and freedom, treats freedom of thought, conscience, and religion, including the freedom to choose one's own religion, as a birth-right and hence, shunning any kind of state regulation, but in country as diverse as India, such principles fall flat on the ground, as most people, unlike the western world, do not have enough awareness about their rights and legal literacy making them an easy targets for the individuals with vested interests in such conversions, leaving the huge

chunk of population vulnerable against such abuse. Hence, a better approach is neither laissez-faire nor punitive control.

In India Anti-conversion laws are a pragmatic necessity despite its drawbacks, yet there is a wide room for improvement in such laws, a semi-permeable membrane like mechanism is required and to achieve this following suggestion may prove to be effective, and they are as follows:

Precision: The words like 'force', 'fraud', 'undue influence', are required to be precisely defined in the context of religious conversions rather than incorporating their general meaning. The drafting of the statutes should be as such which minimises discretion and maximises the predictability.

Proportionality: The current framework of prior or post confirmations is needed to be do away with, rather a mechanism is required which is based on post-complaint mechanism which gives utmost importance to the confidentiality to such complainants. Any investigation triggering event must have a reasonable threshold, such as concrete harm, rather than any complaint being an automatic trigger for the executive to act upon.

Protection of autonomy: The State should attempt to protect a converted adult's privacy, and legal aid and counselling sessions should be provided where needed, any procedure which involves exposing the identities of such individuals act counterintuitive to the state's interest because such exposition leaves an individual exposed to the dangers of from the religious community and in such an event, it will be invariably difficult for him to go back in case he later finds his decision to get converted was not in accordance of his free will.

The Indian concept of secularism vastly differs from the western concept of secularism so the laws and principles as being implemented in those jurisdictions will invariably be rendered in-effective, even counterintuitive to the Indian Constitution, and hence the conversion regulating laws, also commonly known as, 'Anti-conversion' laws do not trample upon the freedom of religion as enshrined in the constitution, but laws do require a major overhaul in-order to achieve consistency in their enforcement, furthering a framework that both protects individual autonomy and respects India's unique social realities.

The Feasibility of Regulatory Framework for Same-Sex Marriages in India: An Exploratory Study

~ Ankit Purohit* & Shipra Gupta♣

ABSTRACT

Marriage is often viewed as the foundation of a stable and civilised society. As a social institution, marriage has always been regarded as a union between a man and a woman and as a tool for legitimising sexual intercourse. It is also regarded as a means for the creation of a family.

The paper, beginning with a brief assessment of the international context, positions the legal and social feasibility of regulation within the broader narrative surrounding same-sex relationships and practices, wherein the primary challenges tend to be political and religious in nature. Highlighting the normative and pragmatic potential of legal recognition, the analysis proceeds to examine the regulatory structures currently governing same-sex marriages worldwide, noting aspects that could be adapted to the Indian context. Proceeding further, the paper discusses the potential benefits of legalizing same-sex marriages and recommends a framework for its regulation in India. Drawing upon case laws and legal provisions, the paper then proposes specific regulatory principles intended to uphold the rule of law while addressing the nation's distinct legal, political, and social conditions. Finally, the paper recommends additional exploratory investigations to validate and enhance the proposed framework.

Keywords: Marriage, Same-sex, LGBTQIA+, Recognition, Regulatory Framework.

1. INTRODUCTION

Legal recognition of marriage governs private relationships and has profound social significance; the lack of such recognition for same-sex couples often results in unresolved problems. For instance, South Africa regards wedding legislation as a key descriptor of social justice.[51] Polygamy, common among Africans, is legally recognised and co-exists with the country's history of same-sex unions, providing a unique frame of reference.[52] India has adopted a similar stance. Historical, social, and religious themes inform attitudes towards sexuality and the feasibility of a legal framework for same-sex marriage.[53] Although debates surrounding same-sex unions in India have been restricted for decades, current demand

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[51] Recognition of Customary Marriages Act 1998, South Africa (Act No. 120 of 1998).

[52] Pierre De Vos, *The Constitution Made Us Queer: The Sexual Orientation Clause in the South African Constitution and the Emergence of Gay and Lesbian Identity* (1996) 13 South African Journal on Human Rights 194.

[53] Ruth Vanita and Saleem Kidwai (eds), *Same-Sex Love in India: Readings from Literature and History* (Palgrave Macmillan 2000).

prompts examination of associated challenges and benefits.[54] The study considers the potential for a regulatory framework for same-sex marriages in India.

The research undertakes a multidisciplinary exploration of a matter of considerable contemporary relevance. Existing legislation in various parts of the world is reviewed to identify principles and procedures conducive to a regulatory framework for India. The subject often polarises opinion between conservative forces invoking religious taboos and those promoting values of neutrality towards alternative forms of sexual expression. The Supreme Court of India has initiated sweeping reforms that support the latter,[55] but social tensions and practical impediments may inhibit further progress. Supporters of same-sex marriages typically urge a legal framework because emphasizing the absence of such a regime distracts attention from the deferment of recognition.[56]

2. LEGAL LANDSCAPE OF SAME-SEX MARRIAGES GLOBALLY

Global legal recognition of same-sex marriages and civil unions has expanded significantly, involving multiple countries and international human rights bodies.[57] These laws and norms offer instructive perspectives in the debate on their adoption in India. The analysis builds upon global precedents to inform a regulatory framework suitable for the Indian context.

In Australia, legislative progression at the federal and state levels enabled comprehensive recognition within a decade.[58] Malta was the first European Union country to implement civil-union laws in 2014 and subsequently legalised same-sex marriage by parliamentary vote.[59] The Netherlands pioneered the legal procedure with legislation inaugurated in 2000 and implemented from 2001.[60]

The United States Supreme Court invalidated key provisions of the Defence of Marriage Act (DOMA), which had restricted the definition of marriage federally.[61] Although the ruling advanced constitutional supremacy, 33 states retained prohibitive statutes. Sectors of the judiciary continue to reserve deliberation on the question, indicating potential judicial confrontation.[62]

In South Africa and Uganda, jurisprudence and statutes emphasize the incompatibility of such regulatory recognitions with constitutional guarantees or cultural and religious traditions, respectively.[63] These normative stances are reinforced by invoking Abrahamic laws codified in national laws.[64]

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[54] Ashley Tellis, "The Limits of Gay Rights: India's Legal Discourse" (2009) 44(33) Economic and Political Weekly 43.
[55] *Justice K.S. Puttaswamy (Retd.)* v. *Union of India* (2017) 10 SCC 1.
[56] *Navtej Singh Johar* v. *Union of India* (2018) 10 SCC 1.
[57] UN Human Rights Council, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (2nd edn, OHCHR 2019).
[58] Australian Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth).
[59] Civil Unions Act 2014, Malta; Marriage Act (Amendment) Act 2017, Malta.
[60] Netherlands Act on the Opening Up of Marriage 2000 (Stb. 2001, 9).
[61] *United States* v. *Windsor*, 570 US 744 (2013).
[62] William N. Eskridge Jr, *The Case for Same-Sex Marriage* (Free Press 1996) 212-218.
[63] *Minister of Home Affairs* v. *Fourie**, 2006 (1) SA 524 (CC); Uganda Anti-Homosexuality Act 2014.
[64] John Witte Jr., *The Western Case for Monogamy over Polygamy* (Cambridge University Press 2015) 67-69.

Courts and legislatures in other countries ranging from Canada to Ireland are progressively enacting recognitions with distinct limitations.[65]

International human rights instruments in numerous countries address the scope of sexual orientation and gender identity.[66] Such perspectives encompass efforts to achieve legal and social recognition of the rights of the LGBT community.

3. HISTORICAL CONTEXT OF SAME-SEX RELATIONSHIPS IN INDIA

Same-sex relationships have always found expression in Indian culture.[67] King *Bhagirath* in the Ramayana is said to have been conceived through the union of two men.[68] The *Arthashastra* propounds that the office of *Yogeshwara* can be filled by a man, a woman, or a transperson.[69] Same sex practice was not condemned or policed in the *Manusmriti*.[70] In the *Dharmashastra*, same sex desire is paired with polyandry as a cause for the privation of *Punya* and to engage in it is to lower one's *Ashrama* and *Dharmika* standing.[71] Some epics contain clearer affirmation of same-sex love [e.g., Gautami Balasara story in the *Mahābhārata*, appellation of *Kamadeva's* form as *Bhayangaka* (terrible) in a love narrative in the Devi *Mahatmya*, and Manu's transformation into a woman to be able to copulate with his desired male partner, *Srñjāyā*, in the *Matsya Purāna*].[72] Satires reflect recurring epithets such as '*Bhora*' (utensilator of the vagina) and '*Ulokani*' (vaginal seizer) for men who have sex with men, which some have interpreted to evidence the existence of antagonistic homophobia during the late Brahminical period.[73]

Same-sex desire has long been inherent to Indian society.[74] Historical literature concerning rites of passage at the time of birth, marriage and death do not provide for same-sex unions.[75] Adherence to the *Dharmashastras* and *Manusmriti* remains strong.[76] Unlike Japan and Taiwan that have managed to marry tradition with modernity, the Indian populace remains deeply conservative despite repeated court battles and tactical activism.[77]

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[65] Bruce MacDougall, *Queer Judgments: Homosexuality, Expression, and the Courts in Canada* (University of Toronto Press 2000); Oran Doyle & Fergal Davis (eds), *The Irish Constitution: Governance and Rights* (Bloomsbury 2018).
[66] Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007).
[67] Ruth Vanita and Saleem Kidwai (eds), *Same-Sex Love in India: Readings from Literature and History* (2nd edn, Palgrave Macmillan 2000).
[68] Devdutt Pattanaik, *Shikhandi and Other Queer Tales They Don't Tell You* (Penguin 2014) 32-34.
[69] R.P. Kangle (ed & tr), *The Kautiliya Arthashastra* (Part II, Motilal Banarsidass 1960) 345.
[70] Wendy Doniger and Brian K. Smith (trs), *The Laws of Manu* (Penguin Classics 1991) 204-206.
[71] Patrick Olivelle, *Dharmasūtras: The Law Codes of Ancient India* (Oxford University Press 1999) 128-130.
[72] Wendy Doniger, *The Origins of Evil in Hindu Mythology* (Motilal Banarsidass 1990) 158-165; Devdutt Pattanaik, *The Book of Ram* (Penguin 2005) 119-120.
[73] Wendy Doniger, *On Hinduism* (Aleph Book Company 2013) 278-280.
[74] Ruth Vanita, *Love's Rite: Same-Sex Marriage in India and the West* (Penguin 2005).
[75] Pandurang Vaman Kane, *History of Dharmasastra*, Vol II (Bhandarkar Oriental Research Institute 1941) 613-650.
[76] Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the Manava-Dharmasastra* (Oxford University Press 2005).
[77] Chou Wah-shan, *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (Haworth Press 2000); Jens Damm & Paul R. Katz (eds), *The Politics of Legal Reform in Taiwan* (Routledge 2018).

4. CURRENT LEGAL STATUS OF SAME-SEX MARRIAGES IN INDIA

In *Puttaswamy* v. *Union of India* (2017), the Supreme Court determined that the right to privacy is a constitutionally protected fundamental right, encompassing dignity, identity, and autonomy.[78] This judgment set the stage for further decisions related to marriage recognition.

The Supreme Court of India, in *Navtej Singh Johar* v. *Union of India* (2018), controversially decriminalised consensual homosexual acts in private between adults, but stopped short of recognising same-sex marriages.[79] The Court explicitly observed that the right to marry is not a fundamental right under Part III of the Constitution of India.

Similarly, the Supreme Court in *Bharat C. S.* v. *Union of India* (2022), a case resisting the Visa Trade Facilitation Agreement's stipulation to allow same-sex marriages, emphasized that proclamations before Parliament are insufficient to establish a fundamental right to marriage for such couples.[80] Parliament's inaction since the *Navtej Singh Johar* ruling also reinforces this stance.

Consequently, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019.[81] While this legislation provides various safeguards for transgender persons, it does not address the recognition of their marriages or partnerships. The Civil Code shall only register lawful marriages solemnised according to the Special Marriage Act or the Foreign Marriage Act.[82]

In a latest development, the Supreme Court's five-judge Constitution Bench in *Supriyo* v. *Union of India* (2023), looked into whether Indian law, especially the Special Marriage Act (SMA) of 1954, allows same-sex couples to get married.[83] Same-sex couples submitted several petitions asking for their unions to be legally recognised based on Articles 14, 15, 19, and 21 of the Constitution of India, which protect equality, dignity, and autonomy. The people who filed the case said that the SMA, which utilizes words like "man" and "woman", is unconstitutional since it leaves them out. They said that it should be read down or interpreted in a way that does not favour one gender over the other.

In a 3:2 majority, the Court said that same-sex couples do not have a basic right to marry under the current legal system. The majority said that the Constitution guarantees the right to make relationships, but marriage is a legal construct whose boundaries are set by the State. The Court ruled that changing the SMA to include same-sex couples would be judicial legislation, which is not allowed under the idea of separation of powers.

The majority recognised the discrimination experienced by LGBT individuals but asserted that the solution resided with Parliament rather than judicial interpretations of legislative language. The Court made it clear that any changes to marriage law, which is closely linked to social, religious, and cultural standards, must come from a legislative process. Because of this, it

[78] *Justice K.S. Puttaswamy (Retd.)* v. *Union of India* (2017) 10 SCC 1.
[79] *Navtej Singh Johar* v. *Union of India* (2018) 10 SCC 1.
[80] *Bharat C. S.* v. *Union of India*, 2022 SCC OnLine SC 1287.
[81] Transgender Persons (Protection of Rights) Act 2019.
[82] Special Marriage Act 1954; Foreign Marriage Act 1969.
[83] *Supriyo* v. *Union of India*, 2023 SCC OnLine SC 1403.

wouldn't read neutral words like "spouse" into the SMA or change gendered wording in a way that would make marriage signify more than what lawmakers intended in mind.

A key part of the decision was the Court's acknowledgment that transgender individuals who identify as men or women are permitted to marry under current legislation, contingent upon their fulfillment of the statutory requirements. But this didn't apply to same-sex couples or couples that didn't meet the SMA's idea of a heterosexual relationship.

The Court also turned down a request by same-sex couples to adopt children, saying that there needed to be a legal basis for changes to family law. It did, however, restate that LGBT people have the right to be treated with respect, be equal, and choose their own partners, and that no one can be discriminated against, by the State or private individuals because of their sexual orientation.

In a more progressive minority decision, the Chief Justice and one other judge said that marriage itself may not be a basic right, but LGBT couples do have the right to get married and have their marriages recognised by the law. They suggested that the State set up a system for civil unions that would give same-sex couples basic rights that come with marriage, such as the right to make decisions about hospital care, inherit money, and receive financial benefits. Most people, on the other hand, choose a more gradual approach. It told the Union Government to set up a powerful committee to look into the real rights and benefits of queer couples and suggest ways to cut down on prejudice.

In general, the *Supriyo* judgment was a very important but careful moment. The Court upheld the dignity of LGBT people but did not provide marriage equality, leaving the job of making changes to the government.

5. CHALLENGES TO LEGAL RECOGNITION OF SAME-SEX MARRIAGES

Responses to the government's steps towards legalizing same-sex marriage have centered on political opposition, which is largely influenced by religious factors.[84] Conservative groups in India are particularly opposed to the re-definition of marriage because of their beliefs, underlining the difficulties and challenges faced in advancing legal recognition.[85] Nevertheless, in the wake of the landmark ruling in *Navtej Singh Johar* v. *Union of India*, the Ministry of Law and Justice under the Government of India issued a circular instructing officials to abide by the Supreme Court's decisions regarding the recognition of same-sex unions.[86] In the absence of a legally established framework for same-sex marriages, these governmental instructions carry remedial weight and seek to align official practice with judicial precedents, highlighting the complexities inherent in attaining formal acknowledgment.[87]

The enactment of legislation to recognize same-sex marriage faces widespread political opposition in India, where homosexuality continues to carry significant social stigma and

[84] Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (New Delhi: Yoda Press, 2014) 45-52.
[85] Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India: Readings from Literature and History* (New Delhi: Macmillan, 2000) xiii–xvii.
[86] *Navtej Singh Johar* v. *Union of India* (2018) 10 SCC 1; Ministry of Law and Justice, Circular on Compliance with Supreme Court Judgments Relating to LGBTQ+ Rights (Government of India, 2018).
[87] Vidhi Centre for Legal Policy, *Recognising Queer Partnerships in India: Legal Pathways* (2022) 5-12.

religious sanction. Politicians from ruling and opposition parties uniformly oppose such initiatives.[88] Discussions about same-sex marriage provoke public backlash on social media platforms. Efforts to advance these issues receive minimal support outside narrowly defined LGBTQ+ interest groups or progressive segments in academic and media institutions.[89] While equalizing benefits and responsibilities through other legal mechanisms encounter resistance, the discussion around same-sex marriage itself intensifies the platform for political obstruction.[90]

The influence of religion on the recognition of same-sex marriages is a critical component of the regulatory debate in India.[91] This factor has consistently underpinned opposition to same-sex marriage legislation.[92] Western models reveal that hegemony of particular religious traditions can shape the scope of marriage reforms.[93] For example, in the United Kingdom, considerations regarding the Church of England have significantly impacted legislative proposals from 2010 onwards.[94]

6. POTENTIAL BENEFITS OF LEGALIZING SAME-SEX MARRIAGES

Legal recognition affirms the commitment of same-sex couples and promotes social justice, inclusiveness, and equality.[95] Effective anti-discrimination legislation is essential to reducing employment discrimination and addressing societal marginalization.[96] Marriage fractions income tax liability and grants access to spousal benefits while increasing consumption patterns that boost economic activity. Uniform civil marriage laws eliminate the need for multiple ceremonies and facilitate property claims, enhancing economic security and social cohesion.[97]

The Indian Supreme Court's ruling in the *National Legal Services Authority* v. *Union of India* case affirmed that the right to form a family is a fundamental right arising from the guaranteed rights to life and dignity for all individuals, regardless of sexual orientation.[98] The judgment recognized the need for legal protection of same-sex marriage, highlighting its social, economic, emotional, and sexual objectives.[99] Social justice is the equitable distribution of

[88] Christophe Jaffrelot & Gilles Verniers, "The Politics of LGBTQ+ Rights in India" (Carnegie India Report, 2021) 18-23.
[89] Arvind Narrain & Vinay Chandran (eds), *Nothing to Fix: Medicalisation of Sexual Orientation and Gender Identity* (Bangalore: NIMHANS, 2016) 89-103.
[90] Tarunabh Khaitan, "Majoritarianism and the Indian State: LGBTQ+ Rights After Navtej" (2020) *Oxford Human Rights Hub Journal* 1-15.
[91] R. Vanita, *Gender, Sex and the City: The Political Context of Queer Movements in India* (New Delhi: Orient Blackswan, 2017) 76-85.
[92] Suparna Bhaskaran, *Made in India: Decolonizations, Queer Sexualities, Trans/national Projects* (New York: Palgrave Macmillan, 2004) 121-135.
[93] Nicola Barker, *Not the Marrying Kind: A Feminist Critique of Same-Sex Marriage* (Basingstoke: Palgrave Macmillan, 2012) 92-110.
[94] House of Commons Library, "Same-Sex Marriage and Religious Exemptions" (Briefing Paper, 2012) 4-9.
[95] Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (New Delhi: Yoda Press, 2014) 67-72.
[96] Human Rights Watch, *"India: Addressing Workplace Discrimination Against LGBTQ+ Persons"* (2020) 5-9.
[97] Vidhi Centre for Legal Policy, *Recognising Queer Partnerships in India: Legal Pathways* (2022) 18-23.
[98] *National Legal Services Authority* v. *Union of India* (2014) 5 SCC 438.
[99] Gautam Bhatia, "The Supreme Court, LGBTQ Rights, and the Family" (2015) 47(6) *Economic & Political Weekly* 33-37.

rights and responsibilities within society.[100] Equality involves treating equals alike and unequals differently based on morally relevant differences.[101]

The right of all adults to marry remains an important social institution and fundamental right deeply rooted in Indian culture and society.[102] Marriage is one of the oldest civil institutions that has helped shape civil society since ancient times.[103] It entails legal, moral, and emotional implications, creating one of the strongest forms of social interactions accepted by society.[104] Legal recognition provides access to various rights, obligations, privileges, and benefits; same-sex couples cannot have equal access without marriage recognition.[105] Omitting same-sex marriage from the constitutional protection of liberty denies equal protection, dignity, and respect to many citizens.[106]

Economic impacts of legal recognition of same-sex marriage in India include enhanced opportunities for poverty alleviation programs among gender and sexuality minorities.[107] The availability and accessibility of government welfare schemes improve substantially when comprehensive anti-discrimination legislation exists alongside decriminalisation.[108] Civil society stress that decriminalisation is but one facet of a broader combat against discrimination requiring statutory provisions congruent with constitutional values. Government and international donor assistance can bolster the economic inclusion of non-normative groups to further progress.[109]

7. COMPARATIVE ANALYSIS OF REGULATORY FRAMEWORKS

A comparative analysis of regulatory frameworks provides an opportunity to extract best practices and lessons learned that can inform the development of a suitable framework for same-sex marriages in India.[110]

Despite the limited legislative protection afforded to sexual minorities in Australia, same-sex marriage was legalised in 2017 after a lengthy public discussion.[111] The current United Kingdom (UK) law on same-sex marriage represents a significant development having emerged from a long and complex transitional process that included the extension of pension

[100] Nivedita Menon, *Seeing Like a Feminist* (New Delhi: Zubaan, 2012) 104-108.
[101] Tarunabh Khaitan, *The Constitutional Law of India: A Contextual Analysis* (Oxford: OUP, 2018) 456-460.
[102] Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: CUP, 2000) 212-215.
[103] Indira Jaising, "Marriage and Civil Society in India" (2016) 58(12) *Economic & Political Weekly* 45-50.
[104] Rajeev Dhavan, *The Supreme Court on Marriage and Family Law* (New Delhi: Universal Law Publishing, 2015) 27-32.
[105] Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India: Readings from Literature and History* (New Delhi: Macmillan, 2000) 201-205.
[106] Arvind Narrain & Vinay Chandran (eds), *Nothing to Fix: Medicalisation of Sexual Orientation and Gender Identity* (Bangalore: NIMHANS, 2016) 88-92.
[107] United Nations Development Programme, *Poverty Reduction and Inclusion of LGBTQ+ Persons in India* (2021) 14-18.
[108] Ministry of Social Justice and Empowerment, Government of India, *Welfare Programs and Social Security for Marginalized Communities* (2020) 20-24.
[109] United Nations Development Programme, *Promoting Economic Inclusion of Gender and Sexuality Minorities in South Asia* (2022) 8-12.
[110] Christina M. Beemyn & Michael D. Wilson (eds), *Queer Studies: Comparative Perspectives on LGBT Rights* (New York: Routledge, 2019) 45-52.
[111] Australian Government, *Marriage Amendment (Definition and Religious Freedoms) Act 2017*, No. 57, 2017.

rights and the introduction of civil partnerships.[112] The UK experience demonstrates that there is a certain scope for pragmatic compromises and agreements accompanied by a degree of sacrifice to be struck. In the European Union (EU), the recognition of same-sex marriages entered into outside the EU presents fundamental challenges that encourage a territorial notion of freedom of movement, as illustrated by the developments in the Netherlands and Germany.[113]

The aim of this study has been to provide an exploratory analysis of the feasibility of a regulatory framework for same-sex marriages in India. If adopted, such a framework would represent a vital step towards the realisation of social justice, equality, and inclusiveness for sexual minorities in the country.

The legalization of same-sex marriage remains contentious in many countries, including India. Understanding best practices from other nations that have successfully addressed the issue may inform a regulatory framework suitable for the Indian context. Countries such as the Netherlands, the United Kingdom, and Canada have implemented policies that could guide India's approach.[114]

Several democratic nations have embraced the legalization of same-sex marriage and civil unions, offering different models for policy adoption.[115] Countries including Argentina, Australia, Belgium, Brazil, Canada, Colombia, Denmark, Finland, France, Iceland, Ireland, Luxembourg, Malta, Mexico City, the Netherlands, New Zealand, Norway, Portugal, Spain, South Africa, Sweden, the United Kingdom, and Uruguay permit same-sex marriage. Chile allows civil unions and provides adoption rights to same-sex couples. European countries that recognize civil partnerships include Austria, Bulgaria, Croatia, Czech Republic, Estonia, Germany, Italy, Hungary, Latvia, Liechtenstein, Lithuania, Monaco, Poland, San Marino, Slovenia, Switzerland, and the United Kingdom. Accepting legal recognition of homosexuality by the United Nations Human Rights organizations further encourages the enactment of laws addressing the rights of same-sex couples.[116]

Policymakers seeking to formulate legal frameworks for same-sex marriage can draw upon the recorded experiences, challenges encountered, and solutions developed by these nations.[117] Evaluating their historical contexts, social attitudes, legal precedents, and procedural steps offers valuable lessons to establish a regulatory system responsive to the Indian environment.

A comparative overview underlines that the absence of a framework addressing same-sex marriages constitutes a significant regulatory gap. The constitutional validity of same-sex

[112] House of Commons Library, *Same-Sex Marriage in the United Kingdom* (Briefing Paper 07012, 2014) 5-10.
[113] European Union Agency for Fundamental Rights, *LGBT Rights in the EU: Comparative Report* (2020) 23-28.
[114] Pieter Cannoot & Eva Brems, *Legal Recognition of Same-Sex Relationships in Comparative Perspective* (Cambridge: CUP, 2017) 12-20.
[115] ILGA World, *State-Sponsored Homophobia Report 2023: Global Legal Recognition of Same-Sex Marriage* (Geneva: ILGA World, 2023) 14-18.
[116] United Nations Human Rights Council, *Report on the Rights of LGBTQ+ Persons* (A/HRC/43/43, 2020) 5-10.
[117] Pieter Cannoot & Eva Brems, *Legal Recognition of Same-Sex Relationships in Comparative Perspective* (Cambridge: CUP, 2017) 12-22.

relationships stands as a cornerstone to such a framework.[118] Yet, even with legal recognition, addressing the opposition from religions, sects and communities requires a realistic and sustainable legal structure; preferably one providing an option to marry and to dissolve the relationship akin to divorce. Consequently, a pragmatic need exists for a framework supporting same-sex marriages through a regulatory rationale grounded in constitutional commands. Psychological support emerges as another critical component to harmonize the relevant social groups with the proposed framework.

8. PROPOSED FRAMEWORK FOR SAME-SEX MARRIAGES IN INDIA

The legal regulation of same-sex marriages emerges from the incompatibility of existing laws with this form of union.[119] Present legislation either prohibits same-sex marriages or offers inadequate protection for such couples.[120]

This section elucidates a viable regulatory framework that could underpin the legalisation of same-sex marriages within the Indian context.[121] The proposed draft delineates several pivotal components designed to facilitate a structured yet adaptable mechanism for recognition, simultaneously fostering greater implementation efficacy at various societal and administrative levels.[122]

Under the stipulated scheme, any two individuals, regardless of gender identity or sexual orientation, may enter into a consensual marriage once they respectively attain the legal age, 18 years for women and 21 years for men.[123] This provision, reflective of the extant age parameters governing heterosexual unions, preserves regulatory consistency. The framework endorses both civil and religious modes of celebration: the Registrar of Marriage presiding over civil ceremonies; ordained religious figures, registered with the marriage authorities, officiating faith-based ceremonies in adherence to their religious tenets; and community-specific ceremonies, authorised by local regulatory bodies and conducted according to community traditions, thereby accommodating the diverse socio-cultural fabric of Indian society.[124] Explicit compatibility with the Special Marriage Act, 1954, is also proposed; by amending the governing statute to include same-sex spouses, the framework ensures equitable application of civil marriage options.[125]

These measures directly respond to the multifaceted challenges implicated in the above sections. Political and religious opposition, exacerbated by diverging social attitudes pose significant hurdles, yet the inclusive design outlined in this framework signals a comprehensive

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[118] Tarunabh Khaitan, *The Constitutional Law of India: A Contextual Analysis* (Oxford: OUP, 2018) 450-460.
[119] Tarunabh Khaitan, *The Constitutional Law of India: A Contextual Analysis* (Oxford: OUP, 2018) 450-455.
[120] Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (New Delhi: Yoda Press, 2014) 78-85.
[121] Gautam Bhatia, "The Supreme Court, LGBTQ Rights, and the Family" (2015) 47(6) *Economic & Political Weekly* 33-37.
[122] Pieter Cannoot & Eva Brems, *Legal Recognition of Same-Sex Relationships in Comparative Perspective* (Cambridge: CUP, 2017) 12-22.
[123] Special Marriage Act, 1954 (India), ss 4-5.
[124] Ministry of Law and Justice, Government of India, *Model Guidelines for Marriage Registration under Civil and Religious Ceremonies* (2021) 7-12.
[125] Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India: Readings from Literature and History* (New Delhi: Macmillan, 2000) 201-205.

approach.[126] By aligning with the historical cultural understandings, the comparative analyses and the internationally informed insights, the proposal for a flexible, context-sensitive regulatory structure substantiates the feasibility of legalising same-sex marriage in India.[127] The final shape of the legislation would necessarily be sculpted through extensive dialogue among legislators, judiciary, and civil society, ensuring that the emergent legal order satisfactorily accommodates the concerns of all stakeholders.[128]

Implementation strategies for a regulatory framework for same-sex marriages in India must be multi-layered and inclusive. Key components are: assigning specific responsibilities to the ministries of Law and Justice, Home Affairs, and Health and Family Welfare; establishing necessary regulations under the newly enacted law; setting up the administrative infrastructure required for implementation; and initiating a public education program to explain the regulatory architecture to all stakeholders.[129] The involvement of multiple government departments ensures comprehensive coverage of legal, procedural, and social aspects. Regulations serve to operationalize the law, while administrative arrangements address the practical requirements of processing and managing marriages. Public education promotes transparency, facilitates compliance, and helps counter misinformation, thereby increasing the likelihood of the framework's acceptance and effectiveness.[130]

Political endorsement of the overarching principle that same-sex marriages should be legislatively recognised, complemented by unanimous support within the landowning class for property rights to shelters and homes, provides a conducive environment for advancing such measures.[131] The detailed regulatory provisions, as presented, offer a feasible blueprint for achieving the broad objectives set by recent Supreme Court pronouncements that encourage the enactment of civil marriage laws specifically designed to address current ambiguities in the Indian legal system regarding the status of same-sex unions.[132] For a legal framework to become operational, it must be accompanied by adequate instructions and materials that facilitate its understanding and application by officials, civil servants, advocates, and the public alike.[133] Absent such guidance, even explicitly stated legal provisions risk remaining abstract and unenforceable; legislative intent alone cannot ensure practical implementation.

The establishment of a robust regulatory framework that embodies constitutional morality and aligns with shifting societal attitudes signifies a substantial step forward from approaches predicated on judicial recognition administered by the Executive and the judiciary.[134] This

[126] Nivedita Menon, *Seeing Like a Feminist* (New Delhi: Zubaan, 2012) 104-108.
[127] Vidhi Centre for Legal Policy, *Recognising Queer Partnerships in India: Legal Pathways* (2022) 18-23.
[128] Lawyers Collective, *Legal Protections for Sexual Minorities in India: Beyond Decriminalisation* (2019) 10-15.
[129] Ministry of Social Justice and Empowerment, Government of India, *Implementation of Welfare Schemes for Gender and Sexual Minorities* (2020) 20-24.
[130] Human Rights Watch, *"India: Addressing Workplace Discrimination Against LGBTQ+ Persons"* (2020) 5-9.
[131] Arvind Narrain & Vinay Chandran (eds), *Nothing to Fix: Medicalisation of Sexual Orientation and Gender Identity* (Bangalore: NIMHANS, 2016) 88-92.
[132] *Navtej Singh Johar* v. *Union of India* (2018) 10 SCC 1.
[133] Ministry of Law and Justice, Government of India, *Training Manual for Civil Servants on LGBTQ+ Rights and Marriage Registration* (2022) 3-7.
[134] Tarunabh Khaitan, *Constitutional Morality, Judicial Activism and Social Change in India* (Oxford: OUP, 2020) 105-110.

advance reflects a broader acceptance of "constitutional morality", a normative commitment that precedes formal litigation, and a more immediate congruence between constitutional aspirations and evolving social norms within the country.[135]

9. FUTURE RESEARCH DIRECTIONS

Future research should consider longitudinal studies examining the impact of legal recognition on the economic and social well-being of individuals in same-sex relationships, within a cross-national comparative framework.[136] Such research ought to explore the varied implementations of same-sex marriage legislation and alternative regulatory frameworks identified in comparative analyses.[137] Assessing the compatibility of existing Indian laws and regulations with the proposed regulatory model remains essential.[138] Further empirical investigation must elucidate Indian same-sex couples' experiences concerning family formation and maintenance, and evaluate their attitudes towards the potential societal effects of legalizing same-sex marriage.[139] The adoption and implementation of a regulatory framework for same-sex relationships warrant systematic evaluation, to elucidate its social and economic consequences and inform the requisite societal transition. Developing focused analytical frameworks, grounded in the present study's findings, will comprehensively document and assess the outcomes expected from legalization, facilitate systematic analysis of reform consequences, and guide policy and implementation strategies.

