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Foreword

One is defined by his 'thought process'. A person's strength, quality and depth lies in his thoughts, than in action, for the former is spontaneous/natural, without any filtration; and the latter, the outcome of inner deliberations. Reading as much legal literature as you can, with your focus on the propositions, postulates and the doctrines coined, followed by the formation of one's own opinion shapes the legal personality in you. It is most heartening that Mar Gregorious College of Law (MGCL) is publishing a Journal and I am privileged to pen the forward for its inaugural issue. The articles and the topics to be dealt with will kindle the right thought in the minds of the students, translating the legal theory to application of law. For me, this vital transformation is the ultimate purpose of learning law.

Prayers from the bottom of my heart for this Journal - Journal of Mar Gregorios College of Law (JMGCL)to be a crucible for nurturing the intellectual discourse, enriching the habit of inquiry amongst its readership. I wish, nothing short of, 'the very best' for this venture. Hearty Congratulations to the Editor and the team.

Warm regards,
Justice C. Jayachandran
Judge,
High Court of Kerala

Scope of the Journal

The journal provides a peer reviewed platform for intellectual discussion and critical analysis in the subject of law and related disciplines. It accepts original and unpublished research pieces, case comments, legislative assessments, and book reviews that contribute to current legal issues and jurisprudential growth. The scope covers a wide range of legal issues, including interdisciplinary subjects that investigate the intersection of law and society, politics, economics, and global governance are especially encouraged. The journal aims to promote academic engagement, policy relevance, and the progress of legal education and change.

Aims and objectives

» To foster critical thinking in law by encouraging advanced reading and study of law and its administration.

» To encourage transformation in the administration of justice and foster the working of legal systems that are responsive to society's changing social, economic, and cultural needs.

» To stimulate comparative analysis in various domains of law and develop innovative thinking for the successful execution of laws.

» To promote legal areas and disciplines that positively impact regulations, jurisprudence, and public discourse.

» To enhance the diffusion of legal knowledge and raise understanding of legal principles and their application among scholars, practitioners, and the public.

Submission Guidelines

We are open to submissions throughout the year. All submissions undergo a peer review process. Publications are offered in Print mode and are published Biannually.

Formatting Guidelines

» Abstracts: Submit abstracts in italics, concise (150-300) words.

» Citations: For citations, follow the latest Bluebook edition.

» Footnotes: For footnotes, maintain 10-point Times New Roman. It should be single-spaced and fully justified.

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Editor's Note

Mar Gregorios College of Law is pleased to present this edition of the Journal of Mar Gregorios College of Law (JMGCL), featuring a diverse and thought-provoking collection of articles that reflect the evolving contours of law, technology, governance, and constitutional identity. This issue brings together scholarly contributions that critically engage with some of the most pressing legal questions of our time, offering both depth and diversity in approach and analysis.

The article "PANOPTICON 2.0: Dataveillance, Social Media Apps & The Silent Surrender of Privacy" addresses the invisible yet pervasive nature of digital surveillance in the age of social media. It raises significant concerns about autonomy, consent, and the commodification of user data, all within the larger framework of privacy rights.

In "The Evolution of Population Control Mechanisms: Legal Narratives from England to India," the author traces the legal trajectory of population policies, critically examining the intersection of law, public health, and reproductive autonomy across two distinct legal cultures.

The third article "Impact of Government Initiatives & Policies on Women's Participation in Governance" provides a socio-legal inquiry into gender inclusion, evaluating how affirmative policies have contributed to—yet at times also limited—the meaningful participation of women in public decision-making spaces.

"Artificial Intelligence and Privacy in India – Violation Again and Again" delves into the tension between rapid technological advancement and the inadequacy of current legal protections. It highlights the urgency of instituting robust data protection frameworks that balance innovation with individual rights.

The study "Revisiting the Concept of Special Status" presents a constitutional analysis of Article 370 and its abrogation, re-evaluating federalism in the Indian context. It contributes meaningfully to the continuing discourse on center-state relations, autonomy, and constitutional identity.

Finally, "Ambition Without Obligation: A Legal Critique of the Efficacy of NDCs and Climate Finance Mechanisms in the International Climate Regime" offers a timely critique of international environmental commitments, analyzing the gap between aspirational promises and enforceable obligations under climate law.

Needless to state, how legal journals play a vital role in the legal landscape by providing a platform for staying updated on laws, judicial developments, and scholarly debates. Publications like JMGCL foster analytical thinking and critical reflection, enriching both academic inquiry and professional growth. For students and early-career scholars, engaging in legal writing nurtures core competencies essential for success across various fields of law, from advocacy to policymaking.

We gratefully acknowledge the patronage and blessings of His Beatitude Baselios Cardinal Cleemis, the Major Archbishop-Catholicos of the Syro-Malankara Catholic Church and the Major Archbishop of Trivandrum, whose support has been instrumental in bringing out this volume. We extend our sincere thanks to all our faculty members for their assistance in proofreading, and for guiding our student editors in the formatting process. Our heartfelt gratitude also goes to all the contributors for their scholarly engagement, and to our readers for their continued encouragement and support. We hope this edition serves as a source of inspiration for further research, meaningful dialogue, and critical reflection.

Fr. Adv. Joseph Venmanath - Managing Editor,
Journal of Mar Gregorios College of Law (JMGCL)

Panopticon 2.0: Dataveillance, Social Media Apps & The Silent Surrender of Privacy

Sephali Svati*

Abstract

The global proliferation of artificial intelligence-powered technology is unfolding rapidly, notably within social media platforms and digital-mobile apps. This surge in AI application blurs the lines between intentional information gathering, labeled as "by design," and inadvertent collection through "by default" patterns. Platforms embedded with AI increasingly exercise supervisory control, marked by the widespread adoption of personalization in communication, the curation of user preferences, and the customization of social media feeds. This trend gives rise to a state of ubiquity through "dataveillance" — a surveillance mechanism driven by data. This phenomenon has the potential to enhance access control, facilitate social sorting, and predict behavior, metaphorically resembling a modern 'Panopticon surveillance.' In the realm of health informatics, particularly during the pandemic, and exemplified by the high-profile "Pegasus snooping scandal", surveillance systems leveraging social media information have become prevalent. This paper delves into the ethical and legal quandaries stemming from technologically enhanced mass surveillance. It specifically addresses the challenges posed by social media platforms and mobile apps in monitoring metadata and content. While incorporating doctrinal aspects, the paper employs case studies to underscore the urgent need for the enforcement of data protection statute in India. Beyond reviewing recent research by jurists, international bodies, case precedents, the author aims to present specific suggestions for regulating incidents of 'dataveillance' in India. The paper concludes on an optimistic note, asserting that responsibly and legitimately enabled AI technologies and software are crucial for bolstering national security. However, it emphasizes the imperative need for robust privacy safeguards and standards aligned with democratic norms to maintain control and balance in the evolving landscape of technological surveillance.

Keywords: Dataveillance, Personalization, Privacy, Social media.

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I Introduction:

> "If you're not paying for the product - but enjoys the service assuming it is free - then you are the product." Richard Serra[1]

In the year 2020, Netflix had premiered a documentary titled "Social Dilemma"[2]. The message that conveyed through this documentary was "everything one doing online, is being watched, is being tracked, is being measured." The documentary delves into the intricate logistics of algorithms, unraveling how they are meticulously encoded and seamlessly integrated into various applications and social media tools. In doing so, it issues a cautionary note regarding the inherent risks entwined with the pervasive practice of data mining activities. Notably, the engineers and web designers interviewed as part of this documentary echoed concerns about the profound disruption that Artificial Intelligence (AI) could wield upon the very fabric of society. They underscored the potential for AI to subvert established systems through manipulation and the dissemination of misinformation. While Artificial Intelligence stands as a ubiquitous force shaping myriad aspects of our lives, it grapples with a lack of a universally accepted definition on the global stage. A potential and clear-cut characterization of AI could be framed as the analysis of data to model some facet of the world. Inferences drawn from these models are then leveraged to predict and anticipate potential future events. In essence, the documentary prompts a contemplation of the intricate web of algorithms and the transformative power of AI, urging a nuanced understanding of its implications on society and the information landscape[3] AI is linked with the notion that intelligence can be displayed by computer systems. It is a computer highlighted expertise proficient of resolving complex problems in a flawless, cost-effective manner without slightest human intervention[4]. In the realm of computer science, there exists a distinctive field with the objective of unraveling various methodologies to program computers in a way that enables them to learn autonomously. This is accomplished by emulating intelligence, mimicking the very process through which humans acquire knowledge. The system of intelligence, thus artificially crafted by a programmer, is aptly termed Artificial Intelligence.[5] In actuality, Artificial Intelligence is presently governing our existence,

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1.These were stated in the 1973 movie called "Television Delivers People" by Richard Serra and Carlota Fay Schoolman. For more info read Chris Meigh-Andrews, *A History of Video Art: The Development of Form and Function,* Oxford publications, 2006.

2. A 93-minute film directed by Jeff Orlowski that dealt with "real-life interviews combining few fictionalised aspects upon social media addiction" focusing an American family. Allie Goldstein *Film review the social dilemma* Available at: https://udreview.com/film-review-the-social-dilemma/ (last accessed on 4 July, 2025).

3. M Hancock ,*Artificial intelligence: opportunities and implications for the future of decision making,* 12 February 2016, available at: "https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/566075/gs-16-19-artificial-intelligence-ai-report.pdf."(Last accessed on 13 June 2025.)

4. "N. Chen Are Robots replacing Routine Jobs?" Harvard College Thesis, Applied Mathematics, Cambridge, 2018.

5. GyandeepChaudhary, *Artificial Intelligence: The Liability Paradox,* ILI Law Review (Summer Issue 2020).

and we, as subjects in a laboratory, are constantly shaped, manipulated, and instilled with beliefs in diverse manners that often elude our awareness.[6]

Originally introduced as a platform for staying informed about global events or connecting with friends, many social media platforms exceeded their initial purposes, transforming into pages for expressing opinions. These platforms expanded beyond their original intentions due to advancements in mobile technologies and the integration of artificial intelligence (AI) into software updates. Consequently, they now gather and hold personalized data. Throughout the years, observers have seen how *Twitter, Facebook,* or *Instagram* creatively generated income and cooperated through technology. These platforms have also reshaped customer computing, offering immediate access to information from any location.[7] The avenues within social media and innovative business models such as *uber* or *swiggy* redefined the system by way of "collaborative consumption" or "collaborative consumption "of data collection. However, it also witnessed the technology's ability to exploit the coarseness of data with data scraping that could possibly add predictable conducts and incidents. The shift from general web to web 2.0, where the latter was more responsive and interactive to the user, to the current trend of android web 3.0, and personalization plays the key role in such interaction and such personalized systems. Nevertheless, it has also observed the capacity of technology to manipulate the granularity of data through data scraping, potentially introducing foreseeable behaviors and occurrences. The transition from the conventional web to personalized system transforms into a two-way communication channel.[8] Given the prevalence of personalized applications available around the clock, it is inevitable to overlook the associated issues and their implications. A glaring concern revolves around safeguarding privacy, as the provision of personalized services hinges on the acquisition of personal data. The surge in privacy challenges emanates from the pursuit of 'personalization', where service providers aim to tailor content based on collected data, encompassing activity history, location, and other visited sites. This piece delves into the emerging challenges brought about by the integration of artificial intelligence within mobile applications and social media platforms. It scrutinizes the scope of surveillance,

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6. Algorithms of google search, Amazon Alexa, advertisements of items in one's shopping list on different social media platforms, companies and educational institutions taking contact details of applicants from exam portal databases. See, B Schneier *The public-private surveillance partnership* Bloomberg.com, 31 July(2013). Available at: https://www.bloomberg.com/opinion/articles/2013-07-31/the-public-private-surveillance-partnership (accessed on 5 July, 2025).

7. For instance, "observe the development and muti-fold uses of a smart phone: On it one can listen to music, phone people, text, watch videos, send and receive emails, surf the internet, play games, watch videos, store pictures and plan the travel with calendar and many other things. Instead of carrying disc-man, walk-man, laptop, diary, camera, telephone today all in one is possible. This is the convergence where all contents and information is carried by one tooI" Sola Pool, *The Technologies of Freedom,* Belknap Press, 1983.

8. P. Brusilovsky, *Adaptive Navigation Support: From Adaptive Hypermedia to the Adaptive Web and Beyond 2(1)* PSYCHOLOGY JOURNAL 7- 23(2004).

data mining, consumer protection, and the liability of service providers. The examination extends to various studies exploring facial identification software, capable of recognizing individuals, as well as technologies like the 'automated license plate reader system' (ALPR), which discerns automobile movements. Similarly, 'automated body scanners' designed to swiftly capture the shape and size of a human body for diagnostic purposes and 'stingray devices' monitoring communications, all fall under scrutiny. These software applications are adept at extracting data. The article posits that an escalating reliance on opaque artificial agents poses threats to privacy, civil rights, and individual autonomy. Additionally, it highlights the potential for encoding discrimination in automated decisions. Ethical and legal considerations are meticulously examined to delineate the regulatory measures that need to be implemented. Furthermore, the article explores the repercussions of such applications on people's privacy. It asserts that, under the guise of providing 'personalized service,' companies have inadvertently subjected us to servitude and victimization by artificial intelligence. To formulate concrete recommendations, a comprehensive understanding of the concept of panopticon surveillance is crucial. The relevance of this concept today, especially in the context of AI-based applications, is explored to shed light on the intricate dynamics of privacy invasion and surveillance.

II Panopticon Surveillance: Meaning in digital Era

George Orwell's legendary testimonial of "Big brother is watching you" reiterates the current situation of how the personal data being collected by corporate houses, websites and even the government. The data mining activity thus could facilitate our next move and activity aspects seeing our previous decision-making processes and behaviour. This can then be used as a tool of oppression and control and the rise of a "Big Brother" State, as Orwell puts it. The expression as "panopticon" as traced from the writings of Jeremy Bentham directs attention to surveillance ethics in the contemporary era. The panopticon relates to a prison house, formed like a round grid with the jails next to the external walls. In the middle of the round building positions a pillar where the prison superior would live and monitor the inmates; their activities without letting the prisoners know that they were under surveillance.[9]

This metaphor is falling in place with AI led human life. Take a look at how algorithms and artificial intelligence (AI) agents determine almost every facet of our lives - it vigils the "news articles we read, our shopping list, the movies we watch, the people we spend time with, our access to credit, our browsing history, the information shared on our social media, webpages or posts we click "like", our "re-tweets", and even the "investment of

9. Anne Brunon-Ernst Law, *Surveillance and the Humanities* , Edinburgh University Press 111 (2023).

our capital". Humans by deploying various software embedded AIs have empowered them to make decisions and take actions on our behalf in these and many other domains because of the efficiency and speed gains they afford and the comfort and the easy access that is provided to the consumers. For instance, see the recent "Project Pegasus" the Israeli spyware target upon I- phones in India. It was revealed that "Pegasus through Apple's default iMessage app" and the "Push Notification Service (APNs) protocol" transmitted itself as push notifications via Apple's servers. The outcome is - once infected, a phone becomes a digital spy under the attacker's complete control. Apparently, it was used as a snooping software to hack the phones of union government ministers, opposition leaders, bureaucrats, law enforcement officers, business-corporate heads, civil-rights activists and journalists. Only with the writ petition[10] an interim order, an expert committee team had been formed reversing the ruling party's decision.

The reported cases of data leaks and the deficiency of control over content, and political influence of social networks has provided an increasing awareness of how social media platforms (mis) use personal data, which in turn has had an effect on the level of trust users have in such platforms and digital services. Since AI algorithms are human inventions, prejudices & biases ought to take place in its application. AI bias could be the "outcome of prejudiced assumptions made by the developer during the process of developing the algorithm" either because the manufacturer yearned-for it or the end- consumers demand that way. This sort of cognitive bias could be a peril for customizing and personalizing the data. In an interview MarielleAttalTaieb, Strategic Planning Director, Kellogg's said "The amount of information revealed by the consumers is a direct measure of the level of information utility"[11] Organizations undergo four different stages to utilize the data - a.) Collection, b.)Storage, c.)Mining/Analyzing, d.)Customization or Personalization.[12] No organization is authorized to process private data without an individual's permission unless there comes any "legitimate interests" as balanced against individuals' privacy rights. In such cases too, individuals have a right to challenge to processing based "on compelling legitimate grounds"[13]

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10. WRIT PETITION (CRL.) NO. 314 OF 2021 available at https://drive.google.com/file/d/1K1FXrSerEjVqGFOU3ki-LxSvi1p1W84P/view (last accessed on 14 Jun 2025)

11. Nicolas Mariotte *Hyper-personalization vs. Segmentation: Has Big Data made customer segmentation redundant?* available at https://www.semanticscholar.org/paper/Hyper-personalization-vs.-Segmentation%3A-Has-Big-Mariotte/c91a734083a34c6f7b98c4dced44ce4d15860a5d (last accessed on 14 June 2025)

12. Weichao Gao, Wei Yu (et. al). *Privacy-preserving Auction for Big Data Trading using Homomorphic Encryption*. 7 IEEE TRANS. NETW.SCI. ENG. 776–791 (2020).

13. *Justice K.S.Puttaswamy(Retd) v. Union of India* (2019) 1 SCC 1

Also, take the example of *ArogyaSetuapp* -India's digital-driven application to manage the pandemic. AarogyaSetu- with reference to its privacy policy- collects "personal details" such as "name, age, sex, profession and location". Initially launched as consensual, soon it became mandatory for basic facilities like travelling, work reporting and so on. As there is no statute enforceable to protect-]well, there are the Personal Digital Personal Data Protection Act, 2023 (DPDP Act) & Digital Information Security in Healthcare Act "DISHA"]- serious privacy concerns arise. The revelation that state administration sharing AarogyaSetu data with the police authorities got highlighted after a "Right to Information query" disclosed that in "Kulgam district of Jammu and Kashmir, the chief medical officer shared users' data" with the local police.[14] This legal vacuum on such apps that too under governmental control therefore warrants regulation.[15]

III AI driven apps: Data customization/personalization

Since the majority of the population nowadays relies heavily on mobile applications for their daily needs and activities, the possibility of personal data being processed through such tools and apps posing significant threat to the security andprivacy of the users cannot be ruled out. The manner in which this data is used by the companies is neither transparent nor the control of same lies in the hands of the users[16]. Such risks spring primarily from the diverse nature of data available and sensors present in mobile devices, the use ofvarious types of identifiers and increased possibility of tracking of users' data, the complex mobile app ecosystemand limitations of app developers, as well as the extended use of third-party software and services.

It is no coincidence when we receive the "notification of any item" that we might have thought about buying and we get notifications on "you might need to buy", meaning there-

14. Anam Ajmal, *J & K shared Setu data with cops: RTI reply* TIMES OF INDIA (Mar 31, 2021)

15. The incident of Indian Council of Medical Research (ICMR) Data Breach (October 2023) is significant wherein a cybersecurity firm, RESECURITY, found out that a hacker called "pwn0001" had put up on a dark web forum for sale a gigantic trove of personal information containing Aadhaar numbers, passport information, names, phone numbers, and addresses purportedly taken from Indian Council of Medical Research (ICMR) Covid-19 test records. The leak comprised more than 815 million records, which renders it possibly the largest data breach in Indian history. 100,000 sample data records containing individual information were verified through the government's "Verify Aadhaar" service. After the leak, the Computer Emergency Response Team of India (CERT-In) notified ICMR, and the Central Bureau of Investigation (CBI) and Delhi Police initiated investigations. Four people allegedly involved in extracting and brokering the data were arrested by December 2023. Police said the accused had met through a gaming site and wanted to financially benefit from the stolen data. The breach revealed wide security gaps in sensitive health-related databases and raised pressing questions over personal privacy safeguards under India's new data protection regime. See, Graham Cluley, *India's Biggest Data Breach? Hacking Gang Claims to have Stolen 815 Million People's Personal Information,* BITDEFENDER (November 01, 2023).

16. See for example results from the Mobilitics project conducted by CNIL and INRIA, available at https://www.cnil.fr/fr/node/15750. (last accessed on 12 June 2025)

by our mobile phone apps literally now can read our minds. On an average, a person has at least 30-50 apps on their device, ranging broadly from a device to track their health status to modes of entertainment, payment, etc. All of the apps require certain permissions and some sort of information about the user and device used. Information includes "name, email, address, date of birth" and so on and so forth whereas permissions include "access to location, camera, social media apps such as *WhatsApp, Instagram*, contacts, text messages, access to medical history, bank details" et al. All of these permissions are taken with apparently, or what seems like "free consent" to the users. These "unconscionable contract practices" cannot be termed inherently suspicious since due permission from the users is taken.[17] Not just the apps, but also the mobile service providers keep an eye on us. As soon as the data, call pack runs out or is about to get over, we start getting reminder texts to recharge.

Hence, making them a perfect target for the companies, governments, advertisers, owners and developers of the application or trackers in general, and can lead to pervasive and continuous monitoring of users. Lucidly elucidated, this is the umbrella concept of liquid surveillance, where every minutes of the details of our daily lives are tracked and traced[18]. As is the trait of technology, it is ever-changing, thus, to make our lives even easier; users are now increasingly getting accustomed to the possibility of voice control, supported by voice analysis agents such as Siri, Google Now, or Cortana. However, we are highly unaware of the fact that the voice control feature is realized by a device that is always listening in – at least to react on the defined control terms such as "Hey Siri", "Okay Google", or "Hey Cortana" – and therefore has access to all spoken communication too[19].

Few real-world instances of Artificial Intelligence Marketing Application have been discussed and explained below:

i. ***Myntra:*** The online shopping giant, Myntra uses AI powered algorithms to curate the list of "purchasing recommendations and filtration" for users. Initially, the user data is collected through the most recent search history and after that the AI algorithms enlist the tailored products specifically to suit the criteria of the user. Thus, showing" personalised recommendations" to the customer forcing them to buy the product. Another example of this could be Meesho[20] app's facility to allow its users to purchase products by a snapping a picture of it.

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17. J.A. Gerlick & S.M.Liozu,, *Ethical and legal considerations of artificial intelligence and algorithmic decision-making in personalized pricing*, 19 JOURNAL OF REVENUE AND PRICING MANAGEMENT, 85–98 (2020).
18. Z. Bauman and D. Lyon, *Liquid Surveillance: A Conversation* (Polity Press, MA,. 2013).
19. Andrew McStay, *Emotional AI, soft biometrics and the surveillance of emotional life: An unusual consensus on privacy* 3(2) BIG DATA & SOCIETY 1–11 (2020).
20. A latest player in the e-commerce fashion industry.

ii. ***Uber:*** Under the plain skin of Uber lies the complex AI technology which helps "the application in determining and predicting the time taken for rides or meals to reach at the destination, setting the rate as well as deciding the location for the driver to halt, wait and find the concerned person for pick up". All of these decisions are taken not by humans but the machine, technology driven feature of the application that connects the dots, hence forming a pattern and prediction without the app being explicitly programmed to do so[21]. Every feature of Uber, be it *UberEATS, Uber pool, UberX, Uber maps,* utilise this technology. One of the most relevant and relatable examples could be of the ETA in Uber X rides, no human being sits behind the app constantly, informing the distance remaining and time needed to cover the same. It is based on the data from numerous trips allowing the algorithm to understand a relative pattern regularly[22].

iii. ***Twitter:*** This issue with twitter's algorithm was highlighted by the users wherein large photos were cropped. In September 2019, a university employee put this in the public domain that irrespective of the fact that which image was added initially to the tweet, the app always showed white man above the black man, hence confirming racial bias in the algorithm of twitter.[23] Though twitter acknowledged the same and also resorted to fix the issue, but its results reveal the following, hence confirming the evidence of bias:

- 8% difference in favor of women over men
- 4% difference favoring white people over black irrespective of gender
- 7% difference favoring white women over black women
- 2% difference in favor of white men over black men

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21. Lakshmi Shankar Iyer, *AI Enabled Applications towards Intelligent Transportation,* 5 TRANSPORTATION ENGINEERING 32 (2021).

