PRO BONO CLUB

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BLOGS

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EDITORIAL NOTE

The Pro Bono Club, National Law University Odisha, established under the Department of Justice, Ministry of Law and Justice, Government of India, as part of the Nyaya Bandhu (Pro Bono Legal Services) Scheme, is dedicated to promoting access to justice through legal aid, research, legal awareness, and community engagement. The Pro Bono Club Blog furthers this vision by providing a platform for students, academicians, practitioners, and researchers to contribute original and analytical scholarship on contemporary legal and socio-legal issues, while fostering informed legal discourse and diverse perspectives.

Following an open-theme approach, the Blog welcomes contributions on law, justice, litigation, dispute resolution, society, pro bono services, access to justice, and interdisciplinary issues that connect law with broader social, economic, ethical, and policy concerns. With submissions accepted on a rolling basis, the Blog seeks to remain a dynamic repository of legal scholarship, encouraging analytical engagement with emerging legal developments.

Every manuscript published in this volume underwent a structured three-stage editorial review. The first stage comprised a technical screening to ensure compliance with the prescribed submission guidelines, including formatting requirements, anonymization norms, and citation standards. Contributors were required to hyperlink primary legal sources wherever possible, while authorities that could not be hyperlinked were cited in accordance with the Oxford Standard for the Citation of Legal Authorities (OSCOLA), Fourth Edition. All submissions were also screened through plagiarism and AI-detection software. As part of the Editorial Board's screening policy, manuscripts were expected to maintain a similarity index within 10–15%, while demonstrating originality, independent legal analysis, and academic integrity.

Submissions that cleared the technical review underwent a substantive assessment by the student editorial board for analytical depth, legal accuracy, originality, coherence, and research quality. The final review was conducted by the post holders of the Club, ensuring that every published piece met the Blog’s academic and editorial standards.

In accordance with the Blog’s publication policy, literary rights in accepted manuscripts vest with the Pro Bono Club, National Law University Odisha upon publication. We thank all the contributors for their valuable submissions and hope this volume fosters critical inquiry, meaningful dialogue, and a continued commitment to justice and ethical legal scholarship.

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When Law Forgets the Mind

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Introduction

Aarohi was 17, yet her youthfulness was lost amid competitive exams, the looming pressure of marriage, and expectations tied to "*log kya kahenge*". On the surface, she was just another student going about her day, but inside she was fighting fears, pressure, and pain no one really saw.

One evening, after failing another mock test, she left a note: "I tried, but my mind would not let me. Forgive me."

The law did not protect her before this moment. There was no mandate for mental health support in her living space and no legal framework recognising a student's right to safe mental health care. Her story is not unique. Thousands of students die every year, raising urgent questions: Does every individual have a right to mental health? Is the State responsible for ensuring it? How should legal systems respond to issues like suicide prevention, disability rights, the role of criminal justice, and debates on euthanasia?

The predicament is not only limited to student suicides; it includes wider legal issues such as whether every individual must have the right to safe mental health. Similar issues create an intricate tapestry of a more disturbing fiasco when connected with legal problems such as the legalization of euthanasia, the rights of disabled people (why does "disabled" seldom include the mentally disabled, too?), etc.

Currently, the Indian legal system is in a nascent stage in terms of recognizing mental disorders and the inclusion of the disabled in Indian mainstream society. Broadly, Article 21 (Right to life and personal liberty) of the Constitution can be interpreted to include various provisions that may aid stable mental health for the people, such as right to privacy, right to marry the person of their choice, and the right to die with dignity. Certain other provisions in the law recognise elements, including emotional damage. Such acts include the Protection of Children from Sexual Offences Act, 2012: Section 19(5), Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The primary legislation in India that deals with mental health and mental disability of the citizens is the Mental Health Care Act, 2017. Although the act addresses clinical.

How would different Schools of Law Approach the Issue

As per the Natural School of law, "True law is right reason in agreement with nature."[1] (Cicero), with the main aim of law being: ensuring survival. With the NCRB noting that a total of 1,70,924 suicides were reported in the country during 2022, the concepts of "moral principles" and "survival" are in peril. Suicide, from this view, signals the collapse of a legal order meant to ensure survival. Yet, what agreement with nature exists in a society where young students, farmers, and homemakers end their lives under crushing mental and social burdens?

A natural law jurist would call this a betrayal of the higher law. If laws like the NDPS Act, 1985, criminalize substance abuse without treating the underlying mental illness, they violate reason and morality, for punishment without healing is against the natural order of justice.

On the contrary, some natural scholars may also critique the recent progressive steps taken by the state and the judiciary. Since anything against the order of nature was considered immoral in the eyes of natural scholars, judgments like Aruna Shanbaug v. Union of India (2011) would be a topic of contention. Life or death, as per this school of law, are subject to nature, and intervention in the same would be immoral. Hence, practices like passive euthanasia would also fall outside the scope of morality, as they disturb the natural course of life.

However, this argument shall not hold true for the sociological school of law, which recognises law to be the Spirit of the People. In this context, Eugen Ehrlich's saying that "The centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself."[2] becomes increasingly relevant. In the case of passive euthanasia, nature's authority over life and death and the word of the law could be bypassed to accommodate society's requirement of a right to dignified death.

Furthermore, a sociological scholar would frown upon the fact that the criminal justice system itself, which is originally designed to aid people, has become a major reason behind rising cases of depression, anxiety, and other mental health disorders and diseases in India. According to the India Justice Report by Tata Trusts, there are only 21,000 judges (15 per million vs. the recommended 50 by the Law Commission), depicting the sharp inadequacy of the Indian justice system in ensuring the right to free and speedy trial. Prolonged trials, inefficient management, and unsupportive staff increase distress amongst undertrial prisoners.

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[1] Marcus Tullius Cicero, De legibus (Elizabeth Meyer tr, Cambridge University Press 1928)

[2] Eugen Ehrlich, Fundamental Principles of the Sociology of Law (Frederic W Maitland tr, Yale University Press 1949) 27.

Roscoe Pound described law as “a tool of social engineering,” designed to balance competing interests and secure social order. This balance is put to the test in one of the key issues surrounding the rights of mentally disabled and unfit people. As per the Indian Contract Act and the inheritance laws in India, mentally unsound individuals are not entitled to enter into a contract or write a will. The exclusion of individuals with mental disabilities from executing contracts or wills illustrates this conflict. The law seeks certainty and reliability, but simultaneously restricts autonomy. By treating mental disability as absolute incapacity, the legal system overlooks conditions where individuals retain rational judgment.

The inability of the Indian Legal system to effectively recognise and resolve the problems of those who are mentally disabled raises pertinent questions: Has society only become positivist in nature?

A positivist scholar would argue that since the Parliament (assuming it to be the sovereign) has not explicitly legislated on various aspects of mental disability, such as inclusion in contracts, recognition of conditions like ADHD and depression, then the judiciary must also refrain from making laws on the subject. However, in the case of P. Rathinam v Union of India (1994), the Supreme Court struck down Section 309 of the IPC, decriminalising the attempt to suicide and reasoning that the “right to life” under Article 21 also includes the right not to live, thus piercing the positivist veil.

Conclusion

India’s legal approach to mental health reveals a striking mismatch between constitutional ideals, legislative frameworks, and lived reality. From a sociological lens, law should function as a “living law” responsive to society; natural law demands protection of dignity and survival; and positivist and historical approaches emphasise order and structure. Until these ideas align in practice, the Indian legal system risks regulating procedure rather than protecting minds. Real justice is not only the absence of punishment, but it is care, support, and the ability to live with dignity.

Urban Dreams: Right to Shelter and Inclusion

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Introduction

It is not uncommon in India's urban cities to see entire families huddled under tarpaulin sheets or sleeping on city streets, a sorry state of affairs that bears testimony to the country's deteriorating housing crisis. The issue is only worsening with urbanisation, forcing millions into overpriced and crowded living spaces. The 2021 Census reports that more than 1.8 million urban dwellers are homeless, a figure that makes us rethink how far we are from the Right to Shelter for all. Forced evictions and unaffordable housing have impacted vulnerable groups in disproportionate numbers, laying bare the fault lines in urban planning and legal protection. Socially inclusive urban development promises to realise the constitutional right to shelter. Socially inclusive urban development works towards equal access to urban facilities and housing for all.

This idea was brought in as the right to shelter in the Constitution, borrowed from the Right to Life under Article 21. Though judicial interpretations have expanded this right, it is confronted with legal loopholes, socio-economic considerations and implementation flaws.

The Constitutional Right to Shelter

The right to shelter has not been directly stated in the Indian Constitution, but it is presumed to be an aspect of Article 21 that provides the Right to life. Through the years, the Supreme Court has interpreted it to be more than existence alone; it includes the right to live with dignity, and a secure place of habitation is a fundamental part of it. Article 19(1)(e) also grants every citizen of India the right to reside and settle in any part of India, solidifying the reality that shelter is an intrinsic right and not a privilege.

Judicial Interpretation

- Olga Tellis vs. Bombay Municipal Corporation (1985): It conferred the pavement dwellers' right to shelter and held that eviction without rehabilitation amounts to the contravention of the Right to Life. The critics, however, argue that subsequent eviction drives often fail to implement the principles in this case, pointing towards the discontinuity between law on the books/theory and law in practice. Stricter policies, rules, and regulations must be devised; non-adherence would lead to penalisation.

- Chameli Singh vs. State of Uttar Pradesh (199G): The Supreme Court stated that the right to shelter includes access to amenities such as water, electricity, and sanitation, which are essentials to a life of dignity. And from this judgment, we can infer that these factors should be kept in mind while policy-making regarding providing affordable housing. An affordable residential property with no access to basic amenities is of no help, as was the case in the colony of Baprola, New Delhi, a few years ago and many such places.
- The Delhi High Court ruled that the state shall undertake fair procedure before evictions can occur, reasserting the role of rehabilitation. That eviction notices should provide a reasonable time for relocation; if the individual is of such a condition, then the state shall provide affordable housing.

Recent Legal Developments

In 2023, the Supreme Court made it abundantly clear that the government must make homes affordable, especially under programs like the Pradhan Mantri Awas Yojana (PMAY). The court upheld that a house is not merely about a roof over one's head; it's a vital component of socio-economic rights. Regarding the 2022 Real Estate (Regulation and Development) Act (RERA) amendments, which were designed to protect homebuyers, making housing projects more transparent and accountable. These advances on the legal front suggest that the right to shelter is being kept in mind, but much more must be done to make it happen for all.

These policies are significant initiatives, but on the practical front, schemes and Yojanas are not very effective in enforcement and awareness, as the majority of the population without housing is either exploited by the bureaucrats or is unaware of such schemes, especially the rural population.

Compared to Global strategies promoting inclusive urban development, we can look at Wembley Park Redevelopment, London, where, per the agreement, the developers had to include 30 to 40% affordable housing in residential projects. The outcome was the integration of social and intermediate housing in high-value zones. In India, the initiatives lack enforcement as they are implemented as Schemes and not Rules or Regulations that should be followed, especially in Private Residential Projects or public-private partnerships (PPP) Projects (Oxford Human Rights Hub).

Courts have stretched the right to shelter, but compliance is wanting. Despite protection by the law, millions are without decent shelter from entrenched socio-economic barriers. Without decent shelter, people become more vulnerable to ill health, disabled through education and employment, and are left stuck in social exclusion.

Challenges to Realising the Right to Shelter in Urban India

Forced Evictions and Displacement

Forced evictions are unpleasant, despite laws enacted to protect them in Indian cities. Between 2019 and 2023, more than a million people were unsheltered. Their homes were bulldozed to make way for infrastructure projects. Many were given little warning and could not rebuild their lives (Oxford Human Rights Hub).

Lack of Affordable Housing

India's housing affordability crisis is mainly affecting poor households. A 2023 report by the Ministry of Housing and Urban Affairs indicated that the urban housing shortage in the country is a whopping 10 million units. Although the government's initiative in the form of PMAY attempted to fill this gap, it could address only 40% of the demand, leaving millions still looking for a safe and stable place to call home.

Land Acquisition Issues

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013) was designed to safeguard landowners. Still, loopholes and weak implementation continue to push displaced individuals to the periphery.

Implementation Gaps

It is simple to enact housing laws; it is another thing to implement them. Bureaucratic inertia, corruption, and lack of political will slow down progress, rendering policies ineffective.

Towards a More Inclusive Urban Legal Framework

Rehabilitation and Resettlement Policies

Integrated rehabilitation and resettlement policies are needed to safeguard displaced individuals. The suggested Urban Rehabilitation and Resettlement Model requires:

- Compulsory pre-eviction consultations.
- Proportionate compensation and provision of alternative housing near the original dwelling place.
- Inclusion of marginalised livelihood, healthcare, and education in resettlement schemes.
- Awareness of these policies should be spread more, covering a greater portion of the troubled population.

Promoting Affordable Housing

Solving India's housing problem isn't just the government's job; private companies also have to do their part. Changes in the Special Economic Zones Act 2023 now encourage multipurpose developments; therefore, commercial development is required to have affordable housing as well. Land pooling and public-private partnerships (PPPs) should entice private investment without making housing unaffordable. Done correctly, this will strike two birds with one stone: business growth and affordable space for people.

Community Participation

Building truly inclusive cities isn't just about policies and laws; it's about involving the people who live there. When communities are engaged in city planning, solutions are more feasible and fair. A case in point is the **Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014,** which gave street vendors legal protection and a say in city planning. Still, the effectiveness of this policy lies in how well this framework incorporates those directly affected. If the same law required public consultations and made it mandatory to consider feedback from affected communities, urban development would be more inclusive. After all, the people who experience housing problems firsthand should have a say in how solutions are planned. There is a lack of institutionalised participatory governance.

Strengthening Legal Framework

Having shelter rights protected by law is excellent, but if they're poorly enforced, they are not helpful. To be of some use, we must have strong legal frameworks that guarantee citizens' housing rights, which are more than paper promises. Speedier disposal of cases related to housing and the setting up of **special housing tribunals** may bring justice faster and better. Another revolution could be the implementation of **Housing Rights Ombudsman Offices** in cities, making it more straightforward for citizens to complain about housing issues and enforce their rights.

Conclusion

Having the right to shelter in the Constitution alone will not make truly inclusive cities in India. Laws won't function without effective enforcement, backed by strong policies, and supplemented by local communities with a framework that makes it mandatory to follow the norms and procedures efficiently. To make housing accessible to all, a balanced approach is required, with legal reforms, good policy-making, and inclusion by the people who will be directly affected.

Meek, Dumb and Erased: Women and Environmental Law After the Bhopal Gas Tragedy

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Introduction

On the night of 2–3 December 1984, Bhopal witnessed one of the worst industrial disasters when lethal methyl isocyanate gas leaked from Union Carbide's pesticide plant. The toxic cloud killed thousands within days and left hundreds of thousands with lifelong respiratory illnesses, reproductive disorders, and intergenerational health complications, while also contaminating Bhopal's soil and groundwater with effects that still persist across generations. For women in particular, the tragedy was not only a matter of immediate injury but of miscarriages, infertility, chronic disease, and the long-term burden of caregiving in households plagued by death and disability.

Indian courts responded to Bhopal by developing new doctrines of liability and settlement but these came at the cost of erasing gendered harms. "The victim" was imagined as a generic, disembodied subject, detached from the specific ways women experienced loss. This piece inquires whether Indian environmental law after Bhopal tragedy adequately recognised women specific gendered harms. By examining the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 and the Charan Lal Sahu v. Union of India judgment of 1990, this article argues that while Bhopal shaped the trajectory of Indian environmental law, it simultaneously exposed law's structural blindness towards woman's lived realities. To explore this, Silvia Federici's Marxist feminist critique of reproductive labour is also relied upon.

Medical and Intergenerational Harms

Women's bodies became some of the most enduring sites of Bhopal's toxic aftermath. Medical research has traced a plethora of reproductive harms: miscarriages, neonatal and perinatal deaths, irregular menstruation, and increased pregnancy loss. Long-term studies also found genotoxic effects such as chromosomal abnormalities, with consequences spilling over the next generation in the form of congenital deformities, immune disorders, and developmental disabilities. One of the earliest toxicological studies revealed that nearly half of all women pregnant on the night of the disaster did not give birth to live babies, emphasising the scale of reproductive as well as emotional loss. A 2002 national fact-finding mission even detected lead, mercury, and organochlorines in the breast milk of nursing mothers, noting that such hydrophobic chemicals cannot be expelled, except through the placenta or breast milk. Therefore, in reality, women were forced to carry and transmit the disaster within their own bodies, making them not only survivors but unwilling conduits of intergenerational harm.

Social Harms and Caregiving Harms

The effects of the Bhopal tragedy on women were consequently, profoundly social as well. In a culture where a woman's value was correlated with motherhood, infertility and reproductive loss were highly stigmatised. Infertile women were seen as "bad omens", and this notion was cruelly evident following the leak. Many women who could no longer conceive were abandoned or divorced by their husbands, their social standing destroyed just as their health had been, others faced rejection in marriage because families did not want to wed their sons to the victims of the tragedy. Yet the same women, who were themselves ill, were also expected to take on extra care work: raising orphaned children, nursing sick husbands, and managing households where every member was injured or ill. This put women in a terrible situation where they were overworked as caregivers and yet denied recognition as mothers.

Rehabilitation after the gas leak reveals how disasters can harden existing social hierarchies instead of undoing them. Women were rarely treated as independent claimants, but as appendages of male claimants within the family unit (the basic category around which relief was distributed). This framework pushed women into a secondary role, painfully visible in almost every official document, because their presence was largely absent. But even when schemes targeted women directly, such as sewing centres, they reinforced stereotypes of passivity and sacrifice, tightening their dependence on state structures rather than empowering them. The result was that gender was seldom treated as an axis of justice in itself and was blurred into an abstract notion of “rehabilitation” that erased women’s distinct experiences.

Settlement and the Invisibility of Reproductive Labour

A USD 470 million settlement between Union Carbide and the Union of India was approved by the Supreme Court in February 1989. The Court justified this amount based on “rough and ready estimates” that placed the death toll at about 3,000 and the number of serious injuries at

30,000. As a result, the foundation of compensation was built upon figures that were not only contested but also drastically understated, particularly in view of later discoveries that the true death toll was over 15,000 and that over half a million people were injured, which meant that the actual scale of women's reproductive and social losses was far greater than what the Court acknowledged.

Compensation was then structured through a rigid classification scheme, which divided losses into heads such as death, varying degrees of disability, property and business loss, environmental damage, and even government expenditure. This bureaucratic taxonomy may have created administrative order, but it also subsumed complex lived experiences, especially women's reproductive, gynaecological and social harms into narrow and inadequate legal boxes. As Federici argues, the conversion of women's reproductive labour into "love", "sacrifice" or private duty is a classic move of capitalist governance: it naturalizes injury and care, keeps them unpaid and invisible, and blocks women's claims to autonomy and compensation. Through her lens, this compensation scheme operates like a valuation machine that erases reproductive labour, keeping the costs of social reproduction off the books and on women's bodies.

In Charan Lal Sahu v. Union of India (1990), the Supreme Court upheld the constitutional validity of the Bhopal Claims Act, which vested all claims in the Union under its parens patriae power. Survivors were said to be "meek" and "disabled," a framing that erased their agency. Feminist scholars argue this recreated patriarchal authority: just as the family patriarch claims to know what is best, the State usurped the power to speak for survivors while silencing them. By legitimising this paternal model, the Court while claiming to protect, reinforced the very discourse of victimhood it claimed to solve. Yet survivors, including women's groups, were active in organising for health, legal, and environmental justice. Had the Court restored their legal standing, representative suits could have deepened democracy by making the State support rather than replace citizen initiatives.