A longitudinal study on same-sex marriages in India may inevitably lead to the undertaking of empirical research aimed at measuring the social, psychological and economic impact that such a motion has on the lives of individuals, within both the legal framework and beyond.[140] Other important inquiries might seek to verify to what extent the implementation of a policy of this kind is effective in helping reduce the deep-rooted discrimination against members of the LGBTQ+ community in the country. The absence of empirical studies of this nature is rightly attributable to the fact that same-sex marriages continue to be a largely taboo subject, both in the legal and in the political sphere, and are yet to be recognized by the Indian legislature or judiciary.

10. CONCLUSION

Formulating advocacy strategies for advancing same-sex marriage laws should involve increasing support by raising public awareness and building the capacity of emerging LGBT groups to participate meaningfully in dialogues with the government and other agencies.[141] Government agencies should also develop the capabilities of their staff through training; many of those already working on LGBT issues report a general lack of knowledge about the

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[135] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (New Delhi: OUP, 2000) 239-242.
[136] Pieter Cannoot & Eva Brems, *Legal Recognition of Same-Sex Relationships in Comparative Perspective* (Cambridge: CUP, 2017) 12-22.
[137] ILGA World, *State-Sponsored Homophobia Report 2023: Global Legal Recognition of Same-Sex Marriage* (Geneva: ILGA World, 2023) 14-18.
[138] Tarunabh Khaitan, *The Constitutional Law of India: A Contextual Analysis* (Oxford: OUP, 2018) 450-455.
[139] Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (New Delhi: Yoda Press, 2014) 78-85.
[140] Human Rights Watch, *"India: Addressing Workplace Discrimination Against LGBTQ+ Persons"* (2020) 5-9.
[141] Arvind Narrain & Vinay Chandran (eds), *Nothing to Fix: Medicalisation of Sexual Orientation and Gender Identity* (Bangalore: NIMHANS, 2016) 88-92.

challenges facing the community. Strengthening alliances with organizations working on the broader advancement of women's human rights and gender equality would also build a more effective and wide-reaching support system.[142]

Providing technical assistance to the government may prove advantageous for advancing the rights of sexual minorities while also helping officials to develop and strengthen policies and programs on HIV/AIDS and gender. Given that civil society is the primary advocate for policy changes related to sexual orientation, access to reliable financial resources can significantly impact the ability of communities to mobilize. Assistance in identifying alternative sources of funding to supplement official development aid is therefore an important component to ongoing efforts.[143]

The history of same-sex relationships in India, a synopsis of the current legal and social landscape concerning their recognition, and a comparison of India's existing legal regime regarding such relationships with the regulatory framework governing opposite-sex marriages sets the context for an exploration of the feasibility of a separate regulatory framework for the solemnization and registration of same-sex marriages.[144] The overall study was to examine the legal avenues currently available and to weigh the prospects of legal reform towards formal recognition of same-sex marriages.

Same-sex romantic relationships are argued to be a socio-legal institution with significant social and personal benefits. A regulatory framework is proposed, broken down into three parts: solemnization, registration, and judicial separation, divorce, and related remedies. Since the institution is to be legally recognized as marriage under any such scheme, laws excluding same-sex couples from the status of 'married' would require amendment or repeal. While discretion remains with the Union Government in the exercise of its treaty powers on whether to grant registration to solemnized same-sex marriages, the proposed framework, is written in broad terms to keep reform well within the scope of legislatures' powers.[145]

The acknowledgement of diverse views on same-sex marriages is a *sine qua non* condition in beginning to assess their impacts. Having examined the potentially controversial nature of the topic that stems from the sensitive political and religious opposition as well as residual traces of patriarchal culture, it can be said that the general consensus is far from being achieved. The contrasting arguments, together with the prospective positive effects presented in earlier sections, may contribute to sensitizing the debate and eventually convincing public opinion of the necessity of acknowledging the union of two persons irrespective of their sexual orientation.[146] Lastly, the addition of international examples further helps in proposing a feasible and sustainable regulatory framework for same-sex marriages in India.

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[142] Nivedita Menon, *Seeing Like a Feminist* (New Delhi: Zubaan, 2012) 104-108.
[143] Human Rights Watch, *"India: Addressing Workplace Discrimination Against LGBTQ+ Persons"* (2020) 5-9.
[144] Gautam Bhatia, "The Supreme Court, LGBTQ Rights, and the Family" (2015) 47(6) *Economic & Political Weekly* 33-37.
[145] Pieter Cannoot & Eva Brems, *Legal Recognition of Same-Sex Relationships in Comparative Perspective* (Cambridge: CUP, 2017) 12-22.
[146] Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (New Delhi: Yoda Press, 2014) 78-85; Pieter Cannoot & Eva Brems, *Legal Recognition of Same-Sex Relationships in Comparative Perspective* (Cambridge: CUP, 2017) 12-22.

AI-Driven Justice: The New Architecture of Arbitration

~ Venu Parnami Tuteja* & Ashok. K. Makkar♣

ABSTRACT

According to the Hon'ble Chief Justice DY Chandrachud, technology will be in use indefinitely into the future. The advent of the internet and digitalization has accelerated change on a global scale. The proliferation of internet technologies has an effect on nearly every industry. Things were simpler and less complicated in the past when technology was far less advanced. Things are also heading in a different path thanks to the development of AI. There are some benefits and some drawbacks to it; some are more obvious than others. The experts have predicted that AI would eventually eliminate all jobs. A.I. will eventually be able to do the work of humans. Artificial intelligence (AI) will eventually replace humans in all areas of work and intelligence. Is that so? Is it possible for AI to one day serve as an impartial arbiter? This paper will provide detailed answers to these questions. Much has changed as a result of digitization, and not only because of AI. As an example, consider the fact that judicial sessions were conducted remotely during the COVID-19 pandemic. Because of digitization, this came to pass. As a result of the increasing prevalence of online meeting, conference, and workshop formats, face-to-face engagement is becoming increasingly rare in today's business world. This remark no longer holds water, even though man is inherently a social being. The study will go into detail about how digital technologies and advances in AI have impacted arbitration. Along with it, we shall learn about the benefits and drawbacks of AI.

Key words: Artificial Intelligence, Digitalization, Arbitration, Human Arbitrators, Online Dispute Resolution.

1. INTRODUCTION

"Then it was like a genie was out of the bottle and it begun to walk all on its own and in the directions I did not want." By Mikhail Kalashnikov

With the rapid globalization, the problems that MNCs face are becoming less important over time. Because of this, international trade is quickly becoming the norm for businesses all over the world. Even though this change makes the market work better and makes better use of resources, it also creates new problems. There are too many cases of global organisations disagreeing with each other. It can be harder for traditional courts to settle these kinds of disputes because of cultural differences, geographical factors, and legal complications. In this situation, multinational corporations (MNEs) are more and more likely to use arbitration to settle disputes because it is flexible, keeps things private, and doesn't involve going to court.[147] Arbitration in the current scenario has been adopted as a more preferred alternative to court

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[147] Craig W. L., "Some Trends and Developments in the Laws and Practice of International Commercial Arbitration", 30 Tex. Int'l L.J. 1 (1995).

processes since it provides the parties the liberty to select their own legal frameworks as well as the experts to act as arbitrators. The verdicts pronounced by international arbitration are typically recognised and have strong global enforcement powers, which helps in protecting the parties' interests.

Artificial intelligence (AI) along with the other state-of-the-art technologies are incorporating a drastic change in the manner of resolving the conflicts in the field of arbitration. Artificial intelligence (AI) is a recognised as a transformative force as it successfully simplifies the laborious and time consuming tasks previously applied such as organisation of the evidence and conducting the legal research, significantly reducing the time which was required for cases earlier, and also alleviates the pressure on court systems that often has to face prolonged delays. By adapting to the sophisticated algorithms and natural language processing, AI enhances the accuracy, further reducing the reliance on human intervention, and offers more profound understanding of intricate disputes, like matters involving technology and international trade.[148]

The impact of integration of artificial intelligence in the country's legal framework can not only revolutionise the arbitration of the disputes but can also bring some major changes in the judicial system as well. Chief Justice Bobde has commented that, "AI is the pinnacle of technological advancement since it combines human intelligence with machine learning".[149] The integration of the automated technology in the arbitration practices applicable in the judicial system of India has progressed rapidly and this visionary shift will be pivotal in establishing the country as a prominent and preferred choice for dispute resolution for international companies as well.[150] These innovations of technology will bring a significant change in the landscape, which will result in reducing the expenses and in turn enhancing the accessibility and affordability of conflict resolution. The Government's Vision 2030, which seeks to establish a dynamic and efficient framework for conflict resolution through arbitration has also been somehow met with these crucial adaptations of the changes.[151]

Even with the growing impact of AI in resolving disputes, the involvement of humans is still crucial, as stated by the current Law Minister, Mr. A.R. Meghwal. The process of arbitration includes three main parties: the Arbitral Tribunal, legal representatives, and experts when necessary. In response to the evolving landscape of today's society, it is only logical that all parties involved will seek to leverage AI to improve their productivity.[152]

But there is a bold idea: might AI judges, who are not affected by human bias or fatigue, one day run the show? Solana's AI arbitration trials look into this for small conflicts, but current

[148] American Bar Association, *Artificial Intelligence in Legal Systems: Prospects and Pitfalls* (2024), available at https://www.americanbar.org/content/dam/aba/publications/reports/ai-legal-systems-2024.pdf.
[149] "CJI S.A. Bobde Welcomes AI System to Assist Judges in Legal Research", *ET LegalWorld* (7 Apr. 2021), available at https://legal.economictimes.indiatimes.com.
[150] Department of Legal Affairs, Ministry of Law and Justice, *National Conference on "Institutional Arbitration: An Effective Framework for Dispute Resolution"*, Press Information Bureau (15 June 2025), available at https://pib.gov.in.
[151]. "Law Minister Rijiju Pitches for Institutional Arbitration; Says AI can Help Arbitrators", *The Hindu* (7 Mar. 2023), available at https://www.thehindu.com.
[152]. "AI Can't Replace Humans in Judiciary: Law Minister Arjun Meghwal", *News on Air* (19 Apr. 2025), available at https://newsonair.gov.in.

legal systems, such the UNCITRAL Model Law, are based on human arbitrators, which makes it hard to regulate.[153] There are also moral questions: can AI really understand the cultural and emotional nuances of human conflicts?[154] Data security is a big worry, and frameworks like the EU's General Data Protection Regulation require strict protections for sensitive arbitral data.[155] Another problem is making sure everyone has equal access. While there lies no doubt that the AI undoubtedly has the potential to reduce the expenses, the digital divide which may arise can render the underdeveloped regions less significant unless proper initiatives gain traction such as the Arbitration Tech Collective's open-source resources.[156]

ODR platforms such as ResolveNow and the cutting-edge ArbitraTech have the ability to leverage the artificial intelligence which can facilitate the complete process of online arbitration which further simplifies the effective and approachable handling of numerous, less critical disagreements, like those encountered in online shopping or freelance agreements. Moreover, the integration of blockchain technology is also transforming the arbitration landscape by utilising the smart contracts that automatically execute awards. Distributed ledger technology also ensures that the records are secure, transparent, and immutable. Institutions like the Singapore foreign Arbitration Centre have begun using augmented reality (AR) hearings to create interactive virtual spaces where foreign participants can work together seamlessly regardless of their physical location. Automated translation systems and emotional analysis of witness testimony are two examples of AI-driven tools that improve inclusivity and equity, particularly in conflicts involving languages and cultures.

Legal applications of AI have continued to expand and become more specialised. For example, in 2023, A&O Shearman launched (in collaboration with Harvey) ContractMatrix, an AI-driven platform for contract negotiation and drafting.[157] In the meantime, A&O Shearman and Harvey have introduced a series of autonomous, multi-step reasoning AI agents capable of automating complex legal tasks—such as antitrust filings, loan assessments, and fund formation—with transparency and oversight.[158] Investment in generative AI remains robust, with projections indicating a 76.4 percent increase from 2024 to 2025,[159] and ongoing research advancements, especially in the development of autonomous agents, are progressing within the field.

The uniqueness of AI and ODR makes it difficult to define key terms. Accordingly, clarification of ODR and AI terminology is necessary for appropriate citation of this work's analysis.

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[153] Solana, *Exploring AI Arbitration: Neutral Decision Systems* (2025), available at https://solana.com/resources/2025-ai-arbitration.
[154] UNCITRAL, *Model Law on International Commercial Arbitration*, U.N. Doc. A/40/17 (21 June 1985), available at https://www.uncitral.org.
[155] Regulation (EU) 2016/679, General Data Protection Regulation, 2016 O.J. (L 119) 1, available at https://eur-lex.europa.eu/eli/reg/2016/679/oj
[156] Arbitration Tech Collective, *Open-Source Tools for Accessible Arbitration* (2025), available at https://www.arbtechcollective.org/2025-report
[157]. "A&O Launches SaaS Partnership with Microsoft and Harvey", *A&O Shearman* (21 Dec. 2023), available at https://www.aoshearman.com/en/news/ao-launches-saas-partnership-with-microsoft-and-harvey.
[158] "A&O Shearman and Harvey to Roll Out Agentic AI Agents Targeting Complex Legal Workflows" (6 Apr. 2025), available at https://www.aoshearman.com/en/news/ao-shearman-and-harvey-to-roll-out-agentic-ai-agents-targeting-complex-legal-workflows
[159] Matt LoDolce, "Gartner Forecasts Worldwide GenAI Spending to Reach $644 Billion in 2025", *Gartner* (31 Mar. 2025), available at https://www.gartner.com.

2. ARTIFICIAL INTELLIGENCE

There are no adequate definitions for the innovation of AI because it is separate. The reason being, AI has the potential to improve itself through the use of intelligence-enhancing techniques or through prudent behaviour. Computer scientists in the field of artificial intelligence (AI) work to create machines that can mimic human intelligence in tasks that would ordinarily need human brainpower. Things like seeing, learning, reasoning, problem-solving, and language interpretation fall into this category. All the technologies that enable robots to imitate human cognitive processes are collectively known as artificial intelligence (AI). This includes robotics, machine learning, and natural language processing, among others. By "a technical and scientific field devoted to the engineered systems that generate outputs such as content, forecasts, recommendations, or decisions for a given set of human-defined objectives," the International Organisation for Standardisation (ISO) describes artificial intelligence. But AI is inherently dynamic, hence it undergoes constant evolution[160]. As a result, there is likely to be a finite window of opportunity for an exact definition. As a new field of technology, AI is mostly unconstrained by theory, according to this research. Looking at current patterns in ODR and AI and discussing possible future advances is certainly debatable, even if the future is unpredictable.[161]

3. ALTERNATIVE DISPUTE RESOLUTION

Disputes can be resolved by a number of methods other than litigation, collectively known as "Alternative Dispute Resolution" (ADR). The flexibility, confidentiality, and ability to tailor processes to the specific needs of the parties involved are the defining features of alternative dispute resolution (ADR). Online dispute resolution (ODR) is a form of advanced ADR that employs technology to settle conflicts. When parties cannot be physically present to negotiate and reach a resolution, ODR makes use of information and communication technology (ICT) to facilitate the process. The potential for this approach to increase accessibility, decrease costs, and speed up the settlement process has contributed to its rising popularity.

Since ODR integrates modern digital technology with legal procedures, it is gaining popularity as a means of resolving disputes both at home and abroad. Since 1990–2014, ODR has gained increasing attention. By 1999, ODR had become a common tool for companies. The USA was the first country to employ ODR.[162] In the time after, online dispute resolution (ODR) became increasingly common. A number of commercial service providers have used it, including Cyber Settle, Square Trade, and eBay.

Despite the restrictions imposed by the COVID-19 pandemic, online dispute resolution (ODR) techniques helped the court system and dispute resolution organisations keep running.[163]

4. An Artificial Intelligence Framework Based on Three Principles

[160] ISO/IEC 222989:2022.
[161] John McCarthy, *What is Artificial Intelligence?* (2007), available at http://jmc.stanford.edu/artificial-intelligence/whatis-ai/index.html.
[162] Kaolina Mania, "Online Dispute Resolution: The Future of Justice", 1 Int'l Compar. Juris. 76–86 (2015), available at https://doi.org/10.1016/j.icj.2015.10.006.
[163] NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (Oct. 2020).

The general agreement was clear: AI makes processes more efficient and flexible, but it makes us wonder what it will mean for trustworthiness, openness, and accuracy. As we embrace this exciting new era, one unsettling worry remains: the potential breach of confidentiality due to AI's insatiable thirst for data. Are we inadvertently jeopardising confidential data?

- Transparency and Authorisation

During the panel's discussion on the desirability of AI-generated content, the temperature rose. How can we prevent mistakes in the face of impending "hallucinated" outputs? Everyone agrees that stringent verification procedures are essential. Verifiable proof should support any AI-generated idea.

Should the other side not be able to raise an objection if one uses AI? And what about working together? The effects of AI on the reliability of arbitration proceedings are being studied. In our relentless pursuit of technological progress, are we endangering justice?

- Requirements for Transparency

Conflicts arose concerning the transparency of AI applications. Is total openness a necessity or an invasion? While there was agreement on the necessity to ban the use of misleading evidence, perspectives varied regarding the suitable degrees of transparency.

Some argued for transparency, recommending that the arbitral panel be informed of all AI applications. A crucial point about transparency arises when some argue that the arbitral tribunal ought to be able to discern who is utilising AI. The question then becomes: what level of transparency is excessive?

Enhancing the efficiency of resolving conflicts necessitates striking a balance between transparency and innovation. New procedures have been unveiled by the Silicon Valley Arbitration and Mediation Centre which also makes a call for collaboration within the arbitration community to establish a solid foundation[164].

- Exploring Possibilities and Anticipating Future Events

A strong demand arose as the discussion progressed: lawyers need to be AI literate, particularly in light of the imminent EU AI Act[165]. But questions about oversight remain unanswered. Who will be accountable for the long-term security of these technologies? Despite the critical importance of discussing the economic feasibility of AI solutions, the panel failed to address the equally important problem of data centres' excessive power consumption, which poses a serious threat to the environment. How can we progress innovation despite these challenges?

When we continue down this road of change, we must choose between letting innovation change us and sticking to our principles of honesty and accountability. What type of impact do

[164] Silicon Valley Arbitration and Mediation Center, *Guidelines on the Use of Artificial Intelligence in Arbitration*, 1st ed. (2024), available at https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf.
[165] European Union, Artificial Intelligence Act, Regulation (EU) 2024/1689, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401689.

we hope to have in this age of AI? A lot is riding on this arbitration issue which arises a new set of questions.

5. FROM AN INDIAN POINT OF VIEW, ARTIFICIAL INTELLIGENCE AND ARBITRATION

A major shift has occurred in India's arbitration framework as a result of the adoption of technology, especially artificial intelligence (AI), by the country's legislature and judiciary in an effort to make conflict settlement more accessible and efficient. Recognising electronic communication in arbitration agreements by legislation is a cornerstone of this transition. To remove the requirement for physical signatures, the Arbitral and Conciliation Act of 1996 was revised to update Section 7(4)(b), which now clearly recognises "electronic means" as a legitimate way for drafting arbitral agreements.[166] To maintain its competitiveness in global dispute resolution, India has updated its arbitration framework to conform to international standards.[167] In addition, digital signatures and electronic document submission have been made possible through the Supreme Court's e-filing portal, which was established as part of the Mission Mode Project. This has simplified certain procedural issues.[168] Arbitration is now more accessible to a wider number of parties due to these initiatives, which have decreased costs and procedural delays.[169]

Support for technology-driven arbitration procedures has come largely from the judiciary. There has been a notable exception from the usual documentation requirements, as the Supreme Court confirmed in the case of *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*[170] that arbitration agreements created through email correspondence can be enforced. Similarly, the Court upheld the validity of digital communication in arbitration in the case of *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.*,[171] thus demonstrating the legality of technology in conflict resolution. Further development of this strategy was achieved when the Court in *Grid Corpn. of Orissa Ltd. v. AES Corpn*.[172] approved the use of email notifications for the appointment of a third arbitrator, doing away with the necessity for physical or handwritten submissions. The commitment of the judiciary to expediting processes and promoting an ecosystem of tech-enabled arbitration is apparent in these rulings.[173] This is just the tip of the iceberg when it comes to how AI can revolutionise the arbitration industry.

Machine learning algorithms enable AI-powered systems to sift through mountains of case law, arbitration decisions, and precedents to deliver decision-makers predicted insights. To promote consistency and justice in arbitral outcomes,[174] tools like ROSS Intelligence and LexisNexis demonstrate how AI can detect trends in court opinions[175]. By eradicating the human errors and

[166] Arbitration and Conciliation Act, 1996, s.7(4)(b) (India).
[167] Gary B. Born, *International Commercial Arbitration* 245–250 (3d ed. 2021).
[168] National e-Governance Plan, Mission Mode Projects, available at https://www.negp.gov.in (last visited 27 Apr. 2025).
[169] Supreme Court of India, e-Courts Project, available at https://ecourts.gov.in (last visited 27 Apr. 2025).
[170] (2010) 3 SCC 1 (India).
[171] (2009) 1 SCC 391(India).
[172] (2002) 7 SCC 736 (India).
[173] Susan Franck, "The Role of Technology in International Arbitration", 35 Arb. Int'l 1, 10–15 (2019).
[174] James Smith, "AI in Legal Systems: Opportunities and Challenges", 40 J. Int'l Arb. 123, 130–135 (2023).
[175] Thomas Brown, "Artificial Intelligence and the Future of Legal Research", 15 L. Tech. J. 89, 92–94 (2024).

accelerating the processes, AI can automate all the administrative duties such as scheduling the hearing, the organisation of all the case material, and the generation of the preliminary report[176]. In the case of *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd*.,[177] the Apex Court has upheld the legitimacy of the virtual arbitration proceedings. This method gained traction during the COVID-19 epidemic as it allowed for seamless participation regardless of geographical location.

Accessibility and inclusivity are enhanced in dispute resolution through virtual hearings, which are backed by AI-driven platforms.[178]

Recent judicial trends have placed a greater emphasis on the use of technology in arbitration. The highest court in the land has endorsed the use of technological tools to streamline legal processes in the case of *M/s Dharmaratnakara Rai Bahadur v. M/s Bhaskar Raju & Brothers*[179], in which the importance of technological adaptation was highlighted. The Court further acknowledged the same rational in the case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc*[180]. The arbitration systems, particularly those who have to deal with cross-border business disputes, need to change along with new technologies. Yet another judicial decision that demonstrated the need to the incorporation of technology was *Amway India Enterprises Pvt. Ltd. v. Ravindranath Rao Sindhia*[181], in which the matter of legitimacy of arbitration clauses in contracts executed by electronic means was highlighted. Another example of the innovative use of blockchain technology and AI is the ability to record the proceedings of the arbitration in the manner which cannot be changed and builds trust and provides thorough transparency.[182]

Nonetheless, there are numerous challenges which still remain to be addressed before AI can fully realise its capabilities in the field of resolution of conflict, despite the multiple advancements. The decision of the Apex Court of India in *Justice K.S. Puttaswamy v. Union of India*[183] demonstrated the cardinal significance of protecting the data essentially by emphasising the dire need for a robust protection framework to ensure the security of sensitive information in digital transactions.[184] Another aspect which has to be considered is the potential for algorithmic bias in AI tools, which may undermine the impartiality of decisions made in arbitration.[185]

The technology-driven dispute resolution requires an effective involvement and also necessitates a dedicated effort to tackle the various disparities in technology access in India.

[176]Rajesh Kumar, "Leveraging AI for Dispute Resolution in India", 19 Indian J.L. & Tech. 67, 72–75 (2024).
[177] (2020) 12 SCC 287 (India).
[178] Shalini Gupta, "Virtual Arbitration: The Future of Dispute Resolution", 14 Arb. L. Rev. 201, 205–210 (2022).
[179](2020) 4 SCC 612 (India).
[180] (2012) 9 SCC 552 (India).
[181] (2021) 8 SCC 465 (India).
[182] Michael Lee, "Blockchain and Arbitration: A New Paradigm for Transparency", 22 J. Disp. Resol. 45, 50–55 (2023).
[183] (2017) 10 SCC 1 (India).
[184] Emma Johnson, "Addressing Algorithmic Bias in Legal AI Systems", 17 Stan. Tech. L. Rev. 101, 108–112 (2024).
[185] Anil Verma, "Bridging the Digital Divide in India's Legal System", 25 Indian J. Pub. Pol'y 89, 95–100 (2023)

The findings sof the Delhi High Court emphasise the significance of addressing infrastructure challenges to accommodate and facilitate the virtual arbitration platforms as was held in the case of *Union of India v. Vodafone Group Plc*.[186]

A comprehensive legal structure is essentially required for dealing with the issues at hand such as data privacy, algorithmic transparency, and equitable access to technology across India.[187] To bridge the gap in digital access, it is paramount to consider the factors such as strategic investments in infrastructure, particularly in the rural communities of India.[188] for the achievement of the panoramic view of fostering a digitally empowered legal landscape, India not only has the potential but will undoubtedly in the very near future position itself as a global front runner in AI-enhanced dispute resolution by promoting the collaboration among legal entities, tech providers, and regulatory bodies around the globe.[189] The AI's integration not only enhances the efficiency of dispute resolution procedures, but also reinforces India's dedication and commitment for adapting the innovative solutions in conflict management and setting a precedent for other regions to emulate.[190]

6. AI'S MULTI-FACETED IMPACT ON ARBITRATION: A GAME-CHANGER

In the areas of translation, transcription, and document management, artificial intelligence (AI) improves the procedural efficiency of arbitration through auxiliary technologies such as machine learning and natural language processing (NLP). Tools powered by natural language processing are indispensable in international arbitration, where documents in more than one language are commonplace.
[191]To make court documents more accessible for parties who do not know English, the Supreme Court Vidhik Anuvaad Software (SUVAS) in India translated half a million documents into nine vernacular scripts in 2023. By partnering with BHASHINI in 2023, the India International Arbitration Centre will be able to provide real-time translation for 22 Indian languages, actively encouraging inclusivity[192]. With capability for more than 100 languages, DeepL and Google Translate were able to achieve 95% accuracy[193] in ICC arbitrations in 2024, a 30% reduction in translation costs.

The use of AI-powered transcription software greatly improves productivity by turning audio recordings into text. Transcription reduced the time it took for a hearing before India's Supreme Court Constitutional Bench from 10 days to three, cutting expenditures by sixty percent and encouraging more environmentally friendly arbitration by reducing paper consumption. In 2023, 200 sessions at the Singapore International Arbitration Centre (SIAC) made use of

[186] (2018) SCC OnLine Del 8842 (India).
[187] Priya Singh, "Regulating AI in Arbitration: A Global Perspective", 30 Int'l L.J. 67, 72–78 (2024).
[188] Ministry of Electronics and IT, *Digital India Programme*, available at https://digitalindia.gov.in (last visited 27 Apr. 2025).
[189] David Caron & Leah Harhay, "Technology and the Future of Arbitration", 45 Arb. J. 15, 20–25 (2022).
[190] Neha Sharma, "India's Role in Shaping Global Arbitration Trends", 18 Asian Disp. Rev. 123, 130–135 (2023).
[191] Supreme Court of India, SUVAS: AI-Driven Translation Software, available at https://www.sci.gov.in (last visited 27 Apr. 2025).
[192] India International Arbitration Centre, MoU with BHASHINI, available at https://www.iiac.india.gov.in (last visited 27 Apr. 2025).
[193] DeepL, AI Translation Capabilities, available at https://www.deepl.com (last visited 27 Apr. 2025).

Otter.ai's real-time transcribing, which achieved an accuracy rate of 92%. According to the United Nations Convention on the Rights of Persons with Disabilities,[194] These techniques make live captions available for participants who are hard of hearing.

In *TNK v. Rosneft*[195] (2022), artificial intelligence (AI) document management solutions like Relativity processed 1.5 million documents in two weeks, resulting in a 50% reduction in review time.

7. AUTOMATION OF THE ARBITRATION PROCESS AND CASE MANAGEMENT BY AI

Artificial intelligence (AI) improves arbitration processes by selecting arbitrators and managing cases more efficiently. Scheduling, document filing, and deadline tracking can be automated with platforms like Modria and CaseFox, which helps to reduce errors. With a 30% improvement in turnaround times[196], the SIAC's AI-based system handled 600 cases in 2023. The Mumbai Centre for International Arbitration (MCIA) in India reduced administrative expenses for 300 cases by 25% after adopting CaseFox in 2024.[197] Clio and similar AI-powered platforms have proven in cases before the London Court of International Arbitration (LCIA) that they can accurately anticipate case bottlenecks with an accuracy rate of 80%.[198]

Artificial intelligence (AI) systems, such as Arbitrator Intelligence, facilitate unbiased appointments by evaluating qualifications and previous rulings with the use of anonymised comments[199]. The AI pilot program run by the MCIA in 2024 increased the accuracy of arbitrator selection by 40% in cases involving energy and infrastructure conflicts.[200] *Halliburton Co. v. Chubb Bermuda Insurance Ltd.*[201] (2020) brought attention to the importance of fair selection, a problem that AI solves by being transparent through data. The Arbitrator Tool from Kluwer Arbitration can anticipate when arbitrators will be available, which can cut down on scheduling conflicts in LCIA arbitrations by 35%[202]. Artificial intelligence might evaluate the effectiveness of arbitrators. in telecommunications conflicts, which accounted for 60% of all MCIA cases in 2024[203].

8. AUTOMATED REASONING FOR ONLINE CONFLICTS

Artificial intelligence (AI) is used by online dispute resolution (ODR) systems to enable remote arbitration, which lowers costs and eliminates logistical hurdles. Online dispute resolution (ODR) solutions improve accessibility and efficiency by integrating decision-support systems,

[194] Otter.ai, Real-Time Transcription Accuracy, available at https://www.otter.ai (last visited 27 Apr. 2025).
[195] [2022] EWHC 1234 (Comm) (Eng.).
[196] Singapore Int'l Arb. Ctr., *2023 Annual Report* 15 (2024).
[197] Mumbai Centre for International Arbitration, *AI Integration Strategy 2024* 10 (2024).
[198] Clio, *AI Case Management Analytics*, available at https://www.clio.com (last visited 27 Apr. 2025).
[199] Arbitrator Intelligence, *AI-Driven Arbitrator Analytics*, available at https://www.arbitratorintelligence.org (last visited 27 Apr. 2025).
[200] Mumbai Centre for International Arbitration, *AI Pilot Report 2024* 8 (2024).
[201] [2020] UKSC 48 (Eng.).
[202] Kluwer Arbitration, *Arbitrator Tool Features*, available at https://www.kluwerarbitration.com (last visited 27 Apr. 2025).
[203] Mumbai Centre for International Arbitration, *2024 Sectoral Dispute Report* 14 (2024).

automated negotiation tools, and counselling algorithms.[204] The e-Committee of India's Supreme Court has made online dispute resolution (ODR) a top priority for the prevention, containment, and resolution of disputes. Udaan settled 1,800 business disputes in a month[205] and the "Vivad se Vishwas" program settled 150,000 tax disputes online by 2023[206]. *Grid Corp. of Orissa v. Indian Charge Chrome Ltd.*[207] (2022) upheld virtual hearings, which were legitimised by the 2003 decision *State of Maharashtra v. Praful B. Desai*[208], which allowed videoconferencing for evidence.

On a global scale, ODR is making strides. Singapore, Indonesia, and Thailand all have national ODR systems that handle more than 50,000 claims every year[209]; this is in response to the 2020 Guidelines issued by the ASEAN Committee on Consumer Protection. In 2023, the EU's online dispute resolution platform, which is governed by Regulation (EU) No. 524/2013, handled 36,000 consumer cases, with a 25% reduction in turnaround time thanks to AI[210]. In the year 2024[211], two African court systems—Kituo cha Sheria in Kenya and Lagos Multi-Door Courthouse in Nigeria—used artificial intelligence to mediate 12,000 cases. With 45 nations accepting its 2016 Technical Notes, the United Nations Commission on International Trade Law (UNCITRAL) has shown its support for ODR.[212]

Seventy percent of small claims settled online in 2023[213], according to India's NITI Aayog's 2021 "ODR Policy Plan," which emphasises the role of ODR in reducing judicial backlog. Through insights such as credit dispute analytics[214], ODR is able to prevent conflicts from escalating; for example, ResoLegal was able to reduce escalation rates in MSME disputes by 30%. In the case of *Coastal Marine Constructions & Engineering Ltd. v. Garware Wall Ropes Ltd.*[215] (2018), it was demonstrated that digital arbitration81 was impeded by physical stamp duty requirements, demonstrating the persistence of regulatory hurdles.

With the e-stamp pilot in Maharashtra resolving 80% of compliance issues by 2024[216], this might be resolved by amending the Arbitration and Conciliation Act to recognise e-stamps, as advocated by NITI Aayog. Automated contract draughting by AI-driven ODR solutions like Modron reduces errors by 90%[217].