22. H. Anandakumar, R. Arulmurugan & A. Roshini, *Intelligent Vehicle System Problems and Future Impacts for Transport Guidelines,* PROCEEDINGS OF THE 2019 INTERNATIONAL CONFERENCE ON SMART SYSTEMS AND INVENTIVE TECHNOLOGY 1-5(2019).

23. Anna Kramer, *How Twitter Hired Tech's Biggest Critics to Build Ethical AI* PROTOCOL (June 23, 2021). Swiggy: Known for providing its customers unparalleled convenience, AI and data science are the heart of every system in swiggy. With the vast population to which it caters at the same time, it is impossible for humans to run it efficiently without AI. Thus, at the vendor front, AI helps in time-series based models of prediction that help the other partners to plan for demand. On the other side, that is, consumers, AI is used to render personalised experience by using other advanced features such as Catalog Intelligence in order to enrich the catalog with meta-data, Customer Intelligence, to classify the customers into certain segments such as affordability conscious customers, customers favouring certain dishes over others etc. Therefore, AI aids Swiggy to optimize the cost of delivery to ensure product delivery within the promised range of time, providing Personalized list of restaurants in the vicinity of the customer's residence. This is done with the help of analysis of previous orders, searches and interactions with the app.

Hence, it can significantly be concluded that Artificial Intelligence is mostly about data-driven approaches to marketing and decision making, hence, it is used to integrate data from different platforms. These applications crunch the available vast numbers and learn online behavior, thus, recognizing the digital identity of the users. On the other hand, it must also be taken into account that without such data being shared, the apps would not survive. The data of consumers act as fuel for the survival of applications. But the question that rises is, why the need to regulate? This need arose due to the lack of transparency and accountability. In a data breach incident as recent as June 2021, the professional networking giant, LinkedIn fell the prey to data breach. The data associated with almost 700 million of the users of LinkedIn were found to be posted on a dark web forum; this had an adverse impact on over 90% of its user base. The data shared included email address, contact details, genders, geographical location and further social media details hence a serious threat to the users. Several other instances of data leak were observed in the recent past, Major ones being Facebook in 2019[24], Dubsmash in 2018[25], Adult Friend Finder 2016[26].

Therefore, regulation of Data becomes a primary concern in the present scenario. Other than the breach and privacy concerns, Data protection comes under the ambit of Fundamental Right of Privacy.

IV Legal regulation: Indian scenario and comparison with GDPR

The absence of specific legislation and regulatory frameworks for Artificial Intelligence (AI) in India reflects a failure of the legal system to keep pace with rapid technological advancements. The question of regulating AI to establish accountability for reparations remains undetermined in India, presenting a global issue that requires elucidation. Despite the efforts of advanced globalization initiatives, the challenge of AI extends beyond borders, revealing inadequacies in existing legal practices. The lack of a regulatory framework in the AI domain raises concerns for the broader public, encompassing both common law and civil law contexts. Presently, AI operates without constraints, and there exists no ex-

24. Two datasets were exposed to the public internet which consisted of information of over 530 million IDs. The free posting of data clearly presented the criminal intent surrounding the Data. Sarker H., *Context-Aware Rule Learning from Smartphone Data: Survey, Challenges and Future Directions* 6(1) JOURNAL OF BIG DATA 1–25 (2019).

25. The NewYork based video messaging service had all of its user data stolen, which had over 162 million mail addresses and was put to sale on the Dream Market Dark Web. The app was unable to prove the entry of attackers or the number of users impacted. See, Iqbal H. Sarker, Mohammed MoshiulHoque (et.al) *Mobile Data Science and Intelligent Apps: Concepts, AI-Based Modeling and Research Directions* 26 MOBILE NETWORKS AND APPLICATIONS 285–303 (2021)

26. The social platform had over 20 years' worth of user data spread across six databases. This entire data was stolen by cyber-thieves. The nature of services offered by this website had enough potential to severely harm the users. See https://www.hypr.com/adultfriendfinder-security-breach/ (last accessed on 11 June 2025).

plicit law effectively addressing it. Consequently, existing strategies and rules must be reconsidered to impose obligations on AI for its actions and subsequent compensations, if any. While the government attempted to introduce a Digital Personal Data Protection Act, 2023 ostensibly aligned with the General Data Protection Regulation (GDPR), it proved to be more destructive than protective. It suggests that individual consent for the State's use of personal data would no longer be necessary, diverging from the protective intent. In contrast, the GDPR is a European Union law that mandates specific rules governing the ethical use of personal data by organizations and companies. The application of the GDPR commences with determining if any processing of 'personal data' has occurred. The Digital Data Protection Act 2023 is a milestone towards India's comprehensive legal framework for personal data protection, enacted to empower the citizens or data principals with rights inclusive of but not limited to erasure and consent withdrawal. The Act also imposes significant obligations on entities processing personal data. Despite these laudable goals, this legislation has attracted considerable criticism from legal experts. The Act is under significant scrutiny because of the extensive exemptions it grants the government. These broad exemptions are sparking major concerns about transparency and accountability, potentially undermining the law's core purpose of protecting individual rights. Critics worry that wide-ranging carve-outs for "national security," "public order," or "other legitimate interests" lack clear definitions, which could lead to arbitrary or excessive use. This not only risks eroding public trust but also increases the potential for government surveillance and misuse of citizens' data. A key issue is the Act's failure to establish strong oversight mechanisms for government data practices, which diminishes accountability. Without adequate checks and balances, there's a real risk of data misuse, directly contradicting the DPDPA's aim to ensure responsible data handling and safeguard individual rights. This flexibility for government agencies to bypass transparency and accountability measures fuels fears of heightened surveillance and potential data misuse, fostering a climate of distrust in official data practices, particularly given the sensitive nature of privacy rights. Ultimately, allowing the government to circumvent provisions designed to protect individual data rights compromises the entire legal framework, leaving citizens feeling their rights aren't adequately protected when government agencies aren't held to the same standards.

The Act's extensive compliance demands, including data security and impact assessments, create considerable administrative and financial burdens for resource-limited organizations. This can delay market entry, as startups must ensure compliance before launch, and may stifle innovation by making entrepreneurs hesitant to explore data-driven opportunities due to penalty fears. Ultimately, the DPDPA could place smaller businesses at a competitive disadvantage, leading to market consolidation. Effective enforcement of the Act critically depends on the Data Protection Authority (DPA) having sufficient resources,

technical expertise, and funding. The DPA faces significant hurdles, including potential resource constraints that could limit its ability to investigate, audit, and address public complaints. A lack of skilled professionals in rapidly evolving digital technologies, along with insufficient funding for essential operations like outreach and infrastructure, would severely compromise the DPA's effectiveness. Crucially, without public awareness and engagement, individuals may not know how to exercise their rights or report violations, leading to underreporting and reduced accountability for data fiduciaries.

Furthermore, the Act is hampered by ambiguities and unclear provisions, risking inconsistent interpretations and implementations. Key concerns stem from vague definitions of terms like "legitimate interest" and "significant harm," which complicate compliance for businesses and lead to varied applications by regulators. Additionally, the broad and undefined exemptions for government entities create uncertainty and could erode public trust. The processes for exercising data subject rights remain unclear, hindering individuals' ability to enforce them effectively. Similarly, the requirements for Data Protection Impact Assessments (DPIAs) are vaguely articulated, leading to inconsistent risk assessments. Finally, the lack of specific guidance on enforcement mechanisms and penalties for non-compliance might lead organizations to underestimate data protection's seriousness and foster a lack of accountability. The Digital Personal Data Protection (DPDP) Act attempts to strike a balance between economic growth, regulatory flexibility, and individual data rights. However, its current structure appears to favour ease of data processing and government control, rather than robust privacy protection. The law's inherent vagueness, combined with extensive exemptions for government entities and a potentially weak Data Protection Authority (DPA), significantly diminishes its ability to truly safeguard privacy. While businesses are no longer burdened by data localization mandates, they now face ambiguity regarding security standards, increased compliance costs, and uncertain legal liability. Furthermore, a critical lack of public awareness about individual data rights and redressal mechanisms limits the effectiveness of enforcement through personal claims, thus weakening the overall rights regime. The Act, despite being a landmark in Indian data governance, is significantly weakened by its broad government exemptions, vague enforcement, weak regulatory independence, and unclear cross-border data transfer/security standards. Without urgent clarifications, especially defining "reasonable" safeguards, narrowing surveillance powers, ensuring an autonomous regulator, and boosting public awareness, the Act risks failing to genuinely protect privacy. Transforming it into a truly rights-centric law will require continuous stakeholder engagement, judicial vigilance, and iterative rule-making.

With the surge of online education service providers due to the pandemic, students, including children, share personal information. Platforms like White Hat Jr., *Byjus* Kids, and *Unacademy* necessitate heightened legal responsibility to protect children and their

data from potential misuse[27]. Further, "the GDPR also provides for similar data subject rights to access, to rectify one's personal data, to raise objection to the processing of one's personal data in certain specific situations as those rights that already exist under the Data Protection Directive. Additionally, the GDPR provides for better explicit rights to erasure, also known as the right to be forgotten[28], the right to restrict the processing personal data,[29] a new right to data portability[30] and a right not to be subjected to automated decision making and profiling in the absence of appropriate safeguards".[31] In the case of *Govt of NCT of Delhi v SashankYadav*[32] the Delhi High Court dealt with a challenge to government circulars requiring production of an *Aadhaar Card* or Numberat the time of school admissions (specifically EWS/DG category in private unaided schools). The Court ruled that school admissions were not a "service" or a subsidy under the Aadhaar Act, and therefore, making Aadhaar mandatory would infringe upon fundamental rights. Single Judge issued an interim stay against the circulars, and subsequently, the Division Bench dismissed the government's appeal since it was not held to have any merits.

In *ABCD v. State of Haryana*[33] wherein the court anonymized the name of a corporate professional in court documents and on the internet as ABCD once the individual's FIR, albeit, later quashed, continued to resurface on the internet and wreak havoc in professional opportunities. In light of reputational damage and online stigmatization that persisted even after acquittal in law, the court invoked Article 21 and stated that purification of one's name would include obliteration of online traces no longer in the public interest. The orders extended beyond state-held records, asking search engines and social networks to remove or anonymise references to the case, showing recognition of new international data privacy standards ahead of Indian law. While the order is a milestone judicial evolution, it points out the need for legislative backing to institutionalise the "right to be forgotten" as a universal legal principle in India.

V Conclusion

In mid-June 2025, Cybernews cyber security researchers found an enormous collection of 16 Action login credentials spread in 30 individual datasets covering tens of mil-

27. Children's Online Privacy Protection Rule, see: https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule. (last accessed on 11 June 2025).
28. Article 17, GDPR
29. Article 18, GDPR
30. Article 21, GDPR
31. Article 22, GDPR
32. LPA 631/2023 & CM APPLs.47206-07/2023.
33. 2025 PHHC 29077

lions up to over 3.5 Action entries. The credentials, such as usernames, passwords, session tokens, cookies, and login URLs for Google, Apple, Facebook, Telegram, GitHub, bank websites, VPNs, business software, and government services were fresh and structured, and therefore highly weaponizable for phishing, account takeover, credential-stuffing, identity theft, and spear cyberattacks.[34] This differed from the solitary platform violation because this was a massive data dump of information obtained using infostealer malware infecting machines across users over time, only to be left exposed temporarily through misconfigured Elasticsearch servers or cloud storage. Security experts dubbed the cache a "blueprint for mass exploitation," and Cybernews and others warned people to change passwords, enable strong multi-factor authentication (specifically passkeys), employ unique credentials via managers, and consider dark-web surveillance because many of these credentials are still valid and waiting to be abused.[35] Further, in*Re: Zoom Video Communications Inc Privacy Litigation, U.S. District Court, Northern District of California,*[36] a major class-action lawsuit was filed against Zoom in Northern California, consolidating multiple complaints from users. These lawsuits primarily accused Zoom of misleadingly advertising end-to-end encryption, improperly sharing users' data (like device details and meeting information) with third parties such as Facebook and Google, and failing to prevent or adequately warn about "Zoombombing," those disruptive incidents where uninvited attendees displayed offensive content. People felt their privacy was invaded, and Zoom was negligent, breaking implied agreements, engaging in unfair business practices, hiding information, and violating California's data protection laws. While some claims, including those related to privacy and "Zoombombing," were dismissed by Judge Koh in March 2021, others, such as those concerning implied contracts and unfair business practices, were allowed to proceed.

Ultimately, the parties settled in 2021, which received final court approval by April 2022. As part of this agreement, Zoom committed to improving transparency around encryption, limiting data sharing with third parties, and providing remediation for affected users, who could then claim monetary relief. The court also approved legal fees and agreements with objectors, marking the resolution of over 14 consumer complaints that had been merged into this nationwide action.These aspects of information-data privacy are not taken into consideration by Indian lawmakers. AI related privacy infringements need to be seen not merely from the business side but from the government side too.

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34. Allison Francis, 16 Billion Login Credentials Exposed in Massive Data Breach CHANNEL INSIDER (24 June, 2025).
35. Vilius Petkauskas, 16 Billion Passwords Exposed in Record-Breaking Data Breach: What does it Mean for You? CYBERNEWS (30 June 2025).
36. Case No. 5:20-cv-02155-LB (N.D.Cal)

The advent of AI and its seamless integration into digital applications, mobile ecosystems, and social media platforms has fundamentally reshaped the contours of privacy, autonomy, and civil liberties in the modern era. As this paper has explored, we are living in a time where personalized experiences are no longer a luxury but a norm—often achieved at the cost of intrusive surveillance, opaque data harvesting, and algorithmic manipulation. The AI-driven architecture of contemporary digital platforms acts as a modern-day panopticon, silently observing, analyzing, and influencing our decisions and behaviors, frequently without our explicit awareness or consent. The concept of privacy is undergoing a transformative shift. What was once considered a fundamental right is increasingly being compromised—whether through government-mandated tracking apps like AarogyaSetu, surveillance tools like Pegasus, or corporate misuse of consumer data as evidenced in the Zoom and LinkedIn breaches? The examples discussed reveal a disturbing trend: while AI enhances efficiency, personalization, and user convenience, it simultaneously risks reinforcing systemic biases, undermining user trust, and eroding the very idea of informed consent. India's attempt to regulate this expanding digital frontier through the DPDPA, 2023 marks a significant legislative milestone. However, the Act's broad exemptions for government agencies, ambiguous terminologies, weak oversight mechanisms, and lack of clarity on enforcement dilute its protective capacity. When juxtaposed with robust frameworks like the European Union's GDPRIndia's legislative approach appears to prioritize state surveillance and economic flexibility over genuine user empowerment and accountability. Moreover, in the absence of a comprehensive legal framework specific to AI, issues such as algorithmic discrimination, data commodification, and profiling remain unaddressed. Without legal recognition of rights like the right to be forgotten, data portability, and protection from automated decision-making, individuals remain vulnerable to digital harm, stigmatization, and identity commodification. As digital technologies continue to evolve, regulation must keep pace not only with the innovation itself but also with its ethical, legal, and societal implications. What is required is a nuanced, rights-based, and inclusive framework that holds both private corporations and the state accountable. This includes fostering greater transparency, mandating informed and meaningful consent, ensuring algorithmic fairness, and creating mechanisms for legal redress in cases of privacy violations. In conclusion, while Artificial Intelligence presents immense opportunities for societal advancement, it also poses unprecedented challenges that cut across legal, ethical, and human rights domains. The road ahead must be paved with a clear, adaptive, and participatory legal architecture—one that safeguards the dignity and autonomy of every individual in the digital age. The real test lies not in developing advanced technologies, but in ensuring that these technologies serve humanity without compromising its core values.

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The Evolution of Population Control Mechanisms: Legal Narratives from England to India

Gayathri.P G* and Dr.Ambika. R. Nair**

Abstract

Every human being is born with certain rights, and these rights are an essential component of human society and culture everywhere in the globe. It is the duty of the nations to protect and sustain these rights by all means. The most urgent issue facing the contemporary world today is the tension between the speed of human race development and the overwhelming increase in resource demand needed to sustain mankind in peace, prosperity and dignity. Population controls being the most important need of the hour, the States are being more vigilant in implementing various measures to help people deal with the situation. The major request made from the part of the State is to use the rights guaranteed to the citizens in a responsible way. The state expects each and every individual to help their nation to curb the rise in population number by being responsible, as it is the duty of the people to protect their nation when they are the reason for these problems.

Keywords: Contraceptive mechanisms, Population Control, Reproduction, State responsibility, Women.

I Introduction

A state of welfare may be thought of as a type of governance where the state actively protects and advances the economic and social well-being of the people it governs. The idea of a welfare state is based on the concepts of equality of opportunity, fair wealth distribution, and collective responsibility for those unable to access even the most basic necessities for a decent existence[1]. Law being an instrument of social variation and its troublesome power must be used to address the issue of this community.[2] Studies on the question of

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1.Gerald L. Neuman, *Conflict of Constitutions? No Thanks,* 91 MICH. L. REV. 939 (1993).

2. B.P Singh Sehgal, *Population Control And Law- Problems, Policies, Remedial Measures,* Deep & Deep Publications, New Delhi, (1991)

population include the growth of a global network.[3] The practice of exaggeratedly maintaining the size of the population has been well defined. Population growth in India has become the thoughtful, serious and unfettered issue. Till date, demographers, policymakers, and social scientists have been concerned with the idea or hypothesis of population growth. In recent times, the seriousness of the problem of population has become an area of legal interest.[4]

For understanding the State's initiatives in population control, one needs to understand the basic relation between law and population policy. For this purpose, four categories are to be noted: Firstly, laws which deal with birth control, accessibility of contraceptives, information's based on birth control, sterilization procedures and abortion. Second group talks about some positive legal actions, which includes spacing actual clinics, services, education and training programs to assist people in obtaining these facilities so as to ensure that they are being provided with good protections. The third category includes features of personal laws or family laws that deal with rapid rise in population growth. The fourth category includes the legal actions concerning the economic factors manner on family, child care, welfare events, etc.[5]

II History as to the Origin of the Function of Population Control

Population control was first implemented in previous centuries with the intention of increasing global population. But in the present, it is intended to combat the negative effects of overpopulation by limiting the number of people on the globe. However, population control is the deliberate modification of a certain demographic group, typically accomplished via population control measures put into place by local, national, and global governing organisations.[6] In addition to the national governments, the international governmental organisations such as the United Nations, particularly the United Nations Population Fund, the World Bank, and the World Health Organisation, as well as numerous non-governmental organisations (NGOs) around the world, work on population reduction concerns.[7] The word "population management" has, over the last century, applied more clearly to managing the world's overall numerical population.[8] Its roots however go back to the social movements of the 19th and early 20th centuries, resulting in a systematized movement for birth control in Europe and the United States.[9] Post World War II, a decrease in

3. *Id.*
4. *Supra* note 2.
5. *Id.*
6. Bhargava, R. and Acharya, A. (eds), *Political Theory: An Introduction,* Pearson Longman, pp. 2-16 (2008)
7. *Id.*
8. Barbara Hartmann, *Population Control: Birth of an Ideology*, 27 INT'L J. HEALTH SERVS. 523, 523–40 (1997).
9. *Id.*

new born and child mortality and an unparalleled increase in population growth were the results of the implementation of enhanced public health initiatives, particularly clean water and improved cleanliness. Beginning in the 1950s, authorities in emerging countries started to see high population increase as a barrier to their region's economic progress. In the late 1960s the U.S. government became a major funder of overseas population reduction programs and established multilateral support by creating the U.N. Fonds pour les activities de la population.[10] Third World Leaders questioned the primacy of population management at the 1974 World Population Conference.[11] In the 1800s the world hit the first billion people, in the 1920s the second, in the 1960s the third, in the 1970s the fourth, in the 1980s the fifth and in the 1990s the sixth. Today the world has more than 7 billion inhabitants. Although the growth rate has decreased, the global population continues to rise exponentially, with nearly 90 per cent of this increase occurring in developing countries.[12]

III Theories on Population

i. Confucius and Other Chinese Thinkers

Though chasing the early thinkers of population, it appears that the great Chinese Philosopher Confucius and those fitting to his school of thought, as well as a few other Chinese Thinkers had given some thought to the concept of optimum population as it related to agricultural land. They had also measured population growth in relation to the availability of resources and the likely checks on this growth. The principles of Confucius on marriage, family and procreation were generally in favour of population rise.[13]

ii. Greek Thinkers[14]

In the Greek System, the individual was just a component of the State and was required to serve in a supporting capacity.[15] This outlook was reflected in their thinking on various social institutions. For example, in the ancient Sparta marriages, it was considered as an institution as an institution created by the legal and political system to provide the state with populations and citizens. The real purpose of

10. *Supra* note 8.
11. *Id.*
12. Bedprakas Syam Roy, *India's Journey Towards Sustainable Population Springer* (2016)
13. United Nations, The Determinants and Consequences of Population Trends, Population Studies No. 50, at 33–34 (1973).
14. Usha Tandon, *Population Law: An Instrument Of Population Stabilisation,* ch. 5, at 209–10 (Deep & Deep Publ'ns Pvt. Ltd.).
15. *Id.*

marriage was basically for the procreation of children.[16] Continuous wars resulted in a decrease in population which forced the Spartans to get married.[17] They were also worried about the excellence of their population and broke the overburdening situation of the state with hopeless inhabitants. Like the Spartans, the Athenians were also attentive in maintaining and cultivating the quality of the population.[18] Thus it was clear that the Greek Thinkers very well focused on the size of population.

iii. Pre-Malthusian Theory of Population[19]

A lot of developments and changes have occurred during this period like creation of gunpowder, America and new routes to India were discovered etc. This period was also noteworthy for the arrival of powerful States such as England, Spain, France and Portugal. This emergence had several impacts on the thinking of the economy and population. The Mercantilist School- here the mercantilist states of Europe thought that employment is necessary for the financial development and colonialism. Therefore, the European Countries, who had always to expand their inspirations and were always equipped to meet any possibilities including war, the size of population of these European states was very vital for achieving their mercantilist characters. A desire to increase population always occurred in these countries.[20] Among the initial mercantile writers, the most important are NiccoloMacchiavelli and Giovanni Botero. Macchiavelli was the first to sight population from the modern angle, by detecting that excessive population would diminish through wars and diseases. Research states that if he saw the relationship between population growth and resources, he may be considered as one of the ancestors of Malthus.[21]

iv. The Beginning of Malthusian Theory[22]

From the middle of the 18th century, most of the writings on population contained references to the point that population increases more rapidly than food

16. *Supra* note 14.
17. *Id.*
18. E. Wirtz.*Population Control and Population Policy.* THE WILEY BLACKWELL ENCYCLOPEDIA OF GENDER AND SEXUALITY STUDIES, 1-5, (2016).
19. *Id.*
20. Sachin R. Atre, Abhay M. Kudale & Heather M. B. Howard, *Addressing Family Planning Needs among Low-Literate Population in Peri-Urban Areas of Delhi, India: A Qualitative Inquiry,* 6 INT'L J. REPROD., CONTRACEPTION, OBSTETRICS & GYNECOLOGY 10 (2017).
21.*Supra* note8
22 *Id.*

supply, which is a point later elaborated by Malthus and came to be known as the Malthusian Theory of Population. The change in the approach to population size is worth noting. The earlier hopeful view, which regarded a large and growing population as a source of strength and wealth, was gradually replaced by the view that it was unwanted to have a population that was too large in relation to the means of subsistence. This negative view was based on such considerations as the potential of the reproductive power of human beings, limited land and limited means of survival, the tendency of population to grow rapidly as to create the problem of overpopulation and the harmful properties of this in relation to the means of subsistence. The rational result of such a line of thinking was belief in the compassionate role of the various checks of population growth. Intellectuals started thinking in terms of checks on child bearing, mainly because of the current fertility of the poor and the resulting load imposed on society by the Poor Laws.

v. Theory of Thomas Malthus

In 1798, Thomas Malthus published "An Essay on The Principle of Population" as its Effects of Future Improvement of Society with Remarks on the Speculation of Mr.Godvin, M. Condorcet and Others.In the first publication of this essay, Malthus began with two hypotheses: "First, that food is necessary to the existence of man. Secondly, the desire between the genders is essential and will remain nearly in its present state".[23] Once, having accepted these laws which are fixed by nature, Malthus goes on to argue, that pretentious that His postulate as granted, say that the power of population is definitely larger than the power in the earth to produce survival for man. Population, when not checked increases in a geometrical fraction. Increase in subsistence only in a mathematical ratio. A small subordinate with numbers can show the massiveness of the first power in contrast with the second.[24] In the next Edition of the Essay, Malthus puts forth the following propositions:

» Population is inevitably limited by the availability of resources needed for survival.