Reproductive Labour as the Hidden Subsidy

The Indian government and Union Carbide settled claims at a low figure because they could rely on women to pick up the slack. Women's unpaid care, tending to disabled husbands, raising orphaned children, managing chronically ill family members effectively became a substitute welfare system. Federici's argument that reproductive labour is capitalism's hidden subsidy translates perfectly here: the state could externalize the real costs of rehabilitation, knowing that women's "natural" caregiving would absorb them without wages, recognition, or compensation. While Federici does not use the phrase "hidden subsidy" directly, she writes that by transforming women's housework into a "natural attribute" of femininity and denying it wages, capital secured "a hell of a lot of work almost for free." I interpret this as meaning reproductive labour subsidises capital by keeping the costs of social reproduction off its books. I argue that this blindness was not incidental but systemic. The law has historically treated reproductive labour as outside the sphere of "work", even though it is central to survival. For instance, most labour and wage statutes exclude housework and caregiving from definitions of employment. Compensation frameworks rarely acknowledge domestic or caregiving losses, for example, wrongful death and injury laws typically quantify damages in terms of lost wages, not unpaid care. Divorce and family law regimes often treat women's household labour as a matter of moral duty rather than economic contribution, with property division rarely recognising it as a financial asset. Unless reproductive labour is recognised and protected, legal systems will remain structurally incapable of addressing gendered harms. Bhopal teaches one urgent lesson: justice cannot stop at compensation. It must also demand that the law itself be rewritten to value reproductive labour as the foundation of both survival and justice.

Terrorism: The Difficulty to Define the Term

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Introduction

Terrorism, in layman's language can be defined as a threat or action designed to intimidate or influence the public. To put it in simplest of the language, any act which involves killings of civilians by non-state actors could be defined terrorism. Many scholars have tried to define the term. Chomsky, for instance, defines it as a use of coercive means aimed at the civilian population to achieve political, religious or other aims. One state's terrorism is another state's resurgence; hence, no official definition is held to be definitive. Attempts have been made to come to common ground, but that has always met with resistance from opposing quarters.

Evolution of Definition of Terrorism as a term by the International Community

The word terrorism was first coined in the 1790s during Robespierre's led Jacobin Party's "Reign of Terror", in which mass executions took place in the form of the guillotine. In the 20th century, Article 1 and Article 2 of the League of Nations Convention for the Prevention and Punishment of Terrorism tried to define terrorism, but it never came into force. The United Nations first focused on defining terrorism after the massacre of the Munich Olympics of 1972. There were also various sectoral conventions of the United Nations such as the Comprehensive Convention on International Terrorism proposed in 199G attempting to define "terrorism". In 1999, the UN Security Council passed Resolution 12G9 unanimously, which "unequivocally condemn[ed] all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation". The real push came after the dastardly 9/11 attacks on the World Trade Center Building by Al-Qaeda. A comprehensive definition of terrorism was required to set responsibilities.

Dilemma to Decide: What Constitutes Terrorism?

There are very few terms in international law that seem to be as difficult to define as terrorism. After the infamous 9/11 attacks and then President Bush's Global War on Terror (GWOT), the meaning has been twisted and turned to create an element of confusion to exercise the will of greater powers over the smaller ones by authorizing attacks, legitimizing them or blocklisting an unfavorable regime by applying sanctions or restrictions. Following are some of the dilemmas with examples which arose due to the broad-based interpretation of terrorism:

State vs. Non-State Actors

The dilemma here lies in whether terrorism as a concept should apply in a similar manner to state actors and non-state actors. For example, consider Syria: should the actions of the Syrian regime against its minority Kurdish population and the actions of non-state actors like ISIL/ISIS against the regime and its people be evaluated and addressed under one definition of "terrorism" or treated as distinct categories?

Right to Self Determination vs. Terrorism

Should a group like Hamas, which is duly etched in the spirits of Palestinians when conducting attacks against occupied territories to combat Israeli troops (foreign occupation in the eyes of Palestinians), be treated as terrorism or a movement for right to self-determination? Was the infamous October 7th, 2023, attack to be viewed as a terrorist activity or a liberation act?

Activities of National Armed Forces During a Conflict

For instance, consider the response of the Israel Defense Forces (IDF) to the October 7th, 2023, attack. Under the provisions of international law and the exceptions to the use of force, what defines the limits of the right to self-defence under Article 51 of the UN Charter? If that doctrine, in total or partial manner, is flouted by the country exercising self-defence (in this case Israel), would it constitute an act of terrorism?

Potential Use of Nuclear Weapons by National Armed Forces

Russia, for instance, has opted to exit the Comprehensive Test Ban Treaty (CTBT) and tested an intercontinental ballistic missile designed to carry nuclear warheads recently. Given the country's ongoing war with Ukraine, should this act be viewed as a terrorist activity, considering the effects a nuclear war can have if Russia decides to pursue one in future?

The State Sponsored Cross Border Terrorism

The state sponsored cross border violent activities come in a different category altogether. These activities partakes the character of terrorism for the host country but the one perpetuating it clandestinely denies having any participation in promoting these groups, whereas secretly ensuring their breeding with the help of the state machinery. The prime example is India's Pahalgam massacre of April 22nd by The Resistance Front (TRF), a Pakistan based group and a proxy for Lashkar-e-Taiba (LeT). LeT's prime objective is to integrate Kashmir into Pakistan for which it has taken the recourse of extreme violence within Indian territories. Whereas Pakistan has openly been hand in gloves with LeT and its leadership, efforts on quelling the activities of TRF were only sought after the USA designated it as a FTO (Foreign Terrorist Group).

The conflict in the North Kivu and Ituri provinces of Democratic Republic of Congo has engulfed the country into utter chaos. The main perpetrator is the Rwanda backed rebels, M23. The mineral rich provinces and the ability of M23 to keep the FDLR (Democratic Forces for the Liberation of Rwanda) at bay has been cited as Rwanda's motive to interfere in the conflict. Rwanda considers the group an existential threat as the FDLR includes Hutu exiles, some of whom were involved in the 1994 Rwandan genocide against the Tutsis. Rwanda accuses the DRC of supporting the FDLR and calling for its neutralization as a prerequisite for regional peace.

Difficulty in Defining Terrorism

As seen by these examples above, the clandestine nature of terrorism makes it extremely hard to define. A definition of "terrorism" must consider the context in which it is being presented or put. One must consider differences in actors (states, paramilitary groups, etc.) that could fall under a definition of the term. Additionally, other forms of political violence often overlap with the basic features of terrorism.

Brian Jenkins, one of the first researchers in the field of terrorism has addressed the definition problem as the "Bermuda Triangle of Terrorism", as even experts can't agree on a definition and big conferences get bogged down in definitional debates. Because of this, the term is used merely as rhetoric without a clear legal definition to support it, opening the door to applying double standards.

Looking Beyond Definitions

Targeting of Civilians

A core distinction lies in the deliberate targeting of non-combatants. Legitimate resistance, under international humanitarian law, aims at military targets whereas terrorism often involves targeting of civilians to instill fear and achieve political goals

Methods of Necessity and Proportionality

The UN Charter specifically states that even in legitimate resistance, the means employed must adhere to principles of necessity and proportionality. Terrorist acts frequently involve unprovoked extreme violence and disregard for human life, exceeding what could be considered necessary or proportionate in a conflict.

Adherence to International Humanitarian Law

Legitimate resistance movements generally strive to adhere to the laws of war, including the Geneva Conventions whereas terrorist groups operate outside established norms of armed conflict.

Motivation and Goals

Legitimate resistance often focuses on self-determination, liberation from occupation, or defense against aggression whereas terrorism may pursue broader, often ideological goals, mostly involving indiscriminate violence to achieve them.

The Status of the combatants

Legitimate combatants often have a form of uniform or are part of an organized group. Terrorists often operate in non-uniform, and can be part of small cells.

In the absence of a strict definition, it is in the prudence to know the not so herculean task of acknowledging the difference between liberation and submission and that is where the line needs to be drawn. The term's fuzziness isn't a failure of analysis; it's a linguistic-philosophical reality that Wittgenstein's insight, "the family resemblance concept" illuminates perfectly.

The Wittgensteininan Solution

The great British philosopher, Ludwig Wittgenstein has talked about "philosophical entanglement" in his theory of "Family Resemblances". Wittgenstein argued that complex concepts—like "games", do not share one single common essence. Instead, they are linked by a network of overlapping similarities. The quest for a single, all-encompassing definition of terrorism shares the same level of confusion and dilemma. Just as members of a family might share the same nose, others the same eyes, and others the same temperament, various acts of violence share "terroristic" traits without being identical. One act might involve non-state actors and civilian targets, while another involves state-sponsored proxies and ideological intimidation.

Conclusion

When we recognize these resemblances, the "one man’s freedom fighter" quip loses its power to paralyze justice. If the conduct bears the hallmark of the "terrorism family" regardless of the actor's stated cause it demands a unified enforcement response. By moving beyond the futility of a perfect definition, we can focus on the "not so herculean task" of holding perpetrators accountable for the universal crimes of targeting the innocent and weaponizing fear.

Consent, Control, and the Illusion of Choice: Revising the Idea of Access to Justice of the Digital Protection of Personal Data

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Introduction

The digitization of India has reorganized the access to welfare, finance, healthcare, and governance itself by citizens. The rights have become mediated through personal data. The adoption of the Digital Personal Data Protection Act, 2023 (DPDP Act) is an important effort to control this data-driven ecosystem.

The key question is, however, not whether India has a data protection law now, but whether this law is truly able to increase the availability of justice in a highly unequal digital society. This blog holds that though the ideas used in the DPDP Act is progressive, it has the potential of transforming privacy and data protection to procedural rights that are formally available but practically unavailable-unless there is good enforcement and pro bono legal intervention.

The DPDP Act Consent: Autonomy or Formalism?

The DPDP Act incorporates consent as the core of lawful data processing. Section G stipulates that their personal data can be processed under free, specific, informed, unconditional and unambiguous consent. This is, on paper, constitutional standards of voluntariness.

Nevertheless, this model does not take into account the truth of power inequality. Consent is frequently offered as an inseparable part of non-negotiable terms of access to vital services like banking, electronic payments, or welfare systems. To a good number, unacceptance is not a viable alternative. This brings up some serious questions regarding the validity of consent under Section G to meet the constitutional test that the Supreme Court has stated.

In the case Justice K.S Puttaswamy (Retd.) v Union of India (2017), the Court said that privacy is inherent to Article 21 and any limitation should meet the criteria of legality, necessity and proportionality. Consent that is obtained through coercion or structural compulsion obviously is a failure to this test. Consent will turn into a legal fiction when it becomes a requirement to survive, not a choice.

Enforcement and Remedies: The Burdened Data Principal

Under Section 18 of the DPDP Act, the Data Protection Board of India is formed which has the authority of inquiring breaches and imposing penalties. The enforcement architecture is mostly complaint based, however. It is up to the Data Principal to detect violations, comprehend procedural regulations, and go to the Board.

This reflects a repetition of an access-to-justice issue. The Supreme Court stressed in Anuradha Bhasin v Union of India (2020) that any restriction of fundamental rights in place should be based on procedural protection and adequate review. A solution that is available to digitally literate and legally conscious persons is not up to this test.

In addition to this, Section 13 restricts the right to compensation, undermining the use of it by the private. Practically, this can lead to a system in which infraction is not contested, especially in cases where the damage is diffuse, technical, and cumulative-like, which are the attributes of data misuse.

The Constitutional Asymmetry and the State Exemptions

Section 7 of the DPDP Act is perhaps the most controversial aspect of this law as it allows the State to process personal data without consent serving purposes of governance, public order and national security. Section 17 also gives the Central Government the power to exempt the State agencies and allow the Act not to apply to them.

Although State exemption is not as such unconstitutional, their scope and absence of external checks and balances poses significant proportionality issues. In Puttaswamy (Aadhaar) v Union of India (2018), the Supreme Court awarded the Aadhaar structure subject to purpose restriction, data minimisation and procedural protection. In the DPDP Act, in its turn, the proportionality or necessity is not presented in many details, in cases where exemptions are applied.

This can be seen as an access-to-justice structural imbalance: people are granted enforceable obligations under the Act, but have little ability to interfere with State data practices that have a direct impact on their rights.

Data Protection is an Access to Justice Issue

Informational privacy is not the only concern of data protection. In modern India, data is what specifies access to welfare rights, creditworthiness, policing, and surveillance. Abuse/exclusion may result in benefit denial, profiling or coercive action by the State.

Procedural fairness has always been viewed by the Supreme Court as a key aspect towards justice. In the case of Maneka Gandhi v Union of India (1978), the Court stated that any action that has an impact on personal liberty, has to be just, fair and reasonable. An inaccessible, opaque or unenforceable data protection regime that cannot be met by large groups of the population does not pass this basic test.

The Pro Bono Imperative of Digital Justice Landscape

Under such structural constraints, pro bono legal participation becomes inevitable. The pro bono should not only be restricted to litigation but should extend to:

- helping people to make complaints to the Data Protection Board,
- carrying out legal literacy programmes regarding data rights,
- upholding the strategic litigation of inappropriate disproportionate State exemptions, and
- participating in policy advocacy in order to enhance accountability measures.

Such institutional projects as the Pro Bono Club at NLUO, operating within the Department of Justice framework, have a specific position to fill the gap between difficult regulatory frameworks and lived experiences of injustice. In such a way, pro bono service will lead to democratising digital rights.

Conclusion

The DPDP Act is an important law but its appropriateness will not be measured by its language, but by its accessibility. Unconsensual consent, rights with no remedies, and exceptions without responsibility are likely to undermine the digital age constitutional protections.

To gain access to justice today, there must be beyond courtrooms, the ability to challenge power that is embedded in codes, data, and digital systems. It is not a choice to ensure this capacity. It is a constitutional necessity, and an imperative that pro bono participation in the legal field should undertake.

Revisiting Acid Attacks under Criminal Law: Emerging Judicial Approaches in India

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Introduction

The acid attacks are making headlines again, and all for the right reasons. In a recent hearing the bench of apex court comprising Chief Justice Surya Kant and Justice Joymalya Bagchi emphasized that acid attackers must be shown zero sympathy by courts, and the "entire system" must respond collectively against them. The court also suggested reforms to Rights of Persons with Disabilities Act 201G. According to the data released by the National Crime Records Bureau more than 200 acid attacks were reported in the last few years. The horror of these attacks lies not only in the physical and psychological injuries caused but also in the silence that follows. Survivors often face lifelong trauma which is further aggravated by social stigma, isolation and exclusion. Even after the physical wounds heal, the social consequences continue to shape their lives.

Rights of Persons with Disabilities Act 2016: Recognition and its Limitations

In furtherance of its commitment to the United Nations Convention on the Rights of Persons with Disabilities, the country enacted the Rights of Persons with Disabilities Act 201G (hereinafter referred as RPWD ACT) replacing the Persons with Disabilities Act,1995. The schedule of the act includes acid attack victims as a specified disability, defined as "*a person disfigured due to violent assaults by throwing of acid or similar corrosive substance.*" Additionally, the survivors are entitled to get a disability certificate under the act. Those assessed as having benchmark disabilities of 40% or more are entitled to reservations in government jobs along with other statutory benefits provided under Chapters VI and VII of the Act, including access to free education for their children.

While the act was a progressive a step, various concerns remain. First and foremost, the acts fail to take into consideration ground reality. The benefits under the act are linked to the benchmark disability of 40 per cent or more which is assessed on the basis of functional impairment rather than the extent of skin area affected. In practice, it means that a survivor qualifies for state help only with over 40 per cent skin burns. As a result, a significant number of survivors with extensive burns fall outside the eligibility criteria. In several cases injuries are often concentrated on the face, neck, and upper limbs, leading to severe disfigurement and even loss of vision. Although such injuries may not amount to 40% burns in terms of surface area, the physical and social impact on survivors is substantial.

Another gap is the failure to recognise victims of acid ingestion whose internal injuries are no less debilitating. The Supreme court rightly pointed out this and held that such survivors made to ingest acid would have no visible marks on the body, but their vital organs would be corroded. These individuals often require prolonged and expensive medical treatment which is largely inaccessible to survivors from economically weaker backgrounds.

Evolving Juridical Approach to Acid Attacks as Attempt to Murder

The court further ruled that cases of acid attack must be prosecuted under the offence of Attempt to Murder under Section 307 of the erstwhile IPC and now Section 109 in BNS and not merely as Voluntarily causing grievous hurt.

The essential ingredients of the same is-

- There must be intention or knowledge to cause death.
- There must be an act done towards that intent.
- The act must be of such a nature that if it had caused death, it would amount to murder.
- Actual injury is not necessary.

This judicial shift reflects an understanding that throwing of acid or forcing its ingestion can result in death of a person due to organ failures or shock. However, the courts may face difficulty in proving intent in such cases. Factors such as whether sensitive areas were targeted, the quantity and type of acid used, where any prior threats become crucial. Otherwise, the defence would argue the intent was not to kill but to cause harm or disfigure and the same must be tried under section 32G of IPC (now section 124 of BNS) voluntarily causing grievous hurt. Hence this observation of the apex court opens new doors of intersection between the 201G act and the criminal laws. The former views acid attack survivors as persons needing rehabilitation while the later sees acid attackers as criminals deserving punishment.

Conclusion

Although these developments signal progress, their effectiveness ultimately depends on the implementation. In the landmark case of Laxmi v Union of India, the supreme court issued a series of directions aimed at preventing acid attacks and ensuring rehabilitation of survivors. Among these directions was a mandate requiring all hospitals, both public and private, to provide free medical treatment to acid attack victims along with an obligation on state government to enforce this requirement. Despite these directions, implementation remains weak. Private hospitals often refuse admission or transfer these patients to public hospitals which lack resources to provide adequate treatment. Additionally, as highlighted by Shaheen Malik's plea trial in such cases take years to be concluded.

One of the solutions suggested by the apex court is the establishment of special courts to exclusively conduct acid attack cases on a day-to-day basis. Other practical solutions would be the provision of mandatory interim compensation as soon the case is registered and stricter regulation of sale of acid. There must be a real time digital portal for its sale logged with buyer ID and vendor license.

Acid attacks are not merely an assault on an individual's body but on the very notion of human dignity and safety. While the prompt implementation of legal reforms is important, it is equally important we play our roles as society. Survivors should not be viewed through a different lens, they deserve equality, respect, and support. True justice requires not only punishment of offenders but restoration of dignity to those who survive.

Relief Camps are Not Homes: The Right to Shelter after Disasters in India

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Introduction: Disaster-Induced Displacement as a Constitutional Concern

India lives under an ever-present menace of floods. Among the 329 million hectares of land it possesses, over 40 million hectares of land are flood-prone. An average of 7.5 million hectares of land are submerged by floods each year, which claim the lives of approximately 1,G00 people and cause damage to homes, crops, and public infrastructure worth about ₹1,805 crores. Floods have long since ceased to be periods of remarkable shock; they come back with a certain predictability, once in five years or more, leaving ruins behind them in shattered houses and blighted prospects. This is demonstrated by the recent floods in the southern Punjab. Almost 2.4 million individuals were displaced, more than a hundred lives were lost, and damage was caused in Himachal Pradesh, Uttarakhand, and Jammu & Kashmir.