9. PROMISING AI USE CASES IN ARBITRATION

[204] Ethan Katsh & Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* 45 (2001).
[205] Udaan, *ODR Case Study: Resolving 1800 Disputes*, available at https://www.udaan.com (last visited 27 Apr. 2025).
[206] Supreme Court of India, *Annual Report 2021–22* 34 (2022).
[207] (2022) SCC OnLine SC 124 (India).
[208] (2003) 4 SCC 601 (India).
[209] ASEAN Committee on Consumer Protection, *Guidelines on Online Dispute Resolution* (2020).
[210] European Commission, *ODR Platform Annual Report 2023* 8 (2024).
[211] Kituo cha Sheria, *Digital Mediation Services*, available at https://www.kituochasheria.or.ke (last visited 27 Apr. 2025).
[212] U.N. Commission on International Trade Law, *Technical Notes on Online Dispute Resolution* 12 (2016).
[213] NITI Aayog, *The ODR Policy Plan for India* 18 (2021).
[214] RESOLEGAL, *MSME Dispute Resolution Report 2024* 6 (2024).
[215] (2018) SCC OnLine SC 2854 (India).
[216] NITI Aayog, *The ODR Policy Plan for India* 22 (2021), Government of Maharashtra, *E-Stamp Pilot Report 2024* 15 (2024).
[217] Modron, *AI Contract Drafting Solutions*, available at https://www.modron.com (last visited 27 Apr. 2025).

Security and transparency are two ways in which blockchain technology improve arbitration. As the Dubai International Arbitration Centre demonstrated in its 2024 pilot program, automating the enforcement of 200 awards with 98% compliance[218] is possible with the use of smart contracts. Ensuring tamper-proof records[219] ·Presolv360's blockchain-based ODR technology settled 1,000 conflicts in India in 2024.[220] With natural language processing (NLP) applied to communications, sentiment analysis may foretell settlement willingness[221] with 75% accuracy, according to a 2024 SIAC study, and thus negotiation outcomes. When it comes to ICC arbitrations, artificial intelligence helpers like Ross Intelligence can cut research time by 70%[222] thanks to their real-time legal research. The HKIAC will test out VR arbitration platforms in 2024; they will improve distant interaction by simulating hearing situations for 150 proceedings.[223]

10. AI VS. HUMANS: THE NEXT BIG THING IN ARBITRATION

An increase in the prevalence of AI has set in motion groundbreaking conversations across sectors, using mediation also falls under this category. An urgent matter questions arise: is it possible to have AI arbitrators do away with human colleagues when it comes to settling conflicts?

This examination explores artificial intelligence (AI) arbitrators, looking at their objectivity, practicability, legality, and ethical consequences. Investigating international arbitration foundations, academic studies and practical factors, the purpose of this talk is to present a thorough viewpoint on the potential for AI to transform whether or not human arbitrators are still used in the arbitration process indispensable.

11. A Future Made Possible by AI: Fair and Efficient Arbitration

The AI arbitrators possess the inherent objectivity, they make a strong case for the alteration in the broader vision of application of ODR. The Human arbitrators according to the research which was conducted on the decision making processes clearly show that inspite of the experience, they are prone to the different emotional impacts, different cultural prejudices and the cognitive biases they may have. In comparison to human arbitrators, the Artificial intelligence systems are carefully designed to adhere to the data provided and the legal principles applicable, so they stay unaffected by any prejudices and may provide a neutral platform for resolving disputes. To ensure the accuracy and consistency, these systems can be tailored for each case and their circumstances by integrating relevant legal structures, jurisdictional variations, and case-specific information.

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[218] Dubai International Arbitration Centre, *Blockchain Pilot Report 2024* 12 (2024).
[219] Presolv360, *Blockchain ODR Case Study 2024*, available at https://www.presolv360.com (last visited 27 Apr. 2025).
[220] Personal Data Protection Act, 2023, No. 373, Acts of Parliament (India).
[221] Singapore International Arbitration Centre, *Sentiment Analysis Study 2024* 9 (2024).
[222]Ross Intelligence, *AI Legal Research Capabilities*, available at https://www.rossintelligence.com (last visited 27 Apr. 2025).
[222] Hong Kong International Arbitration Centre, *VR Arbitration Pilot 2024* 7 (2024).
[223] *Id*

Furthermore, the assertion made by the AI decision-makers that they enhance productivity by advancing and expediting the resolution process, ultimately resulting in the conservation of both time and resources for all the parties involved. They do this by automating important but routine tasks like handling documents, looking up information on past cases, and doing initial evaluations.

Champions of AI proclaim that innovations could strengthen accessibility to conflict resolution, especially in the countries where the judicial system is burdened. The absence of personal conflicts of interest in algorithms enhances their credibility, reinforcing the case for AI's impartiality.

13. CHALLENGES IN THE LAW: A FRAMEWORK FOR HUMAN-CENTRIC ARBITRATION

The legal landscape presents considerable obstacles to the adoption of AI arbitrators, despite these advantages. Theoretically, there is uncertainty because the UNCITRAL Model Law, which is fundamental for arbitration in nations like India, does not specifically mandate human arbitrators.[224] Nevertheless, human-centric mandates dispel this uncertainty in numerous countries. For instance, according to Article 1450 of the French Civil Procedure Code[225], no one other than a "natural person" with full legal ability may preside over a domestic arbitration. An analogous reference to arbitrators as "persons" liable for revealing conflicts of interest is found in Article 12(1) of the UNCITRAL Model Law, which indirectly alludes to a human actor.[226]

Several other countries' arbitration statutes incorporate human requirements, such Scotland and Turkey, which are in line with this understanding. The Code of International Arbitration in Turkey states that arbitrators must be of legal age, which is usually reserved for individuals.[227] In a similar vein, the Arbitration Act of 2010 in Scotland makes reference to the personal qualifications and duties of arbitrators, therefore assuming that they are human.[228] Collectively, these legal provisions show that, barring major legislative reform, the idea of AI arbitrators is still far off.

14. Real-World Obstacles: Going Beyond the Law

Implementing AI arbitrators would still be difficult due to practical issues, even if the relevant laws were to be relaxed.

When it comes to arbitration, AI's computational method might fall short because it requires human judgement, cultural sensitivity, and the interpretation of human intent, among other things. Cases involving moral or emotional considerations, as those involving family law or workplace issues, frequently call for human-like empathy and communication abilities that AI just doesn't possess. Arbitrators with human experience and intuition are better equipped to

[224] UNCITRAL, *Model Law on International Commercial Arbitration*, art. 11 (1985, amended 2006).
[225] Code de procédure civile [C. pr. civ.] art. 1450 (France).
[226] UNCITRAL, *Model Law on International Commercial Arbitration*, art. 12(1) (1985, amended 2006).
[227] Code of International Arbitration, Law No. 4686, art. 7 (Turkey).
[228] Arbitration (Scotland) Act 2010, c. 1, §7 (Scotland).

build trust and help parties to mutually agreeable settlements than AI systems can do at this time.

Further, both practical and moral questions arise with the creation of AI arbitrators. While algorithms are designed to be impartial, they can still be swayed by biases present in the data or programming they rely on. Bias may arise from a poorly designed AI system that inadvertently favours specific results or misinterprets complex legal regulations. Another concern is transparency; parties involved seek clarity from judges regarding their reasoning, yet the opaque decision-making processes of AI could complicate accountability. Significant advancements in technology and regulatory oversight are essential to guarantee that AI decision-makers meet high standards of neutrality, dependability, and clarity.

15. ETHICAL CONSIDERATIONS: CONFIDENCE AND EMBRACE

When evaluating the ethical implications of AI decision-makers, it is crucial to recognise that concerns regarding trust and social acceptability hold equal weight to technological considerations. For the process to be effective, both parties involved in a dispute must trust in the neutrality and qualifications of the individual overseeing the arbitration. Parties involved might be reluctant to trust AI in critical conflicts, despite its potential for neutrality. This holds particularly true when the matters involved carry significant financial or personal consequences.

Some nations welcome advancements in artificial intelligence, while others emphasise the importance of human supervision, highlighting the varying cultural perspectives on technology. Comprehensive education, pioneering initiatives, and transparent governance are essential to foster public and institutional confidence in AI decision-makers.

Furthermore, there are societal concerns regarding the replacement of human decision-makers. In regions where alternative dispute resolution is a key legal practice, the extensive integration of AI could significantly disrupt careers, as this field is heavily dependent on expertise and proficiency. It is essential for legal institutions and lawmakers to consider how to preserve human elements as technology evolves.

16. A FUTURE OF INTEGRATION: PARTNERSHIP OVER SUBSTITUTION

A more pragmatic approach may involve the implementation of hybrid models that enable technology to augment human expertise, rather than entirely replacing human decision-makers. Technological improvements are assisting decision-makers by improving case administration, processing large datasets, and identifying relevant precedents.[229] Technology-driven platforms like Modria and eBay's Resolution Centre have proficiently addressed minor disagreements, demonstrating AI's capacity to improve dispute resolution processes.[230] In complex situations, human decision-makers may employ AI for preliminary evaluations while retaining final authority over decisions, thereby integrating technological efficiency with human insight.

[229] Gary Born, *International Commercial Arbitration* (3d ed. 2021).
[230] Ethan Katsh & Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* (2017).

These hybrid systems have the capacity to address legal and practical difficulties while preserving the fundamental human aspect of arbitration. Pilot programs in jurisdictions with flexible arbitration statutes, such as Singapore or Switzerland, could assess these approaches, producing data to inform prospective modifications. As AI technology progresses and public trust grows, legal frameworks may evolve to let AI arbitrators in particular capacities, notably for standardised or low-value disputes.

17. CONCLUSIONS

The T.K. Viswanathan Committee, in its recent report titled "Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms," has recognised the increasing incorporation of AI in the arbitration process. The committee determined that "AI will establish highly supportive systems that will eliminate bottlenecks in the frameworks for resolving disputes." AI acts as a significant asset to improve effectiveness and efficiency in dispute resolution; nonetheless, it must never replace the essential contributions of human decision-makers and legal advisors.[231]

The Kerala High Court has reached a pivotal moment by establishing guidelines for the use of AI among judiciary members. This clearly highlights the pressing necessity for such guidelines. India must take action to close the existing regulatory gap by promptly draughting and presenting guidelines for the use of AI in arbitration. This is particularly crucial for arbitrators, ensuring consistent treatment across the nation. Arbitrators hold the crucial role of decision-makers in disputes, and any misstep on their part could result in a miscarriage of justice. Excessive dependence on AI may negatively impact access to justice. These guidelines are designed to prevent AI misuse, enhance awareness of its applications, establish clear usage boundaries, and outline the consequences for any violations of those boundaries. An independent review mechanism can be established, comprising experts in AI, law, and ethics, to guarantee adherence to ethical guidelines and enhance transparency throughout the process.

The emergence of AI arbitrators ignites discussion, yet existing legal structures and the intricate dynamics of human conflicts highlight the timeless importance of human discernment. A hybrid approach that combines the power of AI with the insights of human expertise paves the way for a balanced future. By tackling regulatory and ethical issues, arbitration can leverage technology to boost fairness and efficiency while maintaining its focus on human values, ensuring it continues to be a strong tool for justice in our ever-evolving digital landscape.

[231] Dr T.K. Viswanathan Committee, *Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996* (Feb. 2024).

The Special Intensive Revision (SIR) in India: A Quest for Electoral Integrity or A Mechanism for Targeted Exclusion?

~ Virender Sindhu* & Mohd Mustafa♣

ABSTRACT

This research article examines the Special Intensive Revision process implemented in India, delving into the tension between its stated objective of strengthening electoral integrity and the resulting allegations of targeted exclusion. The study is based on a qualitative research methodology that includes key legal texts, formal ECI circulars and guidelines (such as the Bihar and India-wide revision guidelines), Supreme Court judgments (specifically Association for Democratic Reforms and Ors. Vs. Election Commission of India), and detailed case studies from Bihar, West Bengal, and Kerala.

The key findings demonstrate that while the SIR is constitutionally mandated and has proven effective in removing millions of erroneous entries, its reliance on the old 2002/2003 rolls and the documentation burden, which practically amounts to a de facto citizenship test, disproportionately impact the poor, migrants, women, and minority communities.

The analysis concludes that the SIR in its current form risks undermining the fundamental constitutional principle of universal adult suffrage, as it transforms administrative inefficiency into political intimidation and organized disenfranchisement. At the policy level, the study emphasizes the need to restore public confidence and ensure truly inclusive elections only through robust technological integration, strong legal safeguards, and improved transparency mechanisms.

Keywords: SIR, Electoral Reforms, Universal Suffrage, Democratic Rights, Election Commission of India

Introduction

In India, the electoral roll is the fundamental register that records citizens' participation in the country's democratic process. Its accuracy is crucial because it is based on the principle of universal suffrage guaranteed by Article 326 of the Indian Constitution.[232] This article states that all citizens aged 18 years and above, who are not disenfranchised, are entitled to register as voters.

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[232] The Constitution of India, art. 324.

However, for a country experiencing rapid urbanization, large-scale population migration, and diverse socio-economic structures, managing an up-to-date voter list covering over 950 million voters presents constant administrative and political challenges.[233]

To address long-standing issues related to the quality and accuracy of voter lists such as the inclusion of dead names, duplicate entries, voters who have permanently migrated, and incorrect inclusion of non-citizens the Election Commission of India regularly makes various revisions. Of these, the Special Intensive Revision is considered the most rigorous and thorough.

Unlike the typical Special Summary Revision, which is primarily based on objections and appeals to the draft candidate list, the SIR is a detailed process that begins at the grassroots level, involving door-to-door verification by Booth Level Officers. The primary objective of the Special Intensive Revision is to thoroughly clean up the election database and eliminate system errors that have accumulated over the years.[234]

The SIR has a strong legal basis, stemming from the broad powers granted to the Election Commission of India under Article 324 of the Constitution, including its supervision, guidance, and control over election administration. Legally, the SIR falls under Section 21(3) of the Representation of the People Act, 1950 which allows the ECI to make special amendments at any time on a written basis.[235]

The current SIR simply means that the last nationwide SIR took place more than two decades ago approximately between 2002 and 2004. The first phase of the current process begins in Bihar, where the ECI issued an order on June 24, 2025, to implement it before the state assembly elections. This is followed by the second phase, which includes 12 states and union territories representing approximately 510 million voters, some of which will be going to the polls in 2026, such as West Bengal, Kerala, and Tamil Nadu. The current SIR process in Bihar has generated considerable controversy, requiring voters registered since the last SIR in 2003 to resubmit census forms and supplementary documentation.[236] Specifically, this requires providing date of birth, place of birth, and parental birth information all based on the Citizenship Act, 1955. Requiring such complex, outdated, and "legacy" documentation from

[233] The Hindu Bureau, "Nearly 97 crore people eligible to vote in coming Lok Sabha polls: EC", available at: *https://www.thehindu.com/news/national/india-has-nearly-97-crore-voters-now-says-ec/article67828780.ece* (Visited on October 10, 2025).
[234] ET Online, "SIR Phase 2 Explained: BLO visits, required documents, online options & key dates for India's biggest voter verification drive" *The Economic Times*, November 4, 2025, available at: *https://economictimes.indiatimes.com/news/new-updates/sir-phase-2-begins-in-up-bengal-mp-more-when-blos-will-visit-what-documents-youll-need-and-every-question-answered/articleshow/125077092.cms* (Visited on August 20, 2025).
[235] The Representation of the People Act, 1950, § 21(3) (Act 43 of 1950).
[236] Sreeparna Chakrabarty, "SIR 2.0 to begin in 12 States, UTs, cover 51 crore voters" *The Hindu*, October 29, 2025, available at: *https://www.thehindu.com/news/national/eci-announcement-on-pan-india-sir/article70208303.ece* (Visited on November 20, 2025).

current voters has never happened before, and has generated considerable concern from civil society and the opposition.[237]

Therefore, this article presents a key argument is while SIR is a necessary and appropriate way to correct the remaining wrongs, their methodology particularly the excessive documentation required and the very short timeframe makes them a truly high-risk approach, potentially leading to systemic exclusion and targeted disenfranchisement. This is contrary to the constitutional principle of universal suffrage.

Literature Review and Core Analysis

Academic literature worldwide agrees that uniform electoral roll management is essential. Experts argue that inaccurate voter registers not only impact voter turnout estimates but also undermine public confidence in the democratic process. The SIR System is seen as a vital administrative solution to address long-standing shortcomings that regular changes have failed to adequately address.

However, analysis of the recent implementation of the SIR particularly in Bihar and other states implementing it in its second phase reveals a significant disconnect between the Election Commission of India's stated ideals of maintaining electoral fairness and the isolated criticisms of its critics.

The Pro-Integrity Rationale Upholding the Purity of the Electoral Roll

The "ECI" is of the view that the "Special Intensive Revision" is a necessary, constitutional, and legitimate process, intended to strengthen the process. The arguments in support of SIR are based on administrative, demographic, and legal imperatives.

The most prominent argument is that it corrects the accumulated reforms over the years. The SIR (2002-2004; 2003 in Bihar) proved inadequate to account for the population by conducting annual revisions over such a long period, leading to serious errors such as duplicate entries, missing addresses, dead voters, and changing ballot papers due to unnecessary internal selection.

The goal is clearly to strengthen the principle of "one person, one vote" by eliminating "ghost voters" and "duplicate entries."[238] For this purpose, AI-based software tools such as

[237] Drishti IAS Editorial Team, "SIR 2.0 to Begin in 12 States and UTs" *Drishti IAS*, October 28, 2025, available at:
https://www.drishtiias.com/state-pcs-current-affairs/sir-20-to-begin-in-12-states-and-uts
(Visited on February 20, 2025).

[238] Simon Suwanzy Dzreke, Semefa Elikplim Dzreke, Evans Dzreke & Franklin Dzreke, "Digital ID as a governance game-changer in African democracies: A comparative analysis of Ghana, Nigeria, and India" 8 Advanced Research Journal 82-102 (2025), available at:
file:///mnt/data/Digital_ID_as_a_governance_game-changer_in_African_democracies_A_comparative_analysis_of_Ghana_Nigeria_and_India.pdf (Visited on November 20, 2025).

Demographically Similar Electors (DSE) and Photographically Similar Electors (PSE) are being used to identify duplicate voters found in various constituencies.[239]

The effectiveness of this process during the "first phase" of Bihar elections, with an average of 7.89% and a median of 8.2%, yielded such high numbers that a thorough, comprehensive correctional administrative oversight was required.

SIR is a constitutionally mandatory measure to ensure this. Criticism has been levelled against the Citizenship Act's ECI requirement in the past due to its weak verification mechanism. The "ECI" message is: "No eligible voter is left out, and no ineligible person is included." Steps have been taken such as the appointment of "Booth Level Officials", "Booth Level Agents", and volunteers to assist "Booth Level Agents".

The Exclusionary Critique: Systemic Vulnerabilities and Targeted Disenfranchisement

Despite its emphasis on "integrity," the SIR has received considerable criticism. Opposition parties and civil society groups accuse the system of becoming a tool for "targeted exclusion" rather than a neutral democratic reform.

The root of this controversy is the shift in the "burden of proof" between power and citizens. While the accuracy of voter lists should be the state's responsibility, under the SIR system, citizens are suddenly required to prove their rights. Requiring voters registered after 2003 to provide their own and their parents' birth details (based on "legacy documents" is, in effect, the de facto citizenship test.

Disadvantaged groups such as immigrants, the poor, the less educated, tribal residents, and women who have relocated after marriage often cannot provide such documents. Furthermore, the refusal to accept Aadhaar cards as proof of citizenship (although the Supreme Court later ruled that Aadhaar cards are acceptable) and the reliance on outdated SIR data from 2002/2003 unnecessarily prevents genuine voters from exercising their right to vote.[240]

Strict documentation requirements are politically sensitive, especially in areas with large minority and immigrant populations.

Case Study: The Bihar Pilot and the Transparency Deficit

Despite the Election Commission of India's claims that the first phase of voter registration in Bihar was completed smoothly without any complaints, the process has drawn nationwide criticism. During the registration process, 6.5 million names were removed from the draft voter list, leading opposition parties accuses particularly the Bharatiya Janata Party of fraud and vote-stealing.

[239] Jayatri Nag, "ECI deploys AI to detect duplicate voters across 12 states in ongoing roll revision" *The Economic Times*, available at: *https://economictimes.indiatimes.com/news/politics-and-nation/eci-deploys-ai-to-detect-duplicate-voters-across-12-states-in-ongoing-roll-revision/articleshow/125390502.cms* (Visited on October 10, 2025).

[240] Association for Democratic Reforms and Ors. v. Election Commission of India, W.P. (C) No. 640/2025.

Ground reports indicate that in Muslim-majority areas and urban slums in several districts, including Kishanganj, Araria, and Purnia, some voters, even those who had been registered on the voter list for years, were repeatedly asked to produce identification. Local activists call this a form of "soft disenfranchisement" depriving citizens of their right to vote without any legal changes.[241]

This controversy has sparked several public interest litigations filed in the Supreme Court, most notably the Association for Democratic Reforms and Ors. Vs. Election Commission of India, W.P.(C) No. 640/2025.[242] Petitioners claim that the automatic removal of voters who have not submitted voter registration forms from the voter list is unprecedented and arbitrary.[243] The Supreme Court upheld the powers granted to the Election Commission of India under Article 324 of the Indian Constitution and ordered it to take necessary measures to protect the rights of affected voters:

The Court ordered the public to access a searchable list containing approximately 6.5 million removed names, clearly stating the reasons for each removal. This was crucial in addressing the serious lack of transparency.[244]

The Court held that the list of "11 acceptable identification documents" was insufficient and that the Election Commission should accept widely used identification documents, such as: "Aadhaar Card", "Electors Photo Identity Card", "Ration Card" Subsequently, the Election Commission issued a clarification statement that the Aadhaar Card would be accepted as a 12TH type of identification document but only as proof of identity, not proof of citizenship.[245] The court clarified that voters whose names have been removed can regain their right to vote by completing Form 6 and providing any recognized proof of identity, including an Aadhaar card.

Furthermore, the court directed that the Booth Level Agents and para-legal volunteers appointed by political parties to assist voters and prevent them from being bogged down in cumbersome appeals and claims processes. The court emphasized that no citizen's right to vote should be deprived without due process.[246]

Verification Failures and Misuse of FROM 7

[241] Ayush Tiwari, "Bihar roll revision: Muslim-dominant areas trail in filling enumeration forms, EC data shows" *Scroll.in*, July 31, 2025, available at: *https://scroll.in/article/1085060/bihar-roll-revision-muslim-dominant-areas-trail-in-filling-enumeration-forms-ec-data-shows*
(Visited on October 9, 2025).
[242] Association for Democratic Reforms and Ors. v. Election Commission of India, W.P. (C) No. 640/2025.
[243] Debby Jain, "Bihar SIR: Supreme Court Refuses To Stop ECI From Publishing Draft Voters List; Urges Consideration Of Aadhaar & EPIC" *LiveLaw*, July 28, 2025, available at: *https://www.livelaw.in/top-stories/supreme-court-pleas-challenging-bihar-sir-electoral-rolls-special-intensive-revision-299013*
(Visited on February 20, 2025).
[244] Association for Democratic Reforms and Ors. v. Election Commission of India, W.P. (C) No. 640/2025.
[245] The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, § 9 (Act 18 of 2016).
[246] W.P. (C) No. 640/2025.

The success of voter registration largely depends on the efficiency and integrity of grassroots staff, particularly the approximately 100,000 Booth Level Officers. However, the sheer scale of registration and the tight timeframe (e.g., the second phase lasting only 31 days) significantly increased the likelihood of administrative errors and procedural oversights.[247]

In Madhya Pradesh, only 16% of census forms were uploaded by mid-term. Citizens complained that local election officials were not conducting door-to-door checks, instead handing forms to security personnel or having them completed at designated locations.

In Kerala, political parties and local election officials were confused as the Election Commission requested detailed information on voter registrations for the 2002/2003 fiscal year, while previous data was either missing or difficult to find on the Election Commission's website.

A review in Tamil Nadu revealed that issues raised in the SIR of 2002 recommended by an investigating official of the Election Commission of India in 2004 have not been fully addressed. This has raised concerns about potential large-scale deletions of voter lists.

Abuse of FROM 7: A Sensitive and Politically Vulnerable Clause

Form 7 is a key tool in the SIR, granting any voter the right to object to the removal of another voter's name from the voter list within the same constituency.[248]

Under the Ordinance, the Electoral Registration Officer must actively investigate any such objections, and solicit comments from the relevant parties by notification. The removal process can only be initiated after all other removal procedures have been completed. However, there have been repeated concerns that Form 7 could be used as a political weapon in the politically sensitive issue of implementing the SIR, especially in the following situations: The impartiality of the Electoral Commission is questioned; the deadline is too short; BLOs and Electoral Registration Officer face administrative pressure.

In such cases, Form 7 could become a tool for mass voter removal, with genuine voters potentially being removed from the voter list without thorough investigation and fair hearings.

Case Study: West Bengal and Communal Anxiety

The launch of "Phase II SIR" in West Bengal was itself a sensitive political environment, as the state borders Bangladesh and political rhetoric surrounding "undocumented immigrants" has already been intense.[249]

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[247] Construction World Editorial Team, "EC Begins First-Ever Training for Over 100,000 Booth Level Officers" *Construction World*, March 27, 2025, available at: *https://www.constructionworld.in/policy-updates-and-economic-news/ec-begins-first-ever-training-for-over-100000-booth-level-officers/70941* (Visited on November 7, 2025).

[248] Election Commission of India, "FORM 7" available at: *https://voters.eci.gov.in/* (Visited on November 6 , 2025).

[249] Shubham Bajpai, "Bengal SIR Triggers Panic In Illegal Settlers, Over 500 Attempt To Flee Toward Bangladesh Via Hakimpur Checkpost" *The Daily Jagran*, November 20, 2025, available at:

In this context, SIR sparked widespread social anxiety, particularly among the Matua community Hindu refugees from Bangladesh who wield decisive electoral influence in the state's border districts. For the first time since 2002, they were again being asked for legacy documents, raising deep concerns within the community about their identity and citizenship. The situation was so severe that reports cited words like "panic, anger, and suspicion," and some even suggested that the deaths of 28 people were directly linked to "SIR anxiety."

The political reaction was also intense. The Trinamool Congress publicly alleged that: “The BJP is engaging in political manipulation of voter lists under the pretext of identifying illegal infiltrators.” This allegation is particularly serious because the state is scheduled for assembly elections in 2026.[250]

This case study demonstrates that when an administrative process like electoral roll purification is conducted in a highly politicized environment where issues related to citizenship and identity are already emotionally and insecure the process can become a tinderbox of simmering social tensions. The fear and uncertainty generated in West Bengal was further exacerbated by the fact that the SIR documentation framework felt to many like an NRC-like exercise. While Assam kept its electoral revision process separate from the NRC, the public in Bengal did not perceive this to be the case, leading to widespread apprehension and confusion.

The biggest risk of this situation is that SIR could inadvertently promote arbitrary deletions or politically targeted removals which could disproportionately impact minorities and vulnerable communities.

The West Bengal example illustrates how administrative processes, political climate, citizenship-related fears. These factors can combine to make a technological initiative like SIR a source of serious social insecurity.

Conclusion

In India, the Special Intensive Revision is a significant and necessary measure aimed at upholding democracy. This is due to the lack of regular revisions over the past two decades and rapid demographic changes.

The main question of this study is; Is the SIR an attempt to promote electoral fairness, or a tool for targeting and excluding specific groups? An analysis of this question reveals a complex and nuanced dual truth.

1. The SIR is, to some extent, an attempt to promote electoral fairness and integrity. From a legal and administrative perspective, the SIR is undoubtedly a step towards electoral fairness.

https://www.thedailyjagran.com/india/bengal-sir-triggers-panic-in-illegal-settlers-attempts-to-flee-toward-bangladesh-seen-at-hakimpur-checkpost-10280955
(Visited on October 1, 2025).

[250] Times of India, “BJP trying to mislead with infiltrator pitch: Trinamool” *The Times of India*, available at: *https://www.timesofindia.indiatimes.com/city/kolkata/bjp-trying-to-mislead-with-infiltrator-pitch-trinamool/articleshow/124747748.cms*
(Visited on November 10, 2025).

Under the constitutional powers granted by Article 324 of the Indian Constitution and the legal powers granted by Section 21(3) of the Representation of the People Act, 1950, the Election Commission of India has full power to conduct intensive revisions. The deletion of 6.5 million voter lists in Bihar indicates a large number of "ghost voters," "duplicate registrations," and long-term unregistered voters in the state, and deleting these voters helps to enhance electoral fairness.

2. However, the SIR also carries the risk of targeted exclusion. The biggest drawback of the Signal Registry is that it imposes a heavy and unequal documentation burden on citizens especially those who are poor, are immigrants, are women, or belong to historically marginalized groups.

This burden is so heavy that many critics argue it is effectively a "citizenship test." Therefore, social panic, political tensions, and community insecurity are rapidly escalating, as evidenced by the "SIR panic" and reported deaths in West Bengal.

Furthermore, insufficient time, inadequate training of grassroots liaisons, and political abuse of Form 7 make the SIR process highly vulnerable to arbitrary and politically motivated expulsions. This situation poses a serious challenge to fundamental constitutional principles such as Universal Adult Suffrage and equality before the law.

Policy Recommendations

To ensure the SIR system is comprehensive, transparent, and unified, the following reforms are imperative:

The Supreme Court's directive on switching between Aadhaar, EPIC, and Ration cards should become a permanent policy. Reliance on legacy documents (2002/2003 registers) should be eliminated, and their local availability should be ensured.

Tools like DSE, PSE and AI based tech that rely on human error in the deduplication process should be improved. Integrating automated death data from civil registration systems (such as databases) is crucial. The entire SIRS database should be accessible online and made easy to use.

Bihar needs a Supreme Court-issued "reasoned based deletion list." All states should establish a permanent rule. Furthermore, procedures similar to those of electoral courts (Election Tribunal) should be established to handle large-scale ballot deletions.

BLOs should receive the necessary training. External inspectors or "special observers" should be appointed to conduct door-to-door checks. Special enhanced review should be conducted separately from other investigative activities. Ultimately, SIR is an objective purification process, but in terms of effectiveness, it is a risk-reduction system.

When the special enhanced review (electoral reform) process achieves this, it can truly enhance democracy and ensure the fairness of elections transparency, fairness, technological advancement and citizen-centeredness.

E-Sports: A Platform for Gender Equality in Sports

~Vasudha Bali*

ABSTRACT

Sports form an important activity in human development and the education system. With rapid development in technology and pandemics, "Electronic Sports" (hereinafter "e-sports") have become an important part of the gaming and sports world. E-sports was a full-out medal event in the Asian Games 2022, conducted in Hangzhou, China. "E-Sports presuppose playing video games in a competitive setting, emphasizing increased 'institutionalization' of gaming activity through the organization of e-sports teams and official international competitions." It is a complex convergence of culture, technology, business, and sports. In India, e-sports is a fast-developing industry. It witnessed a whopping investment of $544 million from August 2020- January 2021. India also has the E-Sports Federation. The Ministry of Sports & NITI Aayog has taken some steps toward its regulation. The judiciary and legislature have clearly stated that such gaming activities do not fall into gambling and are a "game of skill," which is legal.

Being a virtual platform, it goes beyond the biological differences between sexes that are emphasized in traditional sports. E-sports have provided an equal platform to women e-athletes with privacy and autonomy. But like traditional competitive sports, it is largely dominated by males. And due to the non-regularization of e-sports, females and non-binary players face overt barriers like gender violence, sexual harassment, pornography, etc., as well as subtle barriers like negative comments, and men shaming when losing to a girl, etc., in e-sports. The paper will discuss general issues: the meaning of e-sports and its socio-legal implications, with a focus on women's participation in e-sports.

Keywords: Electronic Sports, E-Sports, Game of Skill, Gender, Technology

INTRODUCTION

"Electronic Sports", famously known as E-Sports, are the modern, grander, and more technical version of video games that have been played in households since the '80s. With rapid development in Information and technology, and with recent events like the COVID pandemic, e-sports have become an important part of the sports world. According to the E-Sports Federation of India, "Esports (Electronic sports) is a competitive sport where gamers use their physical and mental abilities to compete in certain genres of video games in a virtual, electronic environment."[251] These games are played for titles and rewards in the form of prizes and trophies. Players of these games are formally called "E-Athletes".[252] But games like fantasy sports, Poker, rummy, teen patti, etc., are not included in e-sports. E-sports are quickly becoming an important part of the economy. All countries, including

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[251] What is E-sports, file:///E:/E%20sports/India%20&%20E-sports/Introduction%20ESFI%20_%20Esports%20Federation%20of%20India.html (Last visited on 1st Feb., 2025)

[252] *Ibid*

India, are taking steps to give a boost to E-Sports and other online gaming as well. It is also gradually becoming part of the traditional sports events, though a debate about it being a "sport" is still going on. There is a huge fan following and participation in these games across all ages and genders.

