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Punjab and Haryana Bar Council Law Journal

COUNSEL

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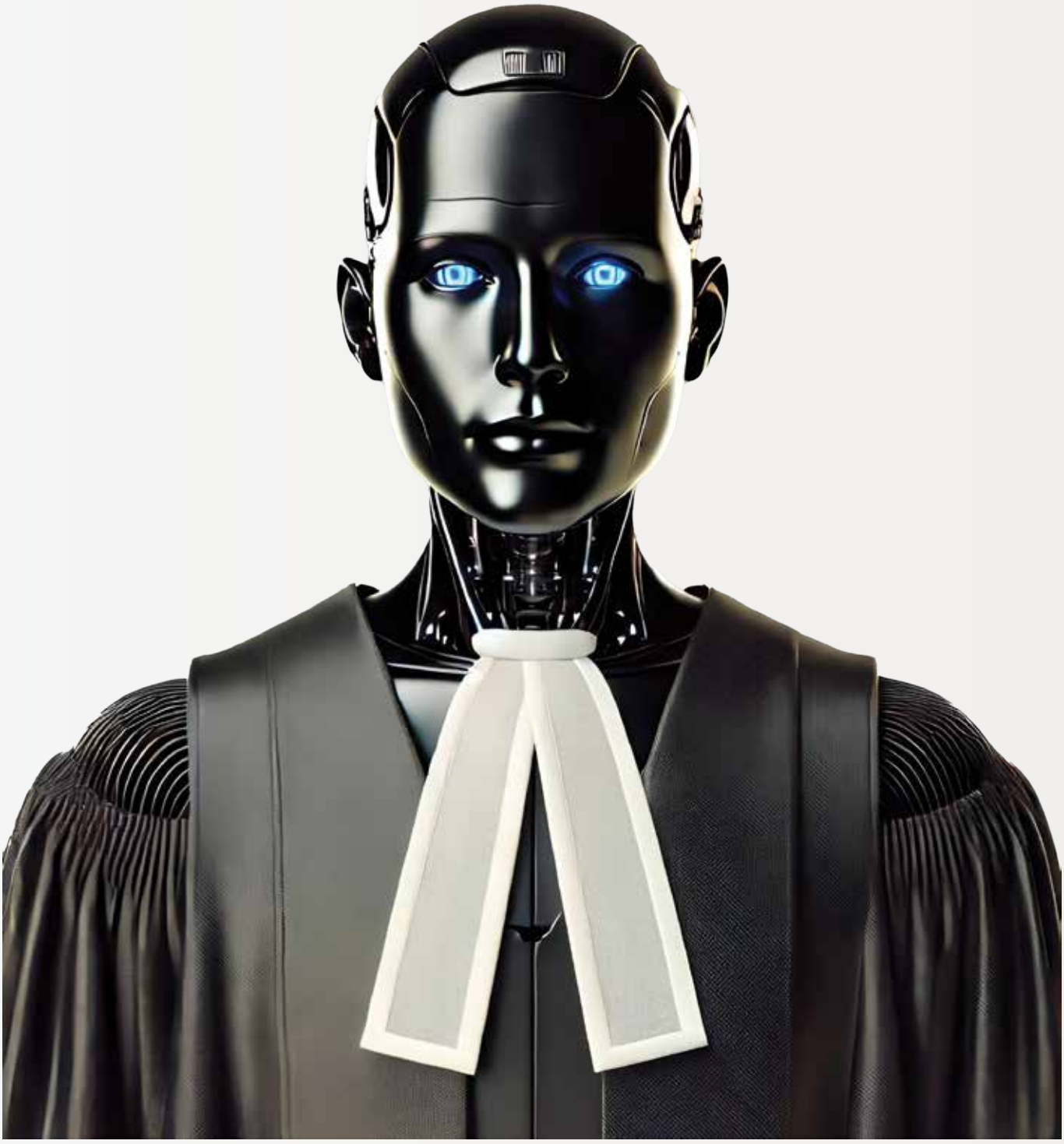
Q6 2025



In Grief

Late Shri Bhupinder Singh Rathore

Hear the Child, Honor Their Future

The Voice of The Child

Paul Clement

Defending Big US Law Firms against Trump

The President of India met Chief Justice of India, Shri Justice Sanjiv Khanna and Judges of the Supreme Court of India at Amrit Udyan of Rashtrapati Bhavan on March 18, 2025.