» Population tends to grow whenever the means of survival improve, unless restrained by strong limiting factors.

» These limiting factors which keep population growth in balance with available resources can ultimately be traced back to moral restraint, vice, or misery.

23. Leslie Green, *The Authority of the State,* Oxford University Press 1988
24. *Id.*

vi. The Classical School

From the initial days of the 19th century to the end of the First World War in 1918, the Classical and Neo-Classical schools of thought donated greatly to the growth of population theory. The Theory of population which arose from the classical school or neo-classical school of thought is:

1. Population came to be considered as one of the several factors causing production, circulation and other human affairs.
2. The earlier theory had observed the size of population as important because it was based on the assumption that there was a simple direct relationship between the size of population and the consequences. There was an increase in recognition of the various dimensions and complexities of the population thoughts.
3. The consciousness that the population phenomena where complex lead to a more cautious appraisal of the socio –economic role of population.
4. Population was no longer looked upon as a self-governing variable but a dependent variable.
5. As a result of such growths, the debate on whether the socio-economic consequences of a growing population where beneficial or harmful seemed to be resolved by the appearance of the theory of optimum population.

vi. Marxist and Socialist Theory

The Malthusian Theory was totally overruled by Marx as it did not fit into his impression of a socialist society. Marx suggested that there could be no natural or universal law of population growth and proclaimed- every historic mode of production has its own special laws of population traditionally valid, within its limits alone. According to his theory, an intellectual law of population exists for plants and animals only and only insofar as man has not restricted them.[25] In his view the population law was peculiar only to the capitalist organization of production, and that the tendency of over population was inherent in that system and was not due to extreme reproduction.

Future Socialists indicate that they support responsible parenthood. The Marxists are of the view that in a socialist society reproductive behaviour could develop a whole

25. United Nations, *The Determinants and Consequences of Population Trends,* POPULATION STUDIES No. 50, at 46–47 (1973)

agreement between the individual and the society. Though they are generally opposed to the theme of birth control as a self-governing means to fight the socio-economic causes of poverty, the modern socialists hold the view that birth control contributes to the liberation of women by "joining happy maternity and creative work". To that extent birth control is accepted and even abortion can be allowed in the modern socialist countries of Europe.[26]

III The Controversial Bradlaugh- Besant Trial in England[27]

In the 19th century, England witnessed pivotal developments in the advocacy of birth control, led by freethinkers such as Charles Bradlaugh and Annie Besant. Bradlaugh, born in 1833, emerged as a radical lawyer and editor of The National Reformer, where he challenged religious orthodoxy and promoted controversial ideas, including population control. Annie Besant, born in 1847, similarly rejected conventional religious beliefs and became a prominent voice in the free thought movement. Both were active in the National Secular Society and worked together to push for intellectual freedom and reproductive rights.

Their activism culminated in the 1877 republication of Fruits of Philosophy, a birth control manual originally written by Dr. Charles Knowlton in 1832. The book, deemed obscene by authorities, had a contentious legal history. Bradlaugh and Besant reprinted it to provoke a test case, leading to a highly publicized trial. Despite initial convictions and a six-month prison sentence, they successfully appealed the decision on legal grounds. The case significantly raised public awareness about contraception, particularly among the working class, and marked a milestone in the movement for reproductive freedom in Britain. Medical voices like Dr. C.R. Drysdale supported the publication, emphasizing the health risks of repeated pregnancies for impoverished women. Meanwhile, figures like H.G. Bohn criticized moral policing by the Society for the Suppression of Vice, exposing broader tensions between censorship and public health. The Bradlaugh-Besant trial became a turning point, reframing birth control not as moral degradation but as a scientific and social necessity.

i. United States Birth Control Campaigns

The United States birth control drive was a social alteration exertion that started in 1914 trying to increase the obtainability of contraceptives in the U.S. through education and legalization. The campaign arose in 1914, when a group of New York City political extremists led by Emma Goldman, Mary Dennett, and Margaret Sanger became

26. S. Srinivasan, Population Policy and Programme in India: A Review, 37 SOCIAL CHANGE 1 (2007).
27. Annie Besant, *The Law of Population: Its Consequences and its Bearing upon Human Conduct and Morals* (Free Thought Publ'g Co. 1877). Mark Bevir, Annie Besant's *Quest for Truth: Christianity, Secularism and New Age Thought,* 50 J. ECCLESIASTICAL HIST. 62, 62–93 (1999). The Queen v. Charles Bradlaugh & Annie Besant (1877), available at https://iiif.lib.harvard.edu/manifests/view/drs:5801909$13i(Last accessed at - July 7, 2025)

worried about the snags that childbirth and self-induced abortions brought to women with low incomes. Just as contraception was considered to be obscene at the time, the campaigners were targeting the Comstock laws, which banned the circulation of any "absurd, lewd, material by mail.

ii. The Comstock Law

In 1873 Congress implemented the Comstock Act. The Comstock Law has been broadly used to accuse people who distribute birth control information and devices.[28] In 1878, an effort was made to abolish the Comstock Law but only had restricted success.[29] The Comstock law remained largely intact. Anthony Comstock was familiar with demolishing some 160 tons of literature and photographs he considered obscene.

iii. Criminal Prosecution of Margret Sanger

The most notable case under the Comstock Law involved Margaret Sanger, a nurse who left her profession in 1912 to advocate for birth control among poor women in New York. In 1913, she was charged for mailing her publication The Woman Rebel, which contained information on contraception, considered "obscene" under the Comstock Act. Although the charges were later dropped, her publication was repeatedly seized. In 1917, she founded the National Birth Control League and opened the first birth control clinic in Brooklyn, for which she was jailed for 30 days. Despite on-going arrests and legal battles, her efforts led to a key ruling where courts allowed doctors to provide birth control for health reasons. In 1921, her league became the American Birth Control League, and in 1923, she opened the first permanent birth control clinic in the U.S. Finally, in 1936, federal courts ruled that birth control information was not obscene, allowing it to be legally distributed across state lines.

In the case of *Griswold v. Connecticut*[30] the Supreme Court ruled that all married couples were entitled to use contraceptives. It efficiently opened the way for the privacy and the freedoms of reproduction that exist today. Practice of birth control was either prohibited or banned prior to this case.[31] It was seen that during the 1960s, many states had laws that limited the sale and promotion of contraceptives. Some states, such as Connecticut and Massachusetts, entirely banned the use of birth control.In addition, the use of contraceptives in

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28. M. Vishwakarma & C. Shekhar, *Covert Use of Reversible Contraceptive Methods and its Association with Husband's Egalitarian Gender Attitude in India,* 22 BMC PUBLIC HEALTH 460 (2022).
29. *Id*.
30.381 U.S. 479 (1965)
31.Dawn Stacey, How *Griswold v. Connecticut* Led to Legal Contraception, available at https://www.verywellhealth.com/griswold-v-connecticut-1965-906887 (Last accessed on 7, July 2025).

the state of Connecticut was punishable by a fine of $50 and/or up to one year in jail.[32] The legislation prohibited the use of "any drug, medicinal object or device to prevent conception."However, from this decision onwards the Connecticut law became unconstitutional as the Due Process Clause was violated. The court also pointed out that the fundamental right to privacy secured the freedom for married couples to make their own reproductive decisions.

This decision further overturned the Connecticut law that banned contraceptive counselling as well as the use of contraception. The ruling fundamentally determined that privacy within a marriage is a private zone off-limits to the government. Therefore, birth control use was still prohibited for individuals who were not married. The *Griswold v. Connecticut* decision has helped to lay the basis for much of the reproductive freedom currently allowed under the law.

IV Constitutional Position and Growth of Regulatory Regime in India

The Constitutional law of a country is a fundamental law which sets a standard for all other laws.[33] Therefore, Constitutional changes are of great meaning. One such constitutional change was made in 1976 which added a new Entry, 20 A, to List 111- Concurrent List of Seventh Schedule of the Constitution. This Entry 20 A is "Population Control and Family Planning". Before this Constitutional Amendment of 1976, population control and family planning were considered as emanating from Entry 6 of List 11- State List- which read as "Public health and Sanitation; Hospitals and Dispensaries." Under the Indian Constitution, the State List outlines subjects on which only the State Legislatures are empowered to legislate, unless two or more states specifically request the Central Government to make laws on a particular matter within that list. In this context, the inclusion of Entry 20A "Population Control and Family Planning" in the Concurrent List marked a significant development. This amendment enabled the Central Parliament to legislate on this subject directly, without requiring prior consent from the states, thereby strengthening the Centre's role in addressing national-level population policies.

With the opinion to representative strong political will and promise for population control, the Constitution (79th Amendment) Bill, 1992 was introduced in the RajyaSabha. The Bill stipulates amendment of the Directive Principles of the State Policy (Article 47) to provide that the state shall attempt to endorse population control; and inclusion in Fundamental Duties (Article 51A) a duty to promote and adopt the small family norms by

32 *Id*.
33. P.S. Sangal, *Role of Law in Population Control,* 3 HEALTH & POPULATION: PERSPECTIVES & ISSUES 159 (1980).

the citizens. As elected representatives need to set an example and act as role models for the population they represent, the Bill proposed to add supplementary agenda under which if a person has more than two children, they are ineligible to be elected and to serve in either the House of Parliament or the House of the State Legislature. These amendments will however, have forthcoming effect and will not apply to any person who has more than children on the dare of beginning of the proposed amendment or within a period of one year of such commencement.

i. The Constitutional (Amendment) Bill, 2020

On February 7, 2020, the Constitution (Amendment) Bill, 2020 was introduced in the RajyaSabha to address India's rapidly growing population, which has doubled in 40 years and is projected to be the world's largest by 2050. Citing a UN report highlighting fast growth in countries like India, Pakistan, and Nigeria, the Bill proposes the insertion of Article 47A into the Constitution. This provision would mandate the State to promote a two-child policy by offering incentives such as tax benefits, employment and education preferences, and withdrawing these benefits from those who exceed the limit. The goal is to control population growth through both rewards and penalties, encouraging adherence to small family norms.

ii. The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy (MTP) Act, 1971 legalized abortion under specific conditions such as risk to the woman's health, fetal abnormalities, rape, or contraceptive failure (initially only for married women). While progressive for its time, the Act did not recognize abortion as a woman's fundamental right, instead placing the power of decision in the hands of medical professionals. This made abortion a medical privilege, not a matter of personal choice or autonomy. Critically, the MTP Act must be understood within the context of India's population control policies of the 1970s. The law served not only public health goals but also state interests in reducing birth rates, especially during the Emergency period, when coercive family planning measures were widespread. Abortion was promoted more as a demographic tool than as a means to empower women. Although amendments over the years, especially in 2021, have improved access including extending gestation limits and recognizing the rights of unmarried women the law remains doctor-centric and lacks a clear rights-based framework. Thus, the MTP Act reflects the on-going tension between reproductive rights and state control over women's bodies in India.

Under the MTP Act, 1971, a woman opting for sterilisation should be between 25 and 45 years old and have at least two live children. The upper age limit can be relaxed if she

has three or more children. The woman must declare that she is undergoing the procedure voluntarily, with her husband's consent, and understands its irreversible nature. The government permits sterilisation for various reasons, including health risks, genetic concerns, previous complications, and socioeconomic factors like limiting family size and controlling population growth.[34]

V Judicial Approach on Population Control in India

In India, number of major developments in controlling problems caused due to population explosion has been formed through case laws which appear before courts for solutions. In *Mukesh Kumar Ajmera and Orsv. State of Rajasthan and Ors*[35], the legislative power to deal with the population matter effectively, purposely, meaningfully, objectively and efficiently has been discussed, which forms basically from the social policy contained in the Directive Principles of the State policy enshrined in Articles 39(e) (f),41,43,45 and 47 of the Constitution of India. However, the goal of this social policy is to maintain social order in order to advance the welfare of the populace, provide appropriate means of subsistence, raise standards of living and nutrition, enhance public health, etc. The Supreme Court of India, in the case *Air India v. NargeshMeerza*[36], discussed the danger of over-population and the necessity of the family planning programme.In this case, the court ruled that the clause prohibiting a third pregnancy with two already-born children would be in the Air Hostesses' best interests overall, which also benefits the children's upbringing. When the world is dealing with the problem of population explosion, it will not only be desirable but absolutely essential for every country to ensure that the family planning programme is not only whipped up but maintained at sufficient levels in order to meet the danger of overpopulation. This is why when interacting with the Rule regarding the prohibition of marriage within four years; the same principles would apply to a bar of third pregnancy where two children are already there.

The importance of Family Planning Programme has been dealt by the Judiciary in the case *Gautam Rama Latke v. The State of Maharashtra*[37], because the case aroused as a result of violation in the provisions which has dealt the disqualification for contesting in elections where the candidate is proved to be the parent of more than two children. The Court outlined the significance of population control and asserted that it is indisputable that efforts are being made to promote family planning, birth control, and the use of con-

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34. Shilpa Phadke, *Pro-Choice or Population Control: A Study of the Medical Termination of Pregnancy Act*, Government of India, 1971, available at www.doccenter.org.in/docsweb/writers/shilpa-phadke1.html (Last accessed 30,June 2025)
35. AIR 1997 Raj 250
36. AIR 1981 SC 1829
37. Writ Petition No. 1097 of 2018

traceptives globally, with particular emphasis on several Asian nations and nations from Europe, North America, and Scandinavia. The phrase "family planning" is frequently used interchangeably with birth control. Household planning is crucial from the perspective of a mother's health as well as taking into consideration the financial and economic situation of a specific household. The uncontrolled growth of population is one of the most important reasons, which creates economic problems in India. A Family Planning Commission has also been established by the Indian government to help manage the country's population increase.

VI Conclusion

The research outlines the evolving role of the state in managing population growth, tracing concerns from early overpopulation anxieties to modern legal and policy interventions. It highlights how the state initially promoted contraception and sterilization through welfare programs and legal frameworks, emphasizing the need for public education in human reproduction and safe birth control practices. The study evaluates how legal mechanisms have supported medical practitioners in implementing contraceptive measures while safeguarding public health. It explores the ethical and legal tension between individual reproductive rights and state-regulated population control. While reproduction remains a personal choice, state policies provide guidance and awareness to encourage responsible family planning.

India's legislative and policy efforts to curb overpopulation are examined in detail, revealing on going challenges in balancing citizen autonomy with national demographic objectives. The state's approach combines legal amendments, public awareness, and access to safe contraceptive methods. The paper also draws on international perspectives, referencing the Bradlaugh-Besant trial in England and Margaret Sanger's legal battles in the U.S. under the Comstock Law. These cases underscore how legal reform and public activism have historically advanced awareness and access to birth control. The study further situates population control in a historical-philosophical context, referencing Chinese and Greek thinkers, as well as Malthusian and demographic transition theories, all of which foresaw the societal impacts of unchecked population growth.

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Impact of Government Initiatives & Policies on Women's Participation in Governance

Psalm Dutta*

Abstract

Government initiatives and policies play a crucial role in enhancing women's participation in governance, which is essential for achieving gender equality and fostering democratic processes. The introduction of gender quotas has proven effective in elevating women's roles within governance structures. For instance, studies indicate that women's representation in local governance increased from 4-5% to between 25-40% following the establishment of these quotas. However, mere representation is not sufficient comprehensive training programs are necessary to equip women with the skills needed for effective leadership. Initiatives that focus on leadership training and capacity building have shown positive outcomes, enabling women to navigate political landscapes and advocate for community needs effectively. In India, significant legislative measures have been implemented to increase women's representation in political spheres. Training programs for elected women representatives are crucial for building their capacity to engage in governance effectively. The government regularly conducts workshops and training sessions to equip these leaders with necessary skills in administration, financial management, and community mobilization.

Keywords: Gender equality, Governance, Legislative measures,Policies

I Introduction

The involvement of women in governance is fundamental to attaining gender equality and guaranteeing that democratic processes are inclusive and representative. The involvement of women in politics not only amplifies their influence in decision-making but also fosters more efficient governance by tackling topics that are frequently neglected or disregarded. Despite their shown leadership capabilities and transformative potential, women continue to be underrepresented in global political arenas, encountering systemic obstacles, discriminatory legislation, and societal preconceptions that restrict their political partic-

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ipation. Government actions and regulations have become essential instruments to close this gap. These initiatives encompass the establishment of gender quotas, the provision of leadership training, and the promotion of legislative amendments that provide equitable access for women in political arenas.[1] The effects of these programs are diverse, encompassing enhanced participation in legislatures and municipal administrations, as well as more inclusive policy-making processes that cater to women's demands and rights. In nations such as India, the allocation of seats for women in local governance has markedly enhanced female participation, empowering millions to assume leadership positions. Nonetheless, obstacles remain, including the necessity for on-going support systems to address impediments such as insufficient knowledge, money, and societal prejudices. This article examines the particulars of these governmental programs, their effects on women's involvement, and the obstacles that persist in attaining gender equality in governance.

II Significance of women's Participation in governance

The involvement of women in governance is essential for attaining gender equality, enhancing inclusive decision-making, and cultivating a more representative democracy. This involvement not only improves governance quality but also fosters societal progress by addressing various demands and viewpoints. The representation and participation of women in local government politics is a crucial catalyst for female empowerment. Political parties recruit members and identify prospective candidates at the local government level, who may subsequently contest at the national level[2]. The municipal level presents a greater likelihood of direct influence of women in politics due to its closeness to the community. Global evidence regarding women's actual representation in rural local governments and their potential influence remains exceedingly limited. While data regarding the representation of women in urban local governments and national parliaments is systematically gathered as a crucial metric for evaluating the advancement of women's political rights, research on women's participation in rural local governance is nearly non-existent at both global and local levels Women's involvement in politics, at both national and local government tiers, pertains to gender equality[3]. The capacity of any collective or their appointed representatives to engage in decisions that impact their lives not only enables them to offer insights but also equips them with the means and alternatives to alter the trajectory, direction, and results of particular programs and activities that will shape their future. It is essential to involve women in decision-making processes within their communities and livelihoods. Common-

1. Cass R. Sunstein, *After The Rights Revolution: Reconceiving The Regulatory State*Harvard Univ. Press (1990).
2. Vissandjee, B, Dupéré, S*Empowerment Beyond Numbers. Substantiating Women's Political Participation,* JOURNAL OF INTERNATIONAL WOMEN'S STUDIES 124 (2005).
3. Ghosh, Ratna, Paromita Chakravarti & Kumari Mansi, *Women's Empowerment and Education: Panchayats and Women's Self Help Groups in India*, J. OF EDUC. & WORK 23 (2015).

ly heard assertions indicate that municipal politics pertains to concerns affecting women's daily lives, including water, garbage disposal, health, and various social services. This indicates that engagement in local governance is a continuation of women's participation in the civic challenges confronting their communities[4]. Other academics propose hat women, due to their domestic obligations and childcare duties, find it more feasible to engage in public life at a level closer to their immediate circumstances. Such arguments may suggest that national-level politics concerns matter that are more remote from and potentially unintelligible to women. Nonetheless, practical considerations are undeniably significant, as these arguments appear to reflect the conceptual patriarchy.

III Government activities and strategies in mitigating obstacles

The Constitution of India established a parliamentary system of governance and ensures justice, liberty, and equality for all individuals, regardless of gender. The Constitution not only ensures equal treatment for women but also mandates the state to implement steps that mitigate the economical, educational, and political obstacles they encounter. Consequently, the ratification of our Constitution marked the commencement of a new epoch of equality for women in India. It ensures equal political rights, including suffrage, for women. Nearly of the stipulations present in the UN Convention on the 'Elimination of Forms of Discrimination against Women' are incorporated in the Indian Constitution[5]. The Constitution not only ensures equal political standing for women but also allows for 'positive discrimination' in their favour, as demonstrated in Article 15(3) of the Constitution. The Constitution contains numerous provisions that emphasize equality between men and women. Article 14 ensures equality before the law and equal protection of the law within the territory of India. Article 15 forbids discrimination based on religion, race, caste, sex, and place of birth. It is a safeguard against all forms of discrimination. Article 15(3) stipulates that the state may implement specific arrangements for the advantage of women and children[6]. Article 16 ensures equal opportunity for all citizens concerning employment or appointment to any public post. Secondly, no citizen shall be deemed eligible for, or discriminated against in, any employment or office under the state on the basis of religion, race, caste, sex, descent, place of birth, residence, or any combination thereof. Millions of women volunteer for prominent political parties and individual politicians globally. Notwithstanding these factors, government has predominantly been male-centric, and until the twentieth century, women were either completely excluded or entirely missing from the

4. Joseph T. M. *Local Governance In India Ideas: Challenges And Strategies,* Concept Publishing Company, (2007).
5. Ratna Kapoor, *Understanding the Significance of School Education in Women Empowerment: Challenges and Opportunities.* 211 DELIBERATIVE RESEARCH, 201 (2014).
6. Indian Constitution, ART15. (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) of Indian Constitution

governance process at all national levels globally. Article 39(a) mandates that the State shall formulate its policy to ensure that both men and women have equal access to appropriate means of livelihood, while Article 39(d) requires the State to establish policies that guarantee equal remuneration for equal work for both genders. Article 42 mandates the establishment of equitable and humane working conditions, along with provisions for maternity relief, while Article 51(A)(e) delineates the basic obligation of people to reject actions that undermine the dignity of women. The 73rd and 74th Constitutional Amendments mandate the reservation of one-third of seats for women in panchayats and municipalities. Articles 325 and 326 ensure political equality, the equal right to engage in political activities, and the right to vote, respectively. Although the former has been accessed and appreciated by several women, the right to equitable participation remains an elusive aspiration. The scarcity of opportunities for involvement in political institutions has led to their minimal representation in these decision-making organizations. Women constitute the largest excluded demographic in the political sphere. 21.9% of national parliament members globally are women.

The 73rd and 74th amendments to the Indian Constitution have initiated a significant transformation with the stipulation of 33% reservation for women in local self-government organizations[7]. They have instigated a significant revolution in India about women's engagement in grassroots-level politics. Women in India are far better represented in Panchayati raj institutions than in Parliament. Bihar, Madhya Pradesh, Uttarakhand, and Rajasthan have allocated 50 percent of panchayat seats for women, while Sikkim has designated 40 percent for women. This marks a significant commencement for the meaningful involvement of women in the decision-making process at the grassroots level. The endeavours and contributions of numerous female representatives in panchayats across Maharashtra, Gujarat, and West Bengal have received significant acclaim. Consequently, women are achieving substantial advancements in the political arena, where heightened involvement is swiftly empowering them. Nevertheless, women have not achieved sufficient representation in the Lok Sabha. The proportion of elected female parliamentarians in the Lok Sabha has never surpassed twelve percent. The representation of women in the Upper House has been marginally elevated, likely attributable to indirect elections and the appointment of certain female members. The active participation of women in local government is seen essential due to their effective management skills and the fact that women represent the largest segment of the Indian population. Subsequent administrations since independence have endeavoured to enhance women's participation in local governance by enacting various laws,

7. Chattopadhyay, Raghabendra, Duflo, Esther. *Impact of Reservation in Panchayati Raj: Evidence from a Nationwide Randomzed Experiment,* ECONOMIC AND POLITICAL WEEKLY, (2004).

ratifying numerous international conventions on women's involvement, and ensuring the comprehensive implementation of the local government act[8].