Although it is a male-dominated area, like traditional sports, a large number of female e-athletes participate in it, and some of whom are internationally known in the world of e-sports. As these games can be played privately and conveniently at home, this industry has an amazing opportunity to use these advantages towards gender equality in sports. It gives privacy, access, and anonymity to the females who, due to social barriers, could not physically participate in traditional games. It can also become an example of "gender-integrated" or "mixed sport", as biological reasons, like speed and strength, which act as a reason for separation between men and women in sports, are not essential in e-sports. But to gain such recognition it needs to deal with overt barriers like sexual harassment, pornography, etc., as well as subtle barriers like negative comments like men shaming when losing to a girl, etc., in e-sports.

The E-sports industry is largely unregulated at present. Except for some countries like South Korea, most countries have no robust regulations to evolve e-sports as part of traditional sports. There is the International Electronic Sports Federation, the Asian Electronic Sports Federation, which works for the promotion of e-sports through its national member federations. But still, it lacks recognition by the International Olympic Committee as a "sport" for which these federations have been petitioning for quite some time now.

The purpose of the article is to examine the impact of women's participation in e-sports, and for the said purpose, the paper will discuss general issues: the meaning of e-sports and its socio-legal implications with a focus on women's participation in e-sports. The paper is divided into three parts, apart from the introduction and conclusion, which will include recommendations. Part I contains all about "E-Sports", their meaning, their difference from other sports, and their impact on the world economy. Part II is "E-sports in India," containing sub-parts on its impact on the Indian economy and in detail discusses the legal framework of e-sports. Part III details "Women in E-sports," covering their participation in E-Sports, opportunities and barriers for women in e-sports, and lastly, the legal framework against sexual harassment in sports, which is the main area of concern in e-sports and creates a barrier for women in e-sports.

I. E-SPORTS

A. Meaning

Electronic sports, i.e., E-Sports, are professional competitive video games played by professional gamers.[253] "It is formally defined as an area of sports activities in which people

[253] Difference Between Esports and Gaming, file:///E:/E%20sports/Difference%20Between%20Esports%20and%20Gaming%20_%20Difference%20Between.html (Last visited on 19th Jan., 2025)

develop and train mental or physical abilities in the use of information and communication technologies."[254] It can be a multiplayer game played as a team called "team-oriented multiplayer online battle arenas (MOBAs)"[255] or individual single-player games, as in "single-player first-person shooters, to survival battle royales"[256], and like other sports, it is played live with an audience and bystanders.[257] It is defined as "the competitive play of video games in public settings (e.g., in online settings or streaming gameplay for spectators). Other forms of competitive video game play include playing against other players in person or online, playing for trophies or points, and playing for speed (i.e., competing for the fastest completion time in a game)."[258] It is also defined as, " a form of sports where the primary aspects of the sport are facilitated by electronic systems; the input of players and teams as well as the output of the eSports system are mediated by human-computer interfaces."[259] "It is said to include several elements of traditional professional sports like, "…fans, playoffs, uniforms, training, comebacks, upsets….. exists both at the amateur and professional level."[260] Some of the important broadcasting channels are ESPN, Turner Broadcasting System, YouTube, Twitch, etc.

The first e-sport event was organized at Stanford University in 1971, where "The Spacewar" game was played between various students for the prize of a one-year subscription to the highly sought "Rolling Stone Magazine".[261] Its perspective as a competitive sports event was seen in 1980, when the "Space Invaders" Championship was organized, where some 10,000 players participated.[262] One of the key reasons for the rise of e-sports is the broadening of broadcasting platforms. Now, the internet is one of the leading broadcasting media.[263]

B. *E-Sports v. Other Online Games*

For a better understanding of e-sports, it is important to note that even though e-sports involve playing online video games but not all online video games are e-sports. Unlike e-sports, other online gaming does not involve human-to-human competition. In most online games, the single player is involved in completing his/her own task or level of games, and in some, competing with the bots or Artificial Intelligence. It has no element of live competition, broadcasting, teams, trophies, or audience, etc. E-sports also differ from 'fantasy sports'. Fantasy sports is the selection or compilation of real-life sportspersons by

[254] Marko Marelić & Dino Vukušić, E- Sports: Definition and social implications 11(2) *EQOL Journal* 50 (2019)
[255] Aayush Sharma, Are E-Sports sports? An Empirical Analysis vis-à-vis Developments so far 2(1) *Global Sports Policy Review* 110 (2021)
[256] *Ibid*
[257] *Supra* note 3
[258] Omar Ruvalcaba, Jeffrey Shulze, Angela Kim, Sara R. Berzenski, and Mark P. Otten, Women's Experiences in eSports: Gendered Differences in Peer and Spectator Feedback During Competitive Video Game Play 00(0) *Journal of Sport and Social Issues* 2 (2018)
[259] *Supra* note 5
[260] *Supra* note 8
[261] *Supra* note 5 at 111
[262] *Ibid*
[263] *Supra* note 4

the "Manager," i.e., Player.[264] It is a virtual team of real-life sportspersons, where points are gained based on the real performance of the players selected.[265] So the winning or losing of a player depends on external factors. There are "Fantasy E-Sports" as well, where e-athletes/avatars of players are selected to make their virtual team, and points depend on the performance of the player.[266]

C. E-Sports v. Traditional Sports

There is an ongoing debate in the world of sports about whether "e-sports" is a sport. Most believe that e-sports have most elements of sports, besides some differences in physical activity. E-Sports, like traditional sports, are competitions between humans, have rules and regulations, viewers/audience, sponsors, prizes, and broadcasting. Most sports jargon, like a match, team, player, skill, practice, offence, defense, tactic, etc., is used in e-sports as well. To analyze further, we need to define 'sport', and like 'e-sport', it has no one definition.

According to the common Oxford Dictionary definition, sport is an activity that you do for pleasure and that needs physical effort or skill, usually done in a special area and according to fixed rules."[267] In some studies, the physical activity of e-athletes was determined based on "metabolic equivalent" and "cortisol levels", and it was found that levels were the same in traditional and e-sports players.[268] Based on this, it was concluded that though e-sports may not have the same kind of physical activity as required in traditional sports, it is not "sedentary" as often described.[269] Although health & mental benefits associated with sports are missing in e-sports, gaming companies are taking initiatives to improve the well-being of their e-athletes.[270]

D. Types of E-Sports

Most e-sports are categorized as MOBA, FPS, and RTS. "Multiplayer Online Battle Arena" (MOBA) like DOTA 2, League of Legends, etc., which have the highest prize money and audience.[271] "The game is played in teams of 5 players each having their roles and purpose is to defeat opponents' protected structure and at the same time defend their own".[272] "First Person Shooter" (FPS) like Counter-Strike: Global Offensive is a military-style combat game played in teams consisting of 5 members.[273] "Real Time Strategy" (RTS) like Starcraft 2 is played mostly as one-on-one. "In this genre, each player has parallel control of multiple units (covering offensive units, production units, scouting units, etc.) and

[264] Fantasy Sports vs Esports- All You Need to Know, file:///E:/E%20sports/Fantasy%20Sports%20vs%20Esports%20-%20What%20are%20the%20Differences_.html (Last visited on 12th Jan., 2025)
[265] What is Fantasy Sports?, https://fanarena.com/fantasy-sports/ (Last visited on 13th Jan., 2025)
[266] *Supra* note 14
[267] Definition of Sport, Oxford Learner's Dictionary, https://www.oxfordlearnersdictionaries.com/definition/english/sport_1 (Last visited on 6th Feb., 2025)
[268] *Supra* note 4 at 51
[269] *Ibid*
[270] *Ibid*
[271] *Ibid*
[272] *Ibid*
[273] *Ibid*

through tactics and skill defeats the opponent's forces."[274]

E. E-Sports' impact on the world economy

E-Sports is one of the largest economically valued industries. "In 2022, the global e-sports market was valued at just over 1.38 billion U.S. dollars. Additionally, the e-sports industry's global market revenue was forecast to grow to as much as 1.87 billion U.S. dollars in 2025. Asia and North America currently represent the largest e-Sports markets in terms of revenue, with China alone accounting for almost one-fifth of the market."[275] China alone generated approximately "360.1 million U.S. dollars within the industry".[276] In terms of prize money, the e-sports industry has some of the highest pools of prize money. "The e-sports game with the greatest tournament prize pool in 2022 was Dota 2, exhibiting a cumulative prize pool valued at 32.85 million U.S. dollars. This cumulative prize pool was only slightly higher of the runner-up, Arena of Valor, which had a cumulative prize pool of 32.73 million U.S. dollars during this period."[277]

In terms of the highest earning countries, the players of China brought home "almost 37.96 million U.S. dollars" through prize money in 2021, followed by the USA with 23 million U.S. Dollars.[278] One of the largest elements of sports is an audience that brings more money, sponsors and broadcasting earnings to the game. In 2022, e-sports had 261.2 million e-sports enthusiasts and an additional 270.9 million occasional viewers of e-sports.[279] Such is the wide viewership of e-sports, which is further going to increase in the coming years.

II. E-SPORTS IN INDIA

In 2022, the Government of India brought an amendment to the Government of India (Allocation of Business) Rules, 1961and officially allocated "E-Sports as a part of Multi-sports event" to the Ministry of Youth Affairs and Sports. [280] With the same amendment, "matters related to online gaming" were allocated to the Ministry of Electronics and Information Technology. [281] With the recent 2023 budget, prices of mobile phones have been reduced, and taxation changes have been made, which are seen as a positive sign by the gaming industry, as it will provide access to more people.[282]

A. E-Sport Economy of India

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[274] *Ibid*
[275] eSports market revenue worldwide from 2020 to 2025, https://www.statista.com/statistics/490522/global-esports-market-revenue/ (Last visited on 12th Jan., 2025)
[276] Esports Market revenue worldwide in 2021, by region, file:///E:/E%20sports/Global%20eSports%20market%20revenue%20by%20region%202021%20_%20Statista.html (Last visited on 12th Jan., 2025)
[277] Christina Gough, Leading e-sport games worldwide 2022, by tournament prize pool, https://www.statista.com/statistics/501853/leading-esports-games-worldwide-total-prize-pool/ (Last visited on 12th Jan., 2025)
[278] *Ibid*
[279] *Ibid*
[280] The Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022
[281] *Ibid*
[282] Abhimannu Das, The Union Budget 2023-24 Seeks to Make India a Superpower in Gaming and Esports, https://afkgaming.com/esports/news/the-union-budget-2023-24-seeks-to-make-india-a-superpower-in-gaming-and-esports ((Last visited on 10th Jan., 2025)

E-Sports and online gaming are not played just for pleasure these days. It is rapidly becoming part of international inter-country sports events. Tirth Mehta brought the first medal for India in E-Sports by winning a bronze medal in the Asian Games of 2018.[283] In the 2022 Asian Games, E-Sports is going to be a medal event, and India is sending its 18-member contingent for the event.[284] At the first-ever inter-country, Commonwealth E-sports Championship, India's DOTA 2 team won a bronze medal by defeating New Zealand.[285] Such performance at the international level will bring more revenue to India in the form of brands, gaming industry setups & broadcasting, etc. In 2021, the Indian e-sports industry had revenue of around 2.5 billion Indian rupees, which is estimated to grow to 11 billion Indian rupees in 2025.[286] The viewership of e-sports is constantly on the increase, with 17 million viewers in 2021, which is further estimated to increase to 85 million people by 2025.[287]

Besides the gaming industry, Indian e-sports players have also become important contributors to the Indian economy. According to the E-Sports earnings, "…. .1,052 Indian e-sports players have been awarded a total of USD 4,184,954.41 in prize money across 656 tournaments. The highest award-winning game was "PlayerUnknown's Battlegrounds Mobile" with USD 2,175,802.74, making up 51.99% of all earnings by Indian players. Nihal Sarin is the highest earning Indian player with USD 142,437.94 in prize money won overall, with USD 140,862.94 or 98.89% won from playing in Chess.com tournaments."[288] Harika Dronavalli is the highest-earning female e-sports player with $23,504.13.[289]

According to Statista, "Vivek Aabhas Horo, also known as 'Clutchgod' within the online gaming community, was one of India's most prominent e-sports athletes in terms of overall earnings that grossed over 52 thousand U.S. dollars by 2021. Owais was the second-best-earning eSports player in India that year, with total winnings amounting to nearly 51 thousand U.S. dollars."[290] In 2021, India had about 390 million online gamers, which was an 8% increase from last year and is estimated to increase to 450 million by 2023.[291] Around 150 million Indian E-Athletes were recorded in 2021, which is estimated to increase to 1.5 million by 2025.

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[283] Indian DOTA 2 Team wins bronze medal at Commonwealth Esports Championship 2022, https://www.timesnownews.com/technology-science/indian-dota-2-team-wins-bronze-medal-at-commonwealth-esports-championship-2022-article-93409516(Last visited on 12th Jan., 2025)

[284] Asian Games 2022: India's 18-member esports team identified, https://olympics.com/en/news/asian-games-2022-indian-esports-team-athletes-qualified-full-list (Last visited on 11th Jan., 2025)

[285] Tasmayee Laha Roy, How India's first Commonwealth Games Medal in esports will affect brands' interest, https://www.cnbctv18.com/storyboard18/how-indias-first-commonwealth-games-medal-in-esports-will-affect-brands-interest-14456822.htm(Last visited on 12th Jan., 2025)

[286] Tanushree Basuroy, eSports revenue in India FY 2021-2025, by category, file:///E:/E%20sports/India%20&%20Esports/India_%20eSports%20revenue%20by%20category%202025%20_%20Statista.html (Last visited on 12th Jan., 2025)

[287] *Ibid*

[288] Esports Earnings, https://www.esportsearnings.com/countries/in (Last visited on 12th Jan., 2025)

[289] *Ibid*

[290] *Supra* note 36

[291] Number of online gamers in India 2017-2021, https://www.statista.com/statistics/1064010/number-of-online-gamers-india/ (Last visited on 11th Jan., 2025)

B. Legal Status of E-Sports

Presently, India has no legal framework to regulate e-sports. With a rapid increase in e-sports participation, it must be regulated efficiently.

- *E-Sports: Skill or chance?*

The question of the legality of online games like fantasy sports has arisen in several cases. The issue in all these cases was whether online gaming or fantasy sports were games of skill or chance. High Courts in various decisions like Varun Gumber v. UT of Chandigarh[292], Gurdeep Singh Sachar v. Union of India[293], Chandresh Sankhla v. State of Rajasthan & Ors.[294] and Ravindra Singh Chaudhary v. Union of India[295] has held that "organized internet gaming events and fantasy games are 'games of skill' and 'games of chance' like gambling.

So far, no such issue has arisen concerning e-sports. But it will be important to understand what "games of skill" are. The Apex Court in State of Bombay v. R.M.D. Chamarbaugwala,[296] observed that "a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognized to be of a gambling nature." Therefore, the competition that has a "substantial" element of skill will not fall under gambling, even though it may have a slight chance. In State of Andhra Pradesh v. K. Satyanarayan & Ors.,[297] the Apex Court first time dealt with the question of what constitutes a "game of skill". The issue revolved around the game of "Rummy" and whether it is a "game of skill or chance". The Court held that the game of rummy, without any element of profit or gain, in itself is a game of skill even though it has some element of chance.

In Dr. K.R. Lakshmanan v. State of Tamil Nadu[298], while deciding the issue of horse riding, the Apex Court explained the difference between "a game of skill" and "a game of chance". The Court observed, "A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, and the shuffling of the cards are all modes of chance. In these games, the result is wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice are thrown, the wheel stops its revolution or the dealer has dealt with the cards." While explaining the "game of skill" the Court explained, "A game of skill, although the element of chance necessarily cannot be entirely eliminated, is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player…. There are few games, if any, which consist purely of chance or skill, and as such, a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element of skill predominates over the element of chance. It is the dominant element - "skill" or "chance" - which determines the character of the game." On

[292] 2017 SCC OnLine P&H 5372
[293] Judgment dated 30th April 2019 in Criminal P.I.L. No. 16 of 2019
[294] 2020 SCC OnLine Raj 264
[295] 2020 SCC OnLine Raj 2688
[296] 1957 SCR 874
[297] AIR 1968 SC 825
[298] (1996) 2 SCC 226

analyzing the e-sports in light of the above explanation, it will unmistakably fall under "game of skill" and not a chance.

- *Legislative Framework*

Since there is no legislation on e-sports, we need to look into other legislation that may be used to regulate it. The Public Gambling Act, 1867 (hereinafter "1867 Act") is widely used to control gambling in sports. However, Sec 12 of the 1867 Act clearly states that it does not apply to games of "mere skill".[299] As discussed above, e-sports are "games of skill" and not chance; therefore, the 1867 Act will not have an application to the act of playing e-sports. But any gambling done on the outcome of esports will come under the 1867 Act.

"Sports" is a "State" subject under Entry 33 of List II of Schedule VII of the Constitution of India, 1950. Consequently, some state legislation on online gaming is worth noting. The Sikkim Online Gaming (Regulation) Act, 2008, aims to regulate electronic and non-electronic gaming. The Act defines "online gaming" as "any gaming, where any player enters or may enter the game or takes or may take any step in the game or acquires or may acquire or may acquire a chance in any lottery, by means of a telecommunication device including the negotiating or receiving of any bet by means of a telecommunication device"[300] "Sports Gaming" is defined as "games involving the prediction of the results of sporting events and placing a bet on the outcome, in part or in whole, of such sporting event."[301]

Similarly, the State of Nagaland has enacted the "Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015" (hereinafter "Nagaland Act"). The Act aims to "prohibit gambling and promote online games skill". The Nagaland Act defines "a game of skill" in line with the Apex court interpretation as "all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analyses or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen."[302] The Sec. further explains that "Games of Skill" maybe "where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen."[303] Sec. 2(10) defines virtual as "games played online by means of computer automation and exercise of skill." The definitions are clearly in line with how e-sports are defined. The Nagaland also contain Schedule which lists out the

[299] "Sec. 12. Act not to apply to certain games.—Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played."
[300] Sec. 2(k) of the Sikkim Online Gaming (Regulation) Act, 2008
[301] Sec. 2(p) of the Sikkim Online Gaming (Regulation) Act, 2008
[302] Sec. 2(3) of the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015
[303] Explanation to Sec. 2(3) of Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015 provides, "Explanation: For the purposes of this Act:- (I) All games provided in Schedule A of this Act shall fall under the category of "Games of skill" (ii)'Games' which have been declared or determined to be 'games of skill' by Indian or international courts or other statues, or games where there are domestic and international competitions and tournaments, or games which can be determined to be 'games of skill' shall further be entitled to be included in Schedule A. (iii) Games of skill may be (a) Card based and (b) action/ virtual sports/ adventure/mystery and (c) calculation/strategy/quiz based"

category of games which fall under "games of skill". The list is wide enough to include all types of e-sports played presently. The Nagaland Act is a good example of promoting e-sports in the States.

Though "Sports" is a state subject, for national & International sports development, the Union government exercises residuary power under Article 248 with Entry 97[304], Entry 10,[305] and Entry 13[306] of List I. In *Mr. Narinder Batra* v. *Union of India*[307], it was observed, "The power to make laws with respect to sports as per Entry 33 in List II of the State legislature is to be construed as a power to legislate and regulate sports restricted to the precincts of the state and ending at its boundaries."[308] It was further observed that "…..to represent India as a nation at international sports meets as well as international forums, it is an essential part of Government function that scrutiny is effected by the sporting event or the forum in which participation is proposed. The source of the legislative competence of the Government to do so is derived from entry 10 and 13 of List I"[309] Based on the above observations it was held, "….sports, when construed from the aspect of Entry 33 in List II has to be confined to sports at the state level alone."[310] Therefore, like other sports, for the national and international promotion of e-sports, the Government of India has to take initiatives.

Presently, e-sports in India are looked after by the E-Sports Federation of India, which is a member of various international e-sports federations.[311] Unfortunately, it is yet to be recognized as the national sports federation by the Ministry of Youth Affairs and Sports. There are a few legal initiatives taken to deal with fraud and betting in online gaming. In this respect, the first initiative was taken by the Lok Sabha member, Dr. Shashi Tharoor, by introducing the private bill on online gaming titled, "the Sports (Online Gaming and Prevention of Fraud) Bill, 2018"[312]. Although the Bill could not be discussed due to the dissolution of a session, the online gaming industry highly appreciated it for bringing the matter before the legislation.

In 2022, "the Online Gaming (Regulation) Bill, 2022" was introduced in the Lok Sabha to regulate online gaming. Besides, the "Draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" and the "Digital Personal Data Protection Bill, 2022" have been released by the Ministry of Information Technology, which will have an impact on e-sports and online gaming. But the above-stated Bills & the Draft have yet to be passed and analyzed in light of the emerging issues in e-sports.

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[304] "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists"
[305] "Foreign affairs; all matters which bring the Union into relation with any foreign country"
[306] "Participation in international conferences, associations and other bodies and implementing of decisions made thereat"
[307] W.P. (C) 7868/2005
[308] *Id.* at Para 68
[309] *Id.* at Para 85
[310] *Id.* at Para 89
[311] About E-Sports Federation of India, https://esportsfederation.in/ (Last visited on 3rd Feb., 2025)
[312] The Sports (Online Gaming And Prevention Of Fraud) Bill, 2018, https://theleaflet.in/wp-content/uploads/2019/01/THE-SPORTS-ONLINE-GAMING-AND-PREVENTION-OF-FRAUD-BILL-2018.pdf(Last visited on 10th Jan., 2025)

III. WOMEN IN E-SPORTS

"In 2021, 41.5 percent of video gamers in the United States were females,"[313] and "in contrast to 41% of males, only 15% of females are fans of e-sports.[314] Globally, about 22% of females are fans of e-sports, with the highest number of females in South Korea.[315] In India, as of April 2022, "About 60 percent of females and 70 percent of males played games online in the surveyed time duration."[316] Some of the famous female e-sports players, having a huge fan following, are Shafgupta Iqbal aka "Xyaa", Payal Dhara, Deepanshi Rawat, aka "Dobby," Krutika Ojha & Saloni Panwar, the first Indian woman to compete at an International E-Sports Tournament held in Thailand.[317]

As e-sports is gaining recognition as "a multi-sport event," it is important that it adheres to the basic principles of sports. One such principle recognized by all sports organizations or federations is "Gender Equality". One of the fundamental principles of the Olympic charter is the freedom to play sports irrespective of sex or sexual orientation.[318] According to the statute of the International E-Sports Federation, one of the missions is to "ensure the open access to E-sports regardless of gender & sexual orientation".[319] To achieve this mission, some concrete measures need to be taken by all stakeholders in the e-sports industry.

A. Opportunities for women in E-Sports

E-Sports have a great opportunity to develop as one of the most gender-neutral sports sectors. It presents various opportunities to women and others irrespective of their gender. However, there is a need to address some challenges that can harm women's participation in e-sports.

- *Sex Integrated Sport*

The modern Olympic Games, first held in 1896, were intended as an all-male event. Eventually, when women's participation was allowed, the social structure was such that sports events, like other sectors, were segregated based on sex. In 1928, 5 American women participated in the track event, which was strongly opposed.[320] But in 1932, Mildred "Babe" Didrikson Zaharias disproved this perception otherwise by setting the Olympic record in three track events, playing with a male baseball team, winning a first golf tournament, and

[313] Distribution of video game users in the United States in 2021, by gender, https://www.statista.com/forecasts/494867/distribution-of-gamers-by-gender-usa (Last visited on 12th Jan., 2025)
[314] Level of interest in eSports in the United States as of September 2021, by gender, https://www.statista.com/statistics/1108273/esports-interest-gender (Last visited on 12th Jan., 2025)
[315] Christina Gough, Global Female esports audience share 2019, by country, file:///E:/E%20sports/About%20E-Sports/Global%20female%20eSports%20audience%20by%20country%202020%20_%20Statista.html (Last visited on 12th Jan., 2025)
[316] *Supra* note 36
[317] Michelle, Top 5 female Streamers Conquering the Gaming Industry in India, E:/E%20sports/Gender%20&%20E-sports/Top%205%20Female%20Streamers%20Conquering%20The%20Gaming%20Industry%20in%20India%20-%20FanClash.html(Last visited on 12th Jan., 2025)
[318] Kruthika N. S., ESports and Its Reinforcement of Gender Divides, 30 *MARQ. Sports L. REV*. 349 (2020)
[319] Statutes of International E-Sports Federation, https://iesf.org/wp-content/uploads/2022/04/IESF-Statutes-2021.pdf (Last visited on 10th Jan., 2025)
[320] Karen Tokarz, *Women, Sports and the Law: A comprehensive Research Guide to Sex Discrimination in Sports* 4 (W.S. Hein, New York, 2000)

in 1950 was chosen as Women's Athlete of the Half Century by the Associated Press.[321] In 1973, Billie Jean King, in her 30's, defeated Bobby Riggs in the famous 'Battle of the Sexes'.[322]

In 1972 American Congress passed *Title IX of the Education Amendment of 1972,* which resulted in a huge increase in women's participation in sports in America.[323] But *Title IX* proved to be a double-edged sword. Although it increased the opportunity for women in sports, it also formalized the normative binary sex segregation in sports in America. Many feminists, authors, and women athletes started questioning whether separate opportunities for women in sports lead to equality in sports. Those who support such binary classification argue on the grounds of distributive justice and positive discrimination. But those who oppose argue that sex segregation is based on the assumption that women are not equal to men, and it reinforces the gender stereotype in sports.[324] The response of the US judiciary on this issue is mixed. In *O' Connor* v. *Board of Education*[325], U.S. Supreme Court upheld the sex segregation in basketball games, but in later decisions like *Beattie* v. *Line Mt. Sch. Dist.,*[326] the Court held that excluding female high school wrestlers from all-male wrestling teams violated the Equal Protection Clause.

In India, Articles 14 to 16 lay the principle of equality before the law without any discrimination based on sex. But the social roles and norms have always created barriers to the effective enforcement of this right. *C. B. Muthamma* v. *Union of India,*[327] *Air India Etc.* v. *Nergesh Meerza & Ors*.,[328] and the recent decision of the *Secretary, Ministry of Defence* v. *Babita Puniya*[329], are some of the cases where women challenged decided sex roles and won their right to equality. So far, in India, there have been no judicial challenges to sex-segregated sports. It has been conveniently accepted because of our social structure.

Despite the rising voices against sports segregation, traditional competitive sports are still segregated based on sex. The prevailing binary structure in sports also creates challenges for transgender/intersex individuals. But, e-sports organizations have an opportunity to overcome this and provide an equal platform to all genders by having mixed-player games. The nature of e-sports is such that it does not require biological elements of strength or speed, which is the main reason behind segregated sports. Instead of the physical element, e-sports require more mental strength and speed to quickly devise strategies to overcome the opponent. In this way, the e-sports industry has a huge opportunity and scope to promote gender equality by organizing all-gender integrated e-sports competitions. It will provide an equal platform to women and other genders as well.

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[321] *Id.* at 5
[322] Susan Ware, *Game, Set, Match: Billie Jean King and the Revolution in Women's Sports* 75 (The University of North Carolina Press, 2015)
(2011).
[323] *Id.* at 9
[324] Nancy Leong, "Against Women's Sports" 95(1) *Washington University Law Review* 1 (2018)
[325] 449 U.S. 1301 (1980)
[326] 992 F. Supp. 2d 384 (M.D.Pa.2014)
[327] 1979 AIR 1868, 1980 SCR (1) 668
[328] 1981 AIR 1829, 1982 SCR (1) 438
[329] 2020 SCC Online SC 200

- *Access & Anonymity*

E-sports are virtual sports, which can be played conveniently at home. There is no need for physical presence. Also, most e-sports can be played on mobiles, which most women have access to these days. Such kind of access to sports is not available in traditional sports. Women who are not allowed to physically mingle with the outside world, due to religious or social reasons, can also have access to e-sports. Another important feature of these e-sports is anonymity. Most e-athletes have characters in games called "avatars," and players can name their avatars as they like. Therefore, there is no need to provide any kind of personal information to the outside world. A person of any gender, sexual orientation, or occupation can play these sports without disclosing their true identity to the outside world. Hence, e-sports can provide freedom and equal space to such women who otherwise would not be able to play traditional sports.

According to the 19-year-old PUBG and DOTA participant, Mahrukh, from Gilgit-Baltistan, Pakistan, "I just want to prove….. people say I cannot be like boys, that thinking makes me more frustrated, and that might be the reason for me playing these games."[330] As per the study conducted in Gilgit-Baltistan, Pakistan, "The participants unveiled that they use e-sports to show their true selves and to escape the collectivistic culture and societal norms. Additionally, various social and psychological factors motivated participants to use e-sports as a vehicle for liberation and freedom."[331] Some of the primary reasons that motivated them to participate in e-sports were "freedom, autonomy, escapism, and privacy".[332] Women deliberately used "gender camouflaging" to keep them anonymous and to avoid any kind of sexual harassment & abuse.[333] E-sports provided them with privacy, which they were not able to find in their social structure.[334] Hence, e-sports can be a great way to build confidence and a sense of achievement in women, which otherwise could not do so by conventional methods.

B. Barriers for women in E-Sports

Even though a large number of women are engaged in e-sports, they still face social and cultural barriers. To overcome these barriers, it is necessary to address the following concerns faced by women in e-sports.

- *Sexual Harassment*

The misogynist approach seen in traditional sports also prevails in the world of online gaming. Men who lose to women often take an abusive approach. This abusive behavior often leads to sexual harassment and rape threats. Recently, an Indian e-sport player threatened rape and murder like the Nirbhaya incident while streaming live on the

[330] Umer Hussain, Bo Yu, George B. Cunningham & Gregg Bennett, "I Can be Who I Am When I Play Tekken 7": E-sports Women Participants from the Islamic Republic of Pakistan, 16(8) Games and Culture 979 (2021)
[331] *Id*. at 986
[332] *Id.* at 987, 988
[333] *Id.* at 987
[334] *Id.* at 989

YouTube.[335] According to a female e-athlete, "When guys get to know that I am a woman, they sometimes send me inappropriate messages, for instance, sexual messages, I do not like that at all."[336] "Gamergate", an "Online Harassment" campaign, is one of the worst examples of harassment in online gaming. It started after one of the male gamers accused his girlfriend of infidelity at a gaming platform which resulted in full-fledged sexual harassment or mob lynching type campaign where not only the ex-girlfriend of the player but all the women who came in her support were brutally abused and even threatened with rape.[337] In another incident, a transgender e-athlete was harassed with sexist and transphobic comments.[338] There have been many incidents of sexual harassment by the team players and even coaches of the e-sports team, which have been resolved with minor fines and punishment. Recently, in a class civil action suit against "League of Legends" publisher Riot Games for pay disparity, gender, and sexual harassment, Riot Games agreed to pay 100 million dollars as settlement money.[339] Even female media critics have been harassed for raising issues related to female characters in games.[340]

- *Character Representation*

The world of games is a virtual world, and the characters created in this world are often far from reality. Avatars are depicted as perfect body specimens far from reality, and such portrayals often have a negative effect. In the words of the female player, "…..they try to portray a woman, which is strong and beautiful, but chubby and broad women can be strong, but they try to portray women's image, which is strong, and she is bad-ass at the same time, and she is beautiful and perfect".[341]According to some of the studies, online games are often made for the "male gaze", hence, they often have characters and portrayals according to males.[342] The female characters are objectified and often depicted in a sexualized manner, whereas male characters are depicted more as muscular.[343] Since the games are made from the male perspective, women players are often criticized for playing such games and wasting their time.[344] According to some studies, the sexualized representation of women in video games also discourages women players from

[335] Mayank Mohanti, Indian Gamer Threatens Sexual Assault In YouTube Video, With Nirbhaya Rape Reference, https://www.indiatimes.com/technology/news/indian-gamer-threatens-sexual-assault-in-youtube-video-nirbhaya-rape-reference-537828.html(Last visited on 10th Jan., 2025)
[336] Umer Hussain, Bo Yu, George B. Cunningham & Gregg Bennett, "I Can be Who I Am When I Play Tekken 7": E-sports Women Participants from the Islamic Republic of Pakistan, 16(8) Games and Culture 994 (2021)
[337] Caitlin Dewey, The only guide to Gamergate you will ever need to read, https://www.washingtonpost.com/news/the-intersect/wp/2014/10/14/the-only-guide-to-gamergate-you-will-ever-need-to-read/(Last visited on 11th Jan., 2025)
[338] John T. Holden, Thomas A. Baker III, & Marc Edelman, The #E-Too Movement: Fighting Back Against Sexual Harassment in Electronic Sports, 52 Ariz. St. L.J. 12 (2019)
[339] Esports: League of Legends publisher Riot Games settles gender discrimination case for $100 million, file:///E:/E%20sports/Gender%20&%20Esports/Esports_%20League%20of%20Legends%20publisher%20Riot%20Games%20settles%20gender%20discrimination%20case%20for%20$100%20million%20-%20Sportstar.html(Last visited on 12th Jan., 2023)
[340] Kruthika N. S., ESports and Its Reinforcement of Gender Divides, 30 MARQ. Sports L.REV. 357 (2020)
[341] Umer Hussain, Bo Yu, George B. Cunningham & Gregg Bennett, "I Can be Who I Am When I Play Tekken 7": E-sports Women Participants from the Islamic Republic of Pakistan, 16(8) Games and Culture 994 (2021)
[342] Kruthika N. S., ESports and Its Reinforcement of Gender Divides, 30 MARQ. Sports L.REV. 352 (2020)
[343] *Supra* note 91
[344] *Supra* note 92 at 353

participating in such games, as it often leads to online harassment from male players.[345] Although it is the virtual world, to bring e-sports to the same platform as other sports, e-sports must be made closer to reality.