Pictures courtesy: Digital Photo Library, Rashtrapati Bhawan

CONTENTS

In this issue | Q6 2025

This edition, we embrace an AI-charged lawyer. Professionals in the legal field have grown less cautious of artificial intelligence (AI) in recent years. It is true that they are starting to accept AI as a revolutionary force and are growing increasingly hopeful about how it can improve their working methods. Legal professionals who wish to perform due diligence on the use of AI in their practices need to do so thoughtfully and rigorously. If they don't do so, they might not maximize the benefits this emerging technology can provide.

COVER STORY

Cusp of Bar Excellence

Manan Kumar Mishra

Senior Advocate, Supreme Court of India

Hon'ble Chairman, Bar Council of India

Hon'ble Member of Parliament (Rajya Sabha)

Heartiest congratulations to Shri Manan Kumar Mishra on his historic seventh consecutive term as Chairman of the Bar Council of India (BCI) having been elected unanimously.

A gold medalist from Patna University and Senior Advocate of the Supreme Court, having recently been unanimously elected as Member of Parliament (Rajya Sabha), his visionary leadership has been instrumental in advancing advocate welfare throughout the country. As a Rajya Sabha MP, he champions the legal fraternity's cause, ensuring the independence and strength of the Bar.

Mr Mishra has been instrumental in setting up of the National Law School of India University at Bangalore, and other prestigious law universities of such stature. He is the sole inspiration behind the historical initiatives undertaken by the Bar Council of India Trust and the setting up of world-class India International University of Legal Education and Research (IIULER) at Goa.

LEGAL PERSONALITY

FEATURES

CASE STUDY

REMEMBRANCE

PRACTICE TOOLSET

OPINION

MISC

"The privilege of resisting or disobeying a particular law or order accrues only to him who gives willing and unswerving obedience to the laws laid down for him."

-Mahatma Gandhi

www.bcph.co.in lawbhawan37@gmail.com LinkedIn

BAR COUNCIL OF PUNJAB & HARYANA

Law Bhawan, Dakshin Marg, Sector 37-A, Chandigarh ☎ 0172-2688519, 81950-17269

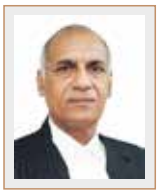
LIST OF MEMBERS OF BAR COUNCIL

Mr. Rakesh Gupta
Chairman

Mr. Amit Rana
Vice-Chairman

Mr. Suvir Sidhu
Member, Bar Council of India

Mr. Surinder Dutt Sharma
Honorary Secretary



Mr. Jai Vir Yadav, Sr. Advocate
Member Bar Council

Mr. Minderjeet Yadav
Member Bar Council

Mr. Chander Mohan Munjal
Member Bar Council

Dr. Vijender Singh Ahlawat
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Mr. Raj Kumar Chauhaan
Member Bar Council

Mr. Gurtej Singh Grewal
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Mr. Rajat Gautam
Member Bar Council

Mr. Pravesh Yadav
Member Bar Council

Mr. Hargobinder Singh Gill (Bagga)
Member Bar Council

Mr. Pravindra Singh Chauhan, Sr. Advocate
Advocate General Haryana

Mr. Maninderjit Singh Bedi
Advocate General Punjab

BCPH ACADEMIC COMMITTEE STAFF - (**Malkit Singh,** Additional Secretary & **Rahul Grover,** Superintendent-I)