As a result of such catastrophes, citizens are forced into temporary shelters, but once the waters recede, they risk long-term abandonment due to the lack of permanent rehabilitation. This exposes a major legal gap as to whether the state's obligation under the right to shelter is restricted to short-term assistance or encompasses long-term rehabilitation and land restoration.

The right to housing, after all, is not simply the promise of four walls and a roof. It is the right to live in security, peace, dignity, and meaning. Here, constitutional guarantees, human rights obligations, and disaster management policies do not stand apart. They are threads of an intricately woven web: interdependent and full of gaps. Despite the foreseeable nature of such disasters, the lack of a legal framework mandating permanent rehabilitation reveals a failure of disaster governance to respond to constitutional obligations.

Judicial Expansion of the Right to Shelter

This post-disaster state of homelessness engages the right to life embedded in Article 21. The judiciary in India has played a decisive role in transforming the right to shelter from a narrow conception of physical survival into a substantive guarantee of dignified living under Article 21. In Chameli Singh v. State of Uttar Pradesh [(199G) 2 SCC 549], the Supreme Court articulated this vision by holding that the right to life necessarily implies access to food, water, education, medical care, and shelter. This recognition established shelter as a prerequisite for human development rather than just a defence against vulnerability. Further, in like Kranti v. Union of India it was held that the state must take immediate steps to ensure such basic needs are met for disaster affected persons.

Other Important rulings like Ambikapathi @ Vinayagam v. Union Territory of Pondicherry, and Olga Tellis v. Bombay Municipal Corporation show a pattern where judicial intervention makes up for legislative and policy shortcomings. However, the Disaster Management Act of 2005, which limits shelter to an emergency response rather than a continuous right, hardly reflects this broad constitutional understanding.

Disaster Management Law and its Limitation

In the absence of enforceable statutory guarantees, post-disaster rehabilitation remains subject to executive discretion rather than legal entitlement. The Section 12 of DMA, 2005, mandates the preparation of national, state, and district disaster management plans and ensures the provision of immediate relief such as rescue, evacuation, food, health services, and temporary shelter. However, the law does not go beyond this "emergency phase" and these are only recommendations, and not binding entitlements.

Section 13 and Section G conspicuously omits to establish binding norms that recognize displaced persons' right to adequate temporary or permanent housing, long-term security of tenure, or restitution of lost property. The law treats housing as relief, not a right. It is very clear that relief measures which should be legal entitlements with enforceable norms are discretionary and executive driven.

India, as a State party, is bound to interpret domestic disaster response consistently with international standards. The international foundation of the right to adequate housing was first laid down in Article 25(1) of the Universal Declaration of Human Rights (UDHR), which recognized housing as an element of the "right to a standard of living." This principle was transformed into a binding treaty obligation under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which requires states to ensure adequate housing for all. Article 2(1) of ICESCR further obliges states to "take steps, individually and through international assistance and cooperation, to the maximum of available resources, with a view to progressively realizing the rights recognized in the Covenant."

The Disaster Management Act remains disconnected from the principles of distributive justice and protection of vulnerable groups despite these constitutional directives. Under Article 38 of DPSP, the state is required to ensure a just social order and to reduce disparities in opportunities, income, and status. Affirmative housing programs and subsidies for the underprivileged are based on this. In continuation, Article 39 obliges the state to prevent wealth concentration while ensuring livelihood opportunities and an equitable distribution of resources, including land and housing. This is in Favor of land monopoly regulation, slum redevelopment, and public housing initiatives. Lastly, Article 4G mandates that the State protect weaker groups from exploitation and advance their economic and educational interests, particularly those of Scheduled Castes and Scheduled Tribes. This clause targets reservations, housing programs, and subsidies for the Economically Weaker Sections.

From Relief to Rights: The Case for Reform

Research and rights-based studies repeatedly document the inadequacy of transitional shelters in India, marked by irregular access to basic services such as sanitation, water, and electricity. These shelters also fail to ensure protection for vulnerable populations, including women, children, persons with disabilities, and the landless, particularly against forced eviction, exclusion from decision-making, and delays in transition from temporary to permanent housing.

A crucial distinction exists between ordinary housing rights that fall within the general scope of the right to shelter and the urgent housing needs that arise in post-disaster contexts. Unlike relief items such as food or medicine, which are consumable and temporary in nature, housing is a non-consumable, long-term asset. In practice, post-disaster housing rebuilding has frequently been positioned as a developmental agenda as opposed to a humanitarian requirement. This framing minimizes the severity of such scenarios where, after the dismantling of temporary housing, disaster victims are left without access to proper, permanent housing after the loss of their land, property, and livelihood.

Given the relief-centric design and statutory omissions of the Disaster Management Act, reform becomes necessary to recognize the legal status of post-disaster housing as a right, ensuring land restoration or providing another land as default, security of tenure, community involvement, and enforceable time limits. Such reforms would realign disaster governance with constitutional morality and the principle of human dignity. While natural disasters may be inevitable, chronic and intentional homelessness represents a failure of law and governance. A right that dissipates once the emergency period ends remain merely symbolic rather than enforceable. Thus, the right to shelter must be embedded within disaster governance frameworks to address these persistent legal vacuums.

Digital Courts for the Marginalised Litigant: Re-Constituting Access to Justice in India's Algorithmic Age

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Introduction: The Gavel and the Grid

The Indian judiciary is currently undergoing its most significant metamorphosis since independence. As Phase III of the e-Courts Project, supported by an enormous budget of ₹7,210 crore, the hallways of justice are being replaced by high-speed fiber optics and cloud-based databases. This is because we are entering a period of a digitally native court system, where AI-based translations or virtual hearings, and AI-based case management will become the norm.

However, this change has two sides in a country where a sizable portion of the population lives in poverty and lacks digital literacy. The "Grid" provides a new barrier to entrance while promising to address the "Gavel's" never-ending problem of pendency, which already exceeds 50 million cases. In order to prevent the "Algorithmic Age" from becoming a time of digital barriers for marginalised litigants, this blog examines how we can reconstruct access to justice.

Open Courts in the Digital Age: What Are We Losing?

The "Open Court" principle, a cornerstone of Indian democracy, mandates that justice must not only be done but be seen to be done. Traditionally, this implied a physical space in which any citizen could be an eyewitness to the glory of the law. In our digital age, this physical accessibility is being replaced by digital interfaces.

While the Supreme Court's Vision Document champions a natively digital judiciary, there is an intangible loss in the transition. The physical court provided a "human" buffer space where a judge's empathy could override procedural rigidity. Digital courts will run the risk of making complex human tragedies invisible to humanity just by data points. As we move toward the Courtroom Live-Audio Visual Streaming System (CLASS), when does justice become open when a marginalized litigant is unable to purchase the data pack needed to represent oneself in witnessing their own case? Algorithms mediate the gaze of the masses and may purify the unrefined realities of the courtroom.

The Exclusion Architecture: Who Gets Left Behind?

The transition to digital justice is based on the principle of universal connectedness - a fact that is an Indian myth. According to recent Data Reportal and TRAI reports, while urban internet penetration is high, rural penetration remains significantly lower. Still more vivid is the difference in genders digital divide, only a portion of the women in rural clusters have access to smartphones independently.

To the underprivileged litigant, a rural worker, a woman escaping an abusive partner without a telephone, or a person with disabilities, the e-filing portal is not a convenience, it is a barrier. In a series of observations, which the Supreme Court has recently made the Right to Life under Article 21 (Pragya Prasun v. Union of India), digital access is an inherent aspect. Without a non-negotiable floor of accessibility, we risk creating a two-tiered system where the wealthy get high-speed hearings and the poor are left navigating dysfunctional e-Sewa Kendras.

The Algorithmic Shadow: Hidden Bias

India is pioneering AI integration through tools like SUPACE (Supreme Court Portal for Assistance in Court's Efficiency) and SUVAS (translation software). While these tools aim to clear the backlog, they cast an algorithmic shadow.

Algorithms are conditioned using past data. Historical evidence tends to support systemic prejudices against Scheduled Castes, Scheduled Tribes as well as against religious minorities in the context of India. On the one hand, by applying AI to bail hearings, which might be implemented eventually as predictive justice or risk assessment, they can, just by chance, automatize the existing biases. Moreover, the legal appeal of a rationale behind a decision, which is presented as a justification of a decision, is violated by the black-box nature of AI that conceals the logic behind the decision. To a fringe litigant, it is much more difficult to dispute an automated refusal of a right than one inflicted by a human being because the computer said so, and this is an immutable and unquestionable source of authority.

Reclaiming Access: Pro Bono Solutions

This is where the role of Pro Bono Clubs and legal aid clinics becomes revolutionary. The government's DISHA (Designing Innovative Solutions for Holistic Access to Justice) scheme offers a framework, but its success depends on the bridge built by the legal fraternity.

Digital Literacy Kiosks

Pro Bono Clubs have to change its traditional mode of operation which is the awareness camp to digital navigation kiosks. Assisting a litigant to use the Nyaya Bandhu App or an e-Courts Services App will be the new form of arguing in court.

Audit and Advocacy

Students can play a role in auditing the accessibility of court websites for persons with disabilities, ensuring compliance with the RPwD Act as mandated in Rajive Raturi v. Union of India.

Technological Intermediaries

E-Sewa Kendras are now in need of a new breed of "para-tech-legal practitioners" , those people who have been trained to be effective in utilizing e-Sewa Kendras, lest they become prey to the cyber-cafe middies.

Conclusion: From Constituting Tech to Constitutional Justice

The goal of the e-Courts project should not merely be "efficient administration" but "Constitutional Justice." Technology should be regarded as a servant of the marginalized, rather than a master who they should be compatible with. Re-constituting the access to justice implies that when one moves to the cloud, people on the ground are not left behind.

The "Algorithmic Age" should not become an age of digital silence for the poor. True digital transformation is achieved not when every judge has a laptop, but when every citizen, regardless of their socio-economic status, can reach the temple of justice with a single, barrier-free click. As we build this digital architecture, human empathy, not just code, must remain the final arbiter of law, ensuring that the promise of Article 39A (Equal Justice and Free Legal Aid) remains a living reality in the virtual world.

Menstrual Leave in Karnataka: A Progressive Reform with Practical Challenges

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Introduction

The Karnataka State Cabinet decided to provide female employees with one day of paid menstrual leave per month on 9th October 2025. This became a landmark decision because it is the only state to grant this benefit to female employees in both public and private sectors. Further, the Cabinet has also pushed for a uniform policy for the implementation of this decision. It recognises menstrual health to be an important facet of the overall reproductive health of women, and aims to destigmatise the topic of menstruation.

Before this policy can be effectively implemented, several legal and practical challenges also need to be factored in and dealt with. There are several accountability gaps that arise, especially since there are no dedicated legislation or any enforcement mechanisms that have been defined by the government.

This is exactly why several concerns arise. Firstly, employers may require disclosure of sensitive health information, making women uncomfortable and causing privacy concerns. A concern, also expressed by the Supreme Court beforehand, is the risk that this menstrual leave policy can actually discourage the hiring of women, especially in enterprises with less financial resources and few employees.

Finally, women in the informal sector still face the harshest working conditions with absolutely no refuge. This policy also fails to include female employees in the informal sector, limiting its inclusivity. This blog aims to explore the legal, economic and public challenges faces by this policy. It further tries to provide a way forward to effectively implement this policy to strengthen gender equality without discouraging any woman to seek such leave.

Why Karnataka's Menstrual Leave Policy is a Step Forward for Gender Equality

Multiple studies have shown that menstruation can directly affect work performance through pain, fatigue, loss of concentration, and hormonal fluctuations. This menstrual leave policy allows for the establishment of gender equity as a facet of substantive equality under Article 14 of the Constitution as well as Article 15(3) of the Constitution, which allows for states to make special provisions for women and children.

While menstruation experiences vary, many women face severe symptoms that make working conditions extremely challenging. Further, continuously working during severe menstruation pain not only impacts the work, but can exacerbate reproductive health problems, thereby causing long term problems affecting the menstruators' daily lives.

Another important consequence of the existence of such a menstrual leave policy is that it allows communication about menstruation and related health issues, without women feeling the need to hide it, therefore, helping the dismantling of the stigma surrounding them. By normalising such discussions, workplaces can become more inclusive where women do not feel the need to conceal their menstrual status. When the poor and unhygienic conditions in workplaces are considered, a menstrual leave policy can serve as a much-needed temporary measure.

Unlike public-sector workers, private sectors are often more competitive, intensifying workplace stress, thus heightening the need to safeguard women's health rights. Women here face greater pressures, and stress is directly relevant to hormonal fluctuations. Therefore, Karnataka's approach stands out against policies already enacted in states like Bihar and Kerala for addressing the gaps in labour welfare and for being more inclusive and equitable.

Implementational Challenge of the Policy

While the steps taken by Karnataka government are commendable and much-needed, there are several legal and ethical challenges that need to be addressed before a complete enforcement of this policy is possible. The introduction of menstrual leave policies in various jurisdictions has revealed multiple implementation issues that Karnataka's policy may similarly encounter.

Japan was the first country in Asia to incorporate menstrual leave into its labour laws. However, as late as in 2014, only 0.9% of surveyed women reportedly availed it. This can be seen a result of social and cultural stigma surrounding menstruation. In Indonesia, although women were legally entitled to take leave for the first two days of their cycle when experiencing period pain, many employers did not let them take such leaves, because they were ignorant to the actual law. Similarly, in certain provinces of China, women could claim menstrual leave only upon producing a medical certificate, which was a requirement that was not restrictive and impractical.

Menstrual leave in India has always been a deeply contested policy issue. In July 2024, the Supreme court rejected the plea for menstrual leave, reasoning that such policies can further divide the labour work force on the basis of gender, while advising the Centre to formulate a uniform policy in consultation with the States. Earlier initiatives like the Menstrual Hygiene Policy and the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022, which proposed paid menstrual leave, have remained in legislative uncertainty. The already existing state level policies implemented by states like Bihar and Kerala have not included the private sector within their ambit.

These setbacks can be attributed to several factors, including social taboos around menstruation and the reluctance to discuss it openly, the potential reinforcement of gender divides in the workplace because of a bias towards hiring male candidates, and the absence of any consolidated and uniform legal framework. Menstrual leave policies have worked in Kerala and Odisha, but these policies have not been implemented in the private sectors, and have only remained limited to the public sector.

This is why the menstrual leave in Karnataka is a complete shift from existing policies. However, the policy may encounter similar challenges faced by already existing ones. It has already become a source of concern because it is not accompanied by any clear legal framework, enforcement mechanisms or punitive measures. This leaves considerable room for women to be exploited by employers. Menstrual leave encourages open dialogue and communication about menstrual health and the overall reproductive health, but it also raises privacy and dignity concerns.

While menstrual health is extremely important to protect the dignity of all, it can also violate the right to privacy and bodily autonomy under Article 21 of the Constitution. If a workplace lacks sensitivity and discretion, female employees may not want to share personal details of their menstrual health. In rural or less literate areas, there is a lot of social and cultural stigma attached to menstruation. This can potentially discourage female employees from seeking or talking about such leaves at all.

There are numerous benefits of the inclusion of private sector in this policy. However, practical challenges always exist and need to be addressed before a complete enforcement becomes possible. Private enterprises are already harder to regulate, and from an economic point of view, smaller enterprises have few resources and less amount of labour. This makes paid menstrual leaves financially burdensome.

Therefore, some employers may develop a hiring bias towards men if this policy leads to the perception that hiring men is more cost effective or reliable. In the private sphere, where competition is everything, women might themselves refrain from seeking menstrual leaves due to reasons ranging from performance-based targets, and bonuses, and the fear that availing this leave will affect their career growth or professional image.

Another major shortcoming of the policy lies in its exclusion of the informal sector, which is violative of the principles of equitable welfare granted under Fundamental Rights as well as DPSPs of the Constitution. Women experience some of the harshest working conditions and the highest levels of exploitation in the informal sector. Being already marked by instability and lack of regulation, the informal sector makes up for a significant portion of India's female workforce, many of whom face severe menstrual and reproductive health challenges. The policy needs to include these workers to be truly equitable and inclusive for all women across different segments of the labour market.

Conclusion

The Karnataka menstrual leave policy is an important step in the right direction because it includes the private sector in its ambit. This can potentially foster an equitable work environment. This is why this policy serves a noble purpose, and the blog only aims to help address several potential challenges so that it can be effectively enforced in an inclusive manner.

This policy needs to be accompanied by a clear law, which needs to be accompanied by strict enforcement mechanisms. No employer should be allowed to ask for proof of menstruation through medical certificates because this becomes a privacy and dignity concern.

Further, government sector regulation is easier in comparison and that is why such menstrual leave policies have been confined to public sector up until now. To ensure that private companies are following the guidelines, a stricter compliance regime would need to be instituted. Annual gender equity data and gender audits need to be introduced to ensure that this policy does not result in hiring biases, or promotion and bonus biases towards men. This can also include establishment of grievance redressal systems, particularly in reference to the private sector.

If seen from an economic point of view, a phased approach can be implemented to make the enforcement of this policy more practical. Small enterprises, that rely on less workers from the start can be encouraged through incentives to follow such policy. The policy can be amended to provide flexible work options, like work from home, or shorter working hours instead of full day paid leaves.

Lastly, the informal sector is the hardest to regulate. A possibility that can be explored is integration of menstrual leave with already existing welfare schemes like MNREGA, allowing for daily wage compensation or small health allowances. These can include sensitisation and awareness generation programmes which need to be conducted across all levels of the society. In conclusion, the steps taken by the Karnataka state government are important and should be followed throughout India, but only after the challenges are addressed so as to ensure that this menstrual leave empowers, and does not discourage.

False Promises: The Crumbling Legal Aid Framework and the Price of Underfunding

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Introduction

Almost half a century back that the "Right to Free Legal Aid" was recognised in Article 39A of the Constitution through the 42nd Amendment of 197G which was strongly affirmed by the Supreme Court in Hussainara Khatoon M Ors. v. Home Secretary. Additionally, this was emboldened in Articles 14 and 22(1) strengthening equality before the law. Furthermore, the Rule of Law which is the animating principle of the Republic's constitutional framework requires uniformity before the court of law. However, the reality tells a different story where a clear disparity exists between the haves and have nots. Even when both sides stand on the same level in front of the bench, equity is conspicuously absent leading to distorted outcomes and a threat to the greater goals of justice. Although, the principles of legal aid are broadly embedded in India's legal framework from constitutional provisions to Legal Services Authorities Act,1987 and further reiterations of the apex court. And legal aid clinics and other institutions are mushrooming under the aegis of National Legal Services Authority (NALSA) and various state authorities. Yet, these efforts remain a drop in the ocean for the mammoth needs of legal aid in India and are further weakened by insufficient funding. This systemic failure creates a dichotomy where justice gets reserved for those who could 'afford' it, undermining the Rule of Law itself.

The most glaring failure of this supposedly strong legal aid apparatus is the persistent and severe underfunding crisis. The Indian Justice Report reflects that per capita legal aid spending in limited to Rs G.4G, it further indicates the abysmal 0.49% of states' justice budget constituted by legal aid. In addition, the report published by Centre for Research and Policy (CRP) of the Supreme Court reveals that legal aid clinics in law colleges and universities are plagued by underfunding, consequently hurting the access to justice.