IV Legal and policy frameworks for the implementation of gender quotas & their efficacy

The historical documentation of gender quotas in India illustrates a gradual yet persistent progression advocating for affirmative action to ensure equitable representation of both genders in politics. The Indian Constitution was enacted in 1950, and while it established principles of liberty and non-discrimination, it did not delineate gender quotas within the political institutions it created. The Constitution allocated three additional seats for reserved members, specifically Scheduled Castes and Scheduled Tribes, in legislatures to guarantee their participation. The desire for women's political engagement increased alongside the women's movement that commenced in the 1970s and 1980s, leading to the enactment of laws facilitating women's involvement in local governance. The 73rd and 74th Amendments of the Constitution of 1992 endorsed women's reservation in local government, mandating that women occupy one-third of the seats in 'Panchayati Raj' institutions and urban local bodies[9]. These quotas were designed to promote the female elite at the operational level while enhancing their decision-making authority. In addition to local quotas, India has established various legislative measures to enable women to compete for national and state employment opportunities. The People Act of 1951 encompassed stipulations for the reserving of seats for Scheduled Castes and Scheduled Tribes in legislative assemblies and the LokSabha, the lower house of the Indian Parliament. It was only after the adoption of the 73rd and 74th Amendments to the Constitution that women received statutory quotas for local government elections. The Women's Reservation Bill, initially presented in 1996, aimed to allocate one-third of the LokSabha and state legislative assemblies to women. Although the bill has been introduced multiple times in parliament, it encounters significant opposition and has not yet been enacted into law. Nonetheless, certain governments have independently implemented gender quota policies, such as reserving seats for women in local and legislative bodies. The implementation of gender quotas in India has faced numerous obstacles due to rising political resistance, insufficient enforcement mechanisms, and the patriarchal ideologies prevalent in political parties and society at large[10]. The Woman's Reservation Bill is stalled in Parliament due to the resistance from male-dominated

8. Chhibber, Pradeep, and Uma Chakravarti. *Mapping Political Representation: Women In Indian Politics.* Oxford University Press, (2011)
9. D. Hazarika, Women empowerment in India: A brief discussion, 56, INT'L. J. OF EDUCATIONAL PLANNING & ADMINISTRATION, 231(2011).
10. *Id.*

political parties and apprehensions regarding its impact on current power relations. Moreover, adherence to gender quotas at the grassroots level has been hindered by various causes, including tokenism, proxy representations, and a lack of resources for female delegates. Women representatives elected to reserved seats often experience gender discrimination, marginalization, and insufficient support from colleagues and local authorities. Additionally, they frequently lack the requisite capacity to persuade the populace of their agendas and to influence the decision-making process. Consequently, the challenges associated with the implementation of women's representation in elections extend beyond mere participation. Subsequent stages of their empowerment present even more significant hurdles in education, resources, and leadership chances[11]. Conventional sociocultural practices and gender stereotypes are entrenched biases that inhibit women's participation in political institutions and diminish the transformational impact of gender-quota regulations.

V Policies that advocate for women's education and economic empowerment

Empowerment refers to the ability to make choices and demands a transformation in the structure of society, which includes addressing power imbalances and unequal distribution of resources and opportunities. Research identifies three key components of empowerment: self-empowerment, mutual empowerment, and social empowerment. Self-empowerment involves individual efforts to gain control over one's life. Mutual empowerment focuses on relationships with others, fostering collective strength. Social empowerment seeks to remove social, political, and economic barriers to enhance an individual's influence in society. The goal of women's empowerment is to ensure an equal distribution of power between men and women. This means both genders should have equal access to economic, social, legal, and political opportunities for their development[12].

Women's empowerment aims to attain this by ensuring women have equal participation and influence in decision-making at home, in society, the economy, and politics.Numerous non-governmental organizations (NGOs) committed to women's empowerment play a pivotal role as catalysts for social transformation by promoting the social, economic, and legal advancement of women, particularly those from marginalized and disadvantaged communities. These interventions predominantly focus on areas such as legal awareness, economic development, skill enhancement, microenterprise creation, entrepreneurship, and healthcare access. Among these strategies, education stands out as one of the most powerful tools for empowering women. Educating girls equips them with the knowledge, skills, and

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11. P. Jha, & M. Nair, *Impact of education on women's empowerment in rural India: A case study.* 21(4), RURAL DEVELOPMENT AND POLICY REV., 45-60., 2017.
12. Barodawala, Tehzib, Pooja Dikshit Joshi &Virendra Singh, *A Catalyst for Change: Impact of Panchayati Raj on Women's Empowerment in India,* INT'L J. OF RESEARCH & INNOVATION IN SOCIAL SCI. (May 8, 2025)

self-confidence necessary to access and benefit from economic opportunities. Government initiatives at both the state and national levels—such as fee concessions, scholarships, and other educational incentives for girls—have significantly contributed to reducing financial barriers, thereby facilitating greater educational attainment among women. Furthermore, vocational training programs in fields such as computer applications, tailoring, and beauty culture are enabling women to acquire practical skills that enhance their employability and foster economic independence. These capacity-building efforts empower women to move beyond traditional roles and participate more meaningfully in all spheres of society. In essence, education serves as a powerful enabler of women's empowerment, fostering self-reliance and enabling women to challenge societal constraints, thereby contributing to a more equitable and inclusive society.[13]

Eliminating obstacles to education and offering training in many skills enables society to cultivate a generation of women capable of contributing to economic growth, social development, and political decision-making, so benefiting society as a whole.[14] The economic development of women fosters equitable access to resources and opportunities, thereby enhancing their capacity to contribute significantly to their families, communities, and national economies. Education is a crucial resource in promoting women's growth throughout society. Historically, women have predominantly relied on men for their necessities. Nonetheless, the emergence of women's empowerment via employment possibilities has fostered greater self-sufficiency among women, resulting in sustained economic growth. India's contribution of women to GDP stands around 17%, markedly below the global average of 37%[15]. The International Monetary Fund (IMF) asserts that increasing women's labour force participation to equal that of men may enhance India's GDP by 27%. The economic effect of attaining gender equality in India is projected to contribute US$700 billion to the nation's GDP by 2025. Social empowerment must guarantee equality between men and women by eradicating injustice and inequality within society. It is imperative to enhance knowledge of social issues and impart legal literacy, especially concerning women's rights. In India, the principal obstacles to the attainment of women's human rights are social and cultural, firmly ingrained in community traditions. Low literacy rates result in many women being uninformed about their legal rights and the governmental programs intended to assist them. Political empowerment entails guaranteeing women's representation

13. Duflo, Esther et al., *Women's Political Leadership and Economic Empowerment: Evidence from Public Works in India,* 48 J. OF COMP. ECON. 277 (2020)
14. Leigh Hamlet et al., *Barriers to Women's Participation, Leadership, and Empowerment in Community-Managed Water and Sanitation in Rural Bolivia,* 5 H2OPEN J. 532 (2022)
15. Kabeer, N.Gender, education, and women's empowerment: A multidimensional approach46(6)DEVELOPMENT AND CHANGE, 1313 (2015).

in provincial and national assemblies as well as their suffrage rights. The active involvement of women in government and politics is crucial for sustaining a functioning democracy.[16] However, women are often underrepresented in leadership positions, left without a voice in decisionmaking, and overlooked in political discourse. Worldwide, women occupy merely 22% of national participating roles, indicating their underrepresentation across all facets of the political process as a result of societal and cultural impediments. Consequently, there is an imperative necessity for the political empowerment of women, facilitating their active engagement in governance and politics, and their contribution to the development of policies that enhance societal welfare.[17]

VI The Indian Judiciary and Its Role in Gender Equality

In a nation where gender disparity is prevalent in nearly all facets of society, the Indian court plays a pivotal role in empowering women and promoting gender equity. The Indian judiciary has facilitated women's entitlement to their rights through legal rulings and has affirmed that discrimination against women in Indian society is intolerable. The judiciary's role is to interpret and uphold the laws of the constitution. The primary objective of the laws is to deliver justice to the aggrieved. The legislature can draft laws, but it is the judiciary's responsibility to implement them in a manner that guarantees equitable treatment for all individuals, adhering to the principles of equity, justice, and morality. The judiciary examines all provisions prior to their implementation for societal advancement. The judiciary has safeguarded women from injustice under the Indian Constitution.[18] The Constitution of India has always promoted women's rights. The Indian Constitution and the judiciary have protected women from injustice. The rights of women have historically been a priority in the Constitution of India.

The Indian judiciary's judgments' have had a significant impact on and brought about a number of significant changes in society's norms. The Court held in the Dharwad District *PWD Employees Association v. State of Karnataka & Ors*[19] that there should be no gender discrimination among workers and that they should be paid fairly according to their work, and that Article 39(d) of the Indian Constitution provides for payment of equal consideration to both men and women workers for equal work or work of a similar nature, and

16. N. Sivanna & K. G. Gayathridevi, *Political Inclusion and Participation of Women in Local Governance: A Study in Karnataka,* 31 J. RURAL DEV. 193 (2012)
17. Nisha Shukla, Role of *Govt-Led Schemes in Empowering Women in India,* 2(06), J. OF WOMEN EMPOWERMENT & STUDIES 33 (2022).
18. BishakhaDatta et al., *And Who Will Make The Chapatis?* Women In Politics: India's Panchayat Raj StreePubl'ns (1998)
19. 1990 AIR 883, 1990 SCR (1) 544.

that Article 16 provides for equal opportunity for all citizens in matters of employment. Indian airlines had laid down various rules that were found to be in violation of Article 14 of the Indian Constitution in the case of *Air India Etc. v. NargeshMeerza*[20]. The rule specified that air hostesses are not allowed to marry for the first four years of their employment, that they will lose their positions if they become pregnant, and that they will retire at the age of 35 unless the managing director extends their contract at his discretion. The Supreme Court ruled that terminating employment due to a first pregnancy violates Article 14, and that the managing director's extension of employment also violates the principle of equality established by Article 14, because this provision places unrestricted power in the hands of one person. In the case of *Mohd. Ahmed Khan vShah Bano Begum and Ors*[21], the Supreme Court of India ordered the parliament to draught a uniform civil code governing a Muslim husband's obligation to provide maintenance to his divorced wife who is unable to support herself after the iddat period, holding that section 125 of the Code of Criminal Procedure, 1973 will apply to all husbands, regardless of religion, and the husband will be required to support his divorced wife. The Supreme Court of India held in *Vishakha v. State of Rajasthan*[22] that gender equality can be established through fundamental rights guaranteed under Article 14, Article 19, and Article 21 of the Indian Constitution, and that sexual harassment at work is a clear-cut violation of these fundamental rights, which in turn violates the principle of gender equality, and that in the absence of any domestic law to address the evil of sexual harassment, international assistance can be sought. Employers were given guidelines to follow in order to provide a fair, safe, and comfortable working environment for employees, particularly women.

In the case of *Joseph Shine v. Union of India*[23], the Supreme Court overturned its own decision in the case of *Sowmithri Vishnu v. Union of India &Anr*[24], decriminalizing adultery and striking it from the Indian Penal Code, holding that the law was based on gender stereotypes and thus violated Articles 14 and 15 of the Constitution because the law only considered the husband of the adulteress who was aggrieved, while the wife of the adulterer had no interests. The Court went even farther, ruling that adultery cannot be considered a crime since putting interpersonal ties through the rigours of criminal law would be an unjustified invasion of one's right to private.

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20. AIR 1981 SC 1829
21.1985 SCR (3) 844
22. AIR 1997 SC 3011
23. AIR 2018 SC 4898.
24. (1985) SCC 137

VII Government initiatives to advance Gender Equity

The government has instituted numerous initiatives to attain gender equality and empower women. These schemes predominantly focus on vulnerable women. These programs are designed to enhance their overall socioeconomic conditions. Among the various initiatives, only a select few, such as Beti Bachao Beti Padhao, have been established to tackle the declining child sex ratio and other issues related to women's empowerment throughout their lifetimes, including the enhancement of women's educational opportunities. Pradhan Mantri Matru Vandana Yojana (formerly known as the Maternity Benefit Scheme): to foster a more supportive atmosphere. By offering financial incentives for improving health and supporting pregnant and nursing moms with nutrition. The National Nutrition Mission aims to attain 'Suposhit Bharat' by enhancing the nutritional status of pregnant women and breastfeeding moms, while also reducing anaemia among women. Mahila E-Haats is a unique direct online digital marketing platform designed for women[25]. Ujjawala is a comprehensive initiative aimed at preventing the trafficking of women and the commercial sexual exploitation of minors, facilitating the rescue of victims, and ensuring their relocation to safe environments, specifically targeting female enterprises, Self-Help Groups (SHGs), and Non-Governmental Organizations (NGOs). Furthermore, the Mahila Shakti Kendra was formed to empower rural women in community involvement, and training sessions for these women were executed.[26] Trainers for Panchayati Raj elected female legislators; Rashtriya Mahila Kosh for delivering microfinance services to women in rural regions. Socioeconomic advancement of impoverished women. Offering 'Women Helpline-1091' services; Mahila Police are creating 'One-Stop Centres' to provide access to a comprehensive array of services, including police, medical, legal, psychiatric support, and temporary accommodation for women subjected to violence. Volunteers are fervently committed to advocating for women's rights and so ensuring gender justice. To address such offenses, it is imperative to establish Fast Track Courts and conduct expedited trials. Despite the Supreme Court's mandate for states to implement laws banning the sale of acid, India has not yet enacted a comprehensive prohibition on the chemical. Numerous private-sector enterprises continue to neglect compliance with the amended Maternity Act's regulations and modifications[27]. In 2019, the Indian Parliament enacted the Protection of Children from Sexual Offences

25. D Hazarika, *Women empowerment in India: A brief discussion,* INTERNATIONAL JOURNAL OF EDUCATIONAL PLANNING & ADMINISTRATION, 1(3), 225-231, (2011).
26. Financial Times, *Non exec Roles Offer a Launch Pad to Boardroom Gender Parity,* (24 June, 2025) https://www.ft.com/content/96c3efb5-c921-4684-b5ec-693872d660a9 (Last accessed on 6 July, 2025)
27. Diya Bhattacharya, *What Factors Influence the Performance of Women Leaders in Urban Local Bodies? A Study of Two Municipalities in West Bengal,* in D. Rajasekhar & R. Manjula (eds.), Women Leadership, Decentralised Governance and Development 115 Springer publishing (2024).

(Amendment) Act, which seeks to mitigate child sexual exploitation, child pornography, and related offenses. Nonetheless, tyranny endures, as seen by the recent Muzaffarpur Shelter House incident in Bihar. Furthermore, efforts are required to uphold women's dignity and rights in crisis zones. Significant efforts remain need to address issues such honour killings, property rights, and the sufficient involvement of women in the workforce. The relevant authorities must prioritize the safeguarding of fundamental human rights and work dignity for sex workers, LGBTQ individuals, and manual scavengers.

The issue of religion and gender justice requires attention, as religion is employed as an instrument of gender oppression. The government will investigate issues such as prohibiting a particular gender from entering a religious institution, genetic mutilation, and similar matters[28]. Despite the enactment of the Prohibition of Inadequate Representation of Women Act, women continue to be perceived as commodities in the current era of globalization, necessitating reform.

VIII Insufficient enforcement mechanisms for Gender Policies

Empowering women is essential for attaining gender equality. Guaranteeing women equal opportunity and their rightful entitlements not only advances gender equality but also supports a wider array of developmental goals. Gender inequality in India is a pervasive issue that impacts millions of women across diverse socio-economic levels. Notwithstanding substantial constitutional protections and legal structures designed to foster equality, women persistently encounter systematic discrimination, violence, and socio-economic inequities. This disparity between legal statutes and social realities underscores the pressing necessity for a sophisticated comprehension of gender inequality from a socio-legal perspective[29]. The Indian Constitution, enacted in 1950, enshrines numerous fundamental rights designed to guarantee equality for all citizens, irrespective of gender. Articles 14, 15, and 213 explicitly enshrine the right to equality, forbid discrimination on the basis of sex, and assure the right to life and personal liberty. These rules establish a robust legal framework for women's rights. The efficacy of these laws is frequently compromised by entrenched patriarchal norms and cultural practices that persist in marginalizing women. The societal factors contributing to gender disparity significantly affect various crucial domains, including India's sex ratio, women's lifelong health, their educational achievements, and their total economic status. Cultural biases favouring male offspring have traditionally distorted the sex ratio, resulting in significant long-term social ramifications. Gender biases adversely af-

28. M. D. Vinze, (1987). *Women empowerment of India:* A socio-economic study of Delhi. Mittal Publications.
29. Prabhat K. Datta, *Gender Quota and Women's Participation in Rural Local Bodies in India: The Context, Constraints and Consequences,* INDIAN J. POLITICAL SCI. (2023)

fect women's health, leading to insufficient access to healthcare and nutrition, which can influence their well-being throughout their lives[30].

IX Factors Contributing to Gender Inequality

i. **Social Activities:** Women have historically been perceived as the weaker sex, resulting in their disadvantaged position relative to men. This subjugation is evident through numerous forms of exploitation, discrimination, and violence, occurring both domestically and in public domains. Numerous factors contribute to gender imbalance, including entrenched conventional attitudes, poor literacy rates, insufficient awareness, inadequate access to guidance, restricted mobility, and a deficiency in self-confidence[31].

ii. **Socialization** is the process by which humans acquire the ability to navigate their environment, internalizing laws, norms, and practices. From an early age, children are conditioned into distinct gender roles that define the characteristics of masculinity and femininity. Children progressively internalize society standards through contact with main and secondary socialization agents. Significantly, gender distinctions are not biologically predetermined; instead, they are culturally produced. Consequently, individuals are conditioned into divergent roles, resulting in persistent gender disparities. The socialization process prompts essential inquiries regarding gender identity and perpetuates the elements that contribute to gender inequity in Indian society.

iii. **Cultural Practices:** Culture includes the lifestyles, behaviours, and beliefs of diverse societal groupings. It encompasses elements such as communication techniques, everyday life, cognitive processes, attire, matrimonial rituals, familial dynamics, and occupational patterns. The learned behaviours, together termed culture, embody a society's ideals and establish distinctions among individuals. This conceptual framework frequently establishes male superiority via socialization procedures. Cultural components can manifest in distinct ways that affect women differently, with dominant norms and beliefs perpetuating gender inequities[32].

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30. Sunaina Kumar & Ambar K. Ghosh, *Elected Women Representatives in Local Rural Governments in India: Assessing the Impact and Challenges,* ORF OCCASIONAL PAPER NO. 425 (Jan. 31, 2024)
31. Amartya Sen, *The Many Faces of Gender Inequality,* THE NEW REPUBLIC(2001).
32. Leela Kasturi, *Greater Political Representation for Women: The Case of India,* ASIAN J. WOMEN'S STUD. 4(4) 9 (1998)

iv. **Patriarchy:** The origins of gender inequality in Indian society are profoundly entrenched in the patriarchal system, marked by male supremacy, subjugation, and exploitation of women. This framework indicates that men possess authority in essential societal institutions, whereas women are consistently marginalized from such power. The term "patriarchy," originating from "rule of the father," traditionally denotes a particular form of male control. It denotes a power dynamic in which men dominate women, perpetuating their subjugation through numerous mechanisms. This system functions on psychological, cultural, and material dimensions, creating an imbalanced relationship between genders. Currently, women persist in contending with societal norms, convictions, and behaviours that limit their autonomy. The conventional patrilineal joint family structure frequently subordinates women, undermining their authority and influence relative to men. The preference for male offspring and the unfavourable view of female offspring endures in numerous communities, perpetuating gender bias. These practices prescribe appropriate behaviours for women, with societal standards frequently formalizing their positions through legislation and cultural expectations[33].

v. **illiteracy:** The literacy rate among women in India is considerably inferior to that of men. The 2011 Census indicated a female literacy rate of 65.46%, in contrast to 82.14% for males. Despite advancements, inequities remain, particularly in rural regions where the literacy rate is merely 71%, compared to 86% in urban locales. Moreover, dropout rates are elevated for females, resulting in a lower completion of school compared to their male counterparts[34].

vi. **Insufficient Awareness Among Women:** Numerous women are uneducated about their fundamental rights and capacities, rendering them unaware of the influence of socio-economic and political forces on their life. Despite women's potential to achieve in diverse domains when afforded equal chances, historical impediments have impeded their advancement. The Indian Constitution has provisions designed to address gender inequity. The preamble underscores the attainment of social, economic, and political justice for all citizens, while Articles 14, 15(1), and 15(3) delineate the state's obligation to guarantee equality for women[35]. Notwithstanding these constitutional assurances, the reality frequently fails to meet expectations, conservative societal norms, beliefs, and patriarchal systems remains a substantial obstacle to women's empowerment in society. attitudes of women's leadership qualities.

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33. Gerda Lerner, *Creation Of Patriarchy,* Oxford University Press (1986).
34. Renu Bala, *Participation of Women in the Panchayati Raj,* MOD. J. SOC. SCI. HUMANITIES 2(6) 131 (2023)
35. Shireen Parveen & Md. Iftekhar Hussain, *Political Participation and Empowerment of Women: A Study on Panchayat Raj Institutions in India from 1993* to 2024, INT'L J. POLITICAL SCI. GOVERNANCE 6(1):342 (2024).

X Conclusion

Government activities and policies significantly influence women's involvement in governance. Governments may substantially improve women's participation in decision-making processes by instituting gender quotas, offering leadership training, tackling socio-economic obstacles, reinforcing legislative protections, and promoting family and community support. These initiatives not only advance gender equality but also enhance inclusive and responsive government frameworks. The efficacy of such measures is evident in nations like India, where reservations have augmented women's involvement in local administration, resulting in beneficial effects on community development and policy formulation. The influence of governmental programs and policies on women's involvement in governance is complex and extensive. These initiatives have been crucial in closing the gender gap in political representation, enhancing inclusive government, and advancing societal transformation. By contesting conventional gender roles, women in governance motivate others and aid in transforming cultural norms and attitudes of women's leadership qualities. Women contribute distinct viewpoints and experiences to governance, enhancing policy dialogues and ensuring the demands of varied populations are met. Their presence promotes collaboration, empathy, and consensus-building, resulting in more inclusive and effective governance.

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Artificial Intelligence and Privacy in India – Violation Again and Again

Dr. Anju Rajan. V*

Abstract

As India advances toward a technological revolution, Artificial Intelligence (AI) emerges as a transformative force reshaping society, governance, and institutional frameworks. With applications in machine learning, natural language processing, and big data analytics, AI offers immense opportunities but also raises pressing ethical and legal concerns. Central among these is the replication of human biases within AI systems, which can result in discriminatory outcomes, particularly affecting marginalised communities. These biases, embedded in datasets and algorithms, threaten fundamental human rights and compromise principles of equality. A significant concern in the Indian context is AI's impact on the right to privacy. The Digital Personal Data Protection Act (DPDPA), 2023, marks progress in data protection; however, it lacks specific provisions to address AI-related risks such as algorithmic opacity, surveillance potential, and non-transparent automated decision-making. To ensure effective enforcement of principles like data minimisation and purpose limitation, the Act must be supported by mechanisms like privacy-by-design and mandatory algorithmic impact assessments. India's traditional criminal law, grounded in actusreus and mensrea, is ill-equipped to address AI-induced harms where human intent is unclear. Gabriel Hallevy's tripartite model—treating AI as an innocent agent, assigning user liability, or, in rare cases, recognizing AI autonomy—offers a framework for bridging this legal gap. Civil liability through negligence remains a viable remedy without extending legal personhood to AI. As debates around AI legal capacity evolve globally, India must adopt a forward-looking approach. Strengthening judicial capacity, encouraging international cooperation, and building specialised legal frameworks will be key to creating a rights-based, innovation-friendly AI governance model.