COVER STORY

1 **Use AI for Case Law Research:** Adopt AI tools like Manupatra's AI search to find relevant precedents quickly.
2 **Analyze Statutes:** Use AI to parse Indian statutes (e.g., IPC, CrPC) for precise interpretations.
3 **Identify Judicial Trends:** Develop AI models to analyze High Court judgments, e.g., predicting outcomes in tax disputes.
4 **Cross-Reference Cases:** Use AI to link related cases, similar to ROSS Intelligence in the USA.
5 **Multilingual Research:** Create AI tools to search vernacular judgments (e.g., Hindi, Tamil) for regional cases.
6 **Summarize Judgments:** Use NLP tools to generate concise summaries of lengthy Supreme Court rulings.
7 **Track Legal Updates:** Implement AI to monitor amendments, e.g., changes to the Companies Act.
8 **Global Precedent Analysis:** Use AI to compare Indian laws with international cases, aiding arbitration lawyers.
9 **Keyword Extraction:** AI can extract key terms from case files, speeding up research for litigation.
10 **Customized Research:** Train AI on niche areas like environmental law for specialized practices.
11 **Automate Contract Drafting:** Use tools like SpotDraft to create contracts compliant with Indian laws.
12 **Review Contracts:** AI tools like Kira Systems can flag risks in commercial agreements.
13 **Standardize Templates:** Automate templates for wills, NDAs, or leases using AI platforms.
22 **Estimate Case Timelines:** AI predicts case duration in Indian courts, aiding client counseling.
23 **Strategize Arguments:** AI suggests precedents likely to sway judges in specific courts.
24 **E-Discovery:** Use AI to filter relevant emails or WhatsApp chats in litigation, similar to Relativity.
25 **Case Prioritization:** AI helps lawyers focus on high-value cases by analyzing potential outcomes.
26 **Court Scheduling:** AI tracks hearing dates and sends reminders, reducing missed deadlines.
27 **Evidence Analysis:** AI categorizes evidence for relevance, streamlining trial preparation.
28 **Client Updates:** AI automates case status reports for clients via email or apps.

29 **Fee Estimation:** AI calculates litigation costs based on case complexity.
30 **Risk Assessment:** AI evaluates litigation risks, e.g., in intellectual property disputes.
31 **AI Chatbots for Queries:** Deploy chatbots like LegalKart to answer basic legal questions in Hindi or Punjabi.
32 **Guide Legal Processes:** AI assists clients in filing RTIs or consumer complaints, similar to DoNotPay.
33 **Virtual Consultations:** Use AI to schedule and summarize client meetings, improving efficiency.
34 **Affordable Advice:** Offer AI-driven legal guidance for low-income clients via mobile apps.
35 **Multilingual Support:** AI chatbots provide legal advice in regional languages for rural clients.
36 **Legal Aid Integration:** Partner with NALSA to deploy AI chatbots for free legal aid.
37 **Client Onboarding:** AI automates KYC and client intake forms, saving time.
38 **Feedback Analysis:** AI analyzes client feedback to improve services.
39 **Marketing Insights:** AI identifies client needs through social media analysis, e.g., X posts.
40 **24/7 Support:** AI chatbots handle client inquiries round-the-clock, enhancing accessibility.
41 **Case Backlog Reduction:** Advocate for AI to prioritize cases in courts, like e-Courts initiatives.
42 **Digitize Court Records:** Use AI to convert paper-based records into searchable databases.
43 **Automate Court Filings:** AI streamlines e-filing processes for petitions or affidavits.

14 **Clause Analysis:** AI can identify ambiguous clauses in property agreements, reducing disputes.

15 **Due Diligence:** Use AI to analyze mergers and acquisitions documents, as seen with Luminance in the USA.

16 **Version Control:** AI tools track changes in contract drafts, ensuring accuracy.

17 **Compliance Checks:** AI verifies contracts against regulations like GST or labor laws.

18 **Multilingual Contracts:** Develop AI to draft contracts in regional languages for local clients.

19 **Error Detection:** AI identifies typos or inconsistencies in legal documents.

20 **Document Storage:** Use AI-driven cloud systems like Clio for secure document management.

21 **Predict Case Outcomes:** Use AI to forecast rulings based on historical data, like Lex Machina in the USA.

44 **Judge Support Tools:** AI summarizes case files for judges, speeding up hearings.

45 **Transcription Services:** AI transcribes court proceedings, reducing manual workload.

46 **Learn AI Basics:** Enroll in courses on AI in law via NLSIU or Coursera to understand tools.

47 **Partner with Startups:** Collaborate with Indian legal tech firms like MyAdvo or LegalKart.

48 **Join Legal Tech Forums:** Participate in global networks like Legaltech Hub to stay updated.

49 **Develop Custom Tools:** Work with developers to create AI tools for Indian arbitration or family law.

50 **Ethical AI Training:** Learn to ensure AI complies with India's Data Protection Act.