In the world's most populous country where the citizenry widely relies on the judiciary for justice shaping their liberty and lives such gross absence erodes trust in the democratic framework. In a single corporate case at many times more money is spent than the combined legal aid budgets of multiple states. Furthermore, as reflected in the IndiaSpend Report, legal aid lawyers are severely underpaid. Finally, this creates a disparity of representation where constitutional promises to the marginalized citizens become illusory promises with limited grounding.

The funding crises has a far-reaching impact wherein administrative breakdowns coupled with limited technology apparatus propels the systemic failure of the legal aid architecture. Legal aid for the poor is transformed into 'poor legal aid' as aptly remarked by the former CJI U.U. Lalit in 2022. This deplorable situation can be further gauged by the 2018 study by Commonwealth Human Rights Initiative (CHRI) which indicates that only five legal aid lawyers are available per one lakh people. Furthermore, as reflected by a study, almost 20% legal aid counsels identified lack of proper infrastructure such as chambers for interacting with clients, 23% blamed low honorarium and 34% complained about delay in processing payments as frustrations with system which is illustrative of the ills plaguing the legal aid system in India. Moreover, many of these lawyers are engaged not only in representing clients but must partake in administrative activities taking up crucial time and resources without sufficient pay. Alarmingly, a study by Justice S. Murlidhar in 2004, showed how majority of funds are used up for administrative activities rather than for legal aid itself. Also, lawyers who do step forward for providing aid face the worst possible treatment, miserable working conditions, limited payments, threats to life and ignorance of gender sensitivities. In extension to this in the age of technology legal aid seems to fall behind as it has failed to inculcate rapid advances in AI which could have helped to bridge gaps in meeting justice for the masses as remarked by Justice Surya Kant. It can be concluded that the legal aid framework is prone to cataclysmic crises resultant of administrative failure and limited technological adaptation.

The systemic issues associated with legal aid in the country are not only associated with administrative failures, more broadly they represent a betrayal of the constitutional promise of equality and justice. This situation creates a problematic two-tiered system where the privileged get justice and the underprivileged are denied even the possibility of justice. It is a system of institutionalized inequality based on economic capacity of litigants. The deplorable quality of legal aid forces those who need it the most, the Adivasis, Dalits and women to stake their whole livelihoods and even their lives to get justice through hiring expensive courtroom lawyers. In Ramanand @ Nandlal Bharti v. State of UP the Supreme Court observed how legal aid counsels are just for namesake and fail to provide the needed representation. According to the Access to Justice Report, 201G, more than 90% of litigants earn less than Rs 3 lakhs per annum and even these people do not prefer free legal aid truly reflecting the miserable conditions. Furthermore, according to India Justice Report, 2019, over 80% of Indian population is eligible for free legal aid yet only 15 million have taken its benefit indicating how people avoid it because of its flawed structure. These data points show how poor litigants are either forced to manage with overworked legal aid lawyers or must stake the savings of their lives, in stark contrast with the elite ones who face no similar troubles. This situation is an anathema to the core tenets of the rule of law and Article 14, which vouch for equality before the law, clearly absent in the face of a crumbling legal aid structure. The integrity of the entire justice system comes in question when economic abilities, not the merit of a case decides its outcome eroding public trust on the ideas of justice and law. This betrayal reduces legal aid from an instrument of social justice to one that perpetuates the very inequalities it was created to eliminate.

Conclusion

In recent years the glitter of the legal aid framework has faded, revealing contradictions from its essence requiring urgent course correction. The underfunding crisis goes beyond administrative and technological failures to violating the core principles of the constitution. Four decades from Hussainara Khatoon we have surely fostered an enviable legal aid mechanism but have failed to fund the progress which is further not enough and requires course correction. The present façade leaves behind our fellow citizens who lack sufficient capabilities to litigate for justice being women, children, gendered minorities, disabled people, Adivasis and Dalits. The path forward requires us to acknowledge that legal aid investment isn't a mere social commitment but is a core constitutional promise to the people of India. Future reforms must move to implement adequate funding and infrastructure while keeping in mind the rights of both the litigants and legal aid lawyers. Finally, only when India can ensure commensurate legal aid funding true justice delivery can be possible bridging the gap between law in the books and lived law, else it remains a mirage for most of the population.

Consent, Choice, and Dignity: Reproductive Rights for all Abilities

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Introduction

Reproductive rights are an essential part of the human dignities and autonomy. The WHO (World Health Organisation) affirms that "Reproductive rights are based on the acceptance of the fundamental right of all couples and individuals to choose freely and responsibly the number, spacing and timing of their children as well as to have access to the necessary information and means, and to the highest standard of sexual and reproductive health." Such rights are also supported by several international treaties like the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Convention on the Rights of the Child (CRC).

In India, the right to reproduction is acknowledged as a basic right by the Constitution of India's Article 21. Besides, there exists a number of other legal provisions that secure reproductive rights of women. These include Medical Termination of Pregnancy Act, 1971 (MTP Act) and The Prevention of Child Marriage Act, 200G (PCMA). The acts passed by the law-making body are aimed at safeguarding the rights of women, thus giving them the power to decide what is best for them.

The right to reproduction encompasses not only the right to have children but also the right to basic reproductive health care, including the use of drugs for contraception, abortion, and the right to receive maternity benefits and to be taught sex education in public schools or any other way. Besides, the reproductive rights grant the permission to make the decisions about reproduction such as the number of children, when to have them and how far apart they should be and such decisions must be made without violence, coercion, and discrimination.

In India, women and girls make up 44% of the overall population living with disabilities. People with disabilities are often subjected to unequal treatment and are denied various social, political, or economic rights which are typically accessible to those without disabilities. While ensuring equal access to rights and services for persons with disabilities is still a challenge in India, women with disabilities face further barriers, including bias, discrimination, neglect, violence, and social exclusion, which obstruct their ability to fully enjoy their rights. The question of their ability to make perform basic tasks and make decisions regarding the pregnancy and its aftermath which an able-bodied women can do, leads to the stigma and infringement of their fundamental rights. In a society like India where mental and physical disability is still a stigma, disabled women face double discrimination based on disability and gender leading to higher maltreatment, exploitation and marginalization.

Reproductive Rights

The term 'reproductive rights' refer to the entitlements granted to both men and women, encompassing the freedom to access information and make informed decisions about their fertility, choose appropriate contraceptive methods, and, in the case of women, the right to undergo a safe and voluntary abortion. These rights are basic and fundamental to lead a life with personal liberty and dignity for any individual.

The need for the reproductive rights of women has been explained by Development Alternatives with Women for a New Era (DAWN). It states that reproductive rights include the right to have a safe abortion and right to control the reproductive functions and that the health of women should be given utmost importance while she is pregnant. The woman is the one who truly endures the suffering and bears immense pain. The acknowledgement of these rights was initiated by international conventions and thereafter various legislations were enacted by law making bodies of various countries for the implementation of those rights.

The first step in acknowledgement of reproductive rights was taken in Proclamation of Tehran, adopted by International Conference on Human Rights, 19G8.This document for the first time recognized the right of parents to "determine freely and responsibly the number and the spacing of

their children," and formalized the right to reproduction within the international human rights framework. Further, UN General Assembly, 19G9 affirmed these rights and highlighted the significance of family welfare and the role of parental responsibility in making reproductive decisions. Then international conference on population and development, 1994 endorsed community's commitment to prioritize women's health and rights, and emphasized on free and responsible decisions, access to information and means, comprehensive reproductive health care and freedom from discrimination, coercion and exploitation.

In India, the provisions for protection of reproductive rights are governed by Medical Termination of Pregnancy Act, 1971 and The Prevention of Child Marriages act, 200G. The right to make reproductive choices is also safeguarded by constitution under article 21. As per MTP Act, consent of women is necessary for any kind of termination of pregnancy with the exception of any girl below the age of 18 years or mentally ill person. This law forbids abortions that are either compulsory or might cause any health problems for the mothers. PCMA sets 18 years as the minimum legal age for women's marriage and thus, aids in the prevention of early and forced pregnancies until the girls are physically and emotionally ready to make their own choices. Such laws contribute to the reduction of maternal and infant death rates and the occurrence of health complications for a long time.

Reproductive Rights of Women with Mental Disabilities

Reproductive rights are core to the independence, respect, and equality of all persons with disabilities, including both physical and mental ones. However, the abuse of rights related to reproduction has become a common practice as a result of the very discriminatory systemic practices and societal prejudices against the disabled community. India witnessed a major breakthrough in the case of Suchita Srivastava v. Chandigarh Administration, wherein the Supreme Court declared that a woman with intellectual disabilities is entitled to the entire range of reproductive rights by law, including the choice of carrying a pregnancy to term. It clarified that reproductive rights come under personal liberty as per Article 21 of the Constitution, and pointed out that the requirement of obtaining informed consent is critical even in the case of individuals with intellectual disabilities. This decision is consistent

with global obligations such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which was signed by India in 2007, highlighting the importance of acknowledging the reproductive freedom of people with disabilities.

These legal declarations have not eliminated the violations. In 2012, a case in Bihar where about 53 women with varying degrees of disabilities were compelled to undergo sterilization in unclean and unsafe settings shocked the whole nation. The Supreme Court In the Devika Biswas v. Union of India case, harshly criticized this practice and highlighted the need for proper consent. The court also expressed disapproval of the government policies that offer monetary rewards for achieving sterilization targets, which lead to the poor and marginalized being the hardest hit. These instances are a clear indication of the stark contrast between the legal protections and the actual conditions of the physically challenged people who go through such hardships as inaccessible medical care, lack of adequate sex education, and social stigma that questions their ability to take informed decisions concerning their reproduction rights. To remedy this situation, the first step is the enactment of laws that guarantee accessibility, followed by education and the enforcement of legal rights of the physically challenged thereby creating a situation where their reproductive freedom is acknowledged and secured.

Barriers to Reproductive Justice

To understand the reproductive rights of persons living with disabilities, one has to be aware of the particular difficulties that these individuals experience. The physically disabled, for example, often encounter barriers like healthcare centers that are not equipped for their needs, absence of proper medical tools, and wrong assumptions by doctors about their sexual and reproductive requirements.

Inaccessible healthcare and facilities

People with disabilities encounter significant barriers to reproductive healthcare access since most hospitals and clinics still haven't been built with the necessary facilities for them. The absence of equipment such as ramps, adjustable beds, and accessible washrooms makes it hard or even impossible to perform check-ups. A North India study discovered that nearly fifty percent of women with disabilities were unable to access SRH services because of poor infrastructure and transport. Another researcher, Abha Khetarpal, reported that 3G% of women considered the exam tables to be too high and difficult to use. These cases are indicative of the urgent need to make healthcare facilities more inclusive and friendly towards persons with disabilities.

Societal misconceptions and stigmas

The Societal stigma and bias are the other most significant problem which they have to face. Society has a misconception about people with physical disabilities that they have no sexual feelings or desire to be parents. Due to these convictions, health care professionals might overlook the reproductive health issues of patients, thereby providing less attention or care to them. This situation not only degrades the standard of health care they receive but also infringes on their right to control their own reproductive decisions.

Research has demonstrated that such assumptions are quite prevalent. A paper published in the Journal of Ethics stated that certain medical practitioners erroneously think that disabled persons are not sexually engaged, thus resulting in poor access and inadequate quality of care. Likewise, a research done in Nepal discovered that a lot of health staff had unfavorable attitudes towards the reproductive rights of disabled women, which discouraged those women from coming forward for assistance.

Psychological Barriers

The emotional struggles of disabled individuals usually come from the same sources such as society's unfair treatment and ignoring them. Sometimes, people losing their self-esteem and having mental health problems are the consequences of such psychological barriers. The fear of being judged or not receiving proper care could be among the reasons why they do not get reproductive health services. That is why the first step toward solving the problems is to provide the environment that will recognize and support their reproductive rights and needs.

According to studies, discrimination can be a major cause of mental health problems such as anxiety and depression, which in turn affect the quality of life and daily activities of disabled people. In addition, constant discrimination can make the affected people feel unworthy and try to avoid social interactions, thus indirectly aggravating their mental health issues. Therefore, it is crucial to create inclusive healthcare and societal attitudes that not only support but also recognize the existence of people with physical disabilities, so that they can be given complete and compassionate reproductive healthcare services.

The aforementioned obstacles do not only hinder the provision of needed services but also contribute to the myths that people with physical disabilities are not sexually active or should not be parents. Similarly to mental disabilities, the legal situation surrounding these also is very delicate and, in some cases, even the legal frameworks meant for protection do in fact contribute to the person's loss of autonomy. The Medical Termination of Pregnancy Act, 1971 (MTP Act), for example specifies that the pregnancy of a "mentally ill person" can be terminated only with the written permission of her legal guardian. Nevertheless, the Act does not define terms like "mentally ill" and "treatment" which lead to various interpretations and in some instances to misuse. In Suchita Srivastava v. Chandigarh Administration, the Supreme Court differentiated between 'mental illness' and 'mental retardation' saying that a woman with mild mental retardation has the right to make reproductive choices and that her consent is the decisive factor. This judgement called attention to the importance of freeing people with mental disabilities from the shackles of their conditions.

Conclusion

The legal frameworks that include the MTP Act, RPwD Act and the Supreme Court judgments like Suchita Srivastava v. Chandigarh Administration and Devika Biswas v. Union of India have already provided the basis for individuals with disabilities reproductive rights protection, still a considerable gap between the legal provisions and their enactment exists. To bridge this gap legal reforms alone will not do, but society perception change, widespread education and provision of disability friendly health care services would be necessary. It is only through an all-rounded approach that we can ensure the reproductive freedom of all people, irrespective of their physical or mental condition, being fully acknowledged and protected.

Reproductive rights are essential to living with dignity and freedom which is why people with disabilities in India still suffer unfair treatment and have many difficulties in availing of these rights. Laws do exist but social stigma, poor access to hospitals, and lack of knowledge still hinder their situation. Therefore, India needs to improve the accessibility of its healthcare, respect the right of consent, and alter the society's perception about disabilities. If these things happen, then individuals regardless of their physical or mental condition will be able to claim their entire reproductive rights.

Exemptions to Pre-Institution Mediation and Settlement, and IP 2018 Amendment to the Commercial Courts Act

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Introduction: 2018 Amendment

The 2018 amendment to the Commercial Courts Act 2015 ("CCA") introduced the feature of Pre-Institution Mediation and Settlement ("PIMS"). Section 12A of the Act, inserted via the amendment, makes it mandatory for any commercial dispute to undergo pre-institution mediation and settlement before a suit can be instituted. It serves as a remedy that needs to be exhausted prior to the initiation of a suit. The Legal Service Authority is authorized to handle PIMS.

This pre-institution step can be bypassed in cases where the plaintiff is seeking an "urgent" interim relief under the provision in Section 12A (1). However, "Urgent" interim relief has not been defined under the CCA. The courts have also not ruled on the contours of what constitutes an urgent interim relief or the nature and the standard of such urgency in claiming relief in cases of pre-litigation mediation.

Judicial Pronouncements on PIMS

The Supreme Court of India in Patil Automation Private Limited & Ors. v Rakheja Engineers Private Limited held that PIMS is a mandatory step according to Section 12A of the Commercial Courts Act. Plaints filed without the exhaustion of the measure of PIMS can be rejected under Order VII Rule 11 of the Code of Civil Procedure 1908 ("CPC"). It is imperative to note that the decision pertains to a case that was not a scenario of "urgent" relief. The recourse to rejection is to apply prospectively from 20th August 2022. Violation of the provision for PIMS for any plaint or counterclaim filed before 20th August 2022 would not be liable to rejection under the provisions of CPC for non-compliance or non-exhaustion of the remedy of PIMS.

The Supreme Court in Yamini Mohan v T.K.D. Keerath ruled that the Commercial Court should look into the facts and circumstances to decide whether the nature of the interim relief sought is urgent. The Supreme Court has given a subjective interpretation to "Urgent" relief.

A plain reading of the provision makes it clear that a commercial suit which does not contemplate an urgent interim relief ought not to be instituted before a Court unless the party exhausts the remedy of pre-institution mediation. The Apex Court emphasized the need for expedited resolution of commercial disputes and concluded that pre-suit mediation is necessary in such cases where an urgent interim relief is not involved or sought. The Hon'ble Court, while declaring the mandatory nature of Section 12-A of the Act, held that "any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11 of CPC".

The Delhi High Court in Chandra Kishore Chaurasia v R.A. Perfumery Works Pvt. Ltd. ruled that a plaintiff seeking urgent interim relief is not required to exhaust the remedy of PIMS. The court observed that there is no ambiguity regarding the fact that a suit contemplating urgent interim relief is excluded from the provisions of Section 12A (1) of the Commercial Courts Act. PIMS becomes necessary in cases where urgent relief is not sought. Urgency or the ambit of urgent interim relief is to be determined solely based on the nature of the pleadings and relief sought by the plaintiff on a case-by-case or situational basis. When the plaintiff has sought urgent interim relief, the suit cannot be dismissed on the grounds of non-exhaustion of PIMS.

Intellectual Property Matters

The Delhi High Court in Bolt Technology v Ujoy Technology discusses the two classes of commercial disputes contemplated under Section 12A of the Commercial Courts Act. Hon'ble Justice Prathiba M. Singh highlighted the significance of interim injunctions in Intellectual Property matters. This acts in consideration of the interests of consumers and the prevention of confusion and fraudulent practices in the marketplace. The urgent relief prayed for in such cases is to be looked at in the light of the facts and circumstances of the case. After such an analysis, the court may grant an exemption from PIMS. This substantiates that PIMS is not a mandatory requirement in suits related to intellectual property seeking urgent interim relief.

The Madras High Court in Micro Labs Limited v A. Santhosh rejected the plaintiff's claim, given the fact that there was a considerable delay in filing the suit after sending a cease-and-desist notice to the opposite party. This considerable delay, therefore, takes out the contention of urgent relief. The case of Boehringer Ingelheim International GMBH and Ors. v Nexkem Biotech Pvt. Ltd. and Ors. touches upon the cases mentioned earlier and does conclude that cases that contemplate urgent interim relief are not mandatorily required under Section 12A of the Commercial Courts Act to exhaust Pre-Institution Mediation and Settlement. Reddys Laboratories Limited v. Smart Laboratories Pvt. Ltd. applies the discussed cases for an injunction order in a Trademark infringement case. The High Court of Delhi discusses the non-mandatory manner of the PIMS in matters related to Intellectual Property, where there is a contemplation or contention of urgent interim relief. Turning a blind eye to such reliefs sought would result in irreparable harm or loss to the holder of such rights.

Conclusion

Therefore, in light of the above-discussed judgments and the provisions in Section 12A (1) of the Commercial Courts Act, PIMS is not a necessity for suits seeking urgent interim relief, including matters related to Intellectual Property Rights. In the scenario that PIMS is made mandatory, the plaintiff filing the suit may be put to irreversible hardship and loss, and it is in the public interest that injunctions are granted to avoid confusion, protect goodwill, and curb misuse.

Revisiting Order VII Rule 14 CPC: A Legislative Oversight and Judicial Interpretation

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Introduction

The Code of Civil Procedure, 1908(hereinafter "CPC") governs the practice of the civil disputes as enumerated in section 9 of CPC. Since its inception, CPC has undergone innumerable amendments, each aimed at the speedy settlement of civil disputes, ensuring access to justice, irrespective of the social backgrounds of the parties.