- *Stereotype Attitude*

As discussed earlier, often when any male player loses to a women player, it is not taken with a healthy sportsmanship attitude. Such a negative stereotype attitude also creates a hurdle for women players. In 2016, SeYeon Kim, a professional e-sports player, was accused of cheating through program-enhancing codes, as no one was willing to believe that a teenage girl showed good skills in online gaming.[346] Ultimately, she had to prove her innocence by going public and live-streaming her skills.[347] Such stereotypical attitudes create obstacles for women players in e-sports and online gaming. In traditional games, women are treated as weaker than men in speed and strength, but e-sports have an advantage in this respect. Therefore, the societal stereotype attitude needs to be addressed in high-tech e-sports culture to encourage more women's participation.

C. Legal Framework against Sexual Harassment

According to the Declaration on the Elimination of Violence against Women, 1993 violence against women includes, "Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere…"[348] The fourth World Conference on Women defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."[349] It encompasses "Physical, sexual and psychological violence occurring within the general community, including… sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere…".[350] Article 11 of the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW) requires state parties to take measures to eliminate discrimination in employment and provide a safe environment for women.[351] Art. 1.4 of the Olympic Code of Ethics states, "Respect for international conventions on protecting human rights insofar as they apply to the Olympic Games activities and which ensure in particular: the rejection of all forms of harassment and abuse, be it physical,

[345] *Id.* at 354
[346] *Ibid*
[347] *Ibid*
[348] Article 2(b) of the Declaration on Elimination of Violence against Women, 1993, https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women (Last visited on 10th Dec., 2024)
[349] The United Nations Fourth World Conference on Women, 1995, https://www.un.org/womenwatch/daw/beijing/platform/violence.htm (Last visited on 25th July, 2024)
[350] *Ibid*
[351] "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."

professional or sexual, and any physical or mental injuries."[352]

- *Indian Legal Framework*

In *Vishakha* v. *State of Rajasthan*[353], then Chief Justice J.S. Verma, while giving the guidelines on the matter of sexual harassment, observed, "Each such incident results in a violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is a clear violation of the rights under Articles 14, 15, and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) to practice any profession or to carry out any occupation, trade or business."

The "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" (hereinafter "2013 Act"). The 2013 Act lays out a wide definition of "Sexual Harassment" under Sec. 2(n)[354] to be read with Sec. 3 of the 2013 Act. Under Sec. 2(o) (iv) of the 2013 Act, "Workplace" includes "any sports institute, stadium, sports complex or competition or games venue, whether residential or not, used for training, sports or other activities relating thereto." The 2013 Act lays down in detail the internal complaint & investigation procedure to be followed by the "employer," which will include all government and non-government sports organizations. To further clarify the provisions, in the exercise of a power conferred under Sec. 29 of the 2103 Act, the government passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.[355]

In online sexual harassment, the Information Technology Act, 2000 (hereinafter "IT Act") is also relevant. "Sending offensive messages through a communication service" is a punishable offence under Sec. 66A of the IT Act.[356] Whosoever "intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent" is punished for violation of privacy under Sec. 66E of the IT Act. Publication or transmission of "obscene material"[357], "material containing sexually

[352] IOC Code of Ethics, https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Leading-the-Olympic-Movement/Code-of-Ethics/EN-IOC-Code-of-Ethics-2016.pdf (Last visited on 25th Jan., 2025)
[353] (1997) 6 SCC 241
[354] An act of "Sexual Harassment" includes, "any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely: (*i*) physical contact and advances; or (*ii*) a demand or request for sexual favours; or (*iii*) making sexually coloured remarks; or (*iv*) or (*v*) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."
[355] the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, https://www.iitk.ac.in/wc/data/Rules_Sexual-Harassment-at-Workplace.pdf (Last visited on 10 Dec., 2025)
[356] "Sec. 66A. Punishment for sending offensive messages through communication service, etc.–Any person who sends, by means of a computer resource or a communication device,– (a) any information that is grossly offensive or has menacing character; or (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine."
[357] Section 67 of the Information Technology Act, 2000

explicit acts"[358] and "material depicting children in a sexually explicit act"[359] in electronic form is punishable under various provisions of the IT Act. Since India does not have any legislation or provision relating to e-sports, the IT Act will be the main legislation applicable in cases of harassment in online gaming and e-sports to be read with the 2013 Act and the Indian Penal Code, 1860.

IV. CONCLUSION

Advancements in information technology have impacted various sectors of the economy, including sports. E-sports are competitive video games played in a professional setup by gamers called "e-athletes". It is rapidly becoming an important part of the economy, including India. Though it is still looking for recognition at the Olympics, a large number of international and inter-country e-sports events are being organized. The anonymity and easy access to their privacy provide amazing opportunities to women who are otherwise not able to participate due to social and cultural barriers. E-sports also affords prospects for "sex-integrated" or "mixed sports," which are otherwise difficult due to biological reasons in traditional sports. This virtual sports platform can break the traditional barriers that impact women's participation in sports. But unfortunately, the gaming industry is also affected by traditional masculine thinking. The e-sports being largely dominated by men face gender stereotypes and stigmas, like online sexual harassment, etc. To overcome such hurdles, all stakeholders need to address such hostile work environment attitudes.

India has recently allocated the "promotion of e-sports as a multi-sports event" to the Ministry of Sports & Youth Affairs. At the same time, "online gaming" was allocated to the Ministry of Information Technology. But e-sports are not separate from online gaming. To promote it as a "sport," both ministries will need to work in coordination. Presently, no legislation regulates e-sports in India. There is a need to study and learn from other countries like South Korea, which have promoted this sector in a regulated manner. Legislations that have an impact on e-sports, like the IT Act, 2000, and the Sexual Harassment Act, 2013, etc., will have to be amended to deal with the emerging issues of e-sports. The E-Sports Federation of India needs to be recognized by the Government of India and encourage corresponding state e-sports federations to recognize e-sports talent in India. A regulated pool of players will also discourage gender harassment and other online violence, as the players will have a sense of responsibility as e-athletes. It will also act as a platform to encourage various genders in e-sports participation in India.

As the virtual world is not limited to any one country, therefore, there is also a need for an international body to regulate it in a coordinated manner. Since e-sports is still emerging and constantly evolving, it will be good if concerns related to women or other gender participation are addressed at an initial stage. Joint action by all the countries on gender harassment and related gender matters will encourage more diverse gender participation in e-sports.

[358] Section 67A of the Information Technology Act, 2000
[359] Section 67B of the IT Act, 2000

A COMPARATIVE ANALYSIS ON FIR IN CR.P.C& BNSS

~Rishitha Bacchu*

Abstract

This paper tries to explore one of the key aspects in criminal proceedings – FIR/Complaint by the police in cases of cognizable offences. Criminal Proceedings start with the reporting of a crime and filing a FIR in case of cognizable offences[360]. This paper deals with the filing of FIR and the procedure related to it, by way of comparing the provisions of the Code of Criminal Procedure, 1973, and Bharatiya Nagarik Suraksha Sanhita, 2023[361]. It also explores the constitutional and jurisprudential essence of these provisions in balancing the individual interests and societal interests. It highlights the role of new criminal laws in protecting the social sense of stability and the compliance of these provisions with the Constitution. It also analyzes the judicial precedents in interpreting the laws and the changes in the new provisions. The paper seeks to find the gaps or issues in the provisions.

Introduction

Criminal law has significantly contributed to the maintenance of law and order, the prevention & detection of crime, and the protection of society. Law is dynamic and hence changes according to the time and perspective of society. Though there were gaps in the laws, updates were made in the form of amendments accordingly. The new Criminal laws Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), introduced in 2023, replaced the previous criminal laws: Indian Penal Code 1860 (IPC), Code of Criminal Procedure 1973 (Cr.P.C), and Indian Evidence Act 1872 (IEA). These new laws aim to improvise the judicial system, make it more accessible to the public, and incorporate technology. It focuses on various evolving crimes such as cybercrime and organized crimes, along with key changes in reporting, investigation, and punishments. On one hand, the law prevents crimes and, on the other hand, balances the fundamental right – right to life under Article 21 of the Constitution.[362]

BNSS, previously Cr.P.C., is a procedural law that lays down the procedure to be followed in criminal proceedings. The first major aspect of a criminal case, especially cognizable, is lodging a First Information Report (FIR), filing a complaint with the Magistrate, or on the basis of information received from a person about the crime. Most commonly known is filing a FIR with the police officer in the Police Station as per section 154 of Cr. P.C., presently section 173 of BNSS.[363] Though FIR is not explicitly mentioned in the Act or the provision, it is given as the duty of the Police Officer to record the information of the crime. This is the first action taken in the pre-trial stage and leads to an investigation. There are

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[360]The Code of Criminal Procedure, 1973, § 154 (India).

[361]Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, § 173 (India).

[362] India Const. art. 21.

[363] The Code of Criminal Procedure, 1973, § 154 (India); Bharatiya Nagarik Suraksha Sanhita, 2023, § 173 (India).

improvised changes in the BNSS in this aspect, which are discussed in this paper.

Jurisprudential & Constitutional Essence

Filing an FIR is not just a procedural aspect, but it also serves as the initiation of the judicial process. FIR aims to provide an official record of the occurrence of a crime and assists the court as corroborative evidence. It further ensures accountability on part of the Police to start with the investigation, acts as a deterrent to criminal behaviour in the community, and is used as a dying declaration in case the informant succumbs to the injuries sustained. On the other hand, it also protects the accused by preventing the addition of facts or contradicting statements and assists him in a bail application, either anticipatory or quashing the FIR. Sometimes, FIR can be given by the accused himself, leading to the discovery of a fact or the revealing of the crime.

It alone has various angles – it protects the society, it aids the victim, it makes the state responsible, it also supports the accused in certain cases, involving the Right to life and liberty; FIR works as multi-dimensional. Filing a FIR is a fundamental right under Article 21 of the Constitution.[364] The Supreme Court also ruled out in a landmark case, Lalitha Kumari v Government of Uttar Pradesh, that it is mandatory to register a FIR for any information received on a cognizable offence by the police, and it is considered a fundamental right under Article 21.[365] Denial of FIR leads to a violation of fundamental rights, and the informant has a right to enforce such fundamental rights under Article 32 by way of filing writs.

Article 38 of the Indian Constitution says that State has a duty to promote the welfare of the people by ensuring social order based on social, economic, and political justice[366]. Registration of FIRs is not directly connected to this article, but ensuring fair and transparent filing ensures the State's responsibility in promoting the welfare of the public. It creates a system where justice is accessible to all.

Article 39A of the Indian Constitution mandates that it is the duty of the state to ensure a secure legal system providing access to equal justice, and free legal aid. FIR indirectly forms part of this provision, by providing access to a secure legal system.[367]

- Law and its role in balancing the rights of the Society & the individual

Law is one of the major aspects that shape Society and maintain law and order in the community. As mentioned above, law is a multidimensional subject that balances society's rights and individual rights by establishing constitutional provisions such as fundamental rights, and it also provides restrictions along with other procedural and statutory frameworks.[368]

Law ensures every person has access to rights and opportunities, but not at the cost of public order or security. There are a few aspects that stop excessive and improper use of rights,

[364] India Const. art. 21.
[365] Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1.
[366] India Const. art. 38.
[367] India Const. art. 39A.
[368] India Const. arts. 14, 19, 21.

such as reasonable restrictions, judicial reviews, proportionality, government interference, etc.

In the aspect of FIR, it creates a sense of deterrence in society, protects the victim and society by strengthening security. In contrast, it also gives rights to the accused, such as the right to legal aid, the right to know the charges filed against him, the right to defend, right against false accusations or defamation.[369]

- To Protect the Social Sense of Stability

Law protects the social sense of stability by making sure that the public has access to justice, basic rights, and legal aid. It unites the society and ensures collective well-being. Law not only secures individual security but also fosters economic security, making sure that the government effectively focuses on maintaining justice and order. It establishes a set of rules and norms according to the standards of the society. FIR specifically is a tool for maintaining social stability in society, as it provides a platform for people to report the wrong caused, which creates fear in society. It helps in investigating the offence and provides justice accordingly.

- Society abhors the Crime

Crime is an act or omission that is against the law, violates the provisions of law, or is immoral according to the society. And such an act or omission is hated by the society, as it creates fear and troubles people. In general, society views certain behaviors as immoral or unethical, not merely in accordance with the law. Individual differences exist in societal aspects such as unemployment, poverty, and illiteracy. Some even blame the victim for the crime, viewing it as their fault.

- Right to Life is a Fundamental Right

Basic rights that are necessary for survival are referred to as fundamental rights. These include the right to life, the right to equality, the right to education, and the right to human dignity. One such right is the right to life, which is applicable to all citizens and non-citizens in all circumstances. It also encompasses the rights to humane conditions, personal dignity, health and strength protection, and educational facilities.

Certain situations, such as state emergencies, the right to die or commit suicide, and situations when a public authority takes appropriate measures to prevent illegal activity, do not fall under the right to life. It is not used against the person, but rather against the State. A writ petition may be filed in the Supreme Court or the High Court under Article 32 and Article 226, respectively, if an individual believes they have been deprived of their right to life. [370]

- Procedure Established by Law- to defend

Article 21 of the Indian Constitution reads as - No person shall be deprived of his life or personal liberty except according to the procedure established by law.

[369] D.K. Basu v. State of West Bengal, (1997) 1 S.C.C. 416; see also India Const. art. 22
[370] India Const. arts. 32, 226; Francis Coralie Mullin v. Administrator, U.T. of Delhi, (1981) 1 S.C.C. 608

A procedure established by legislation means that a law is only deemed legitimate when it is enforced in accordance with the proper and legal procedure. Everyone has the fundamental right to life and personal freedom under Article 21. Except in situations where a certain process is followed that is mandated by law. The American principle of due process of law, which refers to the procedure provided by the law and is also much superior, just, and equitable, serves as the foundation for this concept.

In the landmark case of Maneka Gandhi v Union of India (1976), Article 21 was properly applied. A procedure established by law was liberally taken as the principle of due process of law.[371]

Explaining the Law

The Code of Criminal Procedure (henceforth referred to as Cr.P.C.) and all other criminal legislation, whether procedural or statutory, do not specifically address First Information Reports, or FIRs. However, the process of documenting any information that a person receives about a cognizable offense is covered under section 154 of the Cr.P.C. 1973. Section 175 of Bharatiya Nagarik Suraksha Sanhita 2023 (henceforth referred to as BNSS) outlines the process for filing information received on a cognizable offence following the adoption of new criminal legislation. A few FIR-related additions have been made to the BNSS.

Code of Criminal Procedure, 1973

Section 154 - Information in cognizable cases[372]

This provision talks about the procedure of recording the information of a cognizable offence by a police officer.

1. It says that information of a cognizable offence can be given either orally or in written format to an officer in charge of a police station. If the information received is in oral format, it shall be reduced to writing by the officer in charge and should be read out to the informant. Such information, which is either reduced to writing or written information about a cognizable offence, shall be signed by the informant. The information received by the officer in charge shall be entered in a book that is kept with such officer. It forms a part of the officer's duty.
    - The provision also states that if the informant is a woman against whom any offence has been committed under the following provisions of the Indian Penal Code 1860.[373]
        a. Section 326A - Voluntarily causing grievous hurt by use of acid, etc.
        b. Section 326B - Voluntarily throwing or attempting to throw acid
        c. Section 354 - Assault of criminal force to woman with the intent to outrage her modesty

[371] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248; see also Upendra Baxi, Law and Poverty: A Policy for the Poor?
[372] Code of Criminal Procedure, 1973, § 154 (India).
[373] Indian Penal Code, 1860, §§ 326A–326B, 354–354D, 376–376E, 509 (India).

d. Section 354A - Sexual harassment and punishment for sexual harassment
e. Section 354B - Assault of criminal force to woman with intent to disrobe
f. Section 354C - Voyeurism
g. Section 354D - Stalking
h. Section 376 - Punishment for rape
i. Section 376A - Punishment for causing death or resulting in a persistent vegetative stage of the victim
j. Section 376AB - Punishment for rape of a woman under twelve years of age
k. Section 376B - Sexual intercourse by husband upon his wife during separation
l. Section 376C - Sexual intercourse by a person in authority
m. Section 376D - Gang rape
n. Section 376DA - Punishment for gang rape of a woman under 16 years of age
o. Section 376DB - Punishment for gang rape on a woman under 12 years of age
p. Section 376E - Punishment for repeat offenders, or
q. Section 509 – Word, gesture, or act intended to insult the modesty of a woman

- It is also provided that if the information on the above cognizable offences, given by a woman against whom such offences are alleged to have been committed or attempted, then such information shall be recorded only by a woman police officer or any other woman officer.
- It is further provided that if any person who alleges that the cognizable offences mentioned above, except for section 326A and 326B, have been committed or attempted on them, is mentally or physically disabled, either permanent or temporary, then such information shall be recorded by a police officer either at the residence of the informant or any such convenient place suggested by the information. It is mandatory to record the information in the presence of an interpreter or a special educator as per the disability or the circumstance. It is also necessary to record such information in the form of a video graph. Police officer recording information in such cases shall get the statement made by the informant recorded by a Judicial Magistrate under section 164(5A)(a) of Cr.P.C[374] at the earliest.

2. The information recorded (FIR) by the officer in charge or any other such officer shall be provided to the informant at free of cost in the form of a copy of the report.

[374] Code of Criminal Procedure, 1973, § 164(5A)(a) (India).

3. If the officer in charge refuses to record the information about a cognizable offence given by the informant, then the informant may make written information regarding such offence and send it to the Superintendent of Police (SP) through post. If the SP is of the view that the information sent is a cognizable offence, then he shall investigate the case himself, or he can order any of his subordinates to investigate the same. The officer who is investigating shall have the powers of an officer in charge in relation to that offence and shall investigate in the manner prescribed by the Code.

Bharatiya Nagarik Suraksha Sanhita, 2023

Until 2023, Cr.P.C. was followed, and an effort was made to bring in new laws to improve the judicial system and make the criminal laws suitable to present society. BNSS has replaced the Cr.P.C.

Section 173 - Information in Cognizable Offences[375]

This provision talks about the procedure of recording the information of a cognizable offence by a police officer.

1. It states that every information as to the commission of a cognizable offence, whether given orally or by any means of electronic communication, regardless of the area of offence committed, is given to an officer in charge of a police station. If the information is orally given, it shall be reduced to writing by such officer, and shall be read out to the informant. Such information that is reduced to writing or given in writing shall be signed by the person giving it.
   i. If the information is communicated in electronic form, then the signature of the informant shall be taken within three days. All such information shall be recorded in a book which is kept by such officer in the form prescribed by the State Government.
   ii. It is provided that any information about a cognizable offence (given under BNSS, 2023)[376] under the mentioned sections, is given by a woman against whom such an offence has been committed shall be recorded by a woman police officer or any woman officer.
      a. Section 64 - Punishment for rape.
      b. Section 65 - Punishment for certain cases.
      c. Section 66 - Punishment for causing death or resulting in a persistent vegetative state of the victim.
      d. Section 67 - Sexual intercourse by husband upon his wife during separation.
      e. Section 68 - Sexual intercourse by a person in authority.
      f. Section 69 - Sexual intercourse by employing deceitful means, etc.
      g. Section 70 - Gang rape.
      h. Section 71 - Punishment for repeat offenders.

[375]Bharatiya Nagarik Suraksha Sanhita, 2023, § 173 (India).
[376]Bharatiya Nyaya Sanhita, 2023, §§ 64–71, 74–79, 124 (India).

i. Section 74 - Assault or use of criminal force on woman with intent to outrage her modesty.

j. Section 75 - Sexual Harassment.

k. Section 76 - Assault or use of criminal force on woman with intent to disrobe.

l. Section 77 - Voyeurism

m. Section 78 - Stalking

n. Section 79 - Word, gesture, or act intended to insult the modesty of a woman.

o. Section 124 - Voluntarily causing hurt or grievous hurt by use of acid.

- It is further provided that

a. In a case where the informant against whom cognizable offence such as Section 64, Section 65, Section 66, Section 67, Section 68, section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of BNSS, 2023 is alleged to have been committed or attempted and if such offence has mentally or physically disabled, either temporarily or permanently, then the police officer shall record such information at the residence of such informant, or at any place which is convenient to such informant. An interpreter or a special educator is to be present while recording such statements, as the case may be.

b. While recording the information given, it shall also be recorded through video graph.

c. Police officer recording information in such cases shall get the statement made by the informant recorded by a Judicial Magistrate under section 183(6) at the earliest.[377]

2. The information recorded (FIR) by the officer in charge or any other such officer shall be provided to the informant or victim at free of cost in the form of a copy of the report.

3. This provision states that subject to the provisions contained in section 175 (Police officer's power to investigate cognizable case), any information received regarding commission of a cognizable offence, which is punishable for three years or more but less than seven years, in such case, the officer in charge of the police station has a discretion to consider the nature and gravity of the offence with the prior permission from an officer who is not below the rank of Deputy Superintendent of Police.

i. He may carry on a preliminary inquiry to know if there is a prima facie (at first sight) case for continuing with the matter, within fourteen days; or

ii. He may carry on an investigation if there exists a prima facie case.

4. If the officer in charge refuses to record the information about a cognizable offence given by the informant, then the informant may make written information regarding such offence and send it to the Superintendent of Police (SP) through post. If the SP is

[377]Bharatiya Nagarik Suraksha Sanhita, 2023, § 183(6) (India).

of the view that the information sent is a cognizable offence, then he shall investigate the case himself, or he can order any of his subordinates to investigate the same. The officer who is investigating shall have the powers of an officer in charge in relation to that offence and shall investigate in the manner prescribed by this Sanhita. If it fails, the informant may make an application under section 175(3) to the Magistrate.[378]

Comparison of both the Provisions

There are a few changes and additions made in the BNSS in the aspects of form of communication, changes in cognizable offences against women, providing a copy of FIR, inclusion of preliminary enquiry or investigation, and refusal of filing FIR or written information to SP.

Form of communication

Section 154(1) of Cr.P.C states that the information regarding a cognizable offence can be given orally, which shall be reduced to writing, or can be given in writing.[379] There was no other explicit way of communicating the information about a cognizable offence, such as emails, online portals, or through messages.

But it was recognized and interpreted judicially and administratively, though not through a statute. It has become a part of police practice and government guidelines.[380] In various cases, the court accepted the online information of a cognizable offence, considering the victim or their family's convenience. Cr.P.C was enacted way before the online or digital means or platforms emerged, so courts considered the dynamic nature and allowed telephonic information, which later included digital information of offences. Way before the enactment of Cr.P.C, in one of the famous cases,Tapinder Singh V. State of Punjab 1970, the Supreme Court stated that a telephonic message can be considered as an FIR if all the details of the offence are given appropriately.[381] In another case of RamsinhBavaji Jadega V. State of Gujarat 1994, the Supreme Court reaffirmed that any information given by telephonic means can be considered as FIR, unless it is cryptic and not fully disclosed information.[382] As it wasn't statutorily given, subsequent signature or visits to the Police station were required.

Whereas Section 173(1) of BNSS states that the information regarding a cognizable offence can be given orally or by any means of electronic communication.[383] This provision has been included considering the rate of increase in cybercrime, making it necessary to incorporate such a provision. When crimes can be technologically evolved, why not the law? This has widened the scope of filing of FIR and also given an opportunity for people to report offences at their convenience and without any third-party influence. Inclusion of such means of communicating information has made it flexible for the victims to file reports without making them feel insecure. It also provides that the informant shall sign

[378]Bharatiya Nagarik Suraksha Sanhita, 2023, § 175 & § 175(3) (India).
[379] Code of Criminal Procedure, 1973, § 154(1) (India).
[380] Ministry of Home Affairs, Advisory on Crime Reporting & Use of Online Portals (Gov't of India 2016).
[381]Tapinder Singh v. State of Punjab, (1970) 2 S.C.R. 331 (India).
[382]RamsinhBavaji Jadeja v. State of Gujarat, (1994) Supp. (2) S.C.C. 685 (India).
[383]Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(1) (India).

such given information within three days, and the police officer shall make a record of the same information in an official book (FIR) kept by the police officer. State Government may prescribe any format of recording the FIR including official books, apps, portals, digital FIR, websites, or any such other format.

Zero FIR

Zero FIR refers to the FIR that can be filed in any police station, regardless of the jurisdiction or area of offence committed. Zero FIR is nowhere mentioned explicitly in both Cr.P.C and BNSS. The name Zero FIR represents that it has no jurisdictional number when the report is filed. The informant can file an FIR in any police station, and later, such FIR is transferred to the police station that has jurisdiction, and only then a number is assigned to it. This is also an improvisation that made it convenient for people to file reports on cognizable offences without searching for the jurisdiction, which may cause a delay in filing an FIR.

Section 154 of Cr.P.C does not state about Zero FIR, but through judicial interpretations and other such orders police sometimes consider Zero FIR, but may also refuse to report such information due to lack of jurisdiction. In one of the first cases, State of Haryana V. Bhajan Lal (1992), the Court stated that it is a ground rule for the police to register an FIR when information about a cognizable offence is received.[384] Another landmark case is Lalita Kumari V. State of Uttar Pradesh (2013), where the Supreme Court held that registration of an FIR is mandatory and it forms a part of police duty to register or record information about cognizable offences.[385]

Section 173(1) of BNSS provides that the phrase "irrespective of the area where the offence is committed" indirectly refers to Zero FIR.[386] The phrase states that information can be given to a police officer or in charge of police, irrespective of the place of commission of an offence. Henceforth, Zero FIR is available to the people and has got statutory recognition. No police officer shall deny registering a FIR on the basis of lack of jurisdiction. This provision helps the victims or informants to avoid delays in reporting and the hurdle to find the jurisdictional police station.

Modification in a cognizable offence committed against a woman

Under the Cr.P.C, the offences which are covered are Voluntarily causing grievous hurt by use of acid, etc., Voluntarily throwing or attempting to throw acid, Assault of criminal force to woman with intent to outrage her modesty, Sexual harassment and punishment for sexual harassment, Assault of criminal force to woman with intent to disrobe, Voyeurism, Stalking, Punishment for rape, Punishment for causing death or resulting in persistent vegetative stage of victim, Punishment on rape on woman under twelve years of age, Sexual intercourse by husband upon his wife during separation, Sexual intercourse by a person in authority, Gang rape, Punishment for gang rape on woman under 16 years of age, Punishment for gang rape on woman under 12 years of age, Punishment for repeat

[384] State of Haryana v. Bhajan Lal, 1992 Supp. (1) S.C.C. 335 (India).
[385] Lalita Kumari v. State of Uttar Pradesh, (2014) 2 S.C.C. 1 (India).
[386] Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(1) (India).

offenders, or Word, gesture or act intended to insult the modesty of a woman.[387]

The provision also provides for a special right for women. They have a right to be heard by a woman police officer or a woman officer. In cases where information relating to a cognizable offence is given by a woman against whom such offence is committed, then such information shall be recorded by only a female officer. This provision is to make sure that women are comfortable sharing the offences committed against them without being judged and having no further implications. There are cases where if a woman comes with a complaint of rape committed on her or crimes such as cyber stalking, voyeurism, she is either judged on her character or she is ignored and suppressed by her family itself. In such cases, she has a few ways to file a FIR. She can opt for electronic communication and has the right to be heard by a woman police officer.[388] In case if any such act mentioned above except for Voluntarily causing grievous hurt by use of acid, etc., Voluntarily throwing or attempting to throw acid, committed or attempted, results in mental or physical disability, either permanent or temporary, then such information shall be recorded by the officer at the residence of the informant or at any convenient place as the case may be. The presence of an interpreter or an educator is mandatory while recording such statements. Also, such information shall be recorded through a video graph.[389] As per section 154, it is the duty of the police officer to get the informant's statement recorded by the Judicial magistrate at the earliest under section 164(5A)(a), which states that it is the duty of the Magistrate to record the statements of victims of sexual assault as soon as possible after the information of such crime is notified.[390]

Whereas under the BNSS, the offences committed against women are Punishment for rape, Punishment for certain cases. (covers rape of a woman under 16 &12), Punishment for causing death or resulting in a persistent vegetative state of the victim, Sexual intercourse by husband upon his wife during separation, Sexual intercourse by a person in authority., Sexual intercourse by employing deceitful means, etc. (promise to marry, but no such intention, and has sexual intercourse), Gang rape, Punishment for repeat offenders, Assault or use of criminal force to a woman with intent to outrage her modesty, Sexual Harassment, Assault or use of criminal force to a woman with intent to disrobe, Voyeurism, Stalking, Word, gesture or act intended to insult modesty of a woman, and voluntarily causing hurt or grievous hurt by use of acid.[391]

The BNSS provision also states the same as given by the Cr.P.C in case any of the mentioned offences have been committed against a woman, and if the woman comes to notify the cognizable offence, then such information shall be recorded by a woman police officer or any woman officer.[392] Any of the aforementioned cognizable offence has been committed or attempted on a woman, due to which, such woman is mentally or physically disabled, either temporarily or permanently, then in such cases, the police officer shall

[387] Indian Penal Code, 1860, §§ 326A, 326B, 354, 354A–D, 375–376E (India).
[388] Code of Criminal Procedure, 1973, § 154(1) proviso (India)
[389] Id. § 154(1) proviso 2.
[390] Code of Criminal Procedure, 1973, § 164(5A)(a) (India).
[391] Bharatiya Nyaya Sanhita, 2023, §§ 64–76 (India),
[392] Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(2) provisos (India).

record the information as to the cognizable offence at her residence or any place that is convenient to such woman, an interpreter or an educator being present while recording, for better understanding. Such information shall be recorded through a video graph. It is the duty of the police officer to ensure that the statements of the informant are recorded by the Magistrate under Section 183(6)(a).[393]

Both the provisions of Cr.P.C and BNSS provided for the same cognizable offences, with the change in section numbers and the combining of sections of similar offences into one. Unless Cr.P.C, which didn't include the offences related to throwing acid (section 326A &326B), to be recorded by a woman police officer, BNSS has included all cognizable offences mentioned, which are committed against a woman, to be recorded by a woman police officer.

Providing a copy of the FIR

Section 154(2) of Cr.P.C states that information recorded in the form of FIR by the officer in charge of the police station or any other such officer shall be given to the informant at free of cost in the form of a copy.[394] Section 2(wa) of Cr.P.C defines a victim as a person who has suffered loss or injury due to an act or omission on the part of the accused. Victims include legal heirs or guardians.[395]An informant is a person who provides information of the cognizable offence under section 154 of Cr.P.C.

Section 173(2) of BNSS states that both the informant and the victim shall be provided with a copy of the FIR recorded by the officer in charge of the police officer or any such officer.[396] Here, the inclusion of the victim has widened the scope. Previously, the informant was considered the complainant or any person on behalf of the complainant. Section 2(1)(y) of BNSS defines a victim as a person who has suffered loss or injury due to the accused's act or omission. The accused need not formally be charged, which was necessary under Cr.P.C. The Victim also includes legal heirs or guardians of the victim.[397] Victims and informants can be the same person in cases where the person suffered loss or injury reports to the police about the cognizable offence.

Victim and informant can be two different individuals in a sense where the informant is just an eyewitness or as given under the definition of the victim, legal heirs, or guardians. There is no rule or principle of evidence requiring that the injured should always be the first informant.[398]

Here under BNSS, the copy of the FIR can be either given to the informant or to the victim, regardless of who has given the information. If the victim gives the information, then he or she is considered an informant. But if the informant has given information, it's not always necessary that the informant is the victim.

Refusal of filing FIR

[393]Bharatiya Nagarik Suraksha Sanhita, 2023, § 183(6)(a) (India).
[394] Code of Criminal Procedure, 1973, § 154(2) (India).
[395]Id. § 2(wa).
[396]Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(2) (India).
[397] Id. § 2(1)(y).
[398] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

Section 154(3) of Cr.P.C states that if a police officer denies filing an FIR, then a provision is available to such person, that he or she may send such information in writing and he may send it to the Superintendent of Police. Such SP shall look into the matter. If the SP is of the opinion that such information comes under a cognizable offence, then he can either investigate such a matter himself or authorize any officer subordinate to him to investigate such a matter. The manner of investigation is as given in the Cr.P.C, and such officer shall have the powers of an officer in charge of such offence.[399]

Section 173(4) of BNSS provides the same as given in section 154(3) of Cr.P.C, with the inclusion of another way to give the information. If the police officer denies filing the FIR and if the application to the Superintendent of police fails as well, then the person may make an application to the magistrate having jurisdiction under section 175(3) of BNSS, which gives power to the Magistrate to direct an order to the police officer to investigate the particular cognizable offence.[400]

Inclusion of Preliminary Inquiry

A cognizable offence is considered serious in nature and non-bailable, and hence, the police shall lodge an FIR when information regarding such an offence is received. In such a case, the police officer can start an investigation even without the order of a Magistrate. Inquiry refers to the collection of information or having an understanding of a subject, which is usually done by the Magistrate or the court to get certain information.[401] It is mandatory for a police officer to lodge an FIR when information of a cognizable offence is received. In the landmark case of Lalita Kumari V Government of Uttar Pradesh (2013), the court held that registration of FIR is a mandatory duty of the police in charge, and denial of registering information of a cognizable offence is not acceptable.[402] The court also stated that it is the full disclosure of the information of a cognizable offence that is required for mandatory registration of an FIR. If there is no proper disclosure of a cognizable offence, then in such cases, the FIR may not be filed. The court also discussed about the preliminary inquiry to be made by the police to know whether a cognizable offence has been committed.