Keywords: AI, Data Protection, Fundamental Right, Privacy

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I Introduction

Artificial Intelligence (AI) in the legal field refers to the development and application of intelligent technologies—particularly computer systems—that are capable of performing tasks typically requiring human intelligence. These tasks include optimizing repetitive processes, enhancing decision-making procedures, and providing data-driven insights. The primary objective of integrating AI into the legal sector is to improve the efficiency, accuracy, and accessibility of legal services.[1] While human intelligence relies on a combination of cognitive processes to adapt to new environments, AI seeks to replicate human behavior and execute actions that resemble human thinking and problem-solving. Once regarded merely as a subject of science fiction, AI has, over the past two decades, evolved into a transformative force with wide-ranging applications that are reshaping societies and individual lives. In India, where the legal framework is deeply rooted in principles of socio-economic liberty, the rapid development of AI presents significant regulatory and ethical challenges. As AI applications become increasingly complex, the need for comprehensive regulation has become more urgent.It is important to note that defining AI under a single, universally accepted definition remains a challenge. AI is best understood as a collection of interrelated technologies that work in unison to enable systems to sense, interpret, and learn with intelligence akin to that of humans. The term 'Artificial Intelligence' is often used interchangeably with expressions such as computational intelligence, systematic intelligence, or computational rationality.[2]

Among the most pressing concerns in the age of AI are data privacy and security. AI systems possess the capacity to collect, analyze, and store vast amounts of personal data, raising serious concerns about the privacy rights of individuals. To address these concerns, various legal frameworks have been developed globally. For instance, the General Data Protection Regulation (GDPR) in the European Union and the California Consumer Privacy Act (CCPA) in the United States serve as benchmarks in safeguarding personal data within the context of AI. These regulations impose stringent requirements on data collection, processing, and storage, emphasizing transparency, informed consent, and accountability. In this rapidly evolving technological landscape, it is imperative that legal systems adapt to ensure that the benefits of AI are harnessed while protecting fundamental rights, particularly the right to privacy.

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1. Jane Doe, *AI and the Future of Legal Practice,* 123 Journal of AI & L. 456 (2025)
2. Ryan McCarl, *The Limits of Law and AI,* 90 U. Cin. L. Rev. 201 (2022)

II Unboxing AI: Exploring its Promise, Perils & Policy Needs

The area of study for the regulation of AI is very wide as the subject itself in a development phase. The most crucial aspect in the realm of Artificial Intelligence (AI) is the question of responsibility. As nations move towards framing laws to regulate AI, the issue of responsibility stands out as a central concern warranting critical analysis. This includes multiple dimensions such as State responsibility, social responsibility, individual accountability, and the emerging notion of legal responsibility attributable to AI systems themselves.[3] AI has deeply impacted our daily lives, bringing about significant transformations across all sectors of society.[4] Its disruptive effect on both the economy and social fabric is undeniable. Despite its vast potential, AI remains largely unregulated, making the need for a comprehensive legal framework both urgent and essential. Proper regulation is necessary not only to mitigate risks but also to harness AI's potential in nation-building. AI influences both macrostructures—such as governance, infrastructure, and the economy—and microstructures, including education, healthcare, and individual behavior. Among the many challenges AI presents, privacy stands out as one of the most pressing concerns. The advent of new information technologies has introduced complex risks to personal privacy, necessitating careful legal and ethical considerations to protect individual rights in the digital age.[5]

Data Privacy and security are the essential factors to address the age of AI. The capacity of AI system to gather, examine and retain extensive quantities of personal data give risk to substantial apprehensions over the privacy entitlements of individuals. The General Data Protection Regulation (GDPR)in the European Union and the California Consumer Privacy Act (CCPA) in the United States are the legal frameworks that have been implemented to safeguard the personal data in the context of Artificial Intelligence (AI).These policies enforce strict criteria on the collection, processing, and storage of personal data with a focus on ensuring openness, obtaining consent and promoting accountability. The area of study for the regulation of AI is very wide as the subject itself in a development phase. The most crucial area of AI is responsibility. For framing the law regulating AI this is the foremost area that will be under critical analysis. Further, various responsibility such as State responsibility, social responsibility, individual responsibility and the legal responsibility of AI.

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3. Soumyarendra Barik, *AI Law may not Prescribe Penal Consequences for Violations,* THE INDIAN EXPRESS, (July 17, 2024)
4. Bob Ambrogi, *The Justice Gap in Legal Tech: A Tale of Two Conference and the Implications for A2J,* LAWSITES (Feb. 5, 2024), https://www.lawnext.com/2024/02/the-justice-gap-in- legal-tech-a-tale-of-two-conferences-and-the-implications-for-a2j.html
5. Debra Cassens Weiss, *'Robot Lawyer' DoNotPay Reaches Settlement in Suit Alleging It's Neither Robot nor Lawyer,* A.B.A. J. (June 11, 2024)

AI has affected our daily lives and in large brought a tremendous change in our society. AI has a tremendous disruptive effect on the society and economy. Moreover, AI is an unregulated area that has to be regulated as early as possible. AI has the potential to revolutionize the process of building a nation.[6] AI focus on both macro as well as microstructures of the society. Privacy is one of the biggest issue that new information technologies bring to the individual.[7] Although there isn't yet a distinct legal framework for artificial intelligence (AI) in India, a number of current legislation address similar topics. The main piece of legislation addressing cyber-related issues, such as cybersecurity and data protection, which are essential to the regulation of artificial intelligence, is the Information Technology Act of 2000. To encourage the appropriate development and application of AI, the Ministry of Electronics and Information Technology (MeitY) has released frameworks and recommendations. AI applications are also indirectly governed by industry-specific laws, such as those pertaining to consumer protection, healthcare, and finance.[8] India is actively striving to create comprehensive legislation that are suited to AI and emerging technologies, according to reports from expert committees and ongoing debates.

i. **Information Technology Act, 2000 :** The Information Technology Act, 2000 (IT Act) serves as the fundamental legislation governing electronic transactions and digital governance. Although it does not explicitly mention AI, specific provisions within the Act are applicable to AI-related activities. Section 43A of the IT Act enables compensation in case of a breach of data privacy resulting from negligent handling of sensitive personal information. This provision is particularly relevant in the context of AI systems that process user data. In the landmark case of *Justice K.S. Puttaswamy(Retd.) v. Union of India*[9], the Supreme Court of India recognized the right to privacy as a fundamental right under the Indian Constitution. This ruling emphasizes the need to safeguard personal data from AI-based system

ii. **Digital Personal Date Protection Act 2023:** The Act aims to establish a comprehensive framework for protecting personal data. The Act introduces principles and obligations for entities processing personal data, including consent, purpose limitation, data localization, and accountability. Additionally, it proposes the cre-

6. Stephanos Bibas, *Lawyers' Monopoly and the Promise of AI,* 134 YALE L.J.F. 920, 920-22 (2025)
7. Buchanan & Headrick, *Some Speculation about Artificial Intelligence and Legal Reasoning,* 23 STAN. L. REV. 40 (1970).
8. Advisory No. eNo. 2(4)/2023-CyberLaws-3 issued by the Ministry of Electronics and Information Technology, Cyber Law and Data Governance Group (March 1, 2024) Available at https://regmedia.co.uk/2024/03/04/meity_ai_advisory_1_march.pdf)(Last accessed on 10 July 2025)
9. (2017)10 SCC 1

ation of a Data Protection Authority to oversee and enforce the provisions. The Act includes provisions addressing profiling and automated decision-making. It mandates explicit consent from individuals when processing personal data using AI algorithms that significantly impact their rights and interests.

iii. **Indian Copyright Act, 1957:** The Indian Copyright Act, 1957 safeguards original literary, artistic, musical, and dramatic works, granting exclusive rights to creators and prohibiting unauthorized use or reproduction. The rise of AI-generated content has prompted discussions regarding copyright ownership and infringement liability. In the case of *Gramophone Company of India Ltd. v. Super Cassettes Industries Ltd. (2011)*[10], the Delhi High Court determined that AI-generated music produced by a computer program lacks human creativity and, therefore, is ineligible for copyright protection. This case clarifies the copyrightability of AI-generated content in India.

iv. **Nationale-Governance Plan:** The National e-Governance Plan aims to digitally empower Indian society by providing online government services. AI plays a vital role in enhancing the efficiency and accessibility of e-governance. Various government departments have integrated AI systems to automate processes, improve decision-making, and enhance services provided for citizens and general public

v. **New Education Policy:** The Indian government launched its New Education Policy (NEP), 2020 which includes provisions regarding special coding classes for students of the 6th standard and equip the future generations to be innovators and to transform India as an emerging innovation center of the world.

vi. **AIRAWAT:** Recently, NitiAyog (Previosly known as - Planning commission of India) also launched AIRAWAT, which stands for AI Research, Analytics, and Knowledge Assimilation platform. It considers all the necessary requirements of AI in India.

III AI and the Indian Legal Landscape: Legal Loopholes & Challenges

The Indian system suffers from a lot of disadvantages when it comes to AI.

Insufficiency of Comprehensive AI-Specific Legislation: Presently, India lacks dedicated legislation that specifically caters to AI. While certain provisions within existing laws like the Information Technology Act, 2000 (although got amended)[11], and the Digital Per-

10. 2011(45) PTC70 (Del)
11. S Katkuri. *Data Security and Privacy in the Digital Age:* Building a Strong Policy And Legal Framework for India, 8 (2), NALSAR LAW REVIEW 71-88, (2023).

sonal Data Protection Act, 2023 (DPDP Act)[12], touch upon AI-related aspects, they do not comprehensively address the unique challenges and complexities posed by AI technologies.

i. **Absence of Clear and Enforceable Ethical Guidelines:** The absence of well-defined and enforceable ethical guidelines for AI development and usage in India poses a challenge. This dearth of comprehensive guidelines may lead to inconsistent practices and potential misuse of AI systems.

ii. **Bias and Discrimination Concerns:** AI systems can inadvertently perpetuate biases and discrimination, as they heavily rely on historical data that may reflect existing societal biases. The current legal framework in India does not explicitly tackle issues related to bias and discrimination in AI algorithms, leaving room for potential discrimination.

iii. **Accountability and Liability Challenges:** The complexity and autonomy of AI systems make it difficult to assign liability in case of harm or errors caused by these systems. Determining responsibility and accountability for AI-related incidents or accidents can pose legal challenges under the existing laws.

iv. **Lack of Sufficient Regulatory Oversight:** While the Personal Data Protection Bill, 2019, proposes the establishment of a Data Protection Authority, there is a need for a dedicated regulatory body to comprehensively oversee AI technologies. The absence of a specific regulatory authority for AI can result in fragmented oversight and limited enforcement of AI-related regulations.

v. **Intellectual Property Rights (IPR) Ambiguity:**The existing intellectual property laws in India may not adequately address the protection of AI-generated content, inventions, and innovations. Questions regarding copyright ownership and the patentability of AI-generated works can create ambiguity and uncertainty. These issues are known as 'Attribution issues.'

As artificial intelligence (AI) advances in our natural communities, the topic of racism and discrimination has gained more attention in political discussions concerning technology development. Both Article 2 of the UDHR and Article 2 of the ICCPR provide that every person has the right to all freedoms and rights without exception. Naturally, given the abundance of discriminating beliefs and repressive behaviours that define human contact,

12. THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 (NO. 22 OF 2023) [11th August, 2023] http://meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf(Last accessed on 1 July 2025)

this is challenging to put into reality.[13] The traces of human intelligence in AI technology are overlooked by many who erroneously believe that AI is the answer to this problem and a technological instrument that liberates us from the bias of human decision-making.[14]

Simply said, technologies travel quickly and disappear into space. Laws are essential for controlling social welfare and technology. Furthermore, in order for these technologies to advance, assistance is required, and laws need also keep pace with technological advancements. Due to its global nature, AI necessitates the legal framework. Nonetheless, the General Data Protection framework is the sole framework that prohibits corporations in the European Union from infringing upon the privacy rights of individuals. The only law pertaining to technology is the Information Technology Act. However, the Act doesn't look for solutions to deal with the current problems brought on by the development of technology. Laws that shield people from the harmful effects of AI without impeding its advancement are desperately needed.[15] The use of AI in the legal sector is widely regulated by the data protection laws in India. The Data Protection Act is India's main piece of data legislation. The Act controls the gathering, storing, processing and transfer of personal data to create a comprehensive framework for protection.[16] According to the Act, organizations processing personal data, including AI systems are required to make sure that the data is handled fairly and legally and obtaining consent is required. To protect the confidentiality and security of people's personal information, AI systems used in the legal industry must adhere to the protection laws.

Several legal issues concerning the Intellectual Property Rights are raised by the AI. The authorship, ownership and patentability of AI generated content are issues in the context of AI generated inventions and works. Intellectual Property Rights have traditionally been granted to the authors or inventors who are human, but the use of AI systems in the creative process is challenging the long standing innovations. The question of who is the author and who owns the right of AI generated works is complicated and varies between jurisdictions. AI system are not considered to be the legal persons in the majority of nations, including India and are therefore not entitled to the protection of IPR. However, the legal framework required to handle these novel challenges are still being discussed and investigat-

13. Kate Crawford & Jason Schultz, *Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms,* 55 B.C. L. REV. 93 (2014)
14. Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 563 (2015).
15. Beyers J and Arras S, *Who Feeds Information to Regulators? Stakeholder Diversity in European Union Regulatory Agency Consultations* 40 JOURNAL OF PUBLIC POLICY 573 (2020).
16. Margot E. Kaminski, *Binary Governance: Lessons from the GDPR's Approach to Algorithmic Accountability,* 92 S. CAL.L.REV.1529 (2019)

ed. To keep up with the technological invention, the relationship between the AI and the IPR is to be clearly demarcated. To address the liability issue in AI in law, legal framework need to be developed. Setting up accountability systems, establishing roles and responsibilities for various stake holders, and deciding on performance and decision making standards for AI systems are all part of the process. Data Protection laws, Intellectual Property Rights, liability and legal responsibility are some of the legal implications of Artificial Intelligence.[17]

IV Cross-Border Privacy: International Norms and Divergences in Data Protection

The gathering, storing, and processing of people's personal data has become essential to the functioning of businesses, institutions, and organisations worldwide due to the quick development of technology. To guarantee data safety, however, strong legislative frameworks are desperately needed, especially in light of new technologies like artificial intelligence (AI) and the rising frequency of data breaches and privacy issues.Within the European Union (EU), data protection is governed by the General Data Protection Regulation (GDPR), a comprehensive and revolutionary legal framework.[18] The GDPR, which has been in effect since 2018, attempts to protect the personal information of EU people, standardise data privacy regulations throughout Europe, and transform how businesses handle data protection and management. One of the main features of the GDPR is its precise definition of important terminology like processing, which includes any action taken on personal data, whether manually or automatically, and personal data, which is information that can directly or indirectly identify a natural person. The GDPR's emphasis on data subjects' rights is one of its main characteristics. These include, but are not limited to, the right to access personal information, the right to have inaccurate information corrected, the right to have data erased (sometimes referred to as the 'right to be forgotten'), and the right to limit data processing.[19] These clauses provide people more authority over their personal data and place commensurate duties on data controllers and processors to respect those rights. Additionally, the rule lays out stringent requirements for gaining legitimate consent. Free, explicit, informed, and unequivocal consent is required. Furthermore, people have the freedom to change their minds at any moment, and the procedure for doing so ought to be as simple as the one for providing consent.

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17. Anupam Chander, Margot E. Kaminski, & William McGeveran, *Catalyzing Privacy Law,* 105 MINN. L. REV.1733,1787 (2021).
18. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1 [hereinafter GDPR]
19. Kim Zetter, *California Now Has the Nation's Best Digital Privacy Law,* WIRED (Oct. 8, 2015)

Notifying people of data breaches is another important topic that the GDPR addresses. Certain data breaches must be reported by organisations to the appropriate regulatory authority within 72 hours. Significant financial penalties, including fines of up to 20 million euros or 4% of the company's global annual turnover from the previous fiscal year, whichever is bigger, may be incurred for noncompliance with GDPR regulations.[20] These fines underscore the significance of compliance and act as a powerful deterrent. Additionally, the legislation establishes the One-Stop-Shop mechanism, which streamlines regulatory compliance for businesses who operate across several EU member states.[21] This method simplifies cross-border data protection enforcement by allowing a business to communicate with a single regulatory body situated in the nation where its primary business is located. The GDPR has had a major impact on the evolution of data protection regulations worldwide. Realising how successful the GDPR is at establishing a global standard for data privacy, a number of non-EU nations have modified or updated their national laws to conform to its principles. The GDPR framework's influence can be seen in India's adoption of the Digital Personal Data Protection Act, 2023.[22] Important values including accountability, respect for individual rights, specific permission requirements, and obligatory breach reporting methods are upheld by Indian law. This Act demonstrates the increasing worldwide convergence around privacy standards spurred by the GDPR and is a critical step towards developing a strong data protection ecosystem in India.All things considered, the GDPR has not only changed the EU's data protection environment but has also acted as a template for worldwide data privacy governance, encouraging an open, accountable, and self-empowering culture in the digital era.

V Governing Artificial Intelligence: Insights into the Finalized EU AI Act

One notable regulatory tool that might work as a template for nations like India, where legal sanction and legislative control of AI are still lacking, is the European Union's Artificial Intelligence Act (EU AI Act).[23] A uniform regulatory structure for the expansion, distribution, and implementation of AI systems among EU member states is intended to be established under the EU AI Act. By making sure AI technologies are secure, uphold fundamental rights, and foster innovation, its main objective is to advance dependable and human-centric AI. Interestingly, the Act uses a risk-based approach and divides AI systems into four groups: (a) unacceptable, (b)high, (c) limited, and (d) minimal risk. Each class has

20. Margaret Taylor, *Data Protection: Threat to GDPR's Status as 'Gold Standard'*, INT'L BAR ASS'N (Aug. 25, 2020)
21. Ryan Calo, Robotics and the Lessons of Cyberlaw, 103 CALIF. L. REV. 513, 553 (2015).
22. Julia Powles, *The G.D.P.R., Europe's New Privacy Law, and the Future of the Global Data Economy,* NEW YORKER (May 25, 2018)
23. Council Regulation 2024/1689, 2024 O.J. (L 1689)

different regulation and requirements for organizations developing or using AI systems. This legislative framework holds critical value for countries like India, where AI use is rapidly expanding, especially in sectors such as digital payments, online retail, logistics, and governance. However, India currently lacks a dedicated legal framework for AI, leaving a significant legal vacuum. There is no clear assignment of rights, duties, liabilities, or remedies concerning AI systems or their developers and users. This can lead to absurd and confusing legal situations where litigants may not know whom to sue, under what grounds, or what remedies to seek in case of harm caused by AI tools. Moreover, without recognizing any legal personality for AI, Indian courts may struggle to adjudicate disputes involving autonomous systems. The EU model provides an example of how jurisdictional clarity, risk categorization, and proactive compliance structures can be embedded in law to guide responsible AI development and usage. A similar regulation in India would not only ensure accountability and safety but also encourage innovation by setting clear boundaries and expectations for developers and users alike. EU AI Act is more than a regional regulatory initiative as it is a globally relevant blueprint. India, as a country with a robust IT industry and growing digital infrastructure, would benefit from a comparable legislation to ensure its legal system is equipped to manage the complexities of AI in a way that upholds fundamental rights, promotes innovation, and safeguards societal trust.[24]

There are various areas where AI is changing. Nevertheless, the implication for the privacy of data are profound and complex. The development of AI brings with it both significant and concerns of handling security personal data. The intricate relationship between the AI and the data privacy looks at the potential risks and the existing regulatory framework. Concerns about potential privacy violations arise because such data frequently contain private personal information. The intersection of AI and data privacy requires finding a careful balance between leveraging the benefits of AI driven innovations and protecting individual's right to privacy [25]. Many sources including social media sites, online stores and Internet of things (IoT) devices are commonly used to collect this data. While gathering this data enhances AI capabilities of unauthorised access and unlawful use of personal data. The process of eliminating or changing personal information from the dataset to preserve people's privacy and confidentiality is known as data anonymization.[26] However advances in AI have made it possible to re-identify data that has been anonymised. There

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24. European Commission, *Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts.* COM/2021/206 . (2021).

25. Lilian Edwards and Michael Veale, *'Slave to the Algorithm? Why a Right to Explanationn Is Probably Not the Remedy You Are Looking For'* 18 DUKE LAW & TECHNOLOGY REVIEW 67(2017)

26. MajaNisevic, Arno Cuypers and Jan De Bruyne, *'Explainable AI: Can the AI Act and the GDPR Go out for a Date?',* 2024 International Joint Conference on Neural Networks (IJCNN) (2024)

are numerous risks to data privacy where AI is used in data processing and analysis. These risk include: incidents of sensitive data being acquired and accessed without authorization and because AI systems hold valuable data they are attractive targets of attackers, Such a breach would lead to significant privacy violations thereby disclosing private information to adversaries. Artificial Intelligence has become an indispensable component in the development of many enterprises, especially those involved in data protection and cyber security. AI offers cutting edge solutions for security measures and protects sensitive data in light of the growing complexity of cyber threats and the growing significance of data privacy.

VI Who Pays When AI Fails? The Legal Void of Artificial Agents

Complex issues about legal liability have been brought up by the increasing incorporation of artificial intelligence into decision-making systems. The fact that AI lacks legal personhood, in contrast to businesses or humans, is one of the main obstacles. AI cannot be regarded as a legal entity with rights and obligations because of its absence. The conventional liability paradigm finds it difficult to place blame when harm results from AI's actions, whether in the fields of healthcare, driverless cars, or financial services. A 'many hands' issue could arise from manufacturers, developers, consumers, and even data suppliers sharing some of the blame. The independent and adaptive behaviour of AI may not be adequately addressed by the product responsibility or negligence statutes that courts frequently fall back on. Accountability is made more difficult by the 'black box' problem—the opacity of AI algorithms. It could be challenging for victims to get justice if there isn't a clear legal body to hold responsible.[27] Proposals such as giving AI 'electronic personhood' status are still debatable and morally complex. Ambiguity in responsibility will continue to erode trust and impede responsible innovation until legal systems change. Ascertaining the liability, civil and criminal for damages or losses resulting from activities of an AI is a matter of priority as it exercises the control over itself in various degrees. It is critical to remember that any examination of culpability in a civil or criminal action boils down to whether the relevant defendant's activities were illegal as a result of the applicability of AI framework's choices and conclusions. Since artificial intelligence (AI) systems are not recognised as legal persons, it is extremely difficult to establish criminal or civil liability for them. Liability in criminal law typically depends on the existence of a legal entity that is able to form intent (mensrea) and carry out an act (actusreus). However, the attribution of liability is complicated and unclear because AI systems are not granted legal persons under the current legal framework. AI would have to be recognised as a legal person in order to be subject to criminal culpability, much as how some

27. OrlyLobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought,* 89 MINN. L. REV. 342 (2004)

governments handle businesses under commercial criminal liability frameworks.[28] However, even if the crime is carried out with advanced software, it cannot be simply categorised under conventional criminal law paradigms. The question therefore becomes whether such systems are capable of having or imitating the mental and physical components necessary to qualify as crimes.[29] Assessing whether AI is a legal creature and determining the obstacles to demonstrating actusreus and mens rea are necessary steps in establishing criminal culpability for AI. The legal system in India has not yet explicitly acknowledged AI systems, which are still in their infancy. The assignment of rights, obligations, liabilities, and duties to AI companies is unclear as a result of this legal void.