Civil proceedings are aimed at ensuring adjudication of the disputes with orderly presentation of the claims, followed by the defences and evidence before the civil court. The proceedings commence with the filing of the pleadings, followed by the framing of the issues. There is a recording of evidence through examination, cross-examination, and re-examination of the witness. Among these stages, cross-examination is the most pertinent stage as it enables the court to check the credibility and veracity of the witness statements, which form the basis of the decree. The procedure of the cross-examination by the principal is confined to the witness of the opposite party.

However, the present blog identifies the apparent anomaly in the procedural scheme that found its way into the code through the amendment. It has been identified that sub-rule (4) of rule 14 of order VII of CPC should be rectified, which deals with the "production of a document on which the plaintiff sues or relies." The same has been pointed out by the Supreme Court in Salem Advocates Bar Association, Tamil Nadu v. Union of India.

The law commission in its 1G3rd report titled "The Code of Civil Procedure (Amendment) Bill, 1997" suggested amendments in rule 14, which stated that though the plaintiff is under an obligation to produce the documents which are in her possession or power. But the court clarified that if the plaintiff is under an apprehension that original documents may be tampered with, under the custody of the court, then the plaintiff must be exempted from producing the original documents.

The court accepted these recommendations, which led to the culmination of statutory amendments in Rule 14 twice in 1999 and 2002.

Sub-rule 1 imposes a procedural obligation on the plaintiff to produce documents in her power and possession in support of her claim; she must enter all such documents in the list of documents. Also, the plaintiff has to file a copy of the documents with the plaint. Sub-rule 3 states that when the plaintiff is presented and the document is added to the plaint, but was not presented before the court. The plaintiff will not be able to produce the same without the leave of the court.

A parallel provision existed in Rule 18 order VII, which was titled "Inadmissibility of document not produced when plaint is filed" but it correctly mentioned "the defendant's witness". This rule was repealed by the 2002 amendment and was instead inserted as a sub-rule (4) in Rule 14 by the same amendment. This amendment in rule 14 is now the foundation of the anomaly discussed in this article, as the legislature, instead of wording the provision as 'defendant's witness', used 'plaintiff witness'.

Anamoly

Sub-rule 4 of rule 14 of Order VII mentions the cross-examination of the plaintiff 's witness. A plaintiff cannot, except in circumstances provided under section 154 of the Evidence Act, ask questions to his own witness. Sub-rule 3 of rule 1 of order XIII makes the position evident by the expression "cross-examination of the witness of the other party", which makes the anomaly lucid. Therefore, we come to the conclusion that the word "plaintiff's witness" in rule 14 order VII must be substituted with defendant's witness, otherwise it is contrary to the legal commonsense.

Additionally, Rule 1(3)(a) of order XIII provides for the provision that the pleader shall produce the document on which his arguments rely. Sub-rule 3 of Rule 1 of the Order XIII reads:

> *"Nothing in this sub-rule 1 shall apply to documents-*
>
> *a) Produced for the cross-examination of the witness of the other party:*
>
> *b) Handed over to a witness merely to refresh his memory"*

This provision implies that the cross-examination will be conducted by the party opposite to the party that has produced the document in the court. Rule 1 (3)(a) provides for the production of documents by the defendant, but the sub-rule states that the cross-examination of the plaintiff's witnesses will be conducted. And therefore, sub-rule 4 has to adhere to the principle laid down in rule 1 (3)(a)

It is also pertinent to note that section 145 of the Indian Evidence Act, which deals with "cross-examination as to previous statements in writing." This provides an opportunity to the opposite party to cross-examine the witness. This provision has to be read with section 154 of the Evidence Act, which states an exception to the general rule laid down in section 145 of the Evidence Act. The rule provides an opportunity to cross-examine the party's own witness in case the witness turns hostile.

In Rule 14, the prerequisites to cross-examine the witness are not fulfilled. Therefore, there is an urgent need to amend Rule 14 Order VII.

Judicial Interpretation

The anomaly created by Order VII Rule 14 of the Code of Civil Procedure, 1908, arises when the rule is read literally; it will effectively bar a plaintiff from using documents not filed along with the plaint and from cross-examining the defendant's witnesses. This creates a significant contradiction within the procedural framework of civil litigation and undermines the fair trial principle. Several Supreme Court judgments have pointed out this conflict and emphasised the urgent need to reconcile Rule 14 with other related provisions like Order VIII Rule 1(3)(A) of the code and overarching principles of evidence law like Section 145. These decisions have aimed to give temporary guidelines which balance the strict procedural mandates of Rule 14 with the substantive rights of the parties to present their case comprehensively and fairly.

The Supreme Court in Mohhamed Abdul Wahi v. Nilofer M Anr.,addressed the implications of restricting the use of such documents during cross-examination. The Court underscored that the ability to put forward questions and receive answers from "either party with the aid of the relevant documents" will risk the party's right to substantiate and defend their claims with full veracity. To deny parties this opportunity is against the concept of a fair and equitable trial. Therefore, the Court held that documents may be used during the cross-examination of witnesses from either side, and any restriction would constitute an obstacle to ensuring justice.

This interpretation reinforces the principle that a party's right to question a witness with the aid of relevant documents is fundamental to an effective adversarial process. Thus, the anomaly in Rule 14(4) is not merely a technical defect but has substantive consequences in the administration of justice, and the Court's approach attempts to restore the balance between procedural requirements and parties' rights to a fair trial.

While addressing the drafting error in the latest version of Order VII Rule 14 the Court in Salem Advocate Bar Association, Tamil Nadu v. Union of India, the court clarified that the words "plaintiffs witness" is a drafting mistake by the legislature and it ought to be read as "defendant's witnesses". The court substantiated this reasoning by drawing parallels to a similar provision contained in Order VIII Rule 1A (4), which correctly mentions the witnesses of the opposing party. Therefore, the court held that unless the legislature corrects the drafting mistake by amending the provision, the rule of interpretation laid down by this court shall be the rule of law.

Recommendations

The foremost recommendation, which was also emphasised by the Law Commission report, Order VII Rule 14 is legislative amendment to harmonise its provisions with those of other Orders and the principles of evidence law. For instance, Order VIII Rule 1A explicitly grants the defendant the liberty to cross-examine witnesses of the opposing party using relevant documents. A similar provision ought to be incorporated within Rule 14 since both rules fundamentally regulate the production and use of documents by parties in a civil suit. Treating them consistently is logical as they represent two sides of the same procedural coin.

Further, though the rule mandates that documents must be filed along with the plaint, it is important that courts be allowed discretion to admit additional documents at later stages of the trial. For this purpose, Rule 14 should expressly provide criteria or guidelines that clarify when and under what circumstances the court's leave may be granted. Such flexibility is crucial to uphold justice by enabling both parties to effectively present their cases, especially where evidence emerges or becomes relevant only during the course of the trial.

To curb the abuse of Rule 14 applications, it is recommended that cost provisions similar to Section 35B of the CPC be introduced. This would enable courts to impose recoverable costs, deterring frivolous or tactical resistances to document production and compensating the opposing party for delays and inconvenience.

Conclusion

Even though Order VII Rule 14 only constitutes a small part of the Code of Civil Procedure, its impact on civil cases is quite large. The current version of this rule causes some real issues because of the way it's worded, which creates some serious inconsistencies with other rules and provisions. The drafting mistake, especially where it says "plaintiff's witnesses" instead of "defendant's witnesses," isn't just a simple clerical error but it makes it harder for parties to properly present their case and challenge evidence, which affects the fairness of trials and highlights why the amendment in the language is really important. Courts have tried to fix this problem on a case-by-case basis by giving guidelines on how to interpret the rule, but these are temporary fixes, and only a proper change in the law will fully solve the confusion and problems caused by the rule's wording.

Procedural law forms the backbone of an efficient justice delivery system. Any anomaly or inconsistency within procedural statutes that distorts substantive rights or fairness must be addressed immediately. The reform of Order VII Rule 14 offers an opportunity to strengthen civil procedure to better serve the twin pillars of litigation: finality and fairness. Legislative amendment, supplemented by judicial sensitisation and clear court guidelines, will align Rule 14 with contemporary demands of the civil justice system, ensuring that parties can comprehensively and fairly prosecute or defend their claims without undue procedural hindrances.

Set-Off and Counter-Claim under the Civil Procedure Code, 1908

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Introduction

Civil litigation is not always a one-way street. While the plaintiff initiates proceedings seeking relief, the defendant may also have a legitimate demand against the plaintiff. Requiring the defendant to file a separate suit would not only duplicate judicial effort but also delay justice. The doctrines of set-off and counter-claim under the CPC permit defendants to assert such claims within the same proceedings.

Set-off allows the defendant to reduce or extinguish the plaintiff's monetary claim by adjusting it against a debt owed by the plaintiff. Counter-claim, on the other hand, enables the defendant to assert an independent cause of action against the plaintiff, often going beyond a mere monetary adjustment. Both devices serve the overarching goal of procedural economy and comprehensive adjudication values repeatedly emphasised by the Supreme Court of India.

Historical Development

English Common Law Roots

The concept of set-off first emerged in 18th-century England as a statutory innovation through the Statutes of Set-off (1729 and 1735). Before these enactments, a defendant could not deduct a plaintiff's debt from his own liability, he had to file a separate suit. These statutes permitted mutual debts to be adjusted in the same action.

Counter-claims developed later through the equitable jurisdiction of the Court of Chancery, which allowed defendants to seek equitable relief against plaintiffs within the same suit. With the Judicature Acts of 1873–75, the common law and equity systems merged, and counter-claims became a recognised procedural device in all divisions of the High Court of Justice.

Reception into Indian Law

The Code of Civil Procedure, 1908, incorporated legal set-off in Order VIII, Rule G from the outset. Counter-claim provisions were absent in the original Code; defendants had to file independent suits for affirmative relief.

This changed with the Code of Civil Procedure (Amendment) Act, 197G, which inserted Rules GA–GG into Order VIII, empowering defendants to raise counter-claims, a move inspired by English practice and recommended by the Law Commission of India in its 27th and 54th Reports.

Statutory Framework in the CPC

Set-Off (Order VIII, Rule 6)

Order VIII, Rule G provides:

> *"Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff… the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the court, present a written statement containing the particulars of the debt sought to be set-off".*

Essential Conditions for Legal Set-Off:

- The plaintiff's suit must be for recovery of money.
- The defendant's claim must be for an ascertained sum of money.
- The sum must be legally recoverable on the date of the plaintiff's suit.
- Mutuality of parties in the same capacity is required.
- The claim must fall within the pecuniary jurisdiction of the court.

Counter-Claim (Order VIII, Rules 6A-6G)

The counter-claim provisions state that a defendant may set up any right or claim "whether such counter-claim is in the nature of a claim for damages or not," against the plaintiff's claim.

Distinctive Features:

- A counter-claim is treated as a plaint in a cross-suit.
- It can be based on a cause of action accruing before or after the filing of the suit, but before the defendant has delivered his defence.
- The plaintiff may file a written statement in answer to the counter-claim.
- The court delivers a single judgment deciding both the suit and the counter-claim.

Legal vs. Equitable Set-Off

Legal Set-Off

A strict statutory right under Order VIII, Rule G, available only where both claims are definite, ascertained sums and mutually due.

In the case Union of India v. Karam Chand Thapar M Bros (2009), the Supreme Court held that legal set-off requires the defendant's claim to be an ascertained sum due and recoverable from the plaintiff.

Equitable Set-Off

A discretionary, judge-made remedy permitting set-off where the cross-demands arise out of the same transaction or are so connected that it would be unjust to enforce one without considering the other.

In the case Chokalingam Chetty v. Seethai Achi (1927), the Privy Council recognised equitable set-off as part of Indian law, stressing the need for close connection between claims.

Counter-Claim: Scope and Judicial Limits

Counter-claims go beyond monetary adjustments; they can encompass claims for injunctions, declarations, or damages arising from unrelated transactions. However, the Supreme Court has clarified that:

- Counter-claims must be against the claim of the plaintiff and not solely against co-defendants (*Rohit Singh v. State of Bihar (2005)*).
- They must respect limitation laws applicable to independent suits.
- Courts retain discretion to reject counter-claims likely to cause undue delay.

Procedural Nuances and Timings

When to Plead

Set-off: In the written statement, ideally at the first opportunity.

Counter-claim: Before delivering the defence, though courts may permit later filing before issues are framed (Gayathri Women's Welfare Assn. v. Gowramma (2011)).

Jurisdictional Constraints

Both remedies must fall within the court's pecuniary jurisdiction.

Court's Discretion

Courts may disallow a counter-claim if it would prejudice fair trial or overly complicate the original suit.

Comparative Analysis Table

Feature	Set-Off	Counter-Claim
Basis	Order VIII, Rule G	Order VIII, Rules GA–GG
Nature	Defence	Defence and Independent Claim
Scope	Ascertained monetary claims	Monetary & non-monetary claims
Relationship to Plaintiff's Claim	Must be mutual debts	Can be independent
Treated as Cross-Suit	No	Yes
Limitation Date	Date of plaintiff's suit	Date of filing counter-claim

Conclusion

Set-off and counter-claim are not mere technicalities; they are strategic tools in the litigator's arsenal. A sound understanding of their statutory preconditions, procedural timing, and judicial interpretation can make the difference between winning and losing in complex civil disputes. As Indian courts continue to emphasise efficiency and comprehensive resolution, these provisions will remain indispensable.

Abortion Autonomy: Mapping India's Place in Global Debate

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Introduction

In a world torn between liberalization and regression of reproductive rights, India finds itself at a unique legal crossroads. Recent legislative reforms appear progressive but the reality for many women and gender-diverse persons remains blurred. India where legalisation of abortion happened in 1971 with the enactment of Medical Termination of Pregnancy (MTP) Act. It is estimated that G million abortion take place every year out of which 2 million are spontaneous and 4 million are induced , out of the induced one also 5 lakhs are legal and rest are illegal.

In 2022, the Supreme Court's judgment in X v. Principal Secretary was regarded as a great step towards victory for reproductive rights in India where the Court ruled that a woman's decision to bear or not bear a child forms part of her right to bodily autonomy and may not hinge on whether or not she is married. It also identified the plight of women, such as victims of marital rape, in addressing unwanted pregnancies. But in 2023 in X v. Union of India, a wife who had found out about her pregnancy at 24 weeks because of a medical condition was refused permission to undergo an abortion. Despite the fact that she presented serious issues of mental health, the Court ruled she failed the strict legal definitions for abortion past 24 weeks. This ruling appeared to contradict the previous progressive ruling and indicated that women will now have to demonstrate they are at risk in order to be permitted to make choices regarding their own bodies although in the case of Suchita Srivastava v Chandigarh Administration womans reproductive choice was included in the article 21 of Indian constitution which is right to life and personal liberty.

India's abortion laws are still very much medicalized and paternalistic, even though the courts have been quite progressive in their rulings. The Medical Termination of Pregnancy Act, which seems liberal, actually decides that it is not the pregnant person who has the final say but the certified medical practitioners. Thus, control is exercised from the top down whereby women have to prove that they are able to make the right choice instead of simply using it as their right. Also, a difference can be observed in the availability of abortion services as women living in urban areas have access to private clinics while those living in remote and deprived areas are affected by the stigmatization, lack of doctors, and slow administrative processes, which result in a situation where they have to choose unsafe abortions. It shows the gap between legal and practical autonomy; the Constitution, through Article 21, affirms the right to reproductive choice, however, the system still regulates and oversees it through medical discretion and moral judgment.

International Approach

India is not the only country which has abortion rules. In the USA, the 2022 Dobbs v. Jackson Women's Health Organization decision overruled Roe v. Wade and eradicated the federal constitutional right to abortion. The Court affirmed a Mississippi ban on most abortions after 15 weeks and cleared the way for individual states to enact strict bans. The ruling elicited international condemnation, particularly from human rights organizations such as the UN Special Rapporteur on Health. There are seventeen states with near-total bans on abortion, barring the procedure at six weeks of gestation or even earlier. There are some of these laws that contain narrow exceptions like, in the event of rape, incest, or if the life of the mother is in jeopardy.

Since 1983, Ireland's 8th Amendment set all issues of reproductive justice around fetal right to life, frequently trumping a pregnant woman's constitutional rights to privacy, equality, and bodily integrity. Although these rights continued to exist, they were diluted once pregnancy had started, since any activity putting foetal life at risk was circumscribed. The 1983 McGee v. Attorney General decision,prior to the 8th Amendment,did note that if pregnancy posed danger to the woman's life, then the state had to grant access to contraception and even help her acquire it. Although McGee was not an abortion case, its logic provided some basis for upholding reproductive health. Once the subsequent revocation of the 8th Amendment occurred, such arguments might be valid for a constitutional right to abortion when pregnancy poses danger to life. Moreover, Ireland's Constitution states an implied right of bodily integrity, which was first expressed in Ryan v. Attorney General, wherein the Court held that the state cannot unreasonably harm or endanger a citizen's health. Even if not absolute, any limitation on this right has to be proportionate and in the interest of the common good.

Furthermore, global human rights norms require more. India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires states to provide equal access to health and reproductive services. India should focus on medical choices regarding abortion to be patient-focused rather than dictated by physicians or state boards. India finds itself in a critical juncture. The regulations governing abortions show improvements made as well as deep-rooted patriarchal ideas that have been maintained. For moving forward, India has to make it clear once again that bodily autonomy is not an entitlement but a right. In a world where reproductive rights are either being taken away or fought for, India has to choose which side of history it wants to be on.

Global Models of Uniform Civil Code and the Indian Debate: Lessons from Comparative Experiences

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Introduction

The implementation of the Uniform Civil Code ("UCC") under Article 44 has been extensively debated in India. On one hand, it seems essential to achieve gender justice since most personal laws discriminate against women; on the other, it risks Indian diversity and may be seen as an attempt to impose majoritarian norms on minorities. This article argues that the Indian experience with the UCC should be participatory, incremental, and must focus on achieving the goal of gender justice rather than mere consistency in laws.

The Indian debate on the Uniform Civil Code has attracted a wide range of theoretical responses

from scholars who approach law through cultural, feminist, and constitutional lenses. Werner Menski's work on legal pluralism reminds us that law cannot be detached from social life, religion, or community practices, underscoring the limits of purely codified reforms. Upendra Baxi highlights that the legitimacy of reform depends less on formal uniformity and more on its moral resonance with the Constitution's vision of justice.

The debate on the Uniform Civil Code in India has evoked various theoretical responses from scholars using cultural, feminist, and constitutional lenses with which to approach law. Werner Menski's work on legal pluralism reminds us that law cannot be disentangled from social life, religion, or communal practices, pointing out the limitation of strictly codified reforms. Flavia Agnes, from a feminist legal perspective, calls for an approach where the desire for uniformity does not obscure lived inequalities within the different religious frameworks, while Upendra Baxi points out that the legitimacy of reform depends less on formal uniformity than on its moral resonance with the Constitution's vision of justice.

As Werner Menski has pointed out, law never exists in a vacuum and has to go head-to-head with religion, culture, and people's way of life. and Upendra Baxi argued that the legitimacy of any legal change is not about how "uniform" it is, but whether it rings true with the moral values of the constitution.