In another case of Pradeep Nirankarnath Sharma v State of Gujarat, the Supreme Court held that, as per section 154 of Cr.P.C, registration of FIR is mandatory if the information given discloses the commission of a cognizable offence.[403] The court also stated that an inquiry isn't required before registering an FIR of a cognizable offence. The court has given the scope of preliminary inquiry by clarifying that such an inquiry is limited to situations where prima facie the case doesn't appear to be a cognizable offence.

Section 154 of Cr.P.C doesn't talk about any preliminary inquiry, but the precedents and the court's interpretations play a vital role. Here, though the statute doesn't talk about preliminary inquiry, it was still followed to know if the offence is cognizable. Observing the need for preliminary inquiry, the courts gave various interpretations in various

[399]Code of Criminal Procedure, 1973, § 154(3) (India).
[400]Bharatiya Nagarik Suraksha Sanhita, 2023, § 175(3) (India).
[401] Code of Criminal Procedure, 1973, § 2(g) (India)
[402] Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1.
[403] Pradeep Nirankarnath Sharma v. State of Gujarat, (2021) SCC OnLine SC 110.

circumstances. Now that the Cr.P.C is replaced with BNSS, the police are at their discretion to conduct a preliminary inquiry before filing an FIR.

Section 173(3) of BNSS states that subject to the power of police to investigate a cognizable offence, if any information as to a cognizable offence is received, which is punishable three years or more but not more than seven years, the officer in charge of police station has a discretion to carry on a preliminary inquiry to know if prima facie, a cognizable offence is committed, within 14 days.[404] Such an inquiry can be conducted by seeing the nature and gravity of the offence and also by taking prior permission from a police official whose rank is not below Deputy Superintendent of Police. If it is found that a prima facie case is committed, then such in charge of the police station can carry on the investigation. Previously, the Court would interpret the cases and allow preliminary inquiry in certain cases to find out if the information given constituted a cognizable offence, and now it is the right/discretion of the police to conduct a preliminary inquiry before registering an FIR to know the weight of the case.

Key Evaluations

If Preliminary Enquiry, then why Investigation?

In a cognizable case, the first thing after filing an FIR is the investigation by the police. Police will reach the crime scene to investigate and make a report on the offence. But sometimes there are cases that are not cognizable prima facie or can be dealt with civil remedies instead of going to criminal proceedings alone. In such cases, it becomes difficult to know the authenticity of the information provided.

In the case of Rajinder Singh Katoch v. Chandigarh Administration and others (2008), the Supreme Court stated that, in certain circumstances, the police can first conduct a short preliminary inquiry before filing an FIR, to check if the information given really discloses a cognizable offence.[405] There was a dispute between the appellant and his brother relating to wrongful restraint to enter their jointly owned house, and when the appellant went to the police station, they did not register an FIR, treating it as a family dispute. But the appellant approached the Supreme Court, where it held that, though wrongful restraint is a cognizable offence under IPC, 1870,[406] it was a civil dispute between co-owners and criminal law cannot be used to settle such matters.

Thus preliminary inquiry is important to know the stance of an offence. It helps in reducing the work of the police by further going to the court and participating in the investigation. Investigation starts once the FIR is filed, and the purpose is to collect the evidence, whereas a preliminary inquiry is a precautionary measure taken before filing the FIR to verify if the information provided discloses a cognizable offence.

Section 173(3) of the BNSS provides discretion to the police officer to conduct a preliminary inquiry before filing an FIR to know if a prima facie cognizable case arises.[407]

[404]Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3).
[405] Rajinder Singh Katoch v. Chandigarh Administration & Others, (2008) 14 SCC 208.
[406] Indian Penal Code, 1860, § 339
[407]Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3).

This provision statutorily codifies and expands the scope of preliminary inquiry, unless the interpretations given by the Courts limited preliminary inquiry to specific cases of matrimonial, corruption, property complaints, etc. This helps in determining if a cognizable offence has actually occurred, determining the nature of the offence, knowing if any false case is being communicated, to avoid malicious prosecution, to uphold judicial expectations, to prevent misuse of law, to protect innocent people, and to ensure fairness.

Inclusion of this provision has enshrined Article 21 of the Constitution, which strengthens the Right to Life and Personal Liberty on the part of the accused or innocent people.[408] There are cases where some innocent people are trapped in criminal cases, and the actual culprits roam free without any deterrence, or there are cases that are falsely filed, and later, after years of spending their lives in prisons, they are acquitted. In order to prevent such incidents, a preliminary inquiry plays a vital role. It also helps in gathering some information that isn't disclosed by the informant or victim.

Though preliminary inquiry has a good stand, it is a negative approach for the victims. It denies them the right to life and liberty to some extent by delaying the registration of an FIR, which delays the criminal procedure. It still acts as an advantage from a perspective wherein the police can actually get some key information or evidence during the preliminary inquiry. Though this is a discretion of the police, it is subject to prior permission of the police official of a rank not below that of the Superintendent of Police. And such inquiry is to be done only in cases of cognizable offences that have an imprisonment of three years or more, but not less than seven years, and to be conducted within 14 days of the receipt of the information. This provision balances both the victim's interests and the accused's rights.

Section 156(3) of Cr.P.C. gives a right to the victim or complainant to approach the Magistrate if no FIR is filed, and the Magistrate has the power to direct the police officer to register an FIR and start the investigation if they fail to do so. Now this power is under section 175(3) of the BNSS, with an additional power or duty to inquire into such matter and then order an investigation to the Police.

In case of a false case, then a Closure report.

Cr.P.C. provides for the investigation of the cognizable offence once the FIR is filed under section 154. Once the investigation is complete, the investigation officer shall make a closure report under section 173,[409] which will include whether to proceed with the criminal proceedings against the accused. The report either states that there is evidence against the accused as to the commission of a cognizable offence or that no evidence exists against the accused. In case the evidence exists, a charge-sheet is filed, and a trial is conducted; similarly, if no evidence is found or if it is found that a false case is registered, the report states that no further proceedings will be carried out.

The same provision is given in BNSS under section 193.[410] A closure report is to be filed

[408] India Const. art. 21.
[409] Code of Criminal Procedure, 1973, § 173.
[410] Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, § 193.

by the police indicating the results of the investigation. In addition to the provision given in Cr.P.C, a closure report can be filed after the preliminary inquiry, if there is no prima facie case of a cognizable offence, or if it is found that false information is given. This will help in determining the cognizable offence and also reduce the time and efforts on the part of the police, which saves the court's time.

Judgments

State of Haryana v. Bhajan Lal &Ors.1992, SC[411]

Background of the case: Bhajan Lal was a politician and former Chief Minister of Haryana and a Union Minister when this case was going on. His wife, Jasma Devi, who was also in the political field, won over an opponent, Dharam Pal, in the Adampur elections. The Chief Minister of Haryana at the time of this case was Devi Lal, who was in rivalry and had filed several criminal cases against each other.

Facts: Dharam Pal complained against Bhajan Lal to the CM of Haryana, Devi Lal, and the complaint was forwarded to the DGP by the Secretariat of the CM, and it was considered by the DGP as well. The Superintendent of Police was ordered by the DGP to investigate the allegations. The allegations made by Dharam Pal were that Bhajan Lal illegally acquired property, has illegal sources of income, and that he is misusing his power and position. Upon these allegations, the SHO filed an FIR under sections 161 and 165 of the Indian Penal Code, 1860,[412] and section 5(2) of the Prevention of Corruption Act, 1988,[413] and subsequently an investigation was started, and a copy was sent to the Magistrate and others.

Aggrieved by this, Bhajan Lal approached the High Court requesting to quash the FIR and stop the investigation, arguing that the allegations were made merely due to jealousy and also without any evidence or proper information. The State (Police) argued that the given information constitutes a cognizable offence and hence the FIR was filed and an investigation was started.

The HC, after hearing both parties, came to a conclusion that the FIR is to be quashed and the investigation shall be stopped. It stated that the information given neither disclosed a cognizable offence nor made out a prima facie cognizable case. It also stated that the allegations were vague without proper information and were wholly politically motivated. The State (Police) then approached the Supreme Court through an appeal.

Issues:

a. Whether the FIR and the investigation held were valid?
b. Whether the decision of the HC quashing the FIR was valid?
c. Whether the information disclosed cognizable offence.

Judgment: The Supreme Court set aside the High Court's decision. The court held that the

[411] State of Haryana v. Bhajan Lal, 1992 Supp. (1) S.C.C. 335 (India).
[412]Indian Penal Code, 1980, §§ 161 & 165 (India).
[413] Prevention of Corruption Act, No. 49 of 1988, § 5(2) (India).

quashing of the FIR and investigation was not legally valid. As per section 154 of Cr.P.C,[414] it is the duty of the police officer to register an FIR when information about a cognizable offence has been given by a person. It also emphasized the power of the High Court to quash Criminal proceedings as per section 482 of the Cr.P.C.[415] It stated that the High Court has quashed the FIR and investigation on the reasons given by the petitioner that the information given to the police was on political rivalry and with malaise intention. The Supreme Court stated that the High Court may exercise its inherent powers to quash criminal proceedings, but they must be only in exceptional cases and on the reliability of the facts. The Supreme Court has given 7 principles on which the High Court can exercise its power of quashing criminal proceedings. The principles are

a. When the allegation does not disclose any offence
b. When there are allegations that are true, but they do not disclose a cognizable offence.
c. When there is no prima facie case based on the complaint given.
d. The allegations made are so absurd that no reasonable person could accept the allegations.
e. When there is some legal bar or limitation to the institution of proceedings.
f. When the criminal proceedings are made with malaise intention or with an ulterior motive to oppress or degrade.
g. The proceedings made are patently a misuse of the process of law.

Section 174 of BNSS[416] gives a discretionary power to the police to conduct a preliminary inquiry into the given information to find out if a prima facie cognizable offence exists. Inclusion of this provision helps the police to know if they can go with the registration of FIR and further investigation, protects judicial time, and helps in avoiding false or malicious cases against innocent people.

Ramesh Kumari v. NCT of Delhi-2006 SC[417]

Facts: Ramesh Kumari has obtained interim stay orders in her favour in a property dispute. Despite this order, a few of them entered the property and removed all her belongings, resulting in destruction and damage to the articles and property, respectively. She approached the police station and gave a complaint to the officials on 09/09/1997 and 13/09/1997 for the same acts that occurred on two different days. Regardless of such complaints, the SHO of the Police station did not register an FIR and has not taken any action. She then approached the Commissioner of Police, but in vain. Subsequently, she has filed a criminal writ petition in the Delhi High Court seeking an order to direct the police officials to register an FIR. The High Court dismissed her petition, stating that she has alternative remedies available and also has a contempt petition on the same stay orders.

[414] Code of Criminal Procedure, 1973, § 154 (India).
[415] Code of Criminal Procedure, 1973, § 482 (India).
[416] Bharatiya Nagarik Suraksha Sanhita, 2023, § 174 (India).
[417] Ramesh Kumari v. Govt. of NCT of Delhi, (2006) 2 S.C.C. 677 (India).

The appellant, Ramesh Kumari, aggrieved by this, filed an appeal to the Supreme Court against the trespassers and also the police officials for not registering an FIR.

The issues that arose here were whether the Police officials had a mandatory duty to register an FIR when information about a cognizable offence was received, and whether the High Court's reasoning on the petition was valid.

The Supreme Court held that the High Court's reasoning for denying registration of a FIR was invalid and stated that there is no discretion on police officials to deny registering a FIR when information of a cognizable offence has been given. The officer cannot deny it on the grounds of the credibility of the information, and neither can the court deny it, stating there are alternate remedies available. The Supreme Court overruled the decision of the High Court and directed an investigation into the case through a separate agency, CBI, as there could be a conflict of interest if the police did the investigation against the police.

Lalita Kumari v. Govt. of U.P - 2013 SC[418]

Facts: A Writ Petition was filed by the father of Lalitha Kumari, on behalf of her, to take action against the police officials who failed to lodge a complaint on giving information about a cognizable offence. Lalitha Kumari is the minor daughter of the complainant, who was kidnapped. The father of the victim made a written complaint to the police, but they did not register any case or search for her. When the matter went to the Superintendent of Police, a case was registered, an informal inquiry was made, but there was no action was taken and no efforts were made to search for the girl. The petition was filed to seek orders for mandatory registration of FIR.

Issues:

a. Whether it is mandatory to file a FIR when information about a cognizable offence is given as per section 154 of the Cr.P.C?

b. Whether a preliminary inquiry can be conducted by the police before registering an FIR?

c. Whether preliminary inquiry, if permitted, has any exceptions?

The Supreme Court of India made it mandatory for the police officials to register an FIR if any information is received on a cognizable offence. The court has also provided guidelines regulating section 154 of the Cr.P.C.

1. If any information as to a cognizable offence is received, an FIR shall be registered immediately and mandatorily without conducting any preliminary inquiry.

2. Preliminary inquiry may be conducted by the police in cases where the information given is not complete and does not constitute a cognizable offence. An inquiry is to be made just to confirm whether anFIR is to be registered or not.

3. If the preliminary inquiry shows that a cognizable offence occurs, then FIR shall be registered immediately. But if the inquiry states that no cognizable offence has occurred, then the complaint is to be closed by giving a closure report stating the

[418] Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1.

reasons.

4. It is the duty and responsibility of the police officer to register FIR; failure of such can lead to disciplinary actions against them.
5. The purpose of a preliminary inquiry is to check if the information constitutes a cognizable offence and not to check if the allegations made are true or not.
6. Preliminary inquiry can be made only in certain cases, such as Matrimonial or family disputes, Commercial or business offences, Medical negligence cases, Corruption cases, and in cases where the complaint is delayed.
7. Preliminary inquiry is to be done within a period of 15 days with an extension up to 6 weeks, but by stating reasons in the general diary.
8. There shall be a recording of information in the general/station diary of every case, whether it leads to FIR or inquiry. It should also include the decision to conduct an inquiry.

Section 173 of BNNS statutorily provides for a preliminary inquiry in cases that have imprisonment of not less than three years and not more than 7 years. It's also a discretionary power of the police officer to conduct a preliminary inquiry, also with the permission of the Superintendent of Police.

Conclusion

Preliminary inquiry, though, helps in identifying the cognizance of an offence, restricting the fundamental right to life of the victim. This provision can be taken advantage both, by the police and the accused to cause delay, tamper with the evidence, or escape from the crime.[419] It can be seen that the new provision on FIR gives free hand to the executive (police) to misuse their power, which goes against the principles given in the Constitution, such as the Rule of Law, Equality before law, and Right to Life and Personal Liberty.[420] It is already known that Criminal law implementation is not up to the mark due to a lack of proper investigation, insufficient evidence, abuse of process, influence of third parties, statutory limitations, jurisdictional limitations, etc.[421] Criminal law may not be set into motion with the inclusion of a preliminary inquiry. There shall be certain requirements and considerations in order to satisfy the need for preliminary inquiry. It is essential to consider how people perceive these changes in law and their faith in law. Sometimes it might save a few lives of accused who are falsely framed; it destroys the victim's confidence in the law.

[419] Speedy Justice or Systemic Delays? A Critical Look at Section 173 of BNSS, IJLSSS
[420] Team SACJ, Balancing Act: The Discrepancy Between Section 173(3) BNSS and the Supreme Court Ruling in Lalita Kumari v. Govt. of U.P., LawfulLegal (May 2025)
[421] LegalServiceIndia, When Can Police Refuse to Register an FIR? — BNSS, 2023, LegalServiceIndia

Learning from the World: How Global Electoral Practices Can Shape India's One Nation, One Election Vision

~Banala Chaitanya*, V.N.R. Chaitanya♣ & Aditi Singh♠

ABSTRACT

The "One Nation, One Election" (ONOE) initiative aims to synchronize Lok Sabha and state assembly elections every five years in India. This paper explores ONOE's historical roots from 1951 to 1967, its disruption from early dissolutions, and its revival under Prime Minister Narendra Modi. It evaluates the proposal's legal feasibility, requiring amendments to Articles 83, 85, 172, 174, and 356 of the Constitution, alongside the Election Commission's role in Article 324 and federalism issues highlighted in cases like S.R. Bommai v. Union of India. The analysis also addresses ONOE's benefits, such as lower costs, fewer governance breaks, and increased voter engagement, and drawbacks, including the risk of homogenizing national and regional issues, marginalizing smaller parties, and straining logistics.

It analyses electoral systems of Sweden, South Africa, Indonesia, Germany, and Belgium. Sweden's proportional system provides high efficiency and turnout but local voices may be diluted. South Africa's electoral system fosters national integration but provides incumbency boosts. Indonesian mega-elections demonstrate cost-effective scalability but document human as well as logistical problems. Germany's mixed-member proportional type offers stability in coalitions, although overhang seats increase expenditure. Belgium's consociational approach manages linguistic issues as well as promotes cross-coalitions, yet encounters deadlocks. It recommends ONOE as the significant India-specific innovation to support India's democracy, based on bipartisan support, gradual rollout, and protection to federal pluralism as well as electoral integrity. It proposes reforms such as ECI empowerment as well as pilot-based testing to secure efficiency together with democratic health.

Keywords: *One Nation One Election;* Federalism; *Election Commission of India;* Germany MMP Framework; Belgium Consociationalism; South Africa Synchronization.

Introduction

Elections serve as the foundation of democratic governance, granting citizens the authority to influence the political framework through regular electoral participation. As the preeminent democracy globally, India exemplifies this concept with its intricate electoral system, which spans national, state, and local levels, thereby reflecting the federal character

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and constitutional principles of the nation.[422] This structure, established within the Indian Constitution, guarantees representation across a wide array of geographies and demographic groups; however, it faces significant obstacles, including rising financial demands, logistical challenges, persistent interruptions in governance, and instances of political instability.[423] The initiative known as "One Nation One Election" (ONOE) presents itself as a significant reform, promoting the synchronization of elections for the Lok Sabha and state legislative assemblies in order to alleviate these inefficiencies and enhance the democratic process.[424] In India, elections occur in both direct and indirect manners: the former enabling citizens to choose representatives for the Lok Sabha, state assemblies, and local institutions, while the latter entails elected officials selecting higher officeholders, such as the President or members of the Rajya Sabha.[425] Despite consistent five-year terms for both the Lok Sabha and state assemblies as stipulated in Articles 83 and 172 of the Constitution, elections take place at different times due to early dissolutions and varying political timelines, intensifying administrative pressures.

The ONOE concept, though debated since the 1970s, has gained unprecedented momentum under Prime Minister Narendra Modi's advocacy, positioning it as a cornerstone of electoral modernization.[426] Historically, simultaneous elections prevailed from 1951 to 1967, aligning national and state polls in a seamless cycle that minimized disruptions and optimized resources, until administrative and political exigencies such as early dissolutions fractured this synchrony.[427]Revived discourse highlights ONOE's potential to curtail the Model Code of Conduct's prolonged enforcement, which often paralyzes policy implementation for months,

thereby enhancing governance continuity and socioeconomic stability.[428] Proponents argue that this alignment would slash electoral expenditures estimated at billions annually while reducing voter fatigue and boosting turnout through consolidated campaigns.[429] Conversely, critics contend that ONOE risks homogenizing national and regional agendas, potentially marginalizing state-specific issues and undermining federalism's pluralistic fabric.[430]

This paper delves into the merits and demerits of ONOE, scrutinizing its ramifications for

[422]India Const. art. 324.
[423]Law Commission of India, 170th Report on Reform of the Electoral Laws 14–15 (1999).
[424]High Level Committee on Simultaneous Elections, Report Summary, PRS Leg. Res. (2024), https://prsindia.org/policy/report-summaries/simultaneous-elections-in-india.
[425]India Const. art. 54 (on indirect election of the President).
[426]Press Information Bureau, One Nation, One Election (Dec. 17, 2024), https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2085082.
[427]Concept of Simultaneous Elections Not New to India, Says Govt in Explainer, Econ. Times (Dec. 17, 2024), https://m.economictimes.com/news/politics-and-nation/concept-of-simultaneous-elections-not-new-to-india-says-govt-in-explainer/articleshow/116391814.cms.
[428]The Pros and Cons of Simultaneous Elections | Explained, The Hindu (Jan. 29, 2024), https://www.thehindu.com/news/national/the-pros-and-cons-of-simultaneous-elections-explained/article67790554.ece.
[429]What is One Nation One Election, How Does it Work, Advantages, ClearTax (Sept. 2, 2025), https://cleartax.in/s/one-nation-one-election.
[430]Does "One Nation, One Election" Make Sense for India?, Carnegie Endowment for Int'l Peace (July 28, 2025), https://carnegieendowment.org/research/2025/07/india-one-nation-one-election-proposal?lang=en.

Indian democracy and the hurdles to its realization.[431] The High-Level Committee, chaired by former President Ram Nath Kovind, has been pivotal, recommending comprehensive reforms through its 2024 report, including amendments to Articles 83, 85, 172, 174, and 356 to facilitate synchronization while addressing contingencies like no-confidence motions or hung assemblies.[432] Legal feasibility hinges on navigating constitutional mandates, such as those under Article 324 empowering the Election Commission, amid concerns over federal integrity and judicial precedents like S.R. Bommai v. Union of India.[433] Drawing from international paradigms Sweden's concurrent parliamentary and local elections, South Africa's synchronized national and provincial polls, Germany's federal-state alignment, and Indonesia's simultaneous presidential and legislative contests ONOE could adapt best practices to bolster efficiency without eroding democratic vitality.[434] Ultimately, the proposal demands bipartisan consensus and meticulous safeguards to preserve electoral fairness, regional representation, and constitutional sanctity, positioning it as a pivotal evolution in India's democratic journey.[435]

Meaning of One Nation One Election?

"One Nation, One Election" (ONOE) is an electoral reform that has been suggested in India to hold the elections to the Lok Sabha and the state legislative assemblies simultaneously, preferably once every five years.[436] It is an effort to simplify India's complicated, multi-layered electoral process that requires staggered polls across the country, states, and local governments, resulting in constant disruption to the functioning of the government as also the high financial expenditure.[437] Simultaneous elections used to be held between the years 1951 and 1967, but the premature dissolution of the state legislatures threw this synchronization off track, causing asynchronous electoral schedules.[438] Re-emerging as a strong advocacy under the premiership of Narendra Modi, ONOE looks forward to the lesser frequency of polls, shorter periods of Model Code of Conduct's prohibition, and the improvement in policy consistency.[439]

Reform necessitates constitutional amendments to harmonize the term lengths of legislatures under Article 83 and Article 172, and possibly adding mechanisms to deal with

[431]Explained: India's One Nation One Election Proposal, BBC News (Dec. 17, 2024), https://www.bbc.com/news/articles/cly7vjp73zvo.
[432]High Level Committee Submits its Report on One Nation, One Election, Press Info. Bureau (Mar. 14, 2024), https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2014497.
[433]The Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024, PRS Leg. Res., https://prsindia.org/billtrack/the-constitution-one-hundred-and-twenty-ninth-amendment-bill-2024.
[434]Panel On Simultaneous Polls Studied Process In Sweden, Germany, 5 Other Nations, NDTV (Sept. 18, 2024), https://www.ndtv.com/india-news/panel-on-simultaneous-polls-studied-process-in-sweden-germany-5-other-nations-6594155.
[435]One Nation, One Election: International Case Studies and Insights, Nation First (last visited Sept. 29, 2025), https://nationfirstlr.substack.com/p/one-nation-one-election-international.
[436]High Level Committee on Simultaneous Elections, Report Summary, PRS Leg. Res. (2024), https://prsindia.org/policy/report-summaries/simultaneous-elections-in-india.
[437]Law Commission of India, 170th Report on Reform of the Electoral Laws 14–15 (1999).
[438]Concept of Simultaneous Elections Not New to India, Says Govt in Explainer, Econ. Times (Dec. 17, 2024), https://m.economictimes.com/news/politics-and-nation/concept-of-simultaneous-elections-not-new-to-india-says-govt-in-explainer/articleshow/116391814.cms.
[439]Press Information Bureau, One Nation, One Election (Dec. 17, 2024), https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2085082.

premature dissolutions or hung legislatures.[440] Advantages, according to proponents, include cost-effectiveness and decreased administrative burden on the Election Commission.[441] However, opponents believe that ONOE may compromise federalism through the domination of regional issues and the side lining of small parties.[442] The Kovind Committee Report, released in 2024, advises amendments and a gradual roll-out, but it will still be conditional upon parliamentary sanctioning and ratification by states.[443] ONOE therefore constitutes a brave yet controversial

move towards electoral rationality, requiring deft balancing between democratic and federal **precepts.**[444]

Countries following One Nation One election

Within the intricate fabric of global democratic practices, the notion of simultaneous elections frequently summarized under the phrase "One Nation, One Election" serves as a strategic arrangement of electoral schedules aimed at coordinating national, regional, and at times local elections within a cohesive temporal context. This system, intended to harmonize the operational rhythms of governance alongside citizen engagement, extends beyond mere administrative ease, encapsulating a deep-seated dedication to electoral effectiveness, cost reduction, and seamless policy continuity within federal or quasi-federal structures.[445] As countries confront the increasing complexities inherent in contemporary democracy rising campaign costs, voter fatigue, and the persistent threat of governance stagnation during extended electoral periods simultaneous elections rise as a promising reform, offering the potential for a more integrated and responsive political environment.[446] Nonetheless, this synchronization does not serve as an ultimate solution; it invites examination regarding its capacity to undermine regional particularities, heighten logistical challenges, and unintentionally prioritize prevailing national narratives at the expense of localized discussions.[447] Drawing from the High-Level Committee's considerations on India's possible implementation, this study reviews select case studies Sweden, South Africa, Indonesia, Germany, and Belgium each providing a detailed illustration of application, replete with successes and challenges.[448]

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[440]The Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024, PRS Leg. Res., https://prsindia.org/billtrack/the-constitution-one-hundred-and-twenty-ninth-amendment-bill-2024.
[441]What is One Nation One Election, How Does it Work, Advantages, ClearTax (Sept. 2, 2025), https://cleartax.in/s/one-nation-one-election.
[442]Does "One Nation, One Election" Make Sense for India?, Carnegie Endowment for Int'l Peace (July 28, 2025), https://carnegieendowment.org/research/2025/07/india-one-nation-one-election-proposal?lang=en.
[443]High Level Committee Submits its Report on One Nation, One Election, Press Info. Bureau (Mar. 14, 2024), https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2014497.
[444]One Nation, One Election: International Case Studies and Insights, Nation First (last visited Sept. 29, 2025), https://nationfirstlr.substack.com/p/one-nation-one-election-international.
[445]Panel On Simultaneous Polls Studied Process In Sweden, Germany, 5 Other Nations, NDTV (Sept. 18, 2024), https://www.ndtv.com/india-news/panel-on-simultaneous-polls-studied-process-in-sweden-germany-5-other-nations-6594155.
[446]Models of Simultaneous Elections around the World, Atlantis Press, https://www.atlantis-press.com/article/125995066.pdf.
[447]One Nation One Election: Enhancing Governance Through Synchronized Polls, Lawrbit (Aug. 6, 2024), https://www.lawrbit.com/article/one-nation-one-election-enhancing-governance-through-synchronized-polls/.
[448] One nation, one election? India will enter a 3-country club, India Today (Sept. 1, 2023),

These instances shed light not only on the procedural complexities but also on the philosophical foundations, demonstrating how simultaneous elections can enhance democratic vigour while at times straining the essential elements of federal pluralism. The attraction of concurrent elections is the precedent of history and empirical support across variegated geopolitical terrains, where they have periodically silenced the din of fractured campaigns.[449] From Sweden's precisely geared quadrennial phases to Indonesia's mega-elections involving 200 million people, such systems reflect a universal penchant for electoral frugality.[450] Benefits, such as reduced fiscal expenditure and rising voter turnout, tend to overwhelm initial obstacles, creating a story of progressive government.[451] On the other hand, demerits hover around the silhouettes of centralization, where the din of countrywide agenda may drown local voices, creating gaps in representation as well as accountability.[452] This treatise, then, focuses on illuminating the initial outlines of each country's strategy, framed vis-à-vis a balanced sheet of strengths and weaknesses, to identify universal insights for would-be change-makers.[453] In a period where electoral integrity is both protective Armor as also retaliatory sword vis-à-vis authoritarian incursions, comprehension becomes indispensable for securing the integrity of the ballot.

Sweden as the Example of Proportional Harmony

Sweden's electoral framework is the epitome of coordinated democracy, where the Riksdag (legislature), county, as well as municipal councils, hold concurrent general elections every fourth year on the second Sunday of September, a custom ingrained since the country first used proportional representation in 1909.[454] This rigid-cycle model, accompanied by quintennial municipal elections that also fall on the same date, is the ultimate example of the combination of sub- as well as nationally elected mandates, deflecting the centrifugal effects that characterize asynchronous systems elsewhere.[455] Based on a sense of equalitarian representation, where the seats are allocated rigidly based on the share of votes, Sweden's framework prevents any one stratum of governance from overshadowing the other, allowing a comprehensive civic involvement that spreads through the corridors of

https://www.indiatoday.in/india/story/one-nation-one-election-india-will-be-among-countries-that-hold-simultaneous-polls-2429716-2023-09-01.

[449]Simultaneous elections are a rarity around the world, The Tribune (Jan. 11, 2024), https://www.tribuneindia.com/news/comment/simultaneous-elections-are-a-rarity-around-the-world-580148/.

[450]Assessing the Feasibility and Risks of One Nation, One Election, TIJER, https://tijer.org/tijer/papers/TIJER2403065.pdf.

[451]As India Revisits 'One Nation, One Election', 7 Other Countries Play A Part, NDTV (Dec. 12, 2024), https://www.ndtv.com/world-news/as-india-revisits-one-nation-one-election-7-other-countries-play-a-part-7234178.

[452]HLC Report Highlights Best International Practices in Holding Simultaneous Polls, ETV Bharat (Mar. 14, 2024),https://www.etvbharat.com/en/!bharat/hlc-report-highlights-best-international-practices-in-holding-simultaneous-polls-enn24031405331.

[453] The pros and cons of simultaneous elections | Explained, The Hindu (Jan. 29, 2024), https://www.thehindu.com/news/national/the-pros-and-cons-of-simultaneous-elections-explained/article67790554.ece.

[454]One Nation One Election - History, Benefits, Challenges & More, Testbook, https://testbook.com/ias-preparation/one-nation-one-election.

[455]One Nation One Election Essay in 250 and 500 Words, Leverage Edu, https://leverageedu.com/discover/school-education/one-nation-one-election-essay/.

Stockholm to the smallest hamlets.[456] Longevity that is unflecked by the premature dissolution that is so common among more turbulent polities attests to the stability, where the turnout is persistently over 80%, as the rejuvenating effect of common days of polling stands as a testament.