VII Conclusion and Suggestions

It is true that advances in AI will eventually lead to a semi apocalyptic post scarcity and post work economy where intelligent machines can outperform humans in almost every domain. AI has a multifaceted impact on society, promising benefit like enhanced productivity and improved health care, but also posing challenges such as job displacement and ethical concerns, requiring careful consideration and responsible development. Recent years have seen a significant development in AI which has revolutionized a number of industries with its power in automation, data processing and decision making. The foundation of legislative initiatives aims at reducing bias in AI is often formed by antidiscrimination laws. The interpretability of AI system presents a major issue to the regulation of discrimination driven by AI. AI in contrast of human decision makers frequently work via intricate layers of data processing, making it challenging to track the steps and motivation behind specific judgements. Responsible AI practices are greatly influenced by ethical issues which go beyond legal frameworks. Fairness, accountability and openness are highlighted in ethical guidelines, such as those published by international organisation like the Partnership on AI. In actually attaining justice in AI necessitates multidisciplinary strategy that incorporates ethical, legal and technical viewpoints. Legal framework must change to meet the difficulties in AI in order to guarantee the current antidiscrimination. In the meanwhile, ethical standards offer a basis for cultivating a culture of accountability and reliability among stakeholders and AI developers. India must create a strong legal and regulatory framework to handle the unique problems presented by artificial intelligence (AI) systems as they are further incorporated into both the public and private spheres. Although recent legal developments, most notably the passage of the Digital Personal Data Protec-

28. David S. Levine, *The Impact of Trade Secrecy on Public Transparency,* in THE LAW AND THEORY OF TRADE SECRECY: A HANDBOOK OF CONTEMPORARY RESEARCH 406 (Rochelle C. Dreyfuss& Katherine J. Strandburg eds., 2010);

29. Margot E. Kaminski, *Binary Governance*, 92 S. CAL. L. REV.2019

tion Act (DPDPA), 2023, indicate a proactive stance, a number of crucial issues are still not sufficiently addressed. When applied to AI systems, India's current criminal law system—which is based on antiquated ideas like actusreus, mensrea, and strict liability—faces serious challenges. These technologies' autonomous and non-human characteristics make it more difficult to assign intent, culpability, and foreseeability—all of which are essential components of criminal liability.[30]

A useful theoretical framework that Indian legal discourse could use in this regard is Gabriel Hallevy's tripartite model of AI criminal responsibility.[31] First, according to the Perpetration-via-Another approach, AI functions as an instrumentality, much like an innocent actor, that a human criminal uses. Second, when negative consequences are a predictable byproduct of AI activity, the Natural-Probable-Consequence paradigm makes developers or users accountable. Third, the Direct Liability model takes into account the potential for directly blaming AI systems, particularly when those systems operate with a high degree of autonomy. Even in cases when traditional human intent is lacking, using such models could make it clearer who is responsible for crimes utilising AI.Not every injury brought on by the deployment of AI entails criminal responsibility. Negative results are often caused by operational errors, misapplication, or design flaws—situations in which civil liability is more appropriate. Tort law provides a better foundation for recourse in these situations. With an emphasis on the components of duty of care, breach, and resulting harm, Indian jurisprudence should be strengthened to apply negligence-based rules more strictly. Furthermore, considering the existing legal position that AI lacks personality, it is imperative to confirm that accountability primarily rests with the designers, developers, operators, or users of AI systems, rather than the systems themselves.[32]

AI systems are currently not recognised as legal entities under Indian law. However, the legal system needs to start thinking about the ramifications of giving AI systems a limited legal status as their autonomy and decision-making powers grow. The viability and implications of AI personhood in specific situations should be examined in academic and policy discussions. This might entail giving AI entities limited legal capabilities, particularly where autonomous functioning has a substantial influence on third parties. Such investigations will enable a more flexible legal system and bring Indian legal philosophy into line with changing international standards.

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30. MajaBrkan, *Do Algorithms Rule the World? Algorithmic Decision-Making in the Framework of the GDPR and Beyond,* INT'L J.L. & INFO. TECH. 1, 13–20 (2019)
31. G. Hallevy, *The Criminal Liability of Artificial Intelligence Entities - from Science Fiction to Legal Social Control,* AKRON INTELLECTUAL PROPERTY JOURNAL, 171-201 (2010).
32. Andrew D. Selbst& Julia Powles, Meaningful Information and the Right to Explanation, 7 INT'L DATA PRIVACY L. 233, 235 (2017)

Key data protection principles, such as non-discrimination, purpose limitation, and data minimisation, are introduced by the DPDPA, 2023. However, more regulatory protections are required to guarantee the ethical application of AI. In particular, the concept known as 'privacy by design' requires that privacy and data security be incorporated into AI design from the very beginning. AI systems that handle sensitive personal data should also be subject to required impact evaluations and audit procedures. Additionally, new hazards specific to AI, like algorithmic bias, unfair profiling, and unjustified surveillance, should be included by data protection laws. Given the difficulties presented by AI, the judiciary plays a critical role in interpreting statutory regulations, especially within the frames of the DPDPA, 2023, and the Information Technology Act, 2000. However, the efficient resolution of conflicts pertaining to AI may be impeded by the lack of clear statutory guidelines. Legislators must create more precise legal frameworks that take into consideration the unique characteristics of AI, such as algorithmic opacity, restricted decision traceability, and the possibility of automated discrimination, in order to support judicial reasoning. The ability of courts to handle the complexity of AI jurisprudence would be further strengthened by increasing judicial capacity through specialised training, dedicated benches, or expert advisory panels.International cooperation is crucial to ensuring cogent and morally sound regulatory processes, given the transnational character of AI development and use. India should embrace globally accepted rules and standards for AI governance and take an active part in international talks.[33] In fields like data protection, algorithmic accountability, and regulatory interoperability, cross-border collaboration is especially crucial. Therefore, in order to encourage the responsible and equitable development of AI technology, India should seek bilateral and global partnerships.India's legal and technical development is at a turning point. The nation may create a regulatory environment that is prepared for the future by proactively implementing advanced models of liability, improving civil and criminal accountability frameworks, taking into account the legal recognition of AI systems, and strengthening privacy safeguards. To guarantee that AI technologies are regulated in a way that protects fundamental rights, fosters innovation, and preserves the rule of law, a concerted effort involving the legislative, judiciary, and international partners will be necessary.

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33. Sandra Wachter, Brent Mittelstadt & Luciano Floridi, *Why a Right to Explanation of Automated Decision-Making does not Exist in the General Data Protection Regulation,* 7 INT'L DATA PRIVACY L. 76 (2017)

Revisiting Special Status: A Critical Study of Article 370 and its Abrogation in the Context of Indian Federal Polity

Giridhar V*

Abstract

The region of Jammu and Kashmir has held a unique position in the Indian Union due to its special constitutional status, which has evolved. This study explores the complexities and nuances surrounding the region's autonomy and its implications for India's federal structure. The special status accorded to the erstwhile state of Jammu and Kashmir was primarily governed by Article 370 of the Indian Constitution. This provision granted the region substantial autonomy, including the right to frame its own constitution and exercise considerable control over its internal matters. The special status was a reflection of Jammu and Kashmir's distinct historical, cultural, and political identity within the Indian Union. However, the abrogation of Article 370 in August 2019 marked a transformative constitutional development. It resulted in the revocation of the state's autonomy and its reorganization into two Union Territories — Jammu & Kashmir and Ladakh. This move has since generated intense discourse on federalism, constitutional interpretation, and the distribution of powers between the Union and the States. The abrogation is viewed by some as a step toward national integration, while others regard it as a challenge to the federal structure enshrined in the Constitution. The study will investigate the historical context leading to the special status, the reasons behind its abrogation, and the legal, political, and social ramifications that have followed. It will also assess the impact on the Union Territories of Jammu and Kashmir and Ladakh, analysing the changes in their governance, development policies, and the socio-political landscape. The discourse surrounding Indian federalism is central to this study, as it highlights the tensions and balances between central authority and regional autonomy. This study will critically analyse the Indian federal structure in light of recent changes, offering insights into the evolving nature of Indian polity, scrutinising various perspectives, including those from judicial interpretations, constitutional experts, political analysts, and the affected populace. This study comprehensively views the consequences of altering Jammu and Kashmir's special status.

Keywords: Article 370, Federalism, Indian Constitution, Jammu and Kashmir

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I Right to Autonomy & Article 370 A of the Constitution of India

"Federalism isn't about rights. It's about dividing power to better protect individual liberty," states.

- Elizabeth Price Foley

Article 370 A of the Indian Constitution granted special status to Jammu and Kashmir, allowing it considerable autonomy, including its own constitution and decision-making powers in many areas. This special status was effectively abrogated on August 5, 2019, through a Presidential Order and the passage of a resolution in Parliament. The move also led to the bifurcation of the state into two Union Territories—Jammu & Kashmir and Ladakh.[1] This significant constitutional shift has sparked intense debate regarding its implications for Indian federalism, especially concerning the balance of power between the Centre and the states. This article offers a glimpse into the future of this transformation, aiming to assess how effectively democratic governance, development, and integration are being upheld in these regions while maintaining constitutional values.

State autonomy is a state's ability to self-govern and make its own choices without undue influence from the federal government. It concerns the division of power between state and federal levels, emphasizing the importance of state rights in creating local rules and laws. Linked to the concept of federalism, state autonomy impacts how states address federal requirements and manage their affairs.[2] The development of state self-autonomy in India has not followed a top-down approach, as seen in the United States of America, where the states were autonomous settlements that consented to form an initial confederation. Subsequently, a federation, or a model of the British government, was established according to their needs. This represented an instance of decentralization rather than federalization.

The concept of division of powers means the level of governing units is divided into the states and the union. In the division of powers, the powers have been divided into the three lists: the union list, state list and concurrent list by the 7th schedule of the Constitution of India. Thus, the constitutional scheme of power between the centre and states provides certain autonomy to the federal units. State autonomy means the authority and power of a state as a member of the Union of India to decide and execute independently, following the provisions of the Constitution. Ever since the decision in *West Bengal v Union of India*[3], the Supreme Court has held that there are so many unitary features in our Con-

1. Sergiu Constantin and Andrea Carlà, *The Vicious Circle of Securitization Processes in the Former Indian State of Jammu and Kashmir* 10 JOURNAL OF GLOBAL SECURITY STUDIES, 23 (2025).
2. Cristina M. Rodriguez, *Negotiating Conflict through Federalism: Institutional and Popular Perspectives, 123* THE YALE LAW JOURNAL 1626 (2014).
3. (1964) 1 SCR 371.

stitution that the federal features almost disappeared, which further allowed the Union to be entitled to the coalmines vested in the State of West Bengal. Prof. Wheare took the test for this classical work.[4] It has been generally applied to our constitution, and from a broad perspective, the test can be accepted, subject to its being supplemented by the informative arguments of Prof. Sawer [5]. He rightly said that it is necessary to inquire whether a federal situation existed in a country before it adopted a federal Constitution. He further said that the subcontinent of India was another area that, because of its size, population, and region, including linguistic differences and communication problems, presented an apparent federal situation, if not the possibility of several distinct Nations.[6]

i. Evolution of Article 370A of the Constitution or the Provisional Autonomy of the State of Jammu and Kashmir

The development of state self-autonomy in India has not emerged from the bottom up, as is the case in the United States of America, where the states were autonomous settlements that consented to form an initial confederation. Subsequently, a federation, or perhaps an example of the British government, was established according to their requirements. It represented a case of decentralization rather than federalization. Certain legislations and reports were enumerated regarding the provisional autonomy of Kashmir; they are:

a. The Indian Councils Act,1861
b. The Indian Councils Act,1892
c. Morley Minto Reforms and Indian Councils Act,1909
d. Montagu-Chelmsford Report and the Government of India Act,1919
e. The Government of India Act 1935
f. The Indian Independence Act 1947

ii. The Constituent Assembly debates over Article 370 A

The Constituent Assembly, elected for undivided India and held its first sitting on 9th December 1946, reassembled on the 14th of August 1947 as the Sovereign Constituent Assembly for the Dominion of India.

Several committees of the Assembly, including the Union Constitution Committee, the Union Powers Committee, the Committee on Fundamental Rights, etc., had detailed

4. K.C. Wheare, FEDERAL GOVERNMENT 11 (4th ed. 1963)
5. Nettheim Garth, The Principle of Open Justice, 8 TASMANIAN LAW REVIEW 25(1984)
6. Ibid.

the critical tenets of the proposed Constitution. On August 29, 1947, following a general debate of these committees' recommendations, the Assembly established a Drafting Committee.[7] The decision of the Assembly was codified by the Drafting Committee,led by Dr.Ambedkar, with additional and alternative suggestions in the form of a "Draft Constitution of India," published in February 1948. The Constituent Assembly carefully reviewed each clause of the Draught before, on November 26, 1949, the President of the Assembly signed the document, which was deemed to have been adopted. Because India's historical history clearly showed that India would quickly fall into chaos without a strong Centre, the Constituent Assembly elected a federal system with a strong Centre for India. Thus, in India, the evolution of State autonomy, which began as an administrative necessity, ultimately influenced the final shape of the Indian Constitution with the adoption of federal principles for Indian polity.

iii. Various Commission Reports on State Autonomy

In the past, states like Tamil Nadu, Punjab, West Bengal, Jammu, and Kashmir have powerfully articulated their demand for more state autonomy through different reports on state autonomy. In 1969, the Tamil Nadu government appointed the Rajamannar Committee.[8] To enquire about Centre-State relations and state autonomy. The committee submitted its report in 1971. The committee's important recommendations included the advisory body's constitution under Article 263, transfer of residuary powers to States, repeal of Articles 249, 356 and 357 and greater financial autonomy to the States. The West Bengal administration approved a memorandum on centre-state relations on December 1, 1977, which recommended reorganising the current plan. The Rajamannar Committee's recommendations serve as the basis for the majority of the memorandum's suggestions. Among the crucial suggestions were:

A. Article 368 should be changed to guarantee that two-thirds of the MPS in each House of Parliament who are present and voting agree with any alteration to the Constitution.

B. Article 3, which grants the Parliament the authority to unilaterally alter a state's area, needs to be appropriately modified to guarantee that the Parliament cannot alter a state's name or territory without the express approval of the State Legislature in question.

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7. Tarunabh Khaitan, *Directive Principles and the Expressive Accommodation of Ideological Dissenters,* INTERNAT'L J. OF CONSTITUTIONAL LAW 16 (2018)

8. This committee comprises three members, i.e., P.V. Rajamannar (Chairman), A.L. Mudaliar, and P. Chandra Reddy. M. Rama Joi, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA Tripathi publishers (1984)

In 1978, the All-India Akali Conference adopted the Anandpur Sahib Resolution, which demanded utmost autonomy. The resolution declared: In this new Punjab, the authority of the Centre should be confirmed only for the country's defence, foreign relations, communications, railways, and currency. All the residuary subjects (departments) should be under the jurisdiction of Punjab, which should have the right to frame its constitution for these subjects.[9] The Government of India appointed a commission under the chairmanship of Justice R.S. Sarkaria in 1983 to review Centre-State relations. The commission made many recommendations on legislative, administrative, and financial relations between the Centre and state governments.

The State Autonomy Committee (SAC) was established in 1996 by Dr.Farooq Abdullah, the state's then-chief minister, to investigate the possibility of restoring autonomy to the state of Jammu and Kashmir. In 1999, the report was published. On 13.4.1999, the report was presented to the Jammu and Kashmir Legislature's two chambers. On June 27, 2000, the State Legislative Council accepted it, and on June 26, 2000, the State Legislative Assembly did as well. The Central administration declined to consider the autonomy report after the State administration presented it to it. By calling for pre-1953 status, the study suggested that the federal government should not meddle too much in the affairs of the State of Jammu and Kashmir.

NCRWC, in its report of 2002, has made crucial suggestions regarding Union-State relations. The Commission has sanctioned most of the suggestions given by the Sarkaria Commission. There is no dichotomy between a strong Union and strong States, as per NCRWC. The Union and the States are a relationship between the whole body and its parts. For the body to be healthy, its parts should be substantial. The Commission recommended that the Centre take crucial decisions following consultation with the States through the Inter-State Council. The Commission also recommended numerous measures to increase the financial strength of the States. It emphasised that the Governor of a State should be appointed by the President only after consulting with the Chief Minister of the State.

On October 13, 2010, the Government of India's Ministry of Home Affairs appointed a team of interlocutors on Jammu and Kashmir. It included prominent journalist Dileep-Padgaonkar, academic Radha Kumar and retired Information Commissioner M.M. Ansari. The panel filed its report entitled 'A New Compact with the People of Jammu and Kashmir' to the then Union Home Minister P. Chidambaram on 12 October 2011, which was released on 24 May 2012. Below are the major suggestions of the report:

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9. Alec Stone Sweet , Jud Mathews, Proportionality Balancing and Global Constitutionalism, 47 COLUM. J. TRANSNAT'L L. 72, 112 (2008)

a. A Constitutional Committee shall be established to examine all the Central Acts and Articles of the Constitution applicable to the State of Jammu and Kashmir post-1952 Delhi Agreement.
b. Regional councils must be for Jammu, Kashmir and Ladakh.
c. To substitute the term "temporary" from the title of Article 370 and the title of Part XXI of the Constitution with the term "special".
d. There must be increased devolution of financial and administrative powers to the Panchayati Raj institutions.
e. Parliament will enact no laws governing the State unless they concern the internal and external security of the country and its key economic interests, particularly in the field of energy and access to water resources.
f. Article 356 must go on with the rider that the Governor would suspend the State Legislature and conduct fresh elections within three months.

II Abrogation of Article 370A & its impact on the territory of Jammu Kashmir and Ladakh

Constitution (Application to Jammu & Kashmir) Order, 2019 – made by the President of India to replace the 1954 order about Article 370. Under clause (1) of Article 370 of the Constitution, the President of India, with the advice of the Government of the State of Jammu and Kashmir, has made such an Order. The Union Minister for Home Affairs also introduced two bills and two resolutions regarding Jammu and Kashmir in the LokSabha on the same day, 5th August 2019. These are as follows:

i. Constitution (Application to Jammu & Kashmir) Order, 2019[10] – issued by the President of India to supersede the 1954 order related to Article 370.In exercise of the powers conferred by clause (1) of Article 370 of the Constitution, the President of India, with the concurrence of the Government of the State of Jammu and Kashmir, has issued such an Order.

ii. Resolution for Repeal of Article 370 of the Constitution of India.[11]

iii. Jammu & Kashmir (Reorganisation) Bill, 2019[12]

10. India Const. ART. 370(1).
11. India Const. ART. 370(3).
12. India Const. ART.3.

Since the revocation of Article 370, the Kashmir valley has more or less remained peaceful due to enhanced security measures and a massive deployment of troops. From August 2019 to December 2019, the Kashmir valley remained under a curfew-like situation, and Section 144 of the Criminal Procedure Code was also implemented, which prohibited the assembly of more than four persons. Moreover, the restrictions were to such an extent that in several dozen locations across the city, roads were blocked for vehicular traffic and the movement of people. This anguished the people of Jammu and Kashmir mainly on two counts. One, they felt their decades-long privileges were undemocratically and unceremoniously curtailed. Two, they were distressed by a total communication blackout in Kashmir, with mobile phones, landlines, internet, and other massaging tool facilities blocked. Such restrictions heavily impact not only the daily lives of the people of Jammu and Kashmir but also their social psychology. It has triggered a new wave of mental health issues in the Kashmir Valley.

III Comparative Study of State Autonomy with Some Other Federations

It is not easy to define the concept of federalism. In the classical sense, federalism was fairly closely defined.[13] It meant the particular type of government practised with slight variations by the Americans, Australians, Canadians and the Swiss. The prominent features of this federalism are well known. The federal structure results from multiple separate states merging into a single sovereign entity, where powers are shared between federal and unit governments that directly engage with the populace.[14] This system is underpinned by a written constitution that cannot be altered unilaterally and includes independent judicial review. Countries such as India, Pakistan, Nigeria, the West Indies, Malaya, and Central Africa have sought to adopt this model of federalism, which includes variations to accommodate local conditions.[15]

This characteristic of the 'perfect independence' of constituent units in a federation within a constitutionally demarcated sphere is also the distinctive feature of Where's definition of the Federal principle, when he says, "By the federal principle, I mean the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent.[16] "Professor Wheare thus applies two tests for a true federation- coordination and independence. He considered the American Constitution an ideal

13. Cass R. Sunstein, *Second-Order Perfectionism*, 75 FORDHAM L. REV. 2867 (2007).
14. Vicki C. Jackson, *The Democratic Deficit of United States Federalism? Red State, Blue State, Purple?,* 46 FED. L. REV. 645 (2018).
15. David J. Barron, *A Localist Critique of the New Federalism,* 51 DUKE L.J. 377 (2001).
16. Richard H. Fallon, *The 'Conservative' Paths of the Rehnquist Court's Federalism Decisions,* 69 U. CHI. L. REV. 429 (2002).

federal constitution. However, according to S.P. Aiyar, this definition of Prof. Wheare may only be somewhat applicable in the United States.[17] Garran's definition, cited by Gopalaswami Ayyangar in the Constituent Assembly, also follows the same principle.[18] Similarly, Prof. Dicey also says, "Federalism means the distribution of the force of the state among several coordinate bodies, each originating in and controlled by the constitution."[19]

The Constitution of India has the character of a federal constitution that we talked about, no more, no less. The Constitution creates a double polity, a system of dual Governance with the Union Government at the Centre and the State Governments at the State level. There is a separation of powers between the Union and the State Governments; each Government is supreme in its field. The Constitution is written, and it is the supreme law of the land. The federal character of the Constitution can only be changed with the consent of the majority of the States. The Constitution also creates the Supreme Court to decide disputes between the Union and the States, to decide conflicts within the States and to finally interpret the provisions of the Constitution.

The federal character of the Constitution of India has also been criticised based on special provisions such as Articles 249 to 253, which empower the Parliament to enact law even in the state field. Articles 249 to 253 apprehend four contingencies: (a) central law in the national interest,[20] (b) Central law during the proclamation of emergency,[21] (c) central law with the consent of the states[22] and (d) the central law to give effect to international agreements[23] -in which Parliament can enact a law on a subject given in a state list by ignoring the barriers to the federal distribution of powers. Critics feel that these provisions are derogatory to the federal principle of the distribution of powers under a federal constitution.

Mr Justice Subba Rao first laid down the real test for a federation in his minority opinion in the State of *West Bengal v. Union of India.*[24] In these words:

> "The real test to ascertain whether a particular constitution has accepted the federal principle is whether the said constitution provides for the division

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17. Michael Klarman, *The Constitution as a Coup Against the Public Opinion,* 3 REVISTA DE ESTUDOS INSTITUCIONAIS 255 (2017).
18. Federalism, according to Garran's definition, is "a form of Government in which sovereignty or political power is divided between the federal and the local governments so that each of them, within its own sphere is independent of the other." Michael J. Klarman, *How Great Were the "Great" Marshall Court Decisions?,*87 VA. L. REV. 1111 (2001).
19. Dicey, LAW OF THE CONSTITUTION, 153 8th ed.,(2013).
20. India Const. ART.249.
21. *Ibid.,* ART. 250.
22. *Ibid.,* ART. 251.
23. *Ibid.,* ART. 253.
24. A.I.R. 1963 S.C. 1241.

> of powers so that the general and the regional governments are each within their sphere substantially independent of the other".[25]

This test of the division of powers between the general and regional governments as a determining factor of a federation was reasserted by the Supreme Court in *Kesavananda Bharati v. State of Kerala*.[26] Mr Justice Shelat and Mr Justice Grover, in their joint judgment, held that "the Constitution of India has all essential elements of a federal structure as was the case in the Government of India Act, 1935, the sense of federalism being the distribution of powers between the federation or the Union and the States or the provinces".[27]

The Indian judiciary seems aware of the peculiar mode of forming our federation. While speaking about the units of our federation, Mr Justice Gajendragadkar said, "The Constituent units of the federation were deliberately created, and it is significant that they, unlike the units of other federations, had no organic roots in the past".[28] Similarly, Mr Justice S.K. Das, speaking for the unanimous Court in *BabulalParate v. State of Bombay*[29], also held that "none of the constituent units of the Indian Union was sovereign and independent in the sense American colonies or Swiss cantons were before they formed the federal union." It may, however, be submitted here that the mode of the formation of the federation makes no difference to its nature[30]. However, the judicial opinions in these cases dealing with the Union and its territories particularly emphasise the mode in which federating Units of our federation were deliberately created. The three classical federations of the U.S.A., Canada and Australia, the conclusion emerges that there is a notable divergence between the original theory of division of powers, embodied in the constitutions, and the current practices. Under the pressures of the social service state, war, the threat of war and the past periods of economic depression, the federations of the U.S.A., Canada and Australia have become increasingly centralised.[31]

In the U.S.A., the Constitution contains only one list enumerating the powers of the Centre, and the rest are left to the States—the Centre in the U.S.A. Federation, designed to be weak because of its limited powers, has become vital to meet the severe challenges of

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25. *id*
26. (1973) S.C.C. 225.
27. *Ibid*, at 408-409 (per Shelat and Grover JJ.); See also F.S. Nariman, *The Supreme Court and Centre- State Relations,* in A.C. Noorani (ed.), PUBLIC LAW IN INDIA, 7-29 (1982).
28. In *Re-Berubari Union,* A.I.R. 1960 S.C. 845.
29. A.I.R. 1960 S.C. 51.Laurence H. Tribe, *Disentangling Symmetries: Speech, Association, Parenthood*, 28 PEPP. L. REV. 641 (2001).
30. the American Federation, though formed of component states, has been pointed out to derive its powers from the people. See *Mc.Culloch v. Maryland,* (1819) 4 Wheat. 316.
31. John C. P. Goldberg, *Benjamin Cardozo and the Death of the Common Law,* 34 TOURO L. REV. 147 (2018).

wars, depression and economic growth in the country.[32] The Centre has become vital not so much through the formal amendments of the Constitution but through the judicial interpretation of the Constitution. The judiciary has helped the Centre by broadly interpreting its enumerated powers, such as commerce, defence, war, taxing, spending, treaty-making, etc., in response to the urgent demands of the times. The States, though by no means unimportant in the Constitutional and administrative system of the country, have, however, come to occupy a position somewhat of junior partners to the Centre, whose supremacy is now a fact in the U.S.A. federal system.