Uniformity Does Not Guarantee Gender Justice: Learning from Goa and France The Civil Code of Goa, inherited from the Portuguese Civil Code of 18G7 and retained after independence under the Goa, Daman and Diu Administration Act, 19G2, is famously considered to be India's only Uniform Civil Code. The Code contains a uniform set of family law provisions about marriage, divorce, and succession applicable to all Goans. However, it preserves community-specific exceptions-such as those relating to Catholic marriage under Canon Law, and special provisions for Hindu joint family property-revealing that even 'uniform law' retains internal pluralism.

Goa is a frequent presence in the Indian UCC discussion in the guise of the "model state" as it implemented a common civil code that traces its origin to the colonial era.

While the Goan code encompasses many religions, it does not do away with distinctions entirely. For instance, marriages performed under Catholicism are given distinctive benefits as per Canon law, while Hindu joint family traditions are still accorded a certain measure of recognition. The French experience provides an important comparative perspective for India because it highlights the way in which even a secular and codified system can perpetuate patriarchal hierarchies in the private sphere. The French Civil Code, often considered a universal model, also reveals nuances pertinent to India. A legacy of the French Revolution, the Civil Code attempted to make family law a secular and uniform regime. For most of its life, however, the Code subordinated women within marriage and family relations, placing husbands in a legally superior position until reforms in the late twentieth century remedied these inequities.

The French Civil Code, frequently regarded as a universal paradigm, simultaneously exposes complexities pertinent to India. Originating from the French Revolution, it established family law as a secular and standardised framework. Throughout a significant portion of its history, the Code subordinated women in the context of marriage and familial relationships, bestowing upon husbands' legal supremacy over their wives until reforms in the late 20th century rectified these disparities.

Incremental and Democratic Change in Law is More Sustainable: Contrasting the Tunisian experience with the UCC

Ever since the year 195G, Tunisia has implemented the Code of Personal Status, which eliminated polygamy. It repudiated and instituted civil marriage with the explicit consent of both spouses, and gave men and women equal access to divorce before a court. Tunisia chose a gradual and culturally sensitive approach. Conversely, the Tunisian approach successfully maintained religious legitimacy through contextualising reform initiatives with customary social practices and Islamic teachings and helping communities absorb changes more smoothly.

For example, the Tunisian process of judicial divorce applied Islamic procedural guidelines while at the same time advocating greater rights for females and therefore empowered females to approach legal proceedings with less disregard for their religious beliefs. Such gradualism facilitated greater social legitimacy and facilitated easier incorporation of the new norms, and produced the exercise of women's rights at an earlier date and with greater breadth

In February 2024, Uttarakhand became the first Indian state that pass its version of a Uniform Civil Code, a historic legislative experiment that seeks to unify personal law across communities. The Uttarakhand Code, 2024, replaces religious personal laws about matters of marriage, divorce, succession, maintenance, and live-in relationships, marking the first tangible realization of Article 44 of the Indian Constitution.

The structure and substance of the Code call for close doctrinal attention. It mandates compulsory registration of all marriages, live-in relationships (Sections 3 and 4), regardless of religion or custom, with penalties for failure to register. Section 5 disallows polygamy and polyandry, extending the principle of monogamy to all citizens. Section G recognises cohabitation or live-in relationship as valid, granting legal protection to partners in matters of inheritance and maintenance a step unprecedented in Indian statutory law so far. Inheritance rights are equalized across genders and faiths, so daughters and sons have the same right to ancestral and self-acquired property.

Nevertheless, Uttarakhand's law represents a watershed in Indian legal history. It provides a federal model for reform rooted in constitutional morality, testing the viability of uniform personal law within India's plural structure. The long-term success of the experiment depends not just on enforcement but on participatory legitimacy-whether citizens feel ownership of the Code or perceive it as state overreach.

The Uttarakhand experiment holds for India both a template and a warning: incrementalism over absolutism. As the Tunisian example has also shown, gradual reform that grows from within cultural legitimacy is more lasting than abrupt imposition. India might thus begin by standardizing inheritance equality and maintenance rights, areas where consensus already exists, before venturing into more contentious fields like adoption or religious marriage ceremonies. The Uttarakhand Code gives meaning to this constitutional promise of reform through democratic federalism. It transforms the abstract ideal of Article 44 into an imperfect yet historic legislative reality. The real success of the Code, however, lies not in uniformity but in how it manages to balance equality with empathy and reform with representation.

Analysing the Uttarakhand Initiative

In February 2024, Uttarakhand became the first Indian state to enact a comprehensive Uniform Civil Code, thereby operationalizing the long-debated Directive Principle under Article 44 of the Constitution. Far from being merely symbolic, the Uttarakhand Uniform Civil Code, 2024 (Act No. 3 of 2024), represents India's first statutory attempt to unify the personal laws across religions into a single secular framework. A close reading of the legislation discloses not only its progressive aspirations but also its complex doctrinal and constitutional implications.

Let us discuss what provisions were introduced under the Uniform Civil Code, Uttarakhand, 2024.

Essentially, Section 1 and Section 2 under Chapter 1 of the Act draw clear demarcations with respect to its applicability, it extends to all residents of Uttarakhand except members of the Scheduled Tribes. This is a necessary exclusion clause, similar to the historical caution shown by Article 371A (Nagaland) and Section 2(2) of the Special Marriage Act, 1954, whereby tribal customs were preserved on account of them being socio-legal traditions.

Section 3 sets out detailed definitions, and in particular, redefines marriage as a "civil contract"

and not as a religious sacrament. Such a shift from ritualistic solemnization to contractual registration implies a shift from religious to secular validity, which is in keeping with modern conceptions of personal autonomy under Article 21. This is contrary to the Hindu Marriage Act,

1955, which specifically recognizes traditional rites such as saptapadi, which treats it as an important religious ceremony under divine law.

In offering this definition, the Uttarakhand Code transcends “reform within religion” - as is evidenced by 1950s personal law codifications - to reform beyond religion, a critical jurisprudential shift.

Rules 4, 5, and G of the Uniform Civil Code Rules, Uttarakhand, 2025, under Chapter 2 deal with the appointment, powers, and duties of the Registrar General, Registrars, and Sub-Registrars, the key administrative authorities for implementing the Code. Rule 4 thus enables the State Government to appoint any officer not below the rank of Secretary as Registrar General and further allows the appointment of Registrars and Sub-Registrars for rural, urban, municipal, and cantonment areas.

Rule 5 to G detail the responsibilities and roles of these officers. Rule enumerates the duties of the Registrar General on conducting summary inquiries in cases of inaction by Registrars, deciding appeals on the registration of marriages, divorce, declaration of legal heirs, and live-in relationship registration, and providing procedural fairness through reasoned orders and hearings. Rule G prescribes the duties of the Registrars, specifically appellate authority over Sub- Registrars, timelines for inquiries to be conducted, and ensuring expeditious decisions within prescribed periods.

Collectively, these Sections create a hierarchical and quasi-judicial mechanism for monitoring the registration processes under the Uniform Civil Code 2024, guaranteeing procedural accountability, transparency, and uniformity in applying the provisions relating to marriage, divorce, inheritance, and live-in relationships throughout Uttarakhand.

Chapter V (Rule 15) of the Uniform Civil Code Rules, Uttarakhand, 2025 comprehensively discusses the registration and regulation of live-in relationships, implementing Sections 381 to 38G of the Uniform Civil Code, 2024. This chapter institutionalizes the recognition of live-in partnerships by mandating their classification, registration, and documentation under the State’s civil registry framework.

Rule 15(1) categorizes live-in relationships into two categories such those in existence on the date of commencement of the Code; and those intended to be entered into after its commencement.

Rule 15(2) lays down the registration process. Couples already in a live-in relationship can be issued a registration certificate upon a summary inquiry while couples who intend to enter into a live-in relationship can first obtain a provisional certificate for a period of thirty days, further extendable by fifteen days, within which they have to provide proof of accommodation as a "shared household." Only then can a final registration certificate be issued.

Sub-rule 3 of Rule 15 prescribes that the statement of live-in relationship should be supported with Aadhaar numbers, addresses, contact details, proof of residence, previous marital or relationship status, and particulars of children, if any. It also provides that the registrants must declare the concerned jurisdictional Registrar and the Police Station or Patwari Chowki having jurisdiction over the shared household. Thus, this rule integrates the registry and local law enforcement system for verification and monitoring.

Chapter VI (Rule 20) of the Uniform Civil Code Rules, Uttarakhand, 2025 prescribes the miscellaneous and procedural safeguards that operationalize the administrative framework of the Code. It lays down provisions concerning access to information by the public, filing of complaints, preventing misuse, and facilitation of processes related to registration. Rule 20(1) provides a distinction between open access and restricted access to the information gathered under the Code. Non-personal statistical data, for instance, relating to the number of marriages registered during any period/area, shall be made available to the public on the official portal (www.ucc.uk.gov.in.)

Personal information like religion, caste, marital history, or family details can only be accessed jointly by the persons concerned. This stance advances data transparency yet protects personal privacy; at the same time, it does not quiet murmurs of digital surveillance and raises doubts if sensitive data is sufficiently secured.

Rule 20(2) and (3) are efforts in this direction, ensuring that there is no filing of false complaints and providing for the recovery of fines or penalties as arrears of land revenue in case of non-payment. Taken together, these provisions reflect a bureaucratic rationality devised to shield the system from frivolous use or malicious deployment while rendering the administration accountable.

Rule 20(4) thus provides for a standardized system of online grievance redressal, enabling Complaints against Sub-Registrars or Registrars to be filed through the official portal or mobile app, and inquiry results must be communicated within a period not exceeding forty-five days. It is at this point that Rule 20(5) connects registration and acknowledgment of marriages to eligibility for government schemes and subsidies to create an incentive for compliance with the Code. Registration or acknowledgement of a marriage will become mandatory to avail the state welfare benefits six months from the commencement of the Code, that too in a shift from persuasion to conditional compulsion.

Further, Rule 20(G) and (7) provide that certified copies and extracts in respect of marriage, succession, or testamentary declarations, shall be obtained upon an online application. Not only does it digitize the entire process, but it also formalizes documentation of matters hitherto governed by oral tradition or custom.

Finally, Rule 20(8) incorporates a social-welfare-oriented clause wherein landlords are forbidden from denying tenancy to those holding valid certificates of live-in relationships or provisional certificates. This stems directly from Chapter V, recognizing the need for registered live-in partners not to face discrimination in housing and thus providing the translation of legal recognition into practical protection. In sum, Chapter VI underscores the technocratic and bureaucratic aspects of the Uttarakhand UCC in integrating digital governance, administrative accountability, and conditional welfare incentives with family law. At the same time, it reflects a deeper tension between transparency and privacy, and facilitation and control, characteristic of state-led modern legal reform in personal law.

In my view, the Uttarakhand Uniform Civil Code of 2024, along with the Rules of 2025, represents an ambitious yet careful effort to turn constitutional ideals into practical administration. It is neither a radical departure from the past nor just a symbolic gesture; instead, it shows a gradual move toward legal modernity through bureaucratic accuracy. While the constitutionally driven goals of equality and uniformity are commendable, the heavy emphasis on registration, documentation, and procedural oversight reveals a deeper anxiety about control that runs through state-led reforms in India.

Without a doubt, recognizing live-in relationships, require marriage registration are significant steps toward gender justice. At the same time, police checks, data submission, and the risk of social exposure may unfairly impact women, inter-caste couples, and marginalized groups. Therefore, the Uttarakhand model blends progressive inclusion with paternalistic regulation: reform that expands rights but also increases surveillance.

Ultimately, this initiative will only succeed if it builds trust rather than fear, and encourages participation instead of mere compliance. A Uniform Civil Code must be felt not as an edict from the state but as a social agreement among equals, based on consent and constitutional morality. The Uttarakhand law has opened a door; the real challenge is to navigate the delicate balance between justice and uniformity, without losing the spirit of freedom that the Constitution promises.

Conclusion: Toward a Justice-Oriented UCC

Uttarakhand UCC is a watershed and a lesson. It is the first sincere bid of an Indian state to enact a uniform code ending stalled attempts for four decades. But shortcomings such as a lack of consultation, surveillance possibilities, and suspicions of majoritarianism highlight the perils of seeking uniformity rather than justice.

The larger lesson is that a UCC for India cannot become a project of symbolism or cultural homogenization. It must become a project of justice, rooted in constitutional morality, enriched through feminist scholarship, and forged in participatory dialogue. It must draw lessons from Goa and France's incomplete uniformity and Tunisia's incremental legitimacy, to make an incremental change to personal laws focusing on those that are most crucial for gender justice, and sidestepping those practices that do not have as many consequences for justice and are deeply contested.

Hunger as a Method of Warfare: A Legal Analysis of Aid Weaponization in the 2025 Gaza Conflict

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Introduction

On the 24th of June 2025, UN OHCHR, the United Nations Office of the High Commissioner for Human Rights, released a statement that set aside even more than normal the usually carefully worded choice of expressions of international diplomacy. It proclaimed that the blockade or alteration of food supplies for civilians in the Gaza Strip "constitutes a war crime." This was not an isolated declaration, but rather the finale of a long, well-documented, and deadly series of events that has seen famine officially pronounced in the Gaza Governorate, hundreds of aid seekers murdered at the hands of the distribution points, and the already existing UN-led humanitarian system systematically dismantled and replaced by a "privatized, militarized" alternative described by its victims as a "death trap."

The untenable situation of a deficiency of food in the area ruled by the Israeli military is not merely an unfortunate side effect of the conflict but is, in fact, the direct outcome of a series of deliberate policy making, choices that are not only morally and ethically wrong but that also provide a very solid factual and legal basis for a successful prosecution of those responsible in the International Criminal Court (ICC) for the war crime of starvation under international humanitarian law (IHL) and the Rome Statute.

The Legal Architecture of Starvation

The legal framework is unambiguous. Rule 53 of Customary IHL clearly prohibits the use of starvation of civilians as a method of warfare. It iterates that no one shall be starved. The Rome Statute, in Article 8(2)(b)(xxv), makes it a crime to "intentionally use starvation of civilians as a method of warfare." The statute details the way this crime can be committed: by "wilfully impeding relief supplies as provided for under the Geneva Conventions."

The 'Actus Reus': A Policy of Obstruction

The situation on the ground presents a crippling actus reus, or "guilty act." The UN Office for the Coordination of Humanitarian Affairs (OCHA) informed that for May 2025, of 276 planned aid movements that were coordinated with the Israeli authorities, 156 movements were denied permission and 33 were hindered- a staggering 57% denial or impediment rate for pre-coordinated UN convoys. This was labelled as “Israel’s obstruction of humanitarian action” by Refugees International.

The systematic obstruction of humanitarian access is nothing less than a breach of a very serious nature of Rule 55 of Customary IHL which obligates all conflicting parties in the war. The most likely legal defense, a belligerent's "right of control" over aid, collapses in the face of a declared famine. The ICRC's own commentary on Rule 55 goes on to underscore that, although aid may be subject to inspection, the authority of the party to prevent the aid from being delivered as soon as a populace is "threatened with starvation" evaporates. The "right" to control is turned into an "obligation" to assist, and any delay in the delivery of neutral aid after this threshold has been crossed is a deliberate act of obstruction.

A Case Study in Intent: The ‘Death Trap’ of the GHF

While the actus reus is quite apparent, the case for mens rea (criminal intent) is often the most difficult to demonstrate. In Gaza, however, the Gaza Humanitarian Foundation (GHF) provides a powerful and disturbing case study.

The GHF, was Founded in February 2025, right when Israel started to "block impartial aid... and replace trusted humanitarian organisations." A new, "unlawful" registration rule demanding disclosing sensitive data, such as "complete Palestinian staff lists," which major NGOs and UN agencies considered "incompatible with humanitarian principles" and "unsafe," was the means through which this "sidelining" was accomplished.

Through this policy, a vacuum was created that the GHF was introduced as the only possible solution to fill. A study of the GHF exposes two conflicting realities. The official narrative, which the Israeli government supports, is one of success. On June 11, 2025, an official operating report stated that the GHF provided "almost 2.5 million meals" and that "It is evidence that our system works." In the month of August, COGAT stated that "more than 2.2 million relief packages, which is 132 million meals" had been given out.

The situation of the humanitarian and medical sectors in the area represents a very serious indictment. UN specialists, health care workers, and rights groups categorize the GHF as a "privatised, militarised aid distribution scheme" operated by "military contractors, not humanitarian professionals." Among the NGOs, Doctors Without Borders (MSF) offered the most detailed, evidence-based report, classifying the GHF zones as "death traps" and "sites of orchestrated killing." From June 7 to July 24, 2025, only two small MSF clinics admitted 1,380 casualties from the vicinity of GHF zones, among them were 28 deaths and 71 children with gunshot wounds. This information is consistent with the UN OHCHR's report of 509 deaths recorded in the vicinity of GHF areas up to the end of June and the UN experts' tying of the "militarised... aid delivery" system to "almost 1,400" deaths of aid seekers by August. The Palestinian survivors started to call the operation "traps" instead of aid.

The Occupation Debate: A Distinction Without a Difference?

This glaring discrepancy is the key issue in the mens rea prosecution's legal argument. In international law, motive is hardly almost always deduced from a series of actions. If a side in a war (1) is aware that people are dying from hunger (an official famine declaration), (2) methodically cuts the only established, safe, and neutral aid route (the UN), and (3) at the same time supports and runs a "militarised" one that it understands is a "site of orchestrated killing," it is not unreasonable to think that the known and assured result i.e. starvation, is actually the desired one.

This legal responsibility holds regardless of the protracted debate over Gaza's precise legal status. The Supreme Court of Israel in March 2025 turned down the "occupation" term (advocating for a lower, negative duty to simply allow aid), while the International Court of Justice (ICJ) in October 2025 found the exact opposite. The ICJ indicated that Israel's "effective control over the Gaza Strip has increased significantly," and thus, its positive duties under the law of occupation "have also increased significantly." However, the issue of starvation is indeed almost a moot point in this discussion. Israel's continuing noncompliance with even the lowest possible standard- the negative duty to "allow and facilitate" aid, which its own court upheld, may be seen as an arguably more blatant violation of the law.

Conclusion

The legal framework for the prohibition and punishment of the food weaponization is unambiguous. The factual proof of its execution is both systematic and overwhelming. A UN Independent International Commission of Inquiry has already declared the genocide of

Palestinians, referring to the "deliberate inflicting conditions of life calculated to bring about [their] destruction", to put it simply, starvation.

The avenues to be taken, for both help and justice, are very clear. The UN Relief Chief's 60-day plan of October 2025 has laid down the non-negotiables map for such, which includes not only the immediate opening of "multiple relief corridors" but also the "sustained entry of. 1.9 million litres of fuel weekly"

for the purpose of running water sanitation and hospitals. Legal accountability is already being sought in the ICC and ICJ. As the UN Special Rapporteur warned that same month, any future peace plan that includes "amnesties, statutes of limitation, or other measures" to shield perpetrators from criminal responsibility is legally and morally void. The only remaining question is not if the law has been broken, but whether the international legal order, and the states that comprise it, have the political will to enforce it.