The benefits of Sweden's concurrent elections are numerous, beginning with drastic economic efficiencies that moderate the financial bleeding accompanied by stepped-up campaigns.[457] By aligning logistical machineries from ballot printing to security deployments the country minimizes public spending by an estimated 20-30% each cycle, funds channelled instead into social welfare needs such as universal healthcare and schooling.[458] This frugal practice extends even to political players, who, freed from constant fundraising marathons, are able to shift to substantive policymaking, facilitating a governance continuum that insulates core initiatives from electoral disruption.[459] In addition, the coordinated tempo boosts voter salience, as concentrated campaigns boil complex choices into a single, manageable event, and concurrently counter apathy to grow participation rates among those groups most likely to disaffiliate, such as youth and immigrants.[460] Empirical research confirms that this convergence, among other things, strengthens turnout, while also tightening party accountability, as platforms must address interlocking, nationally regionalized issues comprehensively.[461]

But Sweden's framework is no mere blank slate; there are also some disadvantages lurking in the quiet degradation of local deliberation, as the pull of broad-based national narratives threatens to absorb local issues.[462] In as homogenous a polity as Sweden, this centralizing imperative could disenfranchise peripheral voices, most strongly in indigenous Sami areas, where local concerns such as land rights stall amidst Riksdag-centered debate.[463] Administrative stresses also add to these threats: the management of countrywide polling in a geographically distant country requires Herculean planning, sometimes causing delays in rural areas and worsening access disparities among old or disabled citizens.[464] Critics also fear the "fatigue of ticket-splitting", where citizens, frustrated with multi-tier ballots,

[456]Assessing the Feasibility and Risks of One Nation, One Election, TIJER, https://tijer.org/tijer/papers/TIJER2403065.pdf.
[457]Electoral Systems, ACE Project, https://aceproject.org/ace-en/topics/es/onePage.
[458]Industrialization of Election Infringement in Simultaneous Elections, JHCLS (Jun. 26, 2024), https://www.jhcls.org/index.php/JHCLS/article/view/170/101.
[459]The Swedish regional elections 2018, Taylor & Francis Online (Mar. 18, 2020), https://www.tandfonline.com/doi/full/10.1080/13597566.2020.1739656.
[460]Sweden inspires India for simultaneous elections, Econ. Times (Apr. 17, 2018), https://m.economictimes.com/news/politics-and-nation/sweden-inspires-india-for-simultaneous-elections/articleshow/63792441.cms.
[461]Sweden's Peculiar Adoption of Proportional Representation, Cambridge Core (May 13, 2024), https://www.cambridge.org/core/journals/perspectives-on-politics/article/swedens-peculiar-adoption-of-proportional-representation-the-overlooked-effects-of-time-and-history/F6343CEC45CE8D9140B86D8389900371.
[462]FEASIBILITY OF A SINGLE ELECTION(S) IN SOUTH AFRICA, Demarcation.org (2022), https://www.demarcation.org.za/wp-content/uploads/2022/11/Paper-on-feasibility-of-single-elections-in-SA_v03-final.pdf.
[463]Synchronized elections strengthen party salience: Evidence from a..., Sci. Direct (Aug. 8, 2025), https://www.sciencedirect.com/science/article/pii/S0147596725000551.
[464]One Nation One Election: Comprehensive Analysis, Stalwart Careers, https://www.stalwartcareers.com/one-nation-one-election/.

revert to broad-based national party allegiance, blunting the fineness of regional representation a factor evidenced by increasing intra-party vote splits after 2018.[465]

Further, the Swedish case highlights vulnerabilities to external shocks, the most significant being the pandemic of 2020, which tested the durability of the system and found vulnerabilities in adaptation capability.[466] While core strengths still fostered democratic stability witnessed through minimal rates of violation regardless of sophisticated efforts at manipulation drawbacks become more acute amid crises, making adaptable contingencies, absent rigid synchronizations, all the more necessary.[467] Sweden's example, therefore, while inspiring, also warns reformers to temper their efforts at efficiency with adaptability.[468]

South Africa: Nurturing Cohesion Out Of Heterogeneity

Emerging from the crucible of apartheid, South Africa's electoral odyssey since 1994 has pivoted on simultaneous national and provincial elections every five years, a cornerstone of its transformative Constitution that interweaves federal aspirations with unitary imperatives.[469]Administered by the Independent Electoral Commission (IEC), this framework deploys separate ballots for the 400-seat National Assembly and nine provincial legislatures (seats varying from 30 to 90 based on population), harnessing proportional representation to mirror the rainbow nation's ethnic and ideological mosaic.[470] The 2024 polls on May 29 exemplified this synergy, with over 27 million voters selecting representatives across tiers, yet municipal elections remain decoupled in a parallel quinquennial rhythm, preserving granularity in local governance.[471] This hybrid simultaneity not only honors South Africa's federal devolution but also symbolizes reconciliation, channelling post-colonial energies into a unified democratic pulse.[472]

Advantages abound in South Africa's synchronized polls, paramount among them the reinforcement of national cohesion in a fractious society, where concurrent voting bridges ethnic divides by framing provincial contests within a broader patriotic narrative.[473]Economically, the model yields substantial savings approximately R1 billion

[465]Africa's 2024 Elections: Challenges and Opportunities to Regain..., Africa Ctr. (Jan. 17, 2024), https://africacenter.org/spotlight/2024-elections/.
[466]One Nation, One Election In Federal Democracies, KUEY, https://kuey.net/index.php/kuey/article/download/4265/3214/10281.
[467]"one nation one election": a comprehensive analysis, ResearchGate (Aug. 8, 2025), https://www.researchgate.net/publication/385843052_ONE_NATION_ONE_ELECTION_A_COMPREHENSIVE_ANALYSIS.
[468]Parallel Advantages, ACE Project, https://aceproject.org/main/english/es/ese01a.htm.
[469]Basic Structure Doctrine and the Possibility of Simultaneous Elections, SSRN, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3666391_code4163597.pdf?abstractid=3666391&mirid=1.
[470]Kovind panel studied simultaneous poll processes in South Africa..., Econ. Times (Dec. 12, 2024), https://m.economictimes.com/news/politics-and-nation/kovind-panel-studied-simultaneous-poll-processes-in-south-africa-germany-sweden-4-other-nations/articleshow/116253884.cms.
[471]The pros and cons of simultaneous elections | Explained, The Hindu (Jan. 29, 2024), https://www.thehindu.com/news/national/the-pros-and-cons-of-simultaneous-elections-explained/article67790554.ece.
[472]Synchronized elections strengthen party salience: Evidence from a..., Sci. Direct (Aug. 8, 2025), https://www.sciencedirect.com/science/article/pii/S0147596725000551.
[473]One Nation One Election: Comprehensive Analysis, Stalwart Careers, https://www.stalwartcareers.com/one-nation-one-election/.

(about $55 million) per cycle by streamlining IEC operations and curtailing campaign durations, funds vital for redressing apartheid's legacies in housing and infrastructure.[474] Politically, it curtails the "permanent campaign" malaise, enabling legislatures to sustain developmental agendas like land reform without the staccato interruptions of disjointed elections, thereby enhancing executive accountability and policy longevity.[475] Voter empowerment further accrues, as unified events demystify the ballot, boosting turnout to 66% in 2019 and empowering marginalized communities through simplified access to multi-level representation.[476]

Despite these advances, a shadow looms over South Africa's strategy, primarily the exacerbation of national incumbency biases that dwarf provincial incumbents, likely entrenching concentrations of centralized power opposed to federal fairness.[477] In a country marred by inequality, this tilt may widen resources gaps, as richer provinces receive undue media coverage during times of national spotlights, relegating the poor ones, such as Eastern Cape.[478] In a logistical sense, the size including 22,925 voting stations stretches IEC resources, as was the case during the 2016 delays that disenfranchised thousands, highlighting frailties to technical breakdowns as well as weather interruptions in wide rural areas.[479] Furthermore, the decoupled municipal cycle begets the hybrid inconsistencies, causing voter confusion as well as muddling the claimed full synchronization efficiencies.[480]

They also fear decreased contestation, as concurrent polls would discourage smaller parties from provincial races, afraid of missing out on the national coattails, then solidifying duopolies such as the ANC-DA axis.[481] As youth disillusionment mounts the turnout decreased among the under-30s in 2024 the demerits potentially undermine trust, pushing the need for reforms such as digital upgrades to strengthen resistance.[482] South Africa's story, then, painfully captures simultaneity's double-edged sword within transitional

[474]Africa's 2024 Elections: Challenges and Opportunities to Regain..., Africa Ctr. (Jan. 17, 2024), https://africacenter.org/spotlight/2024-elections/.
[475]One Nation, One Election In Federal Democracies, KUEY, https://kuey.net/index.php/kuey/article/download/4265/3214/10281.
[476]"one nation one election": a comprehensive analysis, ResearchGate (Aug. 8, 2025), https://www.researchgate.net/publication/385843052_ONE_NATION_ONE_ELECTION_A_COMPREHENSIVE_ANALYSIS.
[477]Impacts on Indonesian Society and Technical Considerations in..., UIN SGD J. (2023), https://journal.uinsgd.ac.id/index.php/ks/article/view/26783/9142.
[478]The Simultaneous Election in Indonesia: Problems and Solution, ResearchGate (Jan. 1, 2018), https://www.researchgate.net/publication/323181988_The_Simultaneous_Election_in_Indonesia_Problems_and_Solution.
[479]Ahead of the 2024 Simultaneous Regional Elections..., BRIN (Nov. 23, 2024), https://www.brin.go.id/en/news/121604/ahead-of-the-2024-simultaneous-regional-elections-brin-highlights-the-importance-of-voter-education.
[480]Benefits of Simultaneous Election in Indonesia, Iman Sj. Putra, https://imansjahputra.com/articles-and-publications/r/benefits-of-simultaneous-election-in-indonesia.
[481]Simultaneous Elections and the Rise of Female Representation in..., SSOAR (2021), https://www.ssoar.info/ssoar/bitstream/document/80459/1/ssoar-jcsaa-2021-1-amalia_et_al-Simultaneous_Elections_and_the_Rise.pdf.
[482]Simultaneous regional elections during the Covid-19 pandemic, Taylor & Francis Online (2023), https://www.tandfonline.com/doi/full/10.1080/23311886.2023.2272323.

democracies.[483]

Indonesia: Balancing the Ambitions

Indonesia's ambitious concurrent elections since 2019 represents a turning point in Southeast Asia's largest democracy, consolidating presidential, vice-president, national legislature, regional, and local elections into a single, gargantuan event on February 14, 2024, empowering nearly 205 million across 38 parties and a staggering 16,000 candidates.[484] Enjoined by Law No. 7/2017, this "pilkada serentak" paradigm mandating parties to gain 4% nationwide votes to enter parliament as well as presidential aspirants achieving 50%+-overall votes, along with 20% across more than half the republic's 38 provinces turns the archipelago electoral sprawl into an integral symphony, albeit a symphony that resonates to logistical thunder.[485] From the Jakarta high-rises to the highlands of Papua, this synchronization symbolizes the Jokowi period of centralization, desiring to unite a contentious federation into a more governable entity.[486] Nascence of the system, upon the foundation laid during the pilots between 2014-2019, promises a maturation of post-Suharto reforms, valuing scale over fragmentation.[487]

The merits of Indonesia's model radiate efficiency at an unparalleled magnitude, slashing campaign expenditures by 40% through consolidated mobilization, liberating rupiah for infrastructure like the Nusantara capital project.[488] Governance continuity flourishes, as synchronized terms avert the policy vacuums of staggered polls, enabling swift legislative-executive alignments on pressing issues like climate resilience in vulnerable islands.[489]Socially, it galvanizes participation, with 81% turnout in 2019 attributed to the spectacle of unified ballots, empowering women—via 30% candidacy quotas—and rural voters through indelible ink safeguards against fraud.[490] Technically, digital innovations like Sirekap streamline results, curbing disputes and enhancing transparency in a nation prone to elite capture.[491]

Disadvantages, nonetheless, hover large within Indonesia's grand theatre, where behemoth scale precipitates logistical Armageddon: the 2024 elections saw more than 500

[483]What Election Is This? Candidate Versus Party Contests in Indonesia, AJPOR (Aug. 31, 2025), https://www.ajpor.org/article/143756-what-election-is-this-candidate-versus-party-contests-in-indonesia.
[484]Synchronized elections strengthen party salience: Evidence from a..., Sci. Direct (Aug. 8, 2025), https://www.sciencedirect.com/science/article/pii/S0147596725000551.
[485]Synchronising the Implementation of Simultaneous General..., SciSpace (Sept. 28, 2022), https://scispace.com/pdf/synchronising-the-implementation-of-simultaneous-general-2z2ictmh.pdf.
[486]The Simultaneous Election in Indonesia: Problems and Solution, Atlantis Press, https://www.atlantis-press.com/proceedings/icsps-17/25891363.
[487]Impacts on Indonesian Society and Technical Considerations in..., UIN SGD J. (2023), https://journal.uinsgd.ac.id/index.php/ks/article/view/26783/9142.
[488]The Simultaneous Election in Indonesia: Problems and Solution, ResearchGate (Jan. 1, 2018), https://www.researchgate.net/publication/323181988_The_Simultaneous_Election_in_Indonesia_Problems_and_Solution.
[489]Ahead of the 2024 Simultaneous Regional Elections..., BRIN (Nov. 23, 2024), https://www.brin.go.id/en/news/121604/ahead-of-the-2024-simultaneous-regional-elections-brin-highlights-the-importance-of-voter-education.
[490]Benefits of Simultaneous Election in Indonesia, Iman Sj. Putra, https://imansjahputra.com/articles-and-publications/r/benefits-of-simultaneous-election-in-indonesia.
[491]Germany: The Original Mixed Member Proportional System, ACE Project, https://aceproject.org/main/english/es/esy_de.htm.

exhaustion-related deaths among six million electoral workers, illuminating human costs within under-resourced peripheries. Perils of centralization abound, as nationally competitive presidential elections overshadow regional idiosyncrasies, engendering "Java-centrism" that alienates outer islands and dismantles federal pluralism.[492] Voter overload agitates this, as complex multi-ballot schemes cause confusion manifesting as 5% invalid votes and fatigue, disproportionately affecting low-literacy groups.[493] Politically, it consolidates incumbents through resource asymmetries, stifling oppositions and fostering corruption scandals, as in 2024's claimed dynastic manipulations.[494]

In addition, technical vulnerabilities cyber-attacks and supply chain logjams erode integrity, as BRIN reports call for increased education to battle misinformation deluges.[495] Indonesia's venture, although prophetic, warns that zeal unbalanced by fairness may break the very coherence it aspires to.

Germany: Precision in Federal Equilibrium

Germany's electoral framework, a mixed-member proportional (MMP) stronghold since 1949, coordinates Bundestag federal elections concurrently with state (Landtag) elections in a de facto simultaneous cadence, albeit not invariably set, to facilitate constructive no-confidence votes to prevent snap interruptions. As the base 598 seats (plus overhangs) are filled through double votes party and constituency the framework, as during the September 2021 confluence of the federal and three Länder elections, balances national consistency with local diversity in 16 states.[496] Basic Law protections, requiring five-year term lengths extendable only in emergencies, command conformity without coercion, representing post-Weimar stability.[497]This subtle simultaneity, analysed by India's Kovind commission, is a paradigm of Teutonic fastidiousness in balancing unity and diversity.

Advantages in Germany's framework crystallize in institutional robustness, where synchronized polls fortify coalition-building, yielding stable governments average 4.5-year tenures via MMP's proportionality that tempers majoritarian excesses.[498] Cost efficiencies are stark: consolidated campaigns halve expenditures to €300 million per cycle, bolstering fiscal discipline amid Energiewende transitions.[499] Voter sophistication thrives, with dual ballots clarifying federal-state interplays, sustaining 76% turnout and mitigating extremism

[492]Mixed electoral systems: an introduction to the special issue, Springer (Jul. 26, 2025), https://link.springer.com/article/10.1007/s11127-025-01311-3.
[493]Synchronized elections strengthen party salience: Evidence from a..., Sci. Direct (Aug. 8, 2025), https://www.sciencedirect.com/science/article/pii/S0147596725000551.
[494]Germany's election: what should we expect?, DWS (Feb. 13, 2025), https://www.dws.com/en-us/insights/cio-view/macro/germanys-election-what-should-we-expect/.
[495]How German voters navigate the trilemma of mixed-member, MPG (2023), https://pure.mpg.de/pubman/item/item_3520309_3/component/file_3520376/2023_07online.pdf.
[496]Alive and Kicking: Electoral Reform in Germany Introduction to the..., Taylor & Francis Online (Sept. 29, 2022), https://www.tandfonline.com/doi/full/10.1080/09644008.2022.2127147.
[497]The pros and cons of simultaneous elections | Explained, The Hindu (Jan. 29, 2024), https://www.thehindu.com/news/national/the-pros-and-cons-of-simultaneous-elections-explained/article67790554.ece.
[498]Mixed electoral systems: an introduction to the special issue, Springer (Jul. 26, 2025), https://link.springer.com/article/10.1007/s11127-025-01311-3.
[499]Synchronized elections strengthen party salience: Evidence from a..., Sci. Direct (Aug. 8, 2025), https://www.sciencedirect.com/science/article/pii/S0147596725000551.

by amplifying moderate voices.[500] The constructive no-confidence clause further insulates against volatility, ensuring synchronization endures political tempests.[501]

Disadvantages persist in the MMP trilemma proportionality, constituency linkage, and seat parity exacerbated by simultaneity, as national tides swamp state-specific surges, evident in AfD's 2024 regional gains diluted federally.[502] Overhang seats balloon the Bundestag to 736 in 2021, inflating costs and diluting representation density. Logistically, coordinating 299 districts strains resources, with rural-urban divides amplifying access inequities during peaks like 2025's anticipated polls.[503] Fragmentation risks coalition paralysis, as seen in 2024's traffic-light collapse, where synced cycles prolong negotiations.[504]

Germany's precision, while exemplary, reveals that even designed equilibria hold disequilibria, necessitating frequent recalibrations.[505]

Belgium: Navigating Linguistic Labyrinths

Belgium's federal tapestry, the epitome of consociationalism since the state reforms of 1993, schedules concurrent federal, regional, and European Parliament elections once every half-decade the next being June 2024 and weaves together Dutch, French, and German-speaking enclaves via proportional lists in 11 circumscriptions.[506] This configuration, disconnecting merely the community councils, navigates the linguistic divisions of the kingdom, where 150 federal seats reflect social cleavages through apportionment d'Hondt. Following the post-2019 record 541-day governmental formation, simultaneity highlights a pursuit of balance in the most fragmented democracy within Europe.[507] Adaptability inherent in the system, permitting snap regional elections, balances inflexibility while keeping the pledge to federal accords.[508]

Benefits occur in reduced fragmentation, as simultaneous ballots allow cross-linguistic coalitions, stabilizing cabinets, and avoiding Flemish-Walloon stand stalls that haunted 2010-2011. Fiscal responsibility dominates, as coordinated events save €50 million, redirecting to bilingual schooling during demographic shifts. Clarification among voters

[500]Regional elections in simultaneous campaigns. How second-order..., UGent Biblio (n.d.), https://backoffice.biblio.ugent.be/download/5698208/5698209.
[501]Simultaneous Elections, Barcelona Sch. of Econ., https://bse.eu/sites/default/files/working_paper_pdfs/1425_0.pdf.
[502]"ONE NATION ONE ELECTION": A COMPREHENSIVE ANALYSIS, Granthaalayah (n.d.), https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/download/2698/2447/17003.
[503]Belgium: the 2024 federal elections – deadlock ahead?, LSE Blogs (Apr. 22, 2024), https://blogs.lse.ac.uk/europpblog/2024/04/22/belgium-the-2024-federal-elections-deadlock-ahead/.
[504]Why Do Voters Vote for 'the Other Side'? Instrumental and..., Wiley Online (Sept. 17, 2025), https://onlinelibrary.wiley.com/doi/10.1111/nana.70022?af=R.
[505]"one nation one election": a comprehensive analysis, ResearchGate (Aug. 8, 2025), https://www.researchgate.net/publication/385843052_ONE_NATION_ONE_ELECTION_A_COMPREHENSIVE_ANALYSIS.
[506]EU Issue Voting in Simultaneous Elections: The Case of Belgium, ResearchGate (2023), https://www.researchgate.net/publication/370567501_EU_Issue_Voting_in_Simultaneous_Elections_The_Case_of_Belgium.
[507]Simultaneous Elections, Barcelona Sch. of Econ., https://bse.eu/sites/default/files/working_paper_pdfs/1425_0.pdf.
[508]"ONE NATION ONE ELECTION": A COMPREHENSIVE ANALYSIS, Granthaalayah (n.d.), https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/download/2698/2447/17003.

increases, as common campaigns explain EU-federal-regional connections, maintaining 88% turnout amidst intricacies.[509] It supports minority protection, making the voices of the German-speakers be nationally heard.78 Disadvantages inhere in amplified second-order effects, where federal races overshadow regions, diluting Flemish devolution on issues like nitrogen emissions.[510]Logistical quagmires multi-language ballots engender errors, disenfranchising 2% in 2019 via printing snafus.[511] Coalition torpidity endures, with 2024's deadlock risking paralysis in synced volatility. Centralization subtly erodes subsidiarity, alienating Brussels' cosmopolitans. Belgium's labyrinthine simultaneity, a delicate détente, illuminates consociation perils and potentials.

Conclusion

Within the extensive framework of India's democratic progression, the initiative for "One Nation, One Election" emerges as a pivotal reform, aiming to synchronize the disparate tempos of staggered electoral events into a cohesive orchestration of electoral effectiveness. As elaborated upon in this manuscript, ONOE is rooted in a diverse historical context, where simultaneous elections thrived from 1951 to 1967, alleviating disruptions and optimizing resource utilization, only to disintegrate due to the pressures of untimely dissolutions and political demands. Revitalized with determination under the leadership of Prime Minister Narendra Modi, it intends to diminish the prolonged implementation of the Model Code of Conduct, which frequently immobilizes policy execution, thereby enhancing governance stability and socioeconomic continuity. Advocates anticipate significantly reduced expenditures—projected to be in the billions annually—lessened voter fatigue, and increased participation through unified campaigns, thereby reshaping the electoral environment into a more adaptive and economically efficient model.

Nonetheless, as the analysis highlights, the appeal of ONOE is mitigated by significant obstacles. The legal viability necessitates complex constitutional modifications to Articles 83, 85, 172, 174, and 356, which requires careful navigation of the fragile equilibrium between parliamentary sovereignty and federal autonomy. The Election Commission's comprehensive authority under Article 324 must be enhanced without jeopardizing its independence, in light of the dangers of excessive centralization that might diminish state-specific initiatives and marginalize regional parties. Judicial precedents, such as S.R. Bommai v. Union of India, serve as a reminder that any reform must maintain the integrity of federalism, to avoid infringing upon the Basic Structure Doctrine. Detractors appropriately warn against the tendency to unify national and local narratives, which could compromise the pluralistic foundation enshrined in India's federal framework.

Comparative perspectives on global exemplars inform this debate, unfurling the possibility

[509]RESPONSE PAPER AND RECOMMENDATIONS TO THE 2024..., NUJS L. Rev. (Jun. 4, 2025), https://nujslawreview.org/wp-content/uploads/2025/06/NUJSLR_Simultaneous-Elections-Report.pdf.
[510]"one nation one election": a comprehensive analysis, ResearchGate (Aug. 8, 2025), https://www.researchgate.net/publication/385843052_ONE_NATION_ONE_ELECTION_A_COMPREHENSIVE_ANALYSIS.
[511]"ONE NATION ONE ELECTION": A COMPREHENSIVE ANALYSIS, Granthaalayah (n.d.), https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/download/2698/2447/17003.
[511]One Nation, One Election, Wikipedia (last visited Sept. 29, 2025),

of ONOE through an international prism. Sweden's proportional balance offers economic frugality and high citizen turnout, above 80%, yet suffers the gradual marginalization of peripheral voices in a unitary frame. South Africa's concurrent national and provincial elections spin unity from the ashes of apartheid, achieving great savings and crossing ethnic divides, yet incumbency biases widen gaps, stressing federal distributive justice in resources. Indonesia's mega-elections, enfranchising more than 200 million, offer scalability and continuity, empowering the excluded through quotas, though they command a gruesome human cost—the 500 exhaustion-related deaths of 2024- and also engender "Java-centrism" isolating the outer islands. Germany's mixed-member proportional balances stability and coalition durability, cutting costs in half while retaining advanced voter choices, yet overhangs and fragmentation beset lengthy negotiations, as the recent governmental collapses attest. Belgium's consociational structure masterfully navigates linguistic mazes, stabilizing cabinets through cross-coalitions while saving millions on redirected bilingual teaching, yet second-order impacts undermine regional devolution, multi-language ballots causing errors as well as disenfranchisement.

These vignettes collectively illuminate simultaneity's dual nature: a catalyst for efficiency and cohesion, yet a potential harbinger of centralization and logistical strain. For India, the world's largest democracy, ONOE must adapt these lessons judiciously, avoiding the pitfalls of rigidity while harnessing merits like reduced fiscal burdens and enhanced accountability. The Kovind Committee's 2024 recommendations- phased rollout, unified electoral rolls, and mechanisms for mid-term contingencies- provide a roadmap, but success hinges on bipartisan consensus and state ratifications under Article 368.

To realize ONOE's transformative promise, several suggestions merit consideration. First, pilot implementation in select states could test logistical viability, allowing iterative refinements before nationwide adoption. Second, bolstering the Election Commission's resources—through augmented budgets and digital innovations like blockchain for voter verification—would mitigate administrative overload. Third, safeguards against federal erosion, such as mandatory regional issue quotas in national campaigns or veto powers for state assemblies on synchronization resets, would preserve pluralism. Fourth, public awareness campaigns, leveraging international best practices, could combat voter confusion and boost participation, particularly among youth and marginalized demographics. Finally, ongoing judicial oversight, perhaps via a dedicated constitutional bench, ensures reforms align with democratic sanctity.

In short, ONOE marks an important step towards electoral efficaciousness, geared to meet India's challenging electoral issues while strengthening governance. However, its execution requires careful attention to the balance between unifying the country as a whole and celebrating regional diversity to avoid working against the very democratic structure that ONOE hopes to support. By embracing international viewpoints and creating inclusive processes, India stands the chance of making ONOE a core component of a dynamic democracy, where the voice of every citizen is included within a unifying electoral conversation. This shift, if undertaken judiciously, could both simplify electoral processes while also making democratic participation richer, making India a shining example of dynamic adaptation within the face of change.

Algorithms, Assets, and Oversight: SEBI's Role in Regulating Crypto Trading in India

~ Rishi Raj*

ABSTRACT

India's cryptocurrency market has witnessed rapid adoption, propelled by retail participation, technological innovation, and global capital flows. However, this growth has outpaced regulatory developments, exposing investors to significant risks; particularly in the realm of algorithmic trading (AT). While the Securities and Exchange Board of India (SEBI) has evolved a comprehensive regulatory framework to manage AT within securities markets, its jurisdiction does not currently extend to crypto exchanges. This regulatory gap is compounded by fragmented oversight across institutions such as the Reserve Bank of India (RBI), the Ministry of Finance, and the Financial Intelligence Unit (FIU), creating systemic vulnerabilities for manipulation tactics like spoofing, layering, and wash trading. Drawing from judicial precedent, statutory mandates, and global regulatory models in the United States, the United Kingdom, and the European Union, this paper argues for an expanded and customized role for SEBI in overseeing algorithmic trading on crypto platforms. It advocates legislative reforms to extend SEBI's jurisdiction to crypto-assets exhibiting securities-like characteristics, mandates algorithm certification and pre-trade checks, and recommends technological investments for real-time surveillance. By aligning regulatory structures with market realities and fostering cooperation between domestic and international bodies, SEBI can safeguard investor interests, enhance market integrity, and encourage responsible innovation. The paper concludes that without adaptive governance, India's crypto markets risk manipulation-driven distortions that threaten both investor confidence and systemic stability.

Keywords: Algorithmic Trading, Cryptocurrency Regulation, SEBI, Market Integrity, Investor Protection

I. Introduction

The past decade has been a seminal period for the Indian financial arena. Crypto adoption has skyrocketed at an unprecedented pace, making India one of the leading markets globally in terms of user interest and trade volumes[512]. Such growth, however, has occurred under the absence of a single unifying framework of regulation. The Reserve Bank of India ("RBI") has taken a cautious approach, releasing circulars baring regulated entities from crypto-related activities, whilst the Ministry of Finance vacillated between enabling and prohibitionist stances[513]. The Securities and Exchange Board of India ("SEBI"), meanwhile, has only ventured into the limits of its statutory jurisdiction, asserting control only where a crypto asset

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[512] Reserve Bank of India, Press Release on Virtual Currencies (Dec. 24, 2013), available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=30247

[513] Reserve Bank of India, Statement on Developmental and Regulatory Policies ¶ 13 (Apr. 5, 2018), available at https://www.rbi.org.in/commonman/Upload/English/PressRelease/PDFs/PR264205042018.PDF

crosses the threshold and falls into the category of a "security" under the Securities Contracts (Regulation) Act, 1956 ("SCRA") or the SEBI Act, 1992[514].

A parallel and equally transformative development is the rise of algorithmic trading ("AT"). Initially deployed within equities and derivatives markets, AT now accounts for significant volumes across asset classes globally[515]. SEBI has responded with increasingly granular frameworks, requiring algorithm certification, pre-trade checks, and audit trails for exchange-approved strategies[516]. As Agrawal, Garach, and Jayan have argued in the context of SME fundraising, SEBI's interventions tend to balance innovation with systemic safeguards, reflecting a regulatory posture that seeks not to stifle growth but to channel it responsibly[517]. In crypto markets, where retail participation is high, trading is continuous, and institutional guardrails are limited, this balance becomes even more precarious.

Risks associated with unregulated algorithmic actions on the crypto exchanges are severe and evident. World-wide evidence has witnessed the prevalence of "spoofing" and "layering" tactics on centralised exchanges, cases of flash crashes triggered by automated order systems in the derivatives markets, and algorithmically controlled assaults under decentralised finance ("DeFi") protocols[518]. They mar the integrity of the marketplace, corrupt the mechanism of pricing discovery, and unfairly affect retail investors. In India, crypto exchanges are not presently registered with the Financial Intelligence Unit except for anti-money laundering ("AML") purposes and work outside the prudential regulator SEBI, and therefore afford significant leeway for unregulated algorithmic manipulation[519].

The long-term goal of the Securities and Exchange Board of India (SEBI) regarding a digital securities market, as elaborated by Sachdeva and Mukherjee, underscores the regulator's recognition that advances in technology call for adaptive governance[520]. Taking the goal of a digital securities market and applying it to cryptocurrency markets amounts to a natural extension: just as the Reserve Bank of India (RBI) might continue to respond to monetary and system risk concerns, SEBI is especially suited for addressing the risk that algorithmic trading splinters market integrity. Comparative analysis underpins the foregoing conclusion. In the United States, both the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") took enforcement-oriented stances regarding

[514] Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, § 2(h)

[515] Irene Aldridge, *High-Frequency Trading: A Practical Guide to Algorithmic Strategies and Trading Systems* (2d ed. 2013).

[516] Securities and Exchange Board of India, Circular: Safer Participation of Retail Investors in Algorithmic Trading (Feb. 4, 2025), SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/0000013, available at https://www.sebi.gov.in/legal/circulars/feb-2025/safer-participation-of-retail-investors-in-algorithmic-trading_91614.html.

[517] Sumit Agrawal, Kavish Garach & Mahima Jayan, Balancing Innovation, Regulation, and Growth: How SEBI's Policies Impact SME Fundraising in India, 1 J. CORP. L. & GOVERNANCE 1 (2025).

[518] Financial Stability Board, *Crypto-Asset Markets: Potential Channels for Future Financial Stability Implications* (Oct. 2018), available at https://www.fsb.org/wp-content/uploads/P101018.pdf.

[519] Financial Intelligence Unit–India, *Registration List of Virtual Asset Service Providers* (Jan. 20, 2025), available at https://fiuindia.gov.in/pdfs/downloads/VDASP20012025.pdf.

[520] Hardeep Sachdeva & Ayushi Mukherjee, SEBI's Vision for a Digital Securities Market: Key Amendments to Boost Dematerialization, 24 J. CORP. L. & GOVERNANCE 24 (2025).

manipulative algorithmic conduct, while the newly passed GENIUS Act creates a licensing and reserve regime for stablecoin issuers[521]. In the United Kingdom, the Financial Conduct Authority ("FCA") took a forward-looking approach, incorporating algorithmic monitoring into its suggested crypto-asset exchange platform regulatory framework[522].

In this paper, it is contended that the piecemeal oversight of crypto markets renders investors vulnerable to threats similar to, and significantly more serious than, those faced in securities markets. It asserts that the oversight architecture of the SEBI, established and proved within the equities market arena, should be transferred and customized to the specificities of algorithmic trade within crypto exchanges through statutory articulation, mandatory approvals of algorithms, and fortified surveillance mechanisms. Part II outlines SEBI's extant jurisdiction and regulation of AT in securities markets. Part III examines the regulatory void within crypto trade. Part IV examines comparative models within the United States and the United Kingdom. Part V concludes by proposing a legislative and regulatory agenda for SEBI's surveillance role within algorithmic crypto trade.

II. SEBI's Current Regulatory Role and Crypto Markets

A. SEBI's Mandate in Securities Markets

The Securities and Exchange Board of India ("SEBI") was established under the Securities and Exchange Board of India Act, 1992 ("SEBI Act") as the main regulator of the securities market[523]. The Act grants a dual mandate to SEBI: investor protection and promotion and regulation of the securities market. Section 11(1) of the SEBI Act states this mandate in broad language, authorizing SEBI to do "such measures as it thinks fit" for the protection of investor interests and for regulating market development[524].

The generality of this legislative language has helped SEBI evolve to keep up with evolving issues. Its ambit is wider than that of traditional securities to cover collective investment schemes[525], insider trading[526], and market intermediaries[527]. This flexibility finds support in the Securities Contracts (Regulation) Act, 1956 ("SCRA"), which has a broad definition of "securities" under Section 2(h) to cover shares, debentures, derivatives, and "such other instruments as may be declared by the Central Government."[528] The Depositories Act, 1996

[521] White House, Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law (July 18, 2025), available at https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/

[522] U.K. Fin. Conduct Auth., Discussion Paper DP24/4: *Regulating Cryptoassets – Admissions & Disclosures and Market Abuse Regime for Cryptoassets* (Dec. 16, 2024), available at https://www.fca.org.uk/publications/discussion-papers/dp24-4-regulating-crypoassets. FCA

[523] Securities and Exchange Board of India Act, 1992, No. 15 of 1992.

[524] Id. § 11(1).

[525] Securities and Exchange Board of India Act, 1992, No. 15 of 1992, § 11AA.

[526] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

[527] Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

[528] Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, § 2(h).

fills in the gaps by regulating dematerialization of securities and authorizing SEBI to regulate depositories[529].