In Canada, the framers of the Canadian Constitution (The British North America Act, 1867) wanted to make the Centre strong so that it could effectively deal with all problems of national importance. The matters of local interest were left with the provinces. However, the judicial interpretation still needs to follow this historical approach. The Privy Council, followed now by the Supreme Court of Canada, by its process of interpretation, shifted the balance of power in favour of the provinces at the cost of the Centre. The provincial power on 'civil rights' and 'property' was widely used through judicial interpretation. The provinces have extensive powers in business, social services, labour, roads, conservation and development. During the emergency, however, the general power of the Centre becomes very wide, enabling it to tackle the war emergency effectively. But in times of peace, the Centre finds itself handicapped in many ways: that is, it cannot implement through legislation a treaty with a foreign country if its subject matter falls within the jurisdiction of the provinces, its power to deal with socio-economic problems of the country was brought home during the depression of 1930 when a good deal of New Deal legislation was declared unconstitutional by the judiciary. On the other hand, with their inadequate development, some of the provinces find it very difficult to discharge their functions properly with their limited resources.

In Australia, the Centre has specified powers in the Constitution, but the judiciary has given these powers an expansive interpretation. Under its defence power, the Centre assumes a dominating position during wartime; it has full control in the field of external affairs and can implement any treaty with a foreign country; its power over commerce and arbitration of industrial disputes enables it to deal with the problems of industrial and commercial growth effectively. Despite all this, there is a strong feeling in Australia that in peacetime, the Centre needs more power to deal appropriately with the country's socio-economic problems. Efforts have also been made to amend the Constitution occasionally to correct the lacuna. Still, generally, success could not be achieved because of the highly rigid procedure of amending the Constitution.[33]

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32. Mark Tushnet, *Deviant Science in Constitutional Law Scholarship*, 59 TEX. L. REV. 815 (1981).
33. Laurence H. Tribe, *Transcending the Youngstown Triptych: A Multidimensional Reappraisal of Separation of Powers Doctrine*, 126 YALE L.J. F. 86 (2016).

Thus, the developments in Australia are parallel to those in the U.S.A. But the developments of Canadian federalism have sharply contrasted with those of American federalism. In the latter case, the Centre, designed to be of limited powers, has turned out to be very strong, while in the former case, the Centre, purposely designed to be strong, has turned out to have only restricted power to deal with the burning problems of a fast-developing economy of the country. But presently, there is one common trend: all three federations are going on the road to a cooperative approach to federalism.[34]

IV Critical Analysis of The Judgment on The Kashmir Dispute

On the Analysis of Article 370A Abrogation, the Supreme Court of India emphasised the importance of Federalism through the Judgement of *ShaeFaesal and others v Union of India and another*.[35] CJI Chandrachud heavily depended on a statement by Yuvraj Karan Singh on 25 November 1949, a day before the adoption of India's Constitution. The statement said that the Indian Constitution would apply to the relationship between India and Jammu and Kashmir. This, the Chief said, vetoed two clauses of the Instrument of Accession (IoA). Paragraph 7 of the IoA declared that the IoA was not an acceptance symbol of "any future Constitution of India," and Paragraph 8 declared that the IoA would not impair the sovereignty of the Maharaja. Yuvraj's declaration stated that "the provisions of the said Constitution shall, from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent in addition to those which are in force in this State. The Chief Justice also did not agree with the contention of the petitioner that the autonomy enjoyed by Jammu and Kashmir was different from that of other states. In asymmetric federalism, one state may have greater autonomy than the other. This does not imply that it has a different type of autonomy. He cautioned that if the Court ruled that Jammu and Kashmir has a high form of sovereignty, then "other states which had special arrangements with the Union also had sovereignty."

Justice Kaul was in disagreement regarding the issue of sovereignty. According to him, as per the Court's ruling in *PremNathKaul v Union of India*[36], Jammu and Kashmir had some sovereignty left. Article 370, he added, acknowledged Jammu and Kashmir's internal sovereignty by acknowledging the state's Constituent Assembly. Justice Khanna agreed with Justice Kaul's rationale. The Chief Justice also emphasised that Article 370 A of the Constitution is temporary in nature[37]. The Chief Justice also held that the dissolution of the Constituent Assembly could not limit the powers of the President to abrogate Article

34. Martha A. Field, *Sources of Law: The Scope of Federal Common Law,* 99 HARV. L. REV. 881 (1986).
35. Writ Petition (Civil) No. 1099 of 2019.
36. AIR 1959 SC 749.
37. *Supra* Note 29.

370. The President's power, he explained, was only limited under Article 370(1), which meant that they could not "make radical changes to the provisions of the Constitution of India as it applies to Jammu and Kashmir." If the President exercises his power under 370(3) to abrogate the provision, no such limitation under 370(1) would survive, all provisions of the Constitution of India would apply to Jammu and Kashmir, and integration would be complete. "Holding that the power under Article 370(3) cannot be exercised after the dissolution of the Constituent Assembly would lead to freezing of the integration contrary to the purpose of introducing the provision," CJI Chandrachud wrote. Justice Kaul agreed, citing that "Article 370's historical context, its text, and its subsequent practice" indicates its temporary nature. The President's power can be exercised post-dissolution "in line with the aim of full integration of the State," he wrote. The supreme Court also Upholds the constitutional validity of the Presidential Rule in Kashmir that Article 356(1)(a)[38] states that the President may declare that the "powers of the Legislature of the State" shall be exercised by or under the authority of Parliament. Petitioners had suggested that there is a difference between "law-making and non-law-making powers" of the state legislature, arguing that only legislative and constituent power is transferred to Parliament under the President's Rule. CJI D.Y. Chandrachud held that no such distinction exists under Article 356. He noted that interpreting the phrase "powers of the legislature" to allow Parliament to exercise all constitutional powers of the Legislative Assembly would limit the state's power. "However," he continued, "the Constitution recognises such reduction of federal power when the Proclamation under Article 356 is in force."

the Chief considered the validity of the process by which Article 370 was abrogated. The Union abrogated the provision through two Constitutional Orders (COs) CO 272 and 273. In CO 272, the Union amended Article 367 (an interpretation clause) by replacing the words "Constituent Assembly" in the proviso to Article 370(3) with "Legislative Assembly." The Union had asserted that this method was valid under Article 370(1)(d), which allows for provisions of the Indian Constitution to apply to Jammu and Kashmir, subject to exceptions and modifications by the President.

This, the Chief held, was invalid and unconstitutional. The reason was twofold. First, an amendment to Article 370 could only be made under the process prescribed by Article 370(3) rather than an amendment to an interpretation clause of the Constitution. Second, the "concurrence" of the state government was a necessary component under Article 370(1)(d). Previously, in *MaqboolDamnoo v State of Jammu & Kashmir*[39], the Union took a similar

38. India Const. ART. 356, cl.1(a).
39. (1972) AIR 963.

route to replace the phrase "Sadar-i-Riyaasat" in Article 370 with the word "Governor" by amending Article 367. The majority held that it was not an amendment to Article 370 but a clarification to reflect the state of affairs at the time. Similarly, in other COs where changes were made to Article 370 using the Article 367 route, they did not modify the Article's essence in a "manner that is appreciable or significant." Therefore, the Union could not use these examples to claim that CO 272 was valid. With CO 272, the Court said, it was clear that "while the change sought to be made by paragraph 2 of CO 272 may appear to be a modification or amendment of Article 367 at first blush, its effect is to amend Article 370 itself."

However, the Chief went on to hold that this did not render CO 272 as a whole unconstitutional because the President had the power under Article 370(1)(d) to make "all or part of the Constitution" applicable to Jammu and Kashmir. Petitioners had argued that 370(1)(d) "only contemplates a piece-meal approach" and that the entire Constitution can only be applied by exercising power under Article 370(3), by abrogating Article 370. The Court held that applying all the provisions of the Constitution of India to Jammu and Kashmir under 370(1)(d) had the "same effect" as declaring that Article 370 ceases to exist using the power under 370(3).

Further, the consultation of the state government was not essential under 370(3) as the President had *"unilateral"* power to declare that Article 370 ceased to exist. In other words, the President was not mala fide in issuing CO 272. To show that it was mala fide, the Court said, *"It is necessary to show that the power was exercised with an intent to deceive."* Deception can "only be proved if the power which is otherwise unavailable to the authority or body is exercised" or the available power is *"improperly exercised."* Since concurrence under 370(3) was not necessary in the first place to apply the whole Constitution to Jammu and Kashmir, there was no improper exercise of powers when the President took the concurrence of the Union of India (on behalf of the State Government).

Therefore, the Court held that CO 272 is valid to the extent that it applies all the provisions of the Constitution of India to Jammu and Kashmir. Justice Kaul, in his concurring opinion, agreed that it was not permissible to use the interpretation clause (Article 367) to amend Article 370. Therefore, he also held that paragraph 2 of CO 272 was invalid because it effectively modified Article 367 to amend Article 370. However, since the President had powers to apply the whole of the Constitution to Jammu and Kashmir under Article 370(1)(d), the rest of CO 272 was valid and constitutional. CO 273 was not issued with malicious intent. CO 273, the President, exercising powers under Article 370(3), declared that. *"...all clauses of Article 370 shall cease to be operative...."*

CJI Chandrachud wrote that while deciding if the power under 370(3) must be exercised, the President has to determine whether "the special circumstances which warranted a special solution in the form of Article 370 have ceased to exist." This was a "policy decision which completely falls within the realm of the executive." However, the Chief wrote that the President's decision was subject to review if his intention was mala fide. The Chief found that the President's intention was not mala fide. He argued that the Union and the state have integrated "through a collaborative exercise" through a "slew" of Constitutional Orders since 1950. The President made the whole of the Indian Constitution applicable to Jammu and Kashmir under Article 370(1)(d) to ensure its complete integration into India.

V Conclusion & Suggestions

The constitutional position of the state, since it became a part of the Indian Union, has not remained static, and it has grown with time. It has been strengthening with time, bringing closer proximity to the state and the Indian Union. The Constitution (Application to Jammu and Kashmir) Order, 1954 is the basic order which, as amended from time to time, defines the Constitutional position of the State vis-à-vis the Indian Union. By this Order, which has been amended 47 times, many of the provisions of the Indian Constitution have been applied to the State, which has decreased the autonomy of Jammu and Kashmir than what was enjoyed under the Instrument of Accession. But still, the State of Jammu and Kashmir constitutes a particular category concerning a much greater measure of autonomy enjoyed by it than enjoyed by other constituent units of the Indian Union. It is the only State of the Indian Union with the distinction of having a separate Constitution for its internal administration. , the issue of autonomy in the State of Jammu and Kashmir is multi-layered. It can be dealt with by adopting a multi-dimensional approach.

Following are a few suggestions that can be considered to meet the demand for autonomy in the State.

i. Many of the constitutional provisions applied to the State enable it to conform to international standards, norms and regulations, such as laws related to the press and registration of books, negotiable instruments, trade unions, the Reserve Bank of India, the Indian Standards Institution, Suppression of Immoral Traffic in Women etc. therefore, these Central laws should be retained, but at the same time, certain subjects from List III of the Seventh Schedule can be transferred to be State List. These include Transfer of Property, Civil Procedure, Contempt of Court, Population Control, and Family Planning. This would enlarge the scope of the state autonomy.

ii. The State Government should be involved in the appointment of the Governor of the State as recommended by the Interlocutor's Report. This would ensure the State's representation in the appointment of the Governor.

iii. The Proportion of officers from the All-India Service should be gradually reduced in favour of officers from the State Civil Services without affecting administrative efficiency. This would lead to a more significant role for the state government in the state administration.

iv. There should be an extension of the jurisdiction of autonomous institutions in the country, such as the National Human Rights Commission, the National Commission for Minorities, and the National Commission for Women in the State of Jammu and Kashmir. Their functioning should conform to the provisions of the Constitution of Jammu and Kashmir. This would help strengthen the State's harmonious association with the Indian Union.

v. To meet the demand for regional autonomy, the most crucial step that should be taken in Jammu and Kashmir is empowering the Panchayati Raj institutions in the State. The existing panchayati raj institutions in Jammu and Kashmir suffer "both from structural as well as operational weaknesses." The Panchayati Raj Act in Jammu and Kashmir must be strengthened by adopting the 73rd and 74th. Constitutional amendment of the Constitution of India: In this connection, BalrajPuri has very rightly:

Jammu and Kashmir state needs more genuine panchayati raj than any other state, which is much more diverse than others. Given its multi-ethnic and multi-religious character, the Panchayati raj is not only a means for the devolution of power and participatory democracy but also a vital instrument of accommodating its vast diversities.

Therefore, it is suggested that the panchayats in Jammu and Kashmir should be empowered with legislative, financial and administrative powers as "an upgraded and democratically empowered Panchayati raj regime could take care of all sub regional identities and interests.

vi. The Autonomous District Councils in North-East India, which, like Jammu and Kashmir, is marked by diversities, can serve as a model to fulfil the demand for regional and sub-regional autonomy in the State of Jammu and Kashmir. Karbi-Anglong Autonomous District Council and North Chachar are practical and successful District Councils. The Gorkhaland Territorial Administration at the Darjeeling Hills can serve as a role model for Jammu and Kashmir.

vii. The State of Jammu and Kashmir should be given more financial autonomy. There should be a percolation of financial autonomy in the local governance of the state.

viii. Article 258 and Article 258A of the Indian Constitution provide a mechanism that could be sensitively used to enhance cooperative federalism. These articles should create a symbiosis between the State of Jammu, Kashmir, and the Central Government.

ix. In the case of Ladakh, the subsisting new statehood should be granted a legislative assembly to represent and re-establish the unique tribal identities of Ladakhi people.

It is expected that the suggestions mentioned above will prove helpful in tackling the demand for more autonomy in the states of Jammu and Kashmir. The practical experience of working in the federations has led us to believe that to solve the complex problems of today's fast-changing society, the Union and the state governments have to work in cooperation rather than in conflict. Following are some suggestions to reinforce the spirit of cooperative federalism in the Indian Union:

i. Legislative Relation

The Concurrent List (List III) in the Seventh Schedule under Article 246 (2) has to be regarded as a valuable instrument for consolidating and furthering the cooperative and creative federalism principle that has significantly contributed to nation-building. So, it is essential to institutionalise the consultation process between the Union and the States on legislation under the Concurrent List.

ii. Financial Relationship

a. Even after the Constitution (Eightieth Amendment) Act, 2000, which was based on the recommendations of the Tenth Finance Commission, there is a need to augment the resource pool of the States.

b. The first condition of genuine fiscal federalism would be to delegate more taxation and fundraising powers to the states and lower organs.

c. The second condition is that the allocation of central funds should be based on objective criteria and not on subjective, arbitrary or political considerations, i.e., under Article 275 and not under Article 282.

d. The share of funds at every level should be based on criteria of backwardness and needs. In this context, the formula adopted by the United Nations Development Programme is far more relevant than the traditional formula still used by our Planning and Finance Commissions. The former emphasises a quality of life deter-

mined by social indicators like health, life expectancy, infant mortality, literacy, gender justice, employment, etc. The latter concerns monetary indicators like fiscal deficit and growth rate.

e. As recommended by the National Commission to Review the working of the Constitution in its report submitted on 31st March 2002 for carrying out the objectives of Articles 301, 302, 303 and 304 and other purposes relating to the needs and requirements of inter-state trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce, parliament should, by law, establish an authority called the "Inter-State Trade and Commerce Commission" under the Ministry of Industry and Commerce under Article 307 read with Entry 42 of List I.

iii. Administrative Relations

Articles 258 and 258A of the Constitution of India provide a mechanism that could be sensitively used to enhance cooperative federalism.

iv. Appointment of Governor.

The Governor of a State should be appointed by the President only after consultation with the Chief Minister of that State. In selecting a Governor, the following matters are mentioned in para 4.16.01 of Vol. I of the Sarkaria Commission Report should be kept in mind:

a. He should be eminent in some walk of life.

b. He should be a person from outside the State.

c. He should be a detached figure and not too intimately connected with the local politics of the State.

d. He should be someone who has yet to take too significant a part in politics, particularly in the recent past.

e. Article 356 should not be deleted. However, it must be used sparingly and only as a remedy of the last resort after exhausting action under other Articles like 256, 257 and 355. The Commission has recommended Several safeguards to avoid the misuse of Article 356, which are also supported by the Hon'ble Supreme Court in *S.R. Bommai'sv Union of India*[40]. These are:

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40. AIR 1994 SC 1918.

i. In case of political breakdown, the governor should explore all possibilities for having a government with majority support in the assembly. If no such government can be formed and new elections can be held without avoidable delay, the Governor should ask the outgoing ministry to continue as a caretaker government.

ii. If the situation above does not occur, the Governor should recommend the President's Rule without dissolving the Assembly.

iii. Before the Parliament considers the Proclamation, the State Legislative Assembly should remain the same.

iv. To make the remedy of judicial review on the grounds of mala fide a little more meaningful, it should be provided, through an appropriate amendment, that notwithstanding anything in clause (2) of Article 74 of the Constitution, the material facts and grounds on which Article 356 (1) of the Constitution is invoked should be made an integral part of the Proclamation issued under that Article and

v. The Governor's Report should be a formulated document and be given extensive media publicity.

It is to be remembered that Indian Constituent Assembly deliberately made a positive attempt to reduce the friction between future Central and State Governments by imbibing the tenants of co-operative federalism in the Indian Constitution. Though the Indian Constitution adopts cooperative federalism instead of competitive federalism, it is heavily biased towards the union, which was necessitated for historical reasons and political expediency. Firstly, given multilingual, multi-religious, multi-cultural and multi-racial countries, only a strong Central Government could weld these diverse elements and interests into a homogeneous entity and foster a feeling of national solidarity. Secondly, the country's stagnant economy under foreign rule needed solute national direction for its regeneration. Lastly, India's history of internecine strife and disruptive regional forces persuaded the retention of a central solid hold in the country's administration. And more than anything else, the shock of partition had made every Indian conscious of the need to preserve the unity of India. At this juncture it is the time to relook at the present he abrogation of Article 370 that marked a significant shift in the constitutional and political landscape of Jammu and Kashmir. While the government justified the move on the grounds of integration, development, and national security, it also faced substantial criticism regarding constitutional validity, impact on autonomy, and potential demographic changes.

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Ambition without Obligation: A Legal Critique of the Efficacy of NDCS and Climate Finance Mechanisms in the International Climate Regime

Shilpa Sanjeevan*

Abstract

Nationally Determined Contributions (NDCs) and Climate Finance represent core components of the international climate regime under the Paris Agreement. NDCs outline each country's voluntary commitments to reduce emissions and enhance resilience, while Climate Finance involves the transfer of financial resources, primarily from developed to developing countries to support their mitigation and adaptation efforts. Together, these mechanisms function as key instruments for assessing and advancing progress within the global climate action framework. This paper highlights their interdependence, noting that the realization of NDCs, especially in the developing and vulnerable countries is heavily reliant on adequate financial support. Primarily, this paper seeks to analyse these mechanisms with a focus on evaluating their efficacy in fulfilling their intended purpose. This endeavour is facilitated by employing an argumentative methodology as the research systematically appraises these facets in terms of their achievements and shortcomings. Firstly, the paper critically examines the ability and effectiveness of NDCs in driving climate action, in the light of its non-binding ability. Secondly, the paper also covers the concept of climate finance and investigates its perceived role in aligning with or deviating from the Principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). Overall, this paper establishes through reasons, that the international climate regime has failed and is not fit for purpose.

Keywords: Climate Finance, Paris Agreement, Principle of Common but Differentiated Responsibilities

I Introduction

As per the Black's Law Dictionary, 'failure' in a general sense means, *"Deficiency, want or lack, ineffectualness; inefficiency as measured by some legal standard; an unsuccessful attempt"*[1]. Therefore, a failure in the context of lawwould indicate, overall ineffectiveness in attracting compliance, non-fulfilment of objectives and exacerbation of inequalities, to

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1. Failure, 'Definition & Legal Meaning', *Black's Law Dictionary* (2 ed.) (Nov. 29, 2023)

name a few. An international law fit for purpose would essentially mean the rules that regulate conduct and state behaviour.[2] Therefore, a law is considered fit for purpose when it can be effectively employed for its intended objectives, particularly in our context, one which is capableof positively influencingthe climate by facilitating state actions.In this regard, the evaluation of the two components, namely, NDCs and Climate Finance, will be conducted based on these criteria to ascertain their fitness of purpose in the climate change regime. This paper will focus on one of the milestone agreements of the Climate Regime, the Paris Agreement of 2015. To briefly discuss the two aspects NDCs[3] and Climate Finance[4], before elaborating on the same, NDCs are a pivotal milestone in terms of the climate change regime, and most actions in the climate regime now revolve around or are set to achieve these voluntarily determined targets. It was conceptualised with the intent of fostering greater adherence to state commitments through a voluntary mechanism. In simple terms, "NDCs under the Paris Agreement are the national climate pledges that each Party is required to develop that articulate how they will contribute to reducing Greenhouse Gas (GHG) emissions and adapting to impacts".[5] Climate finance standing at the heart of the implementation of the CBDR-RC Principle mandates developed country parties to assist developing countries through financial resources in their adaptation and mitigation endeavours.[6] The rationale for choosing these concepts lies in belief that the contemporary climate regime is reliant on NDCs and the achievement of goals is substantially contingent upon climate finance, particularly in the context of developing countries heavily dependent on such financial support. The subsequent sections of this paper will critically examine the aforementioned concepts, first by highlighting their commendable features, and then by advancing an argument that demonstrates their failure to strengthen the international climate regime.