<u>Pakistan's 27th Amendment and India's Emergency-Era Experience</u>

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Introduction: Pakistan's Constitutional Overhaul - The 27th Amendment

Pakistan's 27th Constitutional Amendment stands as one of the most sweeping reforms to Pakistan's constitutional system since the 1973 Constitution was enacted. At the heart of the amendment is the establishment of a Federal Constitutional Court (FCC) that takes over the Supreme Court's jurisdiction over constitutional matters, disputes between the federal and provincial governments, and the enforcement of fundamental rights. All orders of the new court will be binding on all courts of Pakistan, including the Supreme Court, which will essentially only function as an appellate court in civil and criminal matters.

What is especially controversial about this amendment is the mechanism for appointing the FCC. The first Chief Justice and first group of judges will be appointed by the President on the advice of the Prime Minister, effectively allowing the executive to appoint the founding bench. Thereafter appointments will be made by a reconstituted Judicial Commission of Pakistan, where judicial members now only comprise a minority of five judges out of thirteen members. This grants executive and parliamentary representatives' decisive control over who sits on the bench to interpret the Constitution.

The amendment brings extensive changes to other areas besides the judiciary. It empowers the Army Chief, also called Chief of Defence Forces, to have constitutional authority over all military branches and provides them with lifetime immunity from prosecution. High Court judges can now be transferred between provinces without consent, and refusing to accept a transfer can lead to disciplinary action that can include forced retirement. Also, the retirement age for FCC judges has been raised to 68, allowing judges preferred by the executive branch to serve longer.

Within hours of the passage, two senior Supreme Court judges, Justice Syed Mansoor Ali Shah and Justice Athar Minallah, resigned in protest, and Justice Shah, in his resignation letter, poignantly expressed, "The Twenty-Seventh Constitutional Amendment is a grave assault on the Constitution of Pakistan. It dismantles the Supreme Court of Pakistan, subjugates the judiciary to executive authority, and it is an assault on the heart of our constitutional democracy to make justice further away, further fragile, and further vulnerable to power". International organisations like the International Commission of Jurists condemned the amendment as “a flagrant attack on the independence of the judiciary and the rule of law”.

Indira Gandhi’s Constitutional Adventure: The 39th Amendment

The roots of India's constitutional crisis during the Emergency can be traced to June 12, 1975 when the Allahabad High Court, in a ruling by Justice Jagmohan Lal Sinha, found Prime Minister Indira Gandhi guilty of electoral misconduct and declared her election to the Lok Sabha invalid. The Supreme Court granted only partial relief, allowing her to stay in office as Prime Minister but barring her from Parliament. Gandhi was faced with a crisis of political legitimacy that could have ended her career.

What followed was dramatic and unprecedented. Gandhi declared a National Emergency under Article 352 claiming “internal disturbances.” What flowed from this were significant efforts to put her position beyond the scrutiny of the judiciary through amendments to the constitution that would upend the balance of power among the executive, legislature, and judiciary.

The 39th Amendment to the Constitution was passed in 1975 when opposition leaders were imprisoned during the Emergency. This amendment, which included Article 329 A, declared that the elections of the President, Vice President, Prime Minister and Speaker could not be challenged in a court of law. Clause 4 of Article 329-A specifically stated that if a person whose election was being challenged became Prime Minister or Speaker, the election petition would automatically abate, effectively ending Raj Narain's challenge to Gandhi's election.

The Judiciary Strikes Back: India's Basic Structure Doctrine

What ultimately retained the Indian democratic system from this constitutional catastrophe was the legal doctrine which emerged just two years before the Emergency the "Basic Structure Doctrine", which was articulated in the landmark case of Kesavananda Bharati v. State of Kerala (1973). In this case, a 13-judge bench of the Supreme Court held that while Parliament has broad powers to amend the Constitution under Article 368, it cannot alter or destroy the "basic structure" of the Constitution.

The doctrine holds that certain basic features of the Constitution cannot be violated that include the supremacy of the Constitution, the rule of law, separation of powers, independence of the judiciary, federalism, secularism, the democratic and republican character of the polity, and the protection of fundamental rights. Any constitutional amendment that violates these basic features will be unconstitutional and void irrespective of the legitimacy of the constitutional method of passage. This doctrine became the shield to combat Gandhi's constitutional overreach.

In Indira Nehru Gandhi v. Raj Narain (1975), the Supreme Court invalidated Clause 4 of Article 329-A which was established in the 39th Amendment, because it violated the basic structure by excluding judicial review of elections which is a fundamental part of free and fair elections and democratic governance. The court ruled that judicial review, separation of powers, and free and fair elections are integral to the Constitution's basic structure and cannot be amended away by Parliament.

Conclusion

The current constitutional crisis in Pakistan has a strong resemblance to the political turmoil of the Emergency era in India, which is not easy to ignore. Both dominant executives have sought to protect themselves and their allies from judicial accountability through the manipulation of constitutional frameworks. As an example, the 39th Amendment to the Indian Constitution attempted to provide immunity to the election of the Prime Minister to judicial scrutiny. In contrast, Pakistan’s 27th Amendment creates a Federal Constitutional Court with judges appointed by the executive, removing fundamental issues from the jurisdiction of its established judiciary.

However, the outcomes are quite different. India’s judiciary was provided with constitutional protection through the Basic Structure Doctrine from the case of Kesavananda Bharati, permitting the Supreme Court to strike down the most remedial provisions of the 39th Amendment. Those rulings fortified non-negotiable constitutional essentials that no government has seriously attempted to breach. Pakistan has no equivalent doctrinal protection. Though judges have taken courageous resignations in protest against the amendment, the judiciary is structurally weakened and the new court begins its life under suspicion. India's experience also shows just how frail constitutional democracy is in the face of executive overreach. The failure in ADM Jabalpur, along with Justice H.R. Khanna's lone dissenting opinion, shows just how close India came to the abyss. Pakistan is now at a similar inflexion point, with even fewer safeguards. Ultimately, the crisis shows that constitutional texts cannot defend themselves; only strong institutions, principled judges, and ongoing public vigilance can protect constitutional governance. Whether or not Pakistan can reconstruct these elements will depend on which path is forged by the 27th Amendment to the Constitution that will either excuse or extend the prospect for entrenched constitutional capture and ultimately determine the fate of democracy for decades.

From Advisory to Accountability: How the ICJ just Rewrote the Climate Rulebook

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Introduction

July 23, 2025, the Peace Palace in The Hague changed from a serene central of international diplomacy to a legal earthquake centre. In its ground-breaking, unanimous Advisory Opinion on Climate Change Related State Obligations, the International Court of Justice (ICJ) has determined that a major, judicial decision altering the legal landscape of the Anthropocene has happened.

Consequently, what started as a class project of twenty-seven students from the University of the South Pacific in Vanuatu has now resulted in a court decision that changes the law in the Anthropocene era.

Constructive ambiguity which gave a chance to countries to pretend to follow diplomatic agreements while hiding their true intentions has been shut now. The judgement paved the way to a world where governments have to be held legally accountable for their actions and it recognized that climate inaction is not only politically wrong but also a violation of international law.

Here, the authors dissect the law side of the court ruling in great detail, then evaluate its power and influence to transform worldwide climate change management.

The Death of Lex Specialis: Why the Paris Agreement Isn't Enough

For years, high-emitting countries have asserted that the global climate legal regime (UNFCCC and Paris Agreement) comprised its own legal system, or lex specialis, and as long as they followed the procedural box-ticking exercise of sending in Nationally Determined Contributions (NDCs), we were not relevant for liability under general international law.

The ICJ completely turned down this argument. By relying on the principle of "systemic integration," the Court decided that the obligations imposed by the Paris Agreement should be interpreted in a way that is consistent with customary international law and the obligations to respect human rights.

That is to say, the adherence to the Paris Agreement is the minimum requirement, not the maximum. The Court mentioned that the "drop in the ocean" defense when a country contends that its own emissions are so small that they do not have any impact is no longer a legally permissible argument. Each degree of warming is significant.

A "Stringent" Standard of Due Diligence

Maybe the most important aspect is the standard of care defined by the Court. Alongside the International Tribunal for the Law of the Sea (ITLOS), the ICJ classified the prevention of significant harm as a "stringent" due diligence obligation.

This is a significant moment for state accountability. A "strict" standard means that the government has to be more vigilant as the risk increases. Because of the "existential" nature of the climate crisis, states must start taking "all necessary actions" to limit temperature rise to 1.5 degrees Celsius. Thus, the 1.5°C limit which was previously a mere political hope becomes a strict standard for ruling a country negligent or not in its environmental responsibilities.

The Fossil Fuel "Cease-and-Desist"

The Paris Agreement explicitly kept the reference to fossil fuels out of its considerations. On the contrary, the ICJ expressed its views very clearly. In its Paragraph 427, the Court essentially put a stop to the energy sector's activities, which experts are already labeling as a "cease-and-desist" notice. The Opinion clearly indicates that the lack of regulation concerning "the production of fossil fuels, the consumption of fossil fuels, the granting of exploration licenses for fossil fuels, or the provision of subsidies for fossil fuels" could potentially be an internationally wrongful act.

This paragraph poses a significant legal risk for the "Carbon Majors." It suggests that the act of providing new exploration licenses is inconsistent with the standard due diligence obligations of a state. Additionally, it gives states a compelling "police powers" defense in Investor-State Dispute Settlement (ISDS). If a fossil fuel company sues a government for rescinding a license, the state can now defend the decision by stating that the revocation was a required compliance duty under international law; this is a potential legal barrier to compensation.

Judicializing Attribution Science

Establishing liability requires proving causation. Historically, states have argued that because greenhouse gases mix in the atmosphere, it is impossible to link a specific flood or heatwave to a specific country's emissions. The ICJ has now dismantled this defense by validating "attribution science." The Court acknowledged that while the causal link is "more tenuous" than in local pollution cases, it is "not impossible" to establish.

After the Court decided that science can measure the degree to which human-made emissions have increased the chance of a particular disaster, it has decreased the level of evidence required for the payment of damages. The criterion is now a "sufficiently direct and certain causal nexus," which is a variable test that accommodates probabilistic evidence.

Reparations and the "Climate Justice" Divide

The separate opinions illustrate a significant rift in the views about the effects of the breach, although the decision was unanimous. The Court confirmed that states are obliged to give complete reparations for the damages they have caused. Such reparations may be restitutions, compensations, or satisfactions.

President Sebutinde was, in fact, not very happy with the majority, calling their definition of "climate justice" extremely vague. According to her, the Court ought to have promoted "future-oriented remedies" like technology transfer and debt cancellation, as well as if it were based on history, requiring that Annex 1 countries be the first ones to bear the load of compensation.

Judge Bhandari and Judge Cleveland also requested a unified and clear declaration regarding the necessity of gradually eliminating the use of fossil fuels and they were in favour of a bold and resolute response of the court to the industry recalcitrance indicating that the industry's "extreme influence" was the reason for the "even greater decree" to be given." These two separate opinions expose the way for the next court cases expressing that the present decision being the level from which one can measure progress, not the end point.

From The Hague to Domestic Courts: The Lho'imggin Precedent

The first and foremost and the most instantaneous repercussion of the Advisory Opinion is its "normative seepage" into domestic law. The effects of this are visible even now. The Federal Court of Canada made an epoch-making decision in Dini Ze' Lho'imggin v. Canada. In fact, the court's decision came only two months after the ICJ adjudication, that is, in September 2025.

The native chiefs challenged the climate action of the federal government as illegal because it violated the constitution. The court, in its decision, made reference to the ICJ Advisory Opinion, stating that the issue was justiciable and could invoke new rights of action based on international customary law.

This case shows that the ICJ opinion is far from being just a theoretical discussion and it is very much connected to the practical order of international law. In fact, it is a referral instrument that local judges have already employed in order to bypass political question doctrines and thus, to put governments on the rack for their actions.

Conclusion

With the 2025 ICJ Advisory Opinion, the entire climate discussion has been turned upside down. By defining a "stringent" care standard, directly involving the fossil fuel industry as a party, and accepting attribution science, the Court has in effect paved the way for new forms of accountability under law.

However, the way to reparations remains quite complex, but the signal to the authorities and the corporations is very clear: the era of absolute freedom of will is over. In his opinion, the Court made this gesture "in representation of everyone" when the climate minister of Vanuatu stated. The worldwide bar is the one that has to take the lead now in making sure that it is implemented.

CPC's Procedural Grip on Arbitration: A Constitutional Critique

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Introduction

The Arbitration and Conciliation Act, 1996 ("the Act") had assured procedural autonomy from the Civil Procedure Code, 1908 ("CPC"), but courts have routinely invoked CPC provisions in arbitration proceedings. This poses a procedural paradox in which arbitration's statutory autonomy is eroded at every turn, from interim relief applications to enforcement of the award. Many commercial entities choose arbitration to avoid the delays of civil courts, believing they can escape the constraints of civil law. Yet, they often find their arbitral awards caught in the same execution processes they sought to evade. This contradiction reveals how procedural nuances can obscure essential constitutional principles. To revive the autonomy and dignity of arbitration, reforms are necessary. Such reforms need to make arbitral proceedings viable alternatives to traditional litigation, maintaining their intended prerogative and integrity.

The Statutory Dichotomy of Promise Versus Practice

Section 19 of the Arbitration Act clearly states that arbitral tribunals "shall not be bound by the Code of Civil Procedure, 1908," and Section 5 reinforces "minimal judicial intervention." These provisions create a clear procedural difference between arbitration and civil litigation. Section 36(1) obscures this picture by requiring that awards "shall be enforced in the same manner as if it were a decree," causing interpretational uncertainty. The language "as if it were a decree" was meant to be functional equivalence for purposes of enforcement, and not to bring the CPC's procedural complexities in their entirety.

This creates a discernible dichotomy at three critical points. First, courts interpret interim measures under Section 9 as akin to "Order XXXIX CPC" proceedings, transforming expedited remedies into drawn-out processes. Second, the appointment of arbitrators under Section 11 is obstructed by withdrawal provisions in Order XXIII of the CPC. Third, the enforcement of awards under Section 36 mirrors execution under Order XXI of the CPC. Consequently, parties successful in arbitration are left to face every procedural delay they sought to avoid.

The disconnect is most evident in how courts continue to apply the injunction test from Dalpat Kumar v. Prahlad Singh, a civil procedure standard, when granting interim relief under Section

9 of the Arbitration Act. Though the provision allows for broader judicial discretion, courts often default to the rigid three-part test of prima facie case, balance of convenience, and irreparable harm, without fully engaging with the Act's more flexible intent.

This was clear in Orix Leasing and Financial Services India Ltd v. Gensol Engineering & BluSmart Mobility, where the Delhi High Court, despite acknowledging the Act's broader language, relied on CPC-rooted reasoning. It reflects a deeper institutional habit, where the comfort of civil procedure often overshadows the autonomy that arbitration is meant to protect. With the 2024 Amendment Bill proposing to remove Section 9(3) and further limit court involvement, such practices deserve closer scrutiny to preserve the distinction the Act was designed to uphold.

The Court in Essar House Pvt Ltd v. Arcelor Mittal Nippon Steel India Ltd clarified that while

courts may refer to CPC principles in deciding Section 9 applications under the Arbitration and Conciliation Act, that reference is largely discretionary and should not extinguish the potential for discretion afforded under the Act. The Court held that, without regard, procedural technicalities in the absence of averments under Order 38 Rule 5 CPC, would not support a denial of interim relief in light of the substantive elements in support of the grant of relief being otherwise satisfied. While this acknowledges a departure from rigidity and threshold procedural barriers, first instance Courts are inclined to continue applying CPC standards almost reflexively. This contributes to muddied practices undermining the independence of arbitration processes as expected by the parties.

Tracing the Procedural Infiltration through Judicial Precedents

Satyawati v. Rajinder Singh & Another: Execution under Order XXI CPC

The most severe expression of this paradox of process is seen in the execution of arbitral awards. In Satyawati v. Rajinder Singh, the Court was dealing with the issue of delays in executing awards in line with Order XXI of the CPC. The case concerned an arbitral award which was pending execution for a number of years as a result of the complex processes of executing awards in civil courts.

Oddly enough, in Rahul S. Shah v. Jinendra Kumar Gandhi, the Court endeavored to resolve execution proceedings under the CPC by imposing a six-month deadline. Although this was also a case with respect to civil decrees, it reflected an increased attention by the judiciary to procedural abuse in execution mechanisms; and this procedural dysfunction is equally applicable to arbitral awards under Section 36 (which are enforced 'as if they were decrees'). Still, instead of making different procedural rules specific to arbitration, courts are trying to cure the procedural failures of these types of proceedings within the CPC framework itself, so arbitration continues to be connected to civil procedure, rather than deliberately separating it.

M/s Naolin Infrastructure v. Kalpana Industries: Procedural Substitution

This 2024 Supreme Court decision involved whether filing an application under Order VII Rule 11 CPC would satisfy Section 8 requirements of the Arbitration Act. The case was a litigation where the defendant moved an application to reject the plaint under the provisions of CPC, along with a claim of the existence of an arbitration agreement simultaneously.

The Court held that "procedural rigidity in requiring specific compliance with Section 8 would defeat the substantial justice sought through arbitration. The spirit of the provision must prevail over its letter." The Court reasoned that "the requirement contained in Section 8(1) of the Act is satisfied in the facts of the case by filing an application, namely the application under Order VII Rule 11 of CPC, and it was brought to the notice of the Court that the arbitration agreement exists between the parties."

This decision falls into a larger judicial pattern of civil procedural pleadings more and more functioning as proxies for arbitration-specific motions. While targeted at cultivating material justice and avoiding technical loss, it nonetheless serves to replace arbitration’s unique procedural character with CPC-adjacent norms. The Court’s flexibility message is welcome, but it only highlights how judicial dependence on CPC tools, even in the name of efficiency, muddles the separation that Section 19 sought to guarantee.

Constitutional Implications

The procedural application of CPC to arbitration disputes has far-reaching constitutional consequences. The guarantee of equality under Article 14 is violated where the arbitral parties are exposed to the very procedural complexities they had sought to eschew under their agreement. In the seminal case of Salem Advocates Bar Association v. Union of India, the Supreme Court recognised that "Alternative Dispute Resolution mechanisms under Section 89 CPC must retain their procedural flexibility to remain effective.” The imposition of rigid procedural formalities from the CPC onto arbitration proceedings defeats the parties' contractual intent and violates Article 14 by erasing the distinction between consensual and litigated resolution mechanisms.

Additionally, the guarantee of speedy justice offered by Article 21 is diluted when enforcement of arbitral awards is made to suffer from the same delays as enforcement of civil decrees. The Supreme Court in Hindustan Construction Company recognized without equivocation that procedural delays in the enforcement of arbitral awards, especially where delay is automatic or conducted under the authority of the court, are a violation of one's constitutional right under Article 21 for speedy justice.

Procedural Clarity in Arbitration Enforcement

In India, the enforcement of arbitral awards is hindered by procedural uncertainties that undermine their credibility and efficiency. A comparative examination of international models offers valuable lessons for reform. The English Arbitration Act 1996, especially Section 66, is a model of a statutory code that provides for a focus on arbitration independence through facilitating summary enforcement of awards without formalities of judgments. In the same vein, procedural simplicity is a hallmark of the International Arbitration Act in Singapore, exactly as in the Tjong Very Sumito v. Antig Investments Pte Ltd case, where the Court of Appeal highlighted the benefit of streamlined enforcement mechanics in making arbitration 'more commercially attractive.'