Become a AI-driven Lawyer Today!

HON'BLE MR JUSTICE ARUN PALLI

Champion of Accessible Justice

Justice Arun Palli was born on September 18, 1964, in Patiala to Sarla and Prem Kishan Palli, coming from a family of contribution towards service. His great-grandfather, Late Sh. Lachchman Dass Palli, and grandfather, Late Sh. Lajpat Rai Palli, were esteemed lawyers at the District Bar, Patiala, while his father was a very seasoned & highly respected Senior Advocate and later a judge at the Himachal Pradesh High Court, retiring in 1998.

He graduated in Commerce from Panjab University, Chandigarh, in 1985, and completed his Bachelor of Laws from the same university in 1988.

Justice Palli began practising law at the High Court of Punjab and Haryana in 1988, gaining expertise in civil, criminal, constitutional, revenue, industrial, and labour law. His services were requested with his appointment as Additional Advocate General for Punjab from September 1, 2004, to March 2007, and later recognized as he was designated a Senior Advocate on April 26, 2007. He contributed as amicus in many important matters.

He was elevated to the Bench of the Punjab and Haryana High Court on December 28, 2013, and took on significant & effective roles such as Executive Chairman of the Haryana State Legal Service

Authority since May 31, 2023, and a member of the Governing Body of the National Legal Services Authority (NALSA) since October 31, 2023, for a two-year tenure. Apart from serving on many other important roles, Justice Palli lately headed the Indian Law Institute, State Unit. With each role, his contributions & proactive approach towards effective leadership ensured the Institutions flourished.

Justice Palli is popularly known for his judgements & rulings, particularly in niche practice areas especially concerning the general public. His courtroom is a spectacle whereby lawyers are pushed to give their best, crisp & to-the-point arguments are welcomed, and empathy flows for the common man. He is known for emphasizing procedural compliance and fairness.

His judgments are noted for intellectual rigor, citizen-centric justice, balance, and fidelity to constitutional values, with a focus on precision, coherence, and sensitivity to legal and administrative equity.

On April 16, 2025, he was sworn in as Chief Justice of the Jammu and Kashmir and Ladakh High Court, following the Supreme Court Collegium's recommendation on April 4, 2025, and Central government approval on April 12, 2025.

During his swearing-in as Chief Justice, Justice Palli emphasized, "*The voice of the common man must reach, and be heard by the courts*," advocating for accessibility and equality.

A true champion of accessible justice, advocates for common man, guardian of constitutional equality, and reformer of legal access. Bar Council honors his contributions as this edition's legal personality cover story.

Honoring the legacy of Shri Bhupinder Singh Rathore

(16.05.1946 - 22.04.2025)

All Members of the Bar Council & staff, and legal fraternity stands in collective mourning, grappling with the profound loss of Shri Bhupinder Singh Rathore, the senior-most Member of the Bar Council of Punjab & Haryana, whose sudden demise has left an indelible void. A seasoned lawyer & respected Bar leader, Shri Rathore's remarkable journey in the legal sphere began with his **continuous election to the Bar Council since 1997**, evident of the confidence reposed in him by his peers. His illustrious career was marked by prestigious roles, including **Member, Bar Council of India (1997–2003, 2011–2013)** and **Vice Chairman, Bar Council of India (2001–2002)**. Additionally, he served with distinction as President of the

District Bar Association, Karnal, on three occasions, shaping his parent Bar's & region's legal community with his vision and dedication.

Shri Rathore's contributions

transcended mere titles; he was a mentor, advocate, and stalwart whose commitment to the Bar's welfare inspired countless legal professionals. His passing has elicited an overwhelming wave of grief, reflected in the flood of condolence messages from Bar Council of India Members across 20 states and prominent Bar leaders from Punjab, Haryana, and Chandigarh. The Bar Council of India and Bar Council of Punjab & Haryana, in a

poignant gesture, convened an emergent meeting to honor his legacy, passing resolutions that encapsulated

his monumental impact and observing a moment of silence in reverence. This solemn tribute reverberated across the region, as Bar rooms in Punjab, Haryana, and beyond paused for a two-minute standing silence, a collective act of respect for a leader whose life was dedicated to the service of Bar welfare and justice.