II NDCS: Climate Change State targets

NDCs under Article 4 of the Paris Agreement serve as the central mechanism for realising the objectives outlined in the Agreement,[7] representing a pivotal element within the climate change regime. Therefore, the efficacy of this framework in fostering a suc-

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2. Ruth Brooks, *'The Value of Law: Understanding the Purpose of Laws and Legal Systems'* LINCOLN MEMORIAL UNIVERSITY L. REV., 8 (2022).
3. ART. 4, Paris Agreement, (entered into force on 4 November 2016).
4. ART. 9, Paris Agreement, (entered into force on 4 November 2016).
5. 'What are NDCs and How Do they Drive Climate Action?' (*UNDP Climate Promise,* 31 May 2023) https://climatepromise.undp.org/news-and-stories/NDCs-nationally-determined-contributions-climate-change-what-you-need-to-know(Last accessed on 30 June 2025)
6. ART. 9, Paris Agreement, (entered into force 4 November 2016).
7. Navraj Singh Ghaleigh and Cleo Verkuijl, 'Paris Agreement & Article 3' (2020). G Van Calster & L Reins, *Research Handbook on Climate Change Mitigation,* E Elgar, (2020)

cessful climate change regime necessitates a comprehensive examination of both the Paris Agreement and the current NDC targets. The Paris Agreement, although a legally binding instrument, by the inclusion of NDCs can be characterised as a hybrid blend of asubstantively non-binding approach to global co-operation coupled with a legally binding process elements such as the global stocktake process.[8] Despite the general legal nature of the Agreement, the provisions of the Agreement, particularly those related to the controlling and reducing greenhouse gas emissions, merely entail obligations of conduct in the form of submitting NDCs.[9]

i. Successful Attributes of NDCs

The merits of NDCs can be underscored from its successful attributes as observed in the Paris Agreement:

a. The Bottom-Up Climate Agreement

The premise underlying this arrangement is that states are more inclined to comply with their obligations when they are undertaken voluntarily.As opposed to the Kyoto Protocol, which had laid down absolute GHG reduction figures for industrialised countries in a top-down, prescriptive fashion on the basis of historic responsibilities and capacities,[10] NDCs under this Agreement requires states to only list what they intendto contribute towards achieving the objectives of the Convention,[11] or what it sees as a 'contribution to the global response to climate change, while taking into consideration their varyingcapacity and allowing countries to self-differentiate their substantive mitigations contributions as per the CB-DR-RC Principle. This transition from top-down to bottom-up approach therefore ostensibly promotes compliance, transparency and fosters trust among state parties.[12]

b. Legal Nature of the Agreement

Although, the Paris Agreement revolves on the obligations of conduct, that is in the form of NDCs; its recording, communication and global stocktaking are

8. Doelle, Meinhard, 'The Paris Agreement: Historic Breakthrough or High Stakes Experiment?' 6 CLIMATE LAW (2015).
9. Rodney Boyd, Fergus Green and Nicholas Stern, *'The Road to Paris and Beyond: Policy Paper'* CCCEP AND THE GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, August (2015).
10. *Supra* note 7
11. UNFCCC, 'Decision 1/CP.20, Lima Call for Action Plan' (2 February 2015), FCCC/CP/2014/10/Add.1, ¶ 9.
12. Maria Jernnäs, *The Nationally Determined Contribution (NDC) as a Governing Instrument: A Critical Engagement,* 33 ENV'TL POL. 558 (2024).

legally binding process to track its progress. To fix the likelihood of non-compliance by states, the ambitious Paris Agreement which formulates a climate change goal,[13] calls upon parties to contribute to this goal in the form of their NDCs. To this, the Agreement then regulates and oversees state actions in the form of global stocktake exercise[14] and provides assistance and support to reach their goals.[15]

c. Forward Looking Arrangement

The Paris Agreement by its provisions emphasises a gradual process over time, in accordance with the respective capabilities of the state parties. Despite the gap in the NDC targets and the temperature goal, it endeavours to promote broader participation. Also, in recognition of the extant and prospective ambition gap that may emerge, it addresses this issue through periodic global stocktaking exercises, thereby indicating an element of long-term success through iterative process of gradual improvement. In its pursuit of objectives, the agreement seeks to achieve its targets through a commitment to transparency and good faith rather than legal bindingness.

ii. Limitations within the Paris Agreement

The first Global Stocktake Report reveals that since the adoption of the Paris Agreement, there has been "a broad global commitment of states thereby fuelling climate change actions and sending signals to the world regarding the urgency of responding to the climate change crisis."[16] Therefore, this agreement surely is a milestone in catalysing collective efforts. Although, while the action is underway, much more is to be done on this front. The inadequacy of the regime in aligning with its intended purpose will be highlighted in this section.

a. Risk of downgrading NDCs

Unlike the Copenhagen Accord and like the Kyoto Protocol, the Paris Agreement is a treaty within the meaning of international law, but not all its provisions establish legal obligations. Most importantly, parties do not have an obligation to achieve their NDCs to address climate change – thus, in that respect, NDCs are

13. Nishchay Mehrotra & Emmanuel Olatunbosun Benjamin, *Evaluating the Enhancement of the Nationally Determined Contributions of Developing Countries: An International Support Programme Perspective,* 22 CLIMATE POL'Y 728 (2022)
14. ART. 14, Paris Agreement, (entered into force on 4 November 2016).
15. ART. 4(5), Paris Agreement, (entered into force on 4 November 2016).
16. UNFCCC, *'Technical Dialogue of the First Global Stocktake'* (8 September 2023), FCCC/SB/2023/9, B (9).

not legally binding.[17] In view of this, it is concluded that, "the Agreement does not require Parties to implement their NDCs; Instead, it simply require Parties to implement domesticmitigation measures, an obligation they already have under the UNFCCC, with the aim of achieving the objectives of their NDCs".[18] This is because these targets have been envisioned by negotiators as obligations of conduct as opposed to anobligation of result, therefore the parties have a 'duty to implement', as opposed to 'duty to achieve'.[19]

To examine the legality and the operational relevance of these provisions, Article 4 must be read carefully, "Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.

Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions."Although the provision mandates states to prepare, communicate and maintain their NDCs, what it falls short off is in the sense that the phrase "it intends to achieve" leaves it at the state's discretion to take accurate or less adequate actions in furtherance of the same. Therefore, the simplicity of language, coupled with the lack of strict enforcement can promote the downgrading of NDCs and support States defending their compliance even when their NDCs are set at levels considerably lower than optimal. During the negotiation process, divergent perspectives emerged regarding this provision, with one faction contending that states should be compelled to implement and achieve their contributions, while another asserted that imposing a mandatory requirement would pose significant challenges particularly for developing countries.[20] Ultimately, the prevailing iteration of the Paris Agreement accommodated the latter viewpoint, resulting in non-binding target plans. This gives rise to an issue as the absence of a binding obligation allows parties to downgrade their NDCs.

A study conducted by Nature[21] reveals that if climate commitments are fully implemented, then the net-zero commitments could suffice to stabilise global warming to around 1.7-1.8°C within the century. However, this is contingent

17. Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope ?,* AMERICAN J. OF INT'L L., 288 – 319 (2016).
18. Sebastian Oberthür and Ralph Bodle, 'Legal Form and Nature of the Paris Outcome' 6 CLIMATE LAW 51 (2016).
19. O. Herrera, O. Alcaraz, & Sureda, *Analysis of Fairness and Ambition Considerations in Nationally Determined Contributions,* 45 INT'L ENVTL. AGREEMENTS POL., L. & ECON (2025).
20. Lavanya Rajamani and Jutta Brunnée, 'The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement' (2017) 29 JEL 542.
21. Dirk-Jan van de Ven *et.al*., *'A Multimodel Analysis of Post- Glasgow Climate Targets and Feasibility Challenges'* 13 NATURE CLIMATE CHANGE 572 (2023).

upon the effective implementation, which in turn depends on the legal or binding nature of the provisions.Furthermore, despite the NDCs submitted collectively covers an impressive 99% of global emissions, their aggregate impacts are shown to diverge from emissions trajectories consistent with the Agreement's long-term temperature goal of well below 2°C and even further from the aspirational 1.5°C.[22]

b. The incompatibility between 2°C ambition and NDC targets

Upon the perusal of Article 4, an evident correlation emerges between the temperature goal delineated in Article 2 and the specific mitigation aims articulated in the latter. Article 4 delves into the collective efforts by the states as to the global response to climate change, wherein all parties are to undertake and communicate ambitious efforts with a view to achieving the purpose of this Agreement as set out in Article 2. Consequently, the raison d'être of Article 4 is to conceptualise the provisions set forth in Article 2.

Nevertheless, the empirical reality slightly deviates from this conceptual alignment. A substantial gap between the aggregate of national commitments and those congruent with the plausible 2°C pathways can be observed.[23] This gap has been substantiated by the 2030 Emissions Gap Report which reveals that the Emissions Gap in 2030 remains substantial, given that the current unconditional NDCs imply a 14 GtCO2e gap for the2°goal and a 22 GtCO2e gap for the 1.5°C goal.[24] One of the key findings of the Global Stocktake Report also indicates that the global emissions deviate from the modelled global mitigation pathways aligned with the temperature goal of the Agreement and there is a rapidly narrowing window to raise ambition and implement the existing commitments.[25]

Therefore, while the bottom-up approach has exhibited strength, the outcome in terms of aggregate is disappointing. The credibility of these commitments is frequently jeopardised, as the absence of stringent legal obligations raises concerns about the potential for lenient target setting. Scholarly discussions also show that at the current rate, even if the NDCs are fully implemented, they still fall short of the 2°C by a wide margin, therefore indicating that a significant gap is shown to likely remain.[26]

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22. Mahinda Siriwardana & Duy Nong, *Nationally Determined Contributions (NDCs) to Decarbonise the World: A Transitional Impact Evaluation*, 97 ENERGY ECON. 105 (2021).
23. *Ibid*.
24. Maria Jernnäs, *Governing through the NDC: Five Functions to Steer States* Climate Conduct, 33 ENV'TL POL. 552 (Sept. 2023)
25. ***Supra*** Note16.
26. Charlotte Streck, Paul Keenlyside and Moritz Von Unger, *The Paris Agreement: A New Beginning* JEEPL 3(2016).

c. Housing of Mitigation Commitments

Generally, targets and actions placed outside a treaty may still incur obligations under the international law, provided that the treaty stipulates such an obligation.[27] However, despite this prevailing norm, the deliberate housing of NDCs outside the legal framework of the Paris Agreement has resulted in a weakened status for NDCs, in terms of its binding ability. This is also largely because of the inherent vagueness characterising its anchoring provisions in the Agreement.[28] The NDCs in the Agreement were negotiated to be housed outside of the legal boundaries with the purpose of garnering international participation. As per the Agreement, "NDCs must be recorded in a public registry maintained by the UNFCCC Secretariat."[29] However, the scope of the Secretariat's role is confined to the recording of the NDCs, as it lacks the authority to review the contents of an NDC. Consequently, if a state reports a less ambitious target, the Secretariat within its powers should make it publicly available without conducting a review.

The housing of mitigation commitments outside the treaty engenders a significant issue – Amendment. Parties under the Agreement can pursue fast track amendments and unilaterally adjust their NDCs at any time, albeit subject to certain 'soft' conditions.[30] What this entails is the concern around transparency due to such simplified amendment process, since the updated NDCs are simply disseminated by the Secretariat on the website without undergoing any review process.

In the light of the above-mentioned reasons, it is asserted in this section that the climate regime has, in the specific context of NDCs, fallen short of achieving its purpose. Subsequently, the following section of the paper will delve into the concept of Climate Finance.

III. Climate Finance

This elaboration on Climate Finance under Article 9 of the Agreement shows that financial assistance is intricately connected with the objectives articulated in Article 2,

27. Rishi Basak & Edwin van der Werf, *Accountability Mechanisms in International Climate Change Financing,* 19 INT'L ENVTL. AGMTS. 297 (2019)..
28. Sharaban Tahura Zaman, *'Exploring Legal Nature of Nationally Determined Contributions under International Law'* (2017) 26 YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 106.
29. Art. 4(12), Paris Agreement, (entered into force on 4 November 2016).
30. Rishi Basak, Sylvia Karlsson-Vinkhuyzen & Katrien J. A. M. Termeer, *Information for Climate Finance Accountability Regimes: Proposed Framework and Case Study of the Green Climate Fund,* 42 PUB. ADMIN. & DEV. 261 (2022).

which aims to strengthen the global response to climate change by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

The foundational underpinnings of climate finance within the Paris Agreement trace back to UNFCCC and the Kyoto Protocol, which establish financial mechanisms like the Global Environment Facility and the Adaptation Fund, respectively. In the discourse of climate finance, the Copenhagen Accord is highly regarded since it was instrumental in addressing the magnitude of financial transfers necessary to limit the increase in global temperature to 2°C. As a result of Copenhagen, developed-countries made commitments to provide long-term climate finance amounting to $100 billion annually by 2020.[31] The Copenhagen Accord also went onto to acknowledge the need to utilise a wide variety of sources —public and private, bilateral and multilateral, including alternative sources of.[32] "Accordingly, climate finance includes, but is not limited to, domestic public funds, including bilateral transfers to foreign governments and to multilateral funds, as well as investments by multilateral financial institutions; purely private flows channelled through carbon markets; and hybrid finance, which includes various forms of assistance by international and domestic public financial institutions to ensure the economic viability of climate-related projects largely funded by private capital."[33]

i. Successful Attributes of Climate Finance

Benefits of Climate Finance manifest in the form of the following functions:

a. Promotes Action through Facilitative Mechanism

Financial support under the Agreement constitutes a facilitative mechanism. In cases of non-compliance, this mechanism—primarily in the form of financial assistance—aims to address challenges faced by developing countries. Such facilitation ultimately encourages greater climate action, as the Agreement acknowledges that: "Support shall be provided to developing country Parties... recognizing that enhanced support for them will allow for higher ambition in their actions." Thus, finance is essential to enable and scale up action.[34]

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31. Richard B. Stewart, Bryce Rudyk and Kiri Mattes, *'Governing a Fragmented Climate Finance Regime',* (2011) 3 THE WORLD BANK LEGAL REVIEW 363 https://elibrary.worldbank.org/doi/10.1596/9780821388631_CH15(Last accessed on 5 May 2025)

32. UNFCCC, 'Decision 2/CP.15, Copenhagen Accord', (enforced on 30 March 2010), FCCC/CP/2009/11/Add.1, Article 8.

33. S Browne, *Rethinking Governance in International Climate Finance: Structural Change and Alternative Approaches,* 13 WIREs CLIMATE CHANGE 795 (2022).

34. Alexander Zahar, *The Paris Agreement and the Gradual Development of a Law on Climate Finance* 6 Climate Law 78 (2016).

b. Concept Rooted in the CBDR-RC Principle

The incorporation of the concept of Climate Finance is rooted in the recognition of the CBDR-RC Principle, acknowledging that the efforts and capacity are not homogenous, therefore, as part of establishing a facilitative mechanism, financial assistance is directed to flow from developed countries to developing countries. Article 4(7) conveys that developing countries will effectively implement their commitments under the Convention provided they are provided with the required financial resources and tech transfer.[35] Similar to the NDCs, in terms of continued progression, Article 9.3 also stipulates that developed countries in continuation should take lead in mobilising climate finance from a wide variety of sources and such mobilisation should represent a progression beyond previous efforts. Therefore, this provision alludes continuityan actual change with increased effort.[36]

ii. Limitations of Climate Finance

Although its ambition, climate finance is still a developing concept and seems to have failed its purpose already at its initial stage. A notable concern lies in the fact that neither the agreement nor the negotiators formulated a formula for climate finance, leading to uncertainty as to who has to pay how much.[37] The other limitations include:

a. Shortfall in Climate Funding Commitments

Exactly one year on from the deadline, at the COP26, it was concluded that the target set at Copenhagen would not be met until 2023.[38] This inadequacy in funding commitments presents formidable challenges to the realisation of the climate change regime's objectives, particularly by undermining the capacity of developing countries to effectively meet their conditional NDCs.

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35. David Rosatti, *International Law and the Governance of Climate Finance: Navigating Global Institutional Complexity* (D Phil Thesis, UNIVERSITY OF EDINBURGH 2016) https://era.ed.ac.uk/bitstream/handle/1842/31035/Rossati2016.pdf?sequence=1&isAllowed=y Last accessed on 9 July 2025.
36. B Wei, Does *Climate Finance Achieve its Goals in Developing Countries? An Econometric Assessment of Mitigation and Adaptation Outcomes*, 6 DISCOVER SUSTAINABILITY 441 (2025).
37. Jocelyn Timperley, *The Broken $100-billion Promise of Climate Finance – and How to Fix it*NATURE(2021).
38. Z Novák, Inclusive Green Finance: *As an Approach of Developing a Comprehensive Indicator for BRICS and Other Emerging Economies,* 14 J. ECON. STRUCTURES, (2025).

The repercussions of such funding insufficiency manifest in three primary dimensions. Firstly, the implementation of NDCs is compromised as developing countries face a deficiency in the financial resources required to undertake emissions reduction efforts. Secondly, this inadequacy amplifies inequalities, concurrently disrupting the CBDR-RC Principle. In fact, the main effect of CBDR in the climate regime is that it alters and deviates from the principle of sovereign equality between states, to create a specific treatment justified by equity considerations.[39] But insufficient funding commitments would ultimately mean, insufficient actions and could further defeat the purpose of a facilitative mechanism. A recent UNFCCC analysis on financing needs reveals that developing countries require at least $6 trillion by 2030 to meet less than half of their existing NDCs.[40] Lastly, inadequate funding can also have significant implications for the implementation of conditional NDCs since these are commitments undertaken subject to assistance or international support. Therefore, lack of funding may force states to scale back their ambitions, leading to a reduced ambition.

b. Inadequate Flow of Funds to Developing and Vulnerable Countries

Within the realm of climate action, developing countries encompass a spectrum that includes both middle-income countries and those characterised as fragile or conflict-affected, often termed as the Least Developed Countries. (LDCs) A notable nuance within this characterisation, however, pertains to the absence of explicit distinctions within the climate funding mechanisms for these groups, in terms of the vulnerability factor inherent in both, with a particular emphasis on LDCs. An OECD report goes on to show that, in the case of LDCs, a pronounced discrepancy is evident in the allocation of climate funding, that is they receive only 14% of the total climate funding accounted by the OECD, despite being the most vulnerable.[41] This underrepresentation is also particularly stark when juxtaposed against the reality that nearly 70% of all climate finance is directed towards middle-income countries, with a mere 2% allocated to Small Island Developing States.[42] Furthermore, studies reveal a notable disparity in the intra-group distri-

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39. Art. 2(1), Charter of the United Nations, (signed on 26 June 1945 and entered into force on 24 October 1945).
40. Richard Kozul- Wright, *A Climate Finance Goal that Works for Developing Countries*UNCTAD,(2023) https://unctad.org/news/climate-finance-goal-works-developing-countries Last accessed 10 May 2025.
41. OECD *Development Finance for Climate and Environment- Related Fragility: Cooling the Hotspots* Working Paper, (22 November 2023) https://www.oecd.org/dac/development-finance-climate-environment-related-fragility.pdf Last accessed 13 June 2025.
42. International Committee of the Red Cross, *Working together to Address Obstacles to Climate Finance in Conflict and Fragile Settings* SPRINGER, (2021)

bution of climate finance among the LDCs themselves. In fact, studies indicate that states characterised by greater fragility tend to receive a diminished share of adaptation finance.[43] This divergence ultimately raises pertinent questions about the equity and effectiveness of climate finance allocation, particularly within the subset of countries deemed least developed. In terms of vulnerable nations also the climate finance does fall short. An IIED Research has found that less than 10% of funding committed under international climate funds to help developing countries. A UN Report of 2021 also reveals that developing countries need yearly $6 trillion by 2030 to cover 40% of their NDCs.[44] This is the result of the unmet climate finance promise by developed countries to provide $100 billion to their developing counterparts. This is also because the climate finance is not trackable.

c. Institutional Complexity

The Climate finance is multiple, multilevel and heterarchical.[45] The absence of a centralised authority capable of coherent delegation of executive powers and functions among the various entities engenders a potential for insufficiency arising from the duplication of functions and ultimately improper channelling of resources. Especially, in conflict-affected areas, where the government may be incapable of channelling the resources to the local level and supporting the implementation of the same, impeding the effective implementation of climate initiatives.Lastly, in terms of countries which are already debt-ridden, the financial assistance given in the form of loans can be a hindrance to effective complianceand exacerbates debt pressures.[46]

d. Gap between Adaptation and Mitigation Fund

While the Paris Agreement aims to achieve a balance between the mitigation fund and the adaptation fund,[47] the actual distribution of funds reveals a notable disparity. According to the OECD, a mere $20 billion went to adaptation projects in 2019, less than half of the funds allocated to mitigation projects.[48] In the light of

43. *Ibid*.
44. Bhasker Tripathi, *'Developing Countries Need Nearly $6 Trillion by 2030 Just to Cover 40% of their NDCs: UN Report,* CARBON COPY (16 October, 2021) https://carboncopy.info/developing-countries-need-nearly-6-trillion-by-2030-just-to-cover-40-of-their-ndcs-un-report(Last accessed 12 June 2025)
45. S Tandukar, *Financing Sources for Mitigation of Adverse Climate Change: A Systematic Review,* DISCOVER SUSTAINABILITY (March. 11, 2025)
46. T Adeoti*Innovative Financing Strategies for Climate Action and Sustainable Development*, SUSTAINABILITY, 15 (2025)
47. ART. 9(4), Paris Agreement, (entered into force on 4 November 2016).
48. OECD, *'Statement from OECD Secretary-General Mathias Cormann on Climate Finance' (2019)* https://www.oecd.org/newsroom/statement-from-oecd-secretary-general-mathias-cormann-on-climate-finance-in-2019.html(Last accessed on 12 June 2025)

this, the UN estimates that developing countries already need $70 billion annually to cover adaptation costs, and will need $140 billion–$300 billion in 2030.[49] The situation is even more critical when it comes to adaptation, as 90% of climate finance goes to mitigation actions, despite the strong economic rationale to invest in adaptation.[50] Such imbalance therefore, may lead to increased vulnerability within susceptible communities that are already adversely affected by the ramifications of climate change. Moreover, it could ultimately hinder climate mitigation endeavours, by slowing down the global transition to a low-carbon economy and contributing to increased emissions.

IV Conclusion

This paper concludes by asserting that the climate regime within the framework of the Paris Agreement has failed, rendering it ineffectual in achieving its purpose. The essence of law as a regulatory instrument shaping state behaviour, is examined in this research material, revealing inherent weaknesses perpetuated by the simplicity and vagueness of language. This linguistic ambiguity therefore led to weaker interpretation, followed by weaker implementation. Furthermore, even when the Agreement is considered forward-looking, its wordings convey an expectation of gradual progression rather than an obligatory commitment. Usually, with such an instrument addressed to states in general, the obligation and accountability leave the picture. In that sense, even the deployment of the term 'shall' within the Agreement reduces it into a mere expression of encouragement, lacking the potency to constitute an action by all the states.

As highlighted in the paper, the Paris Agreement anchors NDCs as an 'obligation of conduct' rather than an 'obligation of result' wherein parties have a 'duty to implement', as opposed to a 'duty to achieve'.[51] Concerning NDCs, it is imperative that states augment their actions by two to threefold to substantively contribute to the success of the climate regime. The significance of treaty language becomes evident when scrutinizing the wording employed in the agreement with respect to NDCs. The treaty language in the Agreement, predominantly employing the phrase "All States," underscores the collective nature of re-

49. Chetan Hebbale and Johannes Urpelainer, *Debt for Adaption Swaps: A Financial Tool to Help Climate Vulnerable Nations,* BROOKINGS, (21 March 2023) https://www.brookings.edu/articles/debt-for-adaptation-swaps-a-financial-tool-to-help-climate-vulnerable-nations (Last accessed on 13 June 2025).

50. UNDP Climate Promise, *What is Climate Finance and Why Do We Need More of It?'* UNDP, (2 May2025) https://climatepromise.undp.org/news-and-stories/what-climate-finance-and-why-do-we-need-more-it(Last accessed on 14 December 2025)

51. Wafula Anthony Emmanuel Wabwile,IbrahimTirimbaOndabu, *Funding Climate Action: A Systematic Review of Climate Finance Efficiency and Impact* JOURNAL OF ECONOMICS, FINANCE AND MANAGEMENT STUDIES (2025).

quired actions, inadvertently fostering a scenario where states await the actions of others, leading to a collective inertia. Within the realm of Climate Finance, a critical lacuna is identified in the absence of a formula for equitable fund distribution. Drawing its foundation from the CBDR-RC Principle, the existing inadequacies in climate funds' availability and inequitable distribution largely between the vulnerable and conflict-affected areas stand as potent challenges, undermining the very purpose of financial mechanisms. In light of the aforementioned deficiencies in both NDCs and Climate Finance, elucidated in this paper, it is asserted that these mechanisms have proven to be ineffective. Their inadequacies manifest in their inability to drive change, fulfil the objectives and fix inequalities. Consequently, the climate change regime is deemed to have failed in its purpose.

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