Challenges in Indian Arbitration

Indian arbitration enforcement suffers from the inconsistent application of the Civil Procedure Code, which leads to overlapping procedures and delay. Section 36 of the Act should be amended to restrict the CPC's role to mechanical enforcement alone, apart from pre-enforcement objections in a case prescribed in statute. This is consistent with the English and Singaporean models, which maintained procedural simplicity by severely limiting judicial intervention to statutory exceptions.

Proposed Reforms

To meet such challenges, India must adopt a multi-pronged reform strategy. As an example, the creation of specialized arbitration 'benches' and procedural rules can largely separate enforcement proceedings from the delays associated with the extinguishment of liabilities through prolonged litigation processes, present in the litigation environment. This model already operates in jurisdictions like Singapore and Dubai and could be piloted in India's Mumbai Centre for International Arbitration (MCIA).

Uniformity in enforcement processes may be achieved, with binding guidelines, pursuant to Article 141 of the Constitution, by the Supreme Court. The proposed guidelines should clarify that CPC-based objections, which are not limited to Order XXI Rule 26, should not override the principle of summary enforcement unless expressly provided for in the Act.

A more ambitious reform would involve the creation of a dedicated Arbitration Procedure Code, akin to the Insolvency and Bankruptcy Code, which operates independently of the CPC. While no jurisdiction currently has a standalone arbitration procedure code, France and Switzerland have incorporated procedural rules governing arbitration into their civil codes, effectively achieving the same result. India could adopt a hybrid model, codifying enforcement procedures within the Arbitration Act itself or as a separate schedule.

Conclusion

Arbitration was never meant to be civil litigation in disguise. While simply relying upon CPC procedures, and without any statutory basis for doing so, it can be argued that the risk of arbitral autonomy becoming a constitutional farce is acute. CPC procedural creep is not only wasting resources and delaying justice, but it is also undermining the actual purpose for which parties decide to arbitrate in the first place: expeditiousness, efficiency, and finality. If the courts cannot distinguish between exercising supervisory jurisdiction and taking resorting to procedural supervision, arbitration will fail to retain its unique identity and usefulness and consequently lose its democratic legitimacy. The hour calls for a self-disciplined reaffirmation of the legislative limits, supported by judicial restraint and structural reform.

In summation, to safeguard arbitration's future, we need to desist from treating CPC as a default floor plan and begin treating arbitration for what it was always meant to be: a credible, independent, and constitutionally consistent mode of dispute resolution.

Beyond the Bribe: Structural Corruption and the Case for Independent Police Oversight in India

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Introduction: The Law behind the Uniform

Policing in its true essence refers to the sovereign responsibility entrusted upon the state to protect the constitutional rights of its people. But this very act has now been plagued, by what can be called systemic misconduct, born out of structural impunity. The positive obligation upon policemen to not violate the rights but rather protect them comes from the intersection of administrative immunity, professional liability, and constitutional accountability. Apart from the overarching protections of Articles 14 and 21, the state is also legally bound to secure accountable administration and access to justice under Articles 38 and 39A. Article 32 guarantees these rights by making them enforceable through constitutional remedies. Such provisions breathe life into the static block provisions and make accountability a justiciable principle. Furthermore, Article 311 of the Constitution and Section 218 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) establish further procedural safeguards in disciplinary and criminal proceedings against public servants-in many ways compounding existing barriers to prompt accountability. Statutory provisions like Rule 3(1) of All India Services (Conduct) Rules, 1968 makes it necessary for officers to act with integrity and display devotion to duty. All India Services (Discipline & Appeal) Rules, 1969, provides for mechanisms of internal discipline.

With such robust provisions it seems almost impossible that India has witnessed recurring and shocking corruption cases within the police department; a discussion again in full blow after the DIG Bhullar corruption case. The roots of such contradiction stem from The Prevention of Corruption Act, 1988. In the year 2018, an amendment was made to Section 17A which now mandated prior governmental permission before actually investigating a public servant for acts "in discharge of official duty." This created a shield, though procedural in nature, to delay the inquiry. Long ago, the judiciary had termed the vice of corruption as a "constitutional betrayal" in State of Bihar v. P.P. Sharma (1992). It was condemned on the grounds of breach of public trust. It was furthermore held in the case of Centre for PIL v. Union of India (2011) that every public office is a constitutional trust. Thus, this entrenched corruption is not just a result of individual deviance but rather a deep running failure of protection privileges among other things that weigh over public accountability.

Case Study: The Bhullar Scandal

This corrosion of public trust has once again been highlighted by the arrest of Deputy Inspector General Harcharan Singh Bhullar by the Central Bureau of Investigation on the charges of receiving an ₹8-lakh bribe under the Prevention of Corruption Act (PCA), 1988 in the October of 2025. Bhullar was immediately suspended once accused of demanding illegal gratification from a scrap dealer with a promise to save him from criminal action. He also demanded a monthly bribe which he was alleged to term as "sewa-pani." Further investigation led to CBI seizing Rs. 7.5 Crore cash and 2.5 Kg of gold jewellery among other recoveries such as 26 luxury watches, more than 50 immovable properties held in the name of relatives, multiple bank accounts and cartridges from his residence.

In this case, Sections 7 and 13(1)(b) of the PCA invoke criminal law in the receipt or soliciting of gratification by a public servant and characterized it as "criminal misconduct." Simultaneously, the actions of Bhullar also contravened Rule 3(1) of the All India Services (Conduct) Rules, 1968, which mandates integrity and devotion to duty, thus justifying departmental proceedings under the All India Services (Discipline & Appeal) Rules, 1969.

In the present case, Section 17A of the PCA was not invoked because the allegations explicitly were beyond the ambit of lawful authority discussed under the Section. It was further inapplicable as action stemmed from a specific complaint supported by recorded calls, and he was under arrest following a trap in which he was caught red-handed, allowing swift investigation without undue delay. Yet the very fact that such a conviction remains an exception portrays how such provisions protect required scrutiny making Bhullar's case a rare departure from the norm. The invocation of Section 17A, along with the possible application of Section 218 of BNSS and Article 311, hypothetically would have resulted in further delay or complication. Though the counsel representing Bhullar later invoked Section 6 of the Delhi Special Police Establishment Act, 1946, contending that the CBI required prior consent of the state, it only served as a post-facto jurisdictional objection, unlike Section 17A of the PCA requiring prior sanction requirement which could have halted the initial investigation altogether.

Therefore, the case serves not only as an example of individual moral deviance but rather exposes long working scandals and politicized chains forming what can be called a constitutional lapse of accountability mechanisms itself.

The Pattern of Rot: Corruption Across States

The Bhullar case should not be construed to believe that the rot primarily exists in particular states but should rather be observed as a case study to reflect upon the ingrained corruption that cuts across almost all Indian states. According to the Status of Policing in India Report 2023, more than half of the respondents perceived a high level of corruption in the police, primarily rooted in political interference, followed by a lack of autonomy, non-transparent transfer systems, and finally weak internal accountability. The findings also show that only a small part of complaints filed actually result in disciplinary actions and even fewer culminate in prosecution. It represents a grave gap in expectation and actual redressal.

Similarly, the Second Administrative Reforms Commission's Fifth Report on Public Order points to tenure insecurity, executive dependence, and institutional fragility as prime motivators for such conduct. The National Police Commission, way back in 1977–1981, had identified political misuse as a chronic malaise. The undesired inertia in action and reform is thus not something new but rather perpetual.

Recent reporting only reinforces the rot. A Senior Police Inspector Bapurao Madhukar Deshmukh from Maharashtra was arrested in May 2025 for accepting bribe amounting to Rs. 1 Lakh from a school trustee. Retired ACP Sudhir Kalekar and two serving officers from the same state were booked for soliciting Rs. 2.25 Lakh bribe from a lawyer with a deal to ensure procedural leniency in 2024. In 2025 itself, a case came up from Seoni district of Madhya Pradesh, where six police personnel, including a Sub-Divisional Officer were involved in siphoning Rs. 1.5 Crore from seized hawala funds. Punjab's record has unfortunately remained equally tarnished. In 2022, a former Senior Superintendent of Police along with multiple other officers were implicated in amassing disproportionate assets, graft and trafficking-related misconduct. These patterns indicate that corruption runs deep through bureaucratic architecture.

Over the years, judiciary has intervened to break this vicious cycle through its judgments. For instance, the Supreme Court in Prakash Singh v. Union of India (2006), invoked Article 142 and directed the states to form State Security Commissions, fix tenures for DGPs, and functional PCAs. Regrettably, the aim of these reforms remains defeated as these were diluted by most states through political appointments and advisory rather than binding powers. In another case of Paramvir Singh Saini v. Baljit Singh (2020), the Court issued directions for the surveillance of police stations, though the implementation has remained superficial. Therefore, this brings to light the lacuna of deliberate non-compliance showing preference for executive dominance over institutional freedom.

Missing the Watchdog: The Case for Independent Oversight

Despite judicial demands for structural reform, the Indian government is yet to establish an independent, statutorily empowered body to investigate police misconduct. The Prakash Singh judgment guidelines have not been strictly adhered to. Many PCAs lack statutory independence and are administratively subordinate to the Home Department. These completely lack binding authority over disciplinary or criminal proceedings.

The NHRC, by advisories in 2010 and 2021, reiterated the requirement of such civilian oversight mechanisms particularly insulated from the executive. The Second Administrative Reforms Commission pointed out that internal disciplinary mechanisms become self-serving, looking after the interests of the institution rather than the citizen, without external checks. Similarly, the Model Police Act, 2006 suggested the creation of an independent State Accountability Commission with investigation and adjudication powers, but only a few states have implemented it partially.

For example, Kerala and Himachal Pradesh have partial implementation of an independent PCA, which has resulted in some improvement in the disposal rates of complaints at the complaint-processing stage, showing that reform is possible and most importantly long overdue.

The International juxtaposition shows that India lacks an independent overseeing body capable of exercising real control. The statutory independence of the United Kingdom's Independent Office for Police Conduct under the Police Reform Act, 2002 essentially allows it to investigate independently and likewise, recommend binding action. Similarly, civilian-led investigations into police wrongs with scope for prosecutorial follow-up is established by Canada's Special Investigations Unit (Ontario). Australia's Law Enforcement Conduct Commission under the LECC Act, 2016, provides for an investigation-disciplinary probe under judicial supervision. In this way, each model institutionalizes public confidence through legal independence.

Indian reform literature, particularly the CHRI Briefing Paper on Police Complaints Authorities, insists on a twin structure that combines investigative and audit functions with regular transparency reporting. This shall be complemented with yearly third-party audits of ethics and transparency. It also requires institutionalizing ethics modules in police training academies. Without such autonomy, "discipline" remains merely an administrative facade that conceals misconduct under formalistic procedure. Without a legally independent watchdog, accountability would regenerate to remain just a rhetorical ideal, leaving citizens without any meaningful recourse against the very force that should protect them.

Conclusion: The Law Beyond the Uniform

The evolution of police accountability in India is closely a narrative of continued tension between the imperatives of authority and answerability. The uniform, designed as a badge of public duty, has too often been used as a way to amass wealth. Administrative immunity which in its inception was expected to maintain functional independence, has now morphed into institutional insulation. The intersection of Section 17A of the Prevention of Corruption Act, 1988, and the All India Services (Discipline and Appeal) Rules, 1969, reinforce bureaucratic protectionism, standing in the way of any investigation.

Professional liability remains the ethical anchor of policing, though it is increasingly being diluted by absence of credible deterrence. Internal disciplinary measures are often proven to be opaque and the constitutional mandates of Articles 14 and 21 seldom translate to practical redressal of victims of police abuse. In such a situation, there exists no doubt in saying that selective enforcement of protective provisions corrodes public trust and ultimately erodes the legitimacy of the state itself.

The judiciary, particularly in Prakash Singh v. Union of India, tried to institutionalize police accountability with mechanisms like the Police Complaints Authority and State Security Commissions. But what the Status of Policing in India Report 2023 brings out is that most of those directions have been flouted or mellowed down to the point where there lies no real action. The Model Police Act, 2006 too remains liberal on paper, but static in practice. Targeted statutory reform is what India needs now:

- Stringently curtailing the application of Section 17A and other procedural shields;
- Vesting independent PCAs with binding authority;
- Securing time-bound compliance with judicial directives; and

- Embedding transparency audits and community participation into the oversight processes.

Reform requires depoliticised recruitment, transparent disciplinary processes, and independent oversight free from the executive. Revisiting Section 17A in order to restore a degree of investigative autonomy and empowering civilian review bodies can go a long way in balancing the conflicting interests. Accountability, after all, cannot and should not be considered as a fetter but as something essential for lawful governance. It is only when the uniform becomes synonymous with public service rather than state privilege that the Indian police will come closer to representing the rule of law they are sworn to uphold.

Is cooling off before arrest under section 498a of the IPC a justified wait?

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INTRODUCTION

The Supreme Court recently upheld the directives issued by the Allahabad High Court that prohibit immediate arrests under Section 498A of the IPC, or Section 85 of the BNS. The court has mandated a two-month "cooling-off" period before any kind of coercive action by the police in such matrimonial disputes, during which the matter will be referred to a Family Welfare Committee (FWC) so that it can be settled amicably. This judgement comes as a result of repetitive concerns about the increasing number of false allegations, and the tendency of litigants to implicate their relatives in cruelty and dowry-related harassment without substantial basis.

While the need for such mandate is clear, there is a thin line between preventing misuse and deterring genuine complaints, and the law has to ensure that it is able to maintain such balance. This blog aims to examine the rationale behind this judgement, highlights the potential benefits of such "cooling off" period, and flags the concerns that need to be given attention. The blog also aims to provide a way forward so that these guidelines can be enforced in an adequate manner.

GENESIS OF THE GUIDELINES

The guidelines were first introduced by the Allahabad High Court, in Mukesh Bansal v. Union of India as safeguards against the misuse of Section 498A of the IPC. In this case, the complainant made excessively graphic and derogatory allegations about the cruelty propagated by her husband and his family members, but at the same time, failed to substantiate these statements.

The court also noted a rising trend of similar complaints filed without sufficient basis, often implicating the husband as well and other family members. The court, therefore, proposed the idea of a "cooling off period", during which the case would need to be referred to a Family Welfare Committee (FWC), which would be made up of young mediators and social workers.

On 22 July, 2025, the Supreme Court these guidelines, making the two-month cooling-off period, and reference to the FWCs mandatory in all Section 498A complaints, except where the alleged offence involves serious bodily harm, or carries a punishment exceeding 10 years. This ruling came in the wake of another case involving IPS officer Mrs. Shivangi Bansal, who had filed multiple complaints against her husband Mr. Sahib Bansal, which were later found to be false.

These cases are not isolated incidents. Before the judgement was delivered, the Supreme Court had already expressed concern over the misuse of Section 498A. Moreover, the Apex Court also underscored how unwarranted arrests and coercive action on the basis of false complaints can lead to irrevocable harm to the accused along with his family members.

WHY DO THE GUIDELINES MATTER?

Section 498A of the Indian Penal Code is a non-bailable and non-compoundable offence. Therefore, if any action taken against any accused can become extremely coercive. This makes the provision vulnerable to abuse, because many false complaints have been filed over the years. Even though there is no clear quantitative data about the number of false complaints that have been filed, the situation has become concerning as identified repeatedly by both the Parliament and the Judiciary.

Misuse of this provision can not only destroy personal relationships, but label the accused causing irrevocable reputational harm The misuse of this provision can potentially lead to extreme damage, and these guidelines appear to be much needed in the face of such problems. These can help settle matrimonial disputes amicably instead of reverting to a prolonged legal battle.

The guidelines issued by the Allahabad High Court, and now, the Supreme Court have advocated for a two-month period before any coercive action can be taken. This not only serves as an inquiry period for evidence to be collected, but can act as a safeguard against frivolous complaints which would now need to be substantiated reasonably. The fact that the disputes would be now referred to an FWC comprising of young mediators and social workers would mean that a more empathetic and non-judgemental approach can be taken.

As an ancillary benefit, this measure can also lighten the burden on Indian courtrooms, and the availability of police intervention after the FWC submits its report ensures that genuine cases can lead to prosecution even after the mediation process is completed.

THE FLIP SIDE OF THE MANDATE

While the guidelines are commendable because of a variety of reasons, any such blanket mandate can become a cause of concern. The problem with the mediation mandate is that it does not analyse the facts and circumstances behind any case and forces female complainants to remain in the vicinity of the alleged abuser. This can not only expose them to further abuse, but more psychological pressure and distress. This might lead to the complainant feeling forced to withdraw any allegations made especially if there is undue influence by the abuser of the elder family members with an objectively conservative mandate. This is important because the Indian society has conventionally been patriarchal in nature.

Another problem that can arise during this period is the issue of evidence tampering. Even if it is considered that a female complainant has substantial evidence, which is extremely rare in cruelty or domestic violence cases, the evidence can be tampered with and the female will therefore undergo further distress.

The biggest problem with these guidelines is the state of mediation in India. The rural and underprivileged areas face a lack of mediation infrastructure, making it unfeasible to set up FWCs in each district which can pertain to all Section 498A complaints. At the same time, there is a lack of awareness about these quasi-legal processes, and many complainants may not even understand such processes. There is no considerable evidence about the efficiency of such mediation bodies when it comes to dealing with extremely sensitive cases like cruelty and violence, and imposing an immediate blanket ban on any coercive action appears unreasonable.

SOLUTIONS

It is understandable that the Apex Court aims to prevent misuse of this provision, because false allegations can have a devastating impact and destroy the life of any individual, requiring for it to be prevented. However, in a country like India, this measure cannot be implemented immediately without any safeguard or protection being provided to the victims. Therefore, it is the role of the state to ensure that there are adequate support systems in place.

At the first step, this includes widespread training and awareness programmes about the process of mediation would work and the role FWCs would play in a 498A complaint. This also includes ensuring that any individual who partakes in such mediation process is equipped with the resources to handle such mediation. Further, the mediation infrastructure needs to be strengthened as a whole without which it is practically unreasonable to refer every 498A complaints to the FWC.

Secondly, the female complainants need to be provided protection mechanisms without any unwarranted pressure from within or outside the family. This can be done through regular and confidential updates sought by the FWCs or providing for victim protection analogous to witness protections, which again will only be possible if the mediation infrastructure can be strengthened in each district. These complainants need to feel assured that they will not be threatened for pursuing legal recourse, and will be protected from interference.

Lastly, instead of a blanket ban on any coercive action, cases need to be adjudged according to their facts and circumstances. Cases with prima facie victim risk and substantial evidence presented need to be provided with an option of immediate coercive action as enumerated under Section 498A.

CONCLUSION

There is no dispute that false allegations can inflict physical, emotional and psychological harm and this effect persists even when such allegations are disproved, therefore leading to long term consequences over something that the individual did not even do. Public perception takes years to change, if it can be changed at all. This makes the SC guidelines to prevent Section 498A misuse essential, allowing for family disputes to be solved outside the courtroom. However, at the same time, it has to be recognised that the two-month cooling off period cannot be construed in a narrow manner. If done, there is an inherent risk of discouraging any genuine complaint that may arise from this provision, which have never ceased to exist.

That is why the court needs to ensure that a balance can be created to accept genuine cases and deter false ones. A system needs to be created which not only responds to the harms of misuse, but also cater to the legislative intent of Section 498A in the first place. This calls for a need to strengthen mediation infrastructure and victim protection mechanisms. Because for every fake allegation, there are many women who exist and suffer in silence, and they cannot be silenced more by a mechanism that is designed to keep them safe.