Shri Bhupinder Singh Rathore's departure is not merely the loss of a distinguished Member but the end of an era defined by his principled leadership and tireless advocacy. His legacy, woven into the fabric of the legal community, will continue to guide and inspire future generations. As we bid farewell to this luminary, we hold fast to the values he championed, ensuring his contributions to the Bar endure as a lasting testament to his extraordinary life.

Rakesh Gupta

Chairman BCPH

As I pen down my thoughts for this sixth edition of **COUNSEL**, it is truly heartening to witness how this publication has evolved into a distinguished forum for legal minds from various walks of life. In two years, **COUNSEL** has gained recognition as an intellectual space drawing academic contributions from Hon'ble Judges, Chief Ministers, Parliamentarians, Office-bearers, and Members of the Bar Council, Senior Advocates, Academicians, advocates, and aspiring lawyers.

This platform reflects the dynamism of the legal profession and serves as a testament to the Bar Council of Punjab & Haryana's commitment to nurturing a culture of scholarship, advocacy, and thought leadership.

The diversity of topics and perspectives represented within its pages is a testament to the depth and breadth of legal discourse that our Bar supports. Each issue has offered insights not only on the evolving jurisprudence but also on the practical challenges faced by advocates in a rapidly changing legal landscape.

In these times, where the profession faces unprecedented transformations due to technology, societal shifts, and the global nature of legal practice, **COUNSEL** provides a space for us to collectively reflect, critique, and offer solutions. It is through such dialogue that we can strengthen our professional community, uphold the rule of law, and ensure justice for all.

I extend my gratitude to all contributors, especially the young advocates and law students who have used this platform to express their unique voices and perspectives. Their participation ensures that **COUNSEL** remains forward-looking and inclusive. Let this journal continue to inspire and shape future generations of lawyers who will uphold the highest standards of legal excellence.

As we move forward, let us remain steadfast in our mission to support and advance the profession while ensuring that our voices through **COUNSEL** continue to contribute meaningfully to the greater good of society.

We dedicate this edition to the young lawyers and our quest with AI & Technology.

Amit Rana
Vice Chairman BCPH

As the Vice Chairman of the Bar Council of Punjab & Haryana, I am immensely proud to present the sixth edition of our distinguished law magazine, COUNSEL, which features a striking cover image of a robot lawyer adorned in the traditional band and gown, a powerful symbol of the transformative impact of artificial intelligence (AI) and technology on the legal profession.

This bold imagery encapsulates the essence of our times, where the age-old traditions of law are intersecting with the cutting-edge advancements of the digital era, urging us to embrace a future where technology enhances our ability to deliver justice. The robot lawyer on the cover is not a harbinger of replacement but a representation of augmentation, illustrating how AI can empower lawyers by streamlining repetitive tasks, such as document review or legal research, thereby allowing us to focus on the nuanced, human elements of advocacy like strategy, empathy, quality, justice, and ethical judgment. AI-driven tools, from predictive analytics that forecast case outcomes with remarkable accuracy to automated contract analysis that reduces hours of manual labor, are revolutionizing legal practice, making it more efficient, cost-effective, and accessible to a broader spectrum of society. Virtual courtrooms, e-discovery platforms, and AI-powered chatbots providing preliminary legal advice are breaking down barriers, ensuring that justice is not confined to those who can afford traditional legal services. Embracing these technologies is not optional but imperative, as they enable us to stay competitive in a globalized world where clients demand faster, data-driven solutions without compromising on quality or integrity.

However, this technological leap requires us to evolve, to upskill, and to adopt a mindset that views innovation as an ally rather than a threat.

The cover of COUNSEL serves as a clarion call to the legal fraternity, particularly in Punjab, Haryana and Chandigarh, to engage with this paradigm shift, to explore how AI can enhance case preparation, client interactions, and even pro bono work, ensuring that our profession remains a beacon of fairness in an increasingly complex world. The magazine's content delves into these themes, offering insights from legal tech pioneers, case studies on AI applications, and discussions on the ethical considerations of integrating technology into law, all aimed at sparking dialogue and inspiring action. As Vice Chairman, my vision is to foster a culture of innovation within our Bar, where young lawyers, in particular, are at the forefront of this transformation, fearlessly experimenting with AI tools, contributing to legal tech startups, and advocating for policies that balance innovation with accountability. I urge our young advocates to seize this moment, to participate in tech-focused legal forums, attend workshops on AI applications in law, and collaborate on initiatives that bridge the gap between technology and justice, ensuring that our Bar Council remains a trailblazer in this exciting evolution. By engaging in these conversations, young lawyers can shape a future where technology amplifies our ability to serve clients, uphold the rule of law, and make justice more inclusive, all while preserving the timeless values that define our profession.