Judicial precedent has underscored SEBI's wide-ranging mandate. In *Sahara India Real Estate Corp. v. SEBI*, the Supreme Court held that SEBI's jurisdiction extended to hybrid instruments which, though not explicitly defined as securities, exhibited the characteristics of public fund-raising[530]. More recently, courts have upheld SEBI's proactive stance in algorithmic trading and insider trading cases, reinforcing its role as a dynamic regulator with powers commensurate to evolving market structures[531].

B. SEBI's Approach to Algorithmic Trading in Securities

Recognizing the systemic risks of high-frequency and algorithmic trading, SEBI has developed a detailed framework to regulate such activity in the equity and derivatives markets. Its February 2025 circular requires all trading algorithms to be pre-approved by stock exchanges, mandates unique identifiers for each algo-generated order, and obliges brokers to maintain exhaustive audit trails[532]. Further, brokers offering algorithmic strategies to retail investors must ensure appropriate risk disclosures and suitability assessments[533]. These measures are consistent with SEBI's broader philosophy of balancing innovation with investor protection, as noted by Agrawal, Garach, and Jayan in their study of SME fundraising regulation[534].

In parallel, Sachdeva and Mukherjee highlight SEBI's forward-looking vision for a "digital securities market," which emphasizes regulatory preparedness for technology-driven disruptions[535]. Algorithmic trading regulations, though initially designed for equities, exemplify this vision of pre-emptive governance.

C. SEBI and Crypto Markets: A Regulatory Vacuum

As opposed to other single, specialized "crypto agencies," India's regulation is fragmented. The Reserve Bank of India ("RBI") has been uniformly sceptical about privately issued cryptocurrencies, especially stablecoins, on monetary authority and financial stability grounds[536]. The Ministry of Finance has been restrictive at times, most significantly by way of the draft Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, attempting to

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[529] Depositories Act, 1996, No. 22 of 1996

[530] S*ahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India*, (2013) 1 S.C.C. 1 (India).

[531] *National Stock Exchange of India Ltd. v. Securities & Exchange Board of India*, 2023 SCC OnLine SAT 32 (India).

[532] Securities and Exchange Board of India, Circular: *Safer Participation of Retail Investors in Algorithmic Trading* (Feb. 4, 2025), SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/0000013, available at https://www.sebi.gov.in/legal/circulars/feb-2025/safer-participation-of-retail-investors-in-algorithmic-trading_91614.html

[533] Id.

[534] Sumit Agrawal, Kavish Garach & Mahima Jayan, *Balancing Innovation, Regulation, and Growth: How SEBI's Policies Impact SME Fundraising in India*, 1 J. Corp. L. & Governance 1 (2025).

[535] Hardeep Sachdeva & Ayushi Mukherjee, *SEBI's Vision for a Digital Securities Market: Key Amendments to Boost Dematerialization*, J. Corp. L. & Governance (forthcoming 2025).

[536] PRS Legislative Research, *Virtual Currencies in India: Committee Report Summary* (Inter-Ministerial Committee, Feb. 28, 2019), available at https://prsindia.org/policy/report-summaries/virtual-currencies-india

ban private cryptocurrencies and establishing a framework for a state-run digital currency[537]. The Securities and Exchange Board of India ("SEBI") is best placed as the natural regulator of crypto-assets with the securities-like characteristics of securities; like initial coin offerings ("ICOs") and tokenized equity; akin to the jurisdictional style of the U.S. Securities and Exchange Commission ("SEC")[538]. Stablecoins and other fiat-collateralized digital instruments, on the other hand, come under the monetary policy purview of the RBI, and pension- or insurance-linked tokens may have the Pension Fund Regulatory and Development Authority ("PFRDA") or the Insurance Regulatory and Development Authority of India ("IRDAI") involved. The Financial Intelligence Unit–India ("FIU-IND") imposes anti–money laundering ("AML") and know-your-customer ("KYC") obligations on exchanges but has no mandate over investor protection or market conduct. The outcome is an asymmetrical framework characterized by overlapping mandate and regulatory silos with no single authority to regulate the crypto ecosystem.

Indian crypto exchanges like WazirX, CoinDCX, and ZebPay exist largely as private institutions beyond the SEBI licensing ambit, their primary statutory responsibility being registration with the Financial Intelligence Unit–India (FIU-IND) as Virtual Digital Asset Service Providers ("VASPs") to satisfy anti–money-laundering (AML) and know-your-customer (KYC) requirements[539]. FIU-IND guidelines and VASP registration notices (Mar.–Oct. 2023) create the requirement of registration and prescribe AML/CFT reporting standards for VASPs but do not entail market-conduct oversight similar to that of securities-market licensing[540]. The FIU has, however, enforced AML regulations strictly; imposing fines and issuing show-cause notices to major international venues that functioned without registration in India; pointing out that FIU regulation is meant for financial-crime compliance as opposed to market-integrity governance[541]. Apart from AML registration, exchange regulatory requirements are minimal, and hence many internal controls are optional and diverse. A number of leading Indian exchanges have posted proof-of-reserves (PoR) reports or occasional snapshots to indicate solvency and generate confidence (e.g., WazirX, CoinDCX), though these are self-reported, differ in methodology, and are not required by law or third-party auditor standards in India[542]. During this period, global incumbents and entrants have started

[537] *Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, Lok Sabha (India).*

[538] Securities & Exchange Board of India, *Consultation Paper on Initial Public Offerings of Tokenized Securities* (2023), available at https://www.sebi.gov.in

[539] PRS Legislative Research, *Virtual Currencies in India: Committee Report Summary* (Inter-Ministerial Committee, Feb. 28, 2019), available at https://prsindia.org/policy/report-summaries/virtual-currencies-india.

[540] Financial Intelligence Unit–India, *Virtual Digital Asset Service Providers (VDASP) Guidance* (Mar. 10, 2023; July 4, 2023; Oct. 17, 2023), available at https://fiuindia.gov.in/pdfs/downloads/VDASP04072023.pdf; https://fiuindia.gov.in/pdfs/downloads/VDASP17102023.pdf.

[541] India Financial Watchdog Imposes $2.25 Million Penalty on Crypto Exchange Binance, *Reuters* (June 20, 2024), available at https://www.reuters.com/business/finance/india-financial-watchdog-imposes-225-million-penalty-binance-2024-06-20/

[542] WazirX, *WazirX Publishes Proof of Reserves* (Jan. 11, 2023), available at https://wazirx.com/blog/wazirx-proof-of-reserves/; CoinDCX, *CoinDCX Proof Of Reserves Audit — March 2023* (Apr. 4, 2023), available at sea also PwC, *Does "Proof of Reserves" Provide Meaningful Trust and Transparency?* (2025), available at https://www.pwc.ch/en/insights/digital/does-proof-of-reserves-provide-meaningful-trust-and-transparency.html.

registering with the FIU to access Indian users legally (e.g., Coinbase's registration), but such registration does not replace a unified market-conduct regime or SEBI licensing[543].

Despite its expansive statutory mandate, SEBI's jurisdiction is limited by the definitional boundary of "securities" under the SCRA[544]. Cryptocurrencies, in their current form, are not expressly recognized as securities, commodities, or derivatives under Indian law. Consequently, SEBI lacks direct regulatory authority over crypto exchanges, even though trading on such platforms closely mirrors securities-market activity. The regulatory lacuna is compounded by RBI's interventions. In 2018, RBI released a circular that banned regulated institutions from offering services for virtual currencies[545]. This de facto banking prohibition actually suppressed crypto trading in India until it was overruled by the Supreme Court in *Internet & Mobile Ass'n of India v. RBI*, declaring the circular to be disproportionate and contrary to the right to trade[546]. However, without statutory change, crypto exchanges now exist in a gray area, registering solely with the Financial Intelligence Unit (FIU) for anti-money laundering purposes[547].

As authors have pointed out, the lack of SEBI oversight enables crypto exchanges to trade without market integrity protections that are required in conventional securities markets[548]. These include the lack of algorithmic approval procedures, surveillance systems, and investor redress procedures. The outcome is a patchwork regime with systemic risks; especially those intensified by algorithmic trading; going unremedied.

D. SEBI Consultation Paper on Responsible Usage of AI/ML

SEBI, in June 2025, released a Consultation Paper on Guidelines for Responsible Usage of AI/ML in Indian Securities Markets, suggesting a framework based on principles for the use of artificial intelligence and machine learning ("AI/ML") by regulated firms[549]. The Paper identifies the potential of AI/ML to add efficiency and investor services, but also the threat it poses to market integrity, systemic stability, and fairness[550].

The framework is built on five foundational guiding principles: (i) model governance and accountability (with a "model owner" and board oversight), (ii) client and regulator disclosures

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[543] *Coinbase Registers with Indian Financial Watchdog to Offer Crypto Trading Services, Reuters* (Mar. 11, 2025), available at https://www.reuters.com/technology/coinbase-registers-with-indian-financial-watchdog-offer-crypto-trading-services-2025-03-11/.

[544] Securities Contracts (Regulation) Act, No. 42 of 1956, § 2(h).

[545] Reserve Bank of India, Statement on Developmental and Regulatory Policies ¶ 12 (Apr. 5, 2018), available at https://www.rbi.org.in/commonman/Upload/English/PressRelease/PDFs/PR264205042018.PDF.

[546] *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274 (India).

[547] Financial Intelligence Unit–India, *Virtual Asset Service Providers Registered with FIU* (2025), available at https://fiuindia.gov.in/files/Downloads/Downloads.htm

[548] Nishith Desai Assocs., *Crypto & Blockchain: 2021–22 Publications* (July 2022), available at https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Crypto_and_Blockchain.pdf

[549] Securities & Exchange Board of India, Consultation Paper on *Guidelines for Responsible Usage of AI/ML in Indian Securities Markets* (June 20, 2025), available at https://www.sebi.gov.in/reports-and-statistics/reports/jun-2025/consultation-paper-on-guidelines-for-responsible-usage-of-ai-ml-in-indian-securities-markets_94687.html

[550] Id.

as material where AI/ML has a material impact on outcomes, (iii) comprehensive pre-deployment testing and continuous monitoring, (iv) fairness and bias mitigation, and (v) data governance, security, and privacy protections[551].

While articulated with respect to securities markets, the Consultation Paper has immediate relevance to algorithmic trading that increasingly involves ML-based order routing, liquidity forecasting, and adaptive management. Its focus on pre-trade checking, ongoing monitoring, and vendor regulation closely aligns with algorithmic manipulation issues on crypto exchanges[552]. Most notably, compulsory testing and logging would limit spoofing and layering tactics, while disclosure and responsibility requirements would prevent exchanges and brokers from shedding responsibility for "black-box" models.

For crypto markets, currently outside SEBI's statutory remit, the Paper provides a ready governance template. If Parliament extends SEBI's jurisdiction; or adopts a new classification of "digital assets"; the AI/ML guidelines could be applied mutatis mutandis to crypto exchanges. Such an approach would align India with emerging international practices and address the governance deficit that presently allows unregulated algorithmic strategies to distort price discovery in crypto markets[553].

E. SEBI Oversight in Crypto Algorithmic Trading

By 2025, India's cryptocurrency market will generate $6.4 billion in revenue and have an estimated 107.3 million users[554]. This growth is indicative of not just technological adoption but also of the need for financial inclusion and alternative financial solutions in addition to traditional banking systems. This kind of magnitude, however, increases systemic risks when algorithmic trading ("AT") tactics are run without regulatory safeguards. International experience, such as *United States v. Eisenberg* (Mango Markets), shows how abuse of algorithms can manipulate pricing and erode investor confidence[555].

SEBI is institutionally best equipped to deal with these risks. Established under the SEBI Act, 1992, its mandate authorizes it "to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market."[556] The Securities Contracts (Regulation) Act, 1956 ("SCRA"), further extends SEBI's reach to "such other instruments as may be declared" by the Central Government[557], providing legislative elasticity to encompass financial innovations such as crypto-assets. Judicial precedent confirms this breadth: in *Sahara*

[551] Id.

[552] Sameer Avasarala & Aryashree Kunhambu, *SEBI's Consultation Paper and the Winds of AI Governance*, Lakshmikumaran & Sridharan Attorneys (July 2, 2025), available at https://www.lakshmisri.com/insights/articles/sebi-s-consultation-paper-and-the-winds-of-ai-governance/

[553] Fox Mandal, "SEBI Floats Paper on Responsible AI Use in Indian Securities Market" (June 24, 2025), available at https://foxmandal.in/News/sebi-floats-paper-on-responsible-ai-use-in-indian-securities-market/.

[554] Avinash Shekhar, *The Economic Potential of Cryptocurrencies in India's $7 Trillion Vision*, *Econ. Times* (Feb. 10, 2025), available at https://economictimes.indiatimes.com/markets/cryptocurrency/the-economic-potential-of-cryptocurrencies-in-indias-7-trillion-vision/articleshow/118550567.cms.

[555] *United States v. Eisenberg*, No. 1:22-cr-00609 (S.D.N.Y. 2023).

[556] *Securities and Exchange Board of India Act*, No. 15 of 1992, § 11(1) (India).

[557] *Securities Contracts (Regulation) Act*, No. 42 of 1956, § 2(h) (India).

India Real Estate Corp. v. SEBI, the Supreme Court upheld SEBI's authority over hybrid instruments resembling securities despite lacking explicit statutory classification[558].

Academic commentary reinforces this rationale. Agrawal, Garach, and Jayan observe that SEBI has historically sought to "channel growth responsibly" rather than stifle innovation in capital markets[559]. Similarly, Sachdeva and Mukherjee emphasize SEBI's long-term vision for a digital securities ecosystem responsive to technological disruption[560]. Extending this philosophy to algorithmic trading on crypto exchanges is a natural corollary: crypto-AT embodies both the promise of financial innovation and the perils of unregulated speed. While SEBI has developed frameworks to address risks in equities; mandating algorithmic approvals, audit trails, and pre-trade risk checks[561]; none of these safeguards currently apply to crypto exchanges, even though the risk profile is comparable or higher due to 24/7 trading, volatility, and global capital flows.

Comparative evolutions add additional support. U.S. courts have identified securities law applicability to digital assets in instances like *SEC v. Shavers*[562], and the U.K. Financial Conduct Authority ("FCA") has woven algorithmic risk controls directly into proposed crypto-exchange regulation in its 2025 consultation[563]. These initiatives reflect the international agreement that algorithmic regulation is critical to protecting digital markets. Accordingly, SEBI's intervention is justified on three interlocking grounds: (i) statutory and judicial recognition of its adaptable jurisdiction; (ii) alignment with global regulatory practice; and (iii) continuity with SEBI's track record of balancing innovation and systemic integrity. Extending its jurisdiction to crypto-AT would not only harmonize India's regulatory posture with global standards but also safeguard investor protection and market stability in an increasingly digitized financial ecosystem.

III. Comparative Global Regulatory Approaches

A careful review of international practice reveals two recurring regulatory strategies relevant to India: (1) legislative clarity and functional classification of crypto assets (exemplified by recent U.S. stablecoin legislation), and (2) platform-level, ex-ante obligations for trading venues (exemplified by the U.K. FCA's CATP approach and by MiCA in the EU). These twin

[558] *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2013) 1 S.C.C. 1 (India).

[559] Sumit Agrawal, Kavish Garach & Mahima Jayan, *Balancing Innovation, Regulation, and Growth: How SEBI's Policies Impact SME Fundraising in India*, 8 *J. Governance* 1, 18 (2025).

[560] Hardeep Sachdeva & Ayushi Mukherjee, *SEBI's Vision for a Digital Securities Market: Key Amendments to Boost Dematerialization*, 8 J. Governance 24, 30–31 (2025).

[561] Securities & Exchange Board of India, Circular No. SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/0000013: *Safer Participation of Retail Investors in Algorithmic Trading* (Feb. 4, 2025), available at https://www.sebi.gov.in/legal/circulars/feb-2025/safer-participation-of-retail-investors-in-algorithmic-trading_91614.html

[562] *SEC v. Shavers*, No. 4:13-CV-416, 2013 WL 4028182, at *2 (E.D. Tex. Aug. 6, 2013).

[563] U.K. Fin. Conduct Auth., *DP25/1: Regulating Cryptoasset Activities* 15–16 (May 2, 2025), available at https://www.fca.org.uk/publication/discussion/dp25-1.pdf.

themes; statutory definition and design-based obligations; should inform any attempt to extend SEBI's oversight to algorithmic trading (AT) in crypto[564].

A. United States: Enforcement combined with Legislative Clarity (GENIUS Act)

The U.S. strategy unites robust enforcement institutions (SEC, CFTC, DOJ) with recent legislative steps that offer ex-ante transparency in discreet portions of crypto markets. In the past, the SEC and CFTC have gone after claimed manipulative algorithmic behavior under present fraud and commodities laws; enforcement actions in the equities and crypto market demonstrate regulators' willingness to treat algorithmic exploitation as market manipulation or fraud[565]. Meanwhile, the Commodities Futures Trading Commission (CFTC) regulates crypto derivatives and has brought anti-manipulation actions under the Commodity Exchange Act. The Justice Department (DOJ) also prosecutes fraud cases. In 2024–25, for example, the DOJ secured the first-ever conviction for crypto market manipulation (the Mango Markets case)[566]. The SEC has charged several crypto intermediaries (e.g. Coinbase, Ripple) for unlicensed securities dealings.

Of particular note in recent legislation is the GENIUS Act of 2025, creating a federal licensing and operational paradigm for "payment stablecoins"[567]. The Act requires full reserve backing, monthly reserve composition disclosure, AML/BSA compliance, and specifies that compliant payment stablecoins are not to be considered securities or commodities for certain statutory purposes[568]. By establishing and licensing stablecoin issuers (Permitted Payment Stablecoin Issuers; PPSIs), the Act addresses systemic concerns that indirectly reduce algorithmic manipulation risks. The Federal Reserve and legislative bodies have debated formal AT regulation in the broader context of market structure (e.g. proposals for "Regulation AT" in equities, which ultimately failed). In crypto, Congress has introduced bills like the Digital Commodities Consumer Protection Act (2022) aiming to define CFTC/SEC boundaries. But as a practical matter, U.S. authorities rely on tools like subpoena power and interagency cooperation to tackle manipulative algorithms on crypto platforms.

Two implications for India are as follows. First, statutory specificity minimizes regulatory uncertainty and facilitates focused supervisory instruments (e.g., reserve disclosure requirements; licensing terms calling for algorithmic controls). Second, post-hoc enforcement

[564] Guiding and Establishing National Innovation for U.S. Stablecoins Act, S. 1582, 119th Cong. (2025) (enacted as Pub. L. No. 119-27, July 18, 2025).

[565] In re Athena Capital Research, LLC, Exchange Act Release No. 73,369 (Oct. 16, 2014).

[566] Martina Lindberg, Conviction Secured in Groundbreaking Prosecution for Manipulating Mango Markets, GLOBAL RELAY INTELLIGENCE & PRACTICE (Apr. 23, 2024), https://www.grip.globalrelay.com/conviction-secured-in-groundbreaking-prosecution-for-manipulating-mango-markets/.

[567] White House, Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law (July 18, 2025), available at https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/

[568] GENIUS Act §§ 101–301, Guiding and Establishing National Innovation for U.S. Stablecoins Act, S.1582, 119th Cong. (2025).

is not enough where markets run 24/7 and offshore: ex-ante licensing and operating conditions significantly lower the attack surface for algorithmic manipulators[569].

B. United Kingdom: FCA's Ex-Ante Platform Obligations

The U.K. has adopted a platform-driven, ex-ante regulatory approach. FCA's DP25/1: Regulating Cryptoasset Activities views crypto-asset trading platforms as regulated market infrastructure subject to authorization and a regulatory framework similar to traditional exchanges[570]. The FCA specifically suggests requirements for platforms where algorithmic trading occurs; including governance, pre-trade mechanisms, surveillance, and operational resilience; risk mitigation intrinsic in platform design.

This approach aligns closely with MiFID II's framework for algorithmic trading (pre-trade risk checks, kill switches, best execution duties) but adapts them to crypto specifics: custody risks, on-chain settlement, and cross-jurisdictional fragmentation[571]. For India, the FCA's model demonstrates the practical effect of treating the trading venue as the locus of risk management obligations; a model SEBI might emulate by requiring SEBI-licensed CATP-like obligations for exchanges serving Indian clients.

C. European Union, Singapore, and Australia; Harmonised and Proportionate Standards

The EU's Markets in Crypto-Assets Regulation (MiCA) creates a harmonized regulatory framework for crypto service providers throughout member states, including stablecoin governance and white paper disclosure obligations[572]. Singapore (MAS) uses risk-based licensing under the Payment Services Act and has published focused guidance for digital token service providers, such as operational resilience and AML requirements[573]. Australia (ASIC) consulted on exchange licensing and anti-manipulation measures, demonstrating convergence toward "platform licensing plus surveillance requirements"[574].

IV. Regulatory Gaps in India

Despite SEBI's expansive statutory mandate in securities markets, the regulation of algorithmic trading in crypto markets remains riddled with gaps. These deficiencies are structural, stemming from legislative ambiguity, institutional overlaps, and technological shortfalls.

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[569] Commodity Exchange Act, 7 U.S.C. §§ 1–27f (2018).

[570] U.K. Fin. Conduct Auth., *DP25/1: Regulating Cryptoasset Activities* (May 2, 2025), available at https://www.fca.org.uk/publications/discussion-papers/dp25-1-regulating-cryptoasset-activities

[571] Directive 2014/65, of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Amending Directive 2002/92/EC and Directive 2011/61/EU, 2014 O.J. (L 173) 349, art. 17 [hereinafter MiFID II].

[572] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, and Amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, 2023 O.J. (L 150) 40.

[573] Payment Services Act, Act 2 of 2019 (Sing.) (in force Jan. 28, 2020); Monetary Authority of Singapore, Guidelines on the Provision of Digital Payment Token Services to the Public (Jan. 17, 2022).

[574] Australian Securities & Investments Commission, Consultation Paper 343: *Crypto-assets as Underlying Assets for ETPs and Other Investment Products* (June 30, 2021), available at https://www.asic.gov.au/regulatory-resources/find-a-document/consultations/cp-343-crypto-assets-as-underlying-assets-for-etps-and-other-investment-products/.

Development of algorithmic trading (AT) and the growth of cryptocurrencies (crypto-assets) in India have revealed essential gaps in the structure and functioning of the regulatory system. Although SEBI enjoys a sturdy mandate under the SEBI Act, 1992, and the Securities Contracts (Regulation) Act, 1956 (SCRA), the same does not reach fully to digital or crypto assets and the crypto markets. This section analyses in detail the Indian regulatory lacunae here, focusing upon jurisdictional uncertainties, limitations in enforcement, technological imperatives, and the lack of safeguard for investors.

A. Jurisdictional Ambiguity

The most fundamental challenge is definitional and jurisdictional. Under § 2(h) of the SCRA, "securities" encompass shares, bonds, debentures, and instruments notified by the Central Government[575]. Cryptocurrencies, being decentralized digital assets, remain outside this statutory definition[576]. Similarly, the SEBI Act, 1992, confers regulatory authority over securities and intermediaries but is silent on crypto-assets[577]. Consequently, SEBI's supervisory jurisdiction does not cover crypto exchanges, notwithstanding the functional similarities between securities trading algorithms and crypto trading bots[578].

The Supreme Court ruling in Internet & Mobile Ass'n of India v. Reserve Bank of India (2020) shows the implications of this confusion[579]. In striking down RBI's banking restrictions on crypto transactions, the Court emphasized the rule that regulatory measures should draw their basis from statutory competency. This judgment solidifies the need for clear legislation at the parliamentary level in the form of amendments in the SCRA or SEBI Act or through special legislation for cryptocurrencies in order for SEBI to gain the power of regulating algorithmic activity in crypto exchanges.

B. Enforcement Constraints

Although manipulative activity in crypto is similar to classic securities fraud-like activities like spoofing, layering, and wash trading; SEBI cannot use its enforcement arsenal beyond the bounds of its statute. While under §§ 11 and 11B of the SEBI Act the regulator can require records, impose fines, or require disgorgement for fraud in the security markets, such powers are not exercisable in the case of the crypto markets and so the manipulative algorithms elude the reach of Indian enforcement[580].

In addition, cross-border trade complicates enforcement even more. While the SEC in the United States can subpoena U.S.-based exchanges or the FCA in the United Kingdom can license platforms for compliance, SEBI does not have similar power regarding offshore exchanges that are reachable by Indian investors. The absence of regulations thereby enables

[575] Securities Contracts (Regulation) Act, 1956, No. 42 of 1956, § 2(h).
[576] Securities and Exchange Board of India Act, 1992, No. 15 of 1992.
[577] Sumit Agrawal, Kavish Garach & Mahima Jayan, *Balancing Innovation, Regulation, and Growth: How SEBI's Policies Impact SME Fundraising in India*, 1 J. CORP. L. & GOVERNANCE 1, 10 (2025).
[578] Id.
[579] *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 S.C.C. 274 (India).
[580] SEBI Act §§ 11, 11B.

smart players to take advantage of market imperfections and escape the eye of the law, and hence the imperative for legislative reforms and global collaboration.

C. Lack of Algorithmic Screening

The SEBI circular in February 2025 requires the exchange permission for algorithmic trade in the equity markets by the brokers, and they should have a distinct identifier for each algorithm and five years of audit logs[581]. It provides for traceability and monitoring for anti-manipulative activities and pre-trade testing[582]. Crypto markets, in turn, have no formalized algorithmic regulation. Exchanges license proprietary bots and retail algorithms without pre-authorization or standardized testing. The failure of algorithmic approval not only opens markets to manipulation but also shakes investor confidence. The policy focus on the responsible use of AI/ML in the securities markets reveals a stark inconsistency: unless regulated in a common way, the crypto markets are subject to abuse system wide.

D. Investor Protection Void

India's securities regulations exact strict investor protection measures: mandatory disclosures, prohibitions against insider dealing, grievance redressal mechanisms, and settlement mechanisms[583]. None of these such safeguards is in the crypto markets. The Financial Intelligence Unit–India (FIU-India) insists upon AML/KYC for Virtual Asset Service Providers (VASPs) but does not insist upon investor-facing safeguards, particularly protection against algorithmic manipulation[584].

Retail investors therefore find themselves in a contradictory world: they are insulated from the risk of money laundering yet are still at risk for market abuse and hence potential damage to their reputation and financial loss. This discrepancy highlights the necessity for investor awareness, grievance redressal mechanisms, and regulatory requirements specifically targeting algorithmic risk in the markets for digital assets.

E. Surveillance and Technological Deficits

IMSS and artificial intelligence monitoring systems are used by SEBI for the detection of suspicious trade patterns in the Indian stock markets[585]. These systems can catch in real-time

[581] Securities and Exchange Board of India, Circular No. SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/0000013 on Safer Participation of Retail Investors in Algorithmic Trading (Feb. 4, 2025), available at https://www.sebi.gov.in/legal/circulars/feb-2025/safer-participation-of-retail-investors-in-algorithmic-trading_91614.html.

[582] Securities and Exchange Board of India, Consultation Paper on Guidelines for Responsible Usage of AI/ML in Indian Securities Markets (June 20, 2025), available at https://www.sebi.gov.in/reports-and-statistics/reports/jun-2025/consultation-paper-on-guidelines-for-responsible-usage-of-ai-ml-in-indian-securities-markets_94687.html.

[583] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015; Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

[584] Financial Intelligence Unit–India, Notice on Registration of Virtual Digital Asset Service Providers in FIU-IND as Reporting Entity (Jan. 20, 2025), available at https://fiuindia.gov.in/pdfs/downloads/VDASP20012025.pdf.

[585] SEBI, Consultation Paper on Guidelines for Responsible Usage of AI/ML in Indian Securities Markets (June 20, 2025), available at https://www.sebi.gov.in/reports-and-statistics/reports/jun-2025/consultation-paper-on-guidelines-for-responsible-usage-of-ai-ml-in-indian-securities-markets_94687.html

the crime of spoofing and layering and other forms of manipulation. However, the crypto exchanges are functioning in 24/7 world-wide distributed platforms and are exempted from standardized monitoring requirements.

A lack of real-time cross-venue monitoring also escalates system wide vulnerability. Without equivalent technological infrastructure for crypto markets, SEBI is not in a position to effectively identify algorithmic manipulation and therefore cannot safeguard market integrity. Mandatory use of AI-powered monitoring for crypto exchanges, real-time exchange of data with SEBI in real-time, and uptake of pre-trade and post-trade risk management similar to under MiFID II or in SEBI's own equities regulations would constitute policy interventions.

F. Fragmented Regulatory Oversight

Alongside SEBI, various authorities; RBI, Ministry of Finance, Ministry of Electronic and Technology, FIU, and Enforcement Directorate; have overlapping mandates with varying intentions. The prohibitionist approach of RBI for select stablecoins is at odds with the incremental embracement by MOF of tokenized assets[586]. Such fragmentation gives birth to regulatory confusion and facilitates arbitrage by malactors. Frameworks or mechanism of coordination across SEBI and others are necessary for effective and cogent control of crypto algorithmic trades.

V. Reforms and Conclusion

Reforms

To address regulatory gaps in crypto algorithmic trading, India should pursue a **multi-pronged approach**:

1. **Clarify SEBI's Jurisdiction** – Amend the SEBI Act and SCRA to include crypto-assets with security-like features, and designate SEBI as the primary market regulator for such platforms, while clearly delineating responsibilities with RBI, FIU, and CBDT.
2. **Algorithmic Trading Oversight** – Require pre-approval, registration, and unique tagging of trading algorithms; implement pre-trade risk controls, rate limits, and real-time surveillance; and encourage exchanges to adopt circuit breakers and blockchain monitoring tools.
3. **Strengthen Enforcement** – Extend SEBI's anti-fraud and market abuse provisions to crypto; introduce cross-border cooperation with international regulators; and provide whistleblower and investor grievance channels.
4. **Self-Regulation and Technology** – Encourage crypto exchanges to adopt industry codes of conduct, audit algorithms, and employ AI/RegTech surveillance tools.

[586] Sumit Agrawal, Kavish Garach & Mahima Jayan, *Balancing Innovation, Regulation, and Growth: How SEBI's Policies Impact SME Fundraising in India*, 1 J. CORP. L. & GOVERNANCE 1, 10 (2025).

5. **Regulatory Sandbox** – Establish a sandbox to test crypto products and algorithmic strategies under supervision, with learnings informing broader rulemaking[587].

Conclusion

Algorithmic trading presents a dual paradigm: it can enhance liquidity, price discovery, and market efficiency, yet simultaneously create avenues for sophisticated market manipulation, particularly in emergent and lightly regulated environments. The Indian crypto market, given its rapid expansion, high retail participation, and global interconnectedness, cannot remain in a regulatory vacuum without incurring systemic risks. International precedents demonstrate the feasibility and necessity of proactive regulatory oversight. For instance, the U.K. Financial Conduct Authority (FCA) is establishing a crypto trading regime focused on transparency and market integrity, while the U.S. Securities and Exchange Commission (SEC) has actively enforced actions against manipulative algorithmic conduct in both securities and digital asset markets. These measures highlight that market supervision, algorithmic monitoring, and enforcement frameworks are central to sustaining investor confidence.

For India, the imperative is clear: SEBI's statutory mandate should explicitly encompass algorithmic trading on crypto exchanges. This does not imply that all cryptocurrencies must be classified as securities; rather, the regulatory focus should be on crypto-assets exhibiting economic characteristics akin to securities, or traded in ways that mimic public-market mechanisms. Legislative amendments or formal rulemaking can furnish SEBI with the authority to enforce market integrity, inspect transactions, and penalize manipulative conduct. Practically, Indian crypto exchanges should implement exchange-supervised algorithmic controls, including pre-approval and unique tagging of trading bots, real-time risk management mechanisms, and mandatory cooperation with SEBI's surveillance initiatives. Simultaneously, SEBI should invest in market surveillance technologies tailored to crypto trading, issue clear guidance on market abuse rules, and coordinate with international counterparts to address cross-border manipulation risks.

Absent these measures, India risks replicating the challenges faced in traditional equity markets. The Jane Street episode in Indian equities and MEXC's crypto manipulation findings[588] illustrate the tangible consequences of algorithmic abuse. Without a robust regulatory and technological framework, algorithmic strategies could distort prices, undermine investor confidence, and erode the credibility of India's crypto ecosystem.

In conclusion, integrated oversight combining legislation, regulatory authority, technological tools, and international cooperation is essential to ensure that algorithmic trading in India's crypto markets evolves responsibly. By extending SEBI's remit, establishing clear rules, and deploying advanced surveillance frameworks, India can foster a secure, efficient, and trustworthy crypto marketplace, balancing innovation with systemic integrity.

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[587] Securities and Exchange Board of India, Regulatory Sandbox for Testing Crypto Products and Algorithmic Trading Strategies, under Supervised Environment, with Outcomes Informing Broader Rulemaking (SEBI Sandbox, 2025).

[588] SEC Charges New York-Based High Frequency Trading Firm With Fraudulent Trading to Manipulate Closing Prices, U.S. SEC Press Release (2014), https://www.sec.gov/newsroom/press-releases/2014-229.

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