Let the robot lawyer on the cover of COUNSEL be a reminder that the future of law is here, and it is ours to mold through curiosity, courage, and collaboration.

Editor

It gives me immense pleasure to contribute to the sixth issue of **COUNSEL**, the Bar Council of Punjab and Haryana's esteemed Law Journal, which was first printed and inaugurated in 2023 by Hon'ble Mr. Justice Surya Kant, Judge, Supreme Court of India. In the coming years, our vision is to broaden the scope of **COUNSEL** by exploring new avenues such as newsletters, dedicated publications, and even certification courses. The journal has already witnessed incredible participation from esteemed academicians and advocates, and we are sincerely thankful for their contributions. For this issue, myself & the editorial team, along with the academic committee and staff, has strived to compile a collection of articles that represent the diverse fields of society & law, especially concentrating on the influence of AI & tech in the legal sector. Every effort has been made to ensure the journal upholds its values, providing readers with insightful and comprehensive content that will be both informative and productive for their practice and understanding.

With the recent amendments in periodical regulations, including the introduction of the new PRP Act & Rules, we are committed to ensuring full compliance. Moving forward, we aim to deliver high-quality content & legal literary works that will benefit our entire legal community.

– Raj Kumar Chauhaan

Member, Bar Council of Punjab and Haryana
Former Vice Chairman & Hony' Secretary BCPH

INTERNATIONAL LAW CONFERENCE 2024 AMRITSAR, PUNJAB (INDIA)

The International Law Conference 2024 was organized by the Bar Council of Punjab and Haryana on 14.12.2024 at Amritsar, Punjab, which was attended by Hon'ble Judges, thought leaders, academicians, foreign dignitaries and other eminent scholars.

The conference was inaugurated by Hon'ble Mr Justice Surya Kant Judge Supreme Court of India.

On behalf of the Bar Council, the event was primarily organised by **Shri Karanjit Singh Former Chairman and Member Bar Council of Punjab & Haryana**.

The conference celebrated 555 Years of Guru Nanak Dev Ji's Birth Anniversary & Teachings (1469-2024). A similar conference was organized in 2020, making this the second one at 555th year. The theme of the conference was '*Justice & Compassion: Legal Thought and Practice in a changing world*'.

Four separate technical sessions were organized on varied legal topics i.e. *Legal Philosophy & Compassion, 75 Years of Indian Constitution, District Courts at the Heart of Justice and Cross Border Legal Cooperation.*

The event also commemorated 75 Years of the Indian Constitution (1949-2024) and 165 Years of established Bar in Amritsar (1859-2024).

Some highlights are being shared, along with recordings of speeches of dignitaries (*please scan QR code to view addresses*):-

Karanjit Singh
Chairman, Organizing Committee


International Law Conference
Hon'ble Mr Justice Surya Kant


VALEDICTORY CEREMONY


Bar Council of Punjab & Haryana Chandigarh

SCAN TO VIEW

International Law Conference 2024 | 14.12.2024 | Amritsar (Punjab) | Hon'ble Mr Justice Surya Kant

SCAN TO VIEW

International Law Conference 2024 | 14.12.2024 | Amritsar, Punjab | Hon'ble Chief Justice Sheel Nagu

SCAN TO VIEW

International Law Conference 2024 | 14.12.2024 | Amritsar (Punjab) | Manan Kumar Mishra

SCAN TO VIEW

International Law Conference 2024 | 14.12.2024 | Amritsar (Punjab) | Hon'ble Mrs Justice Lisa Gill

SCAN TO VIEW

International Law Conference | 14.12.2024 Amritsar, Punjab | Hon'ble Mr Justice Anupinder Singh Grewal

SCAN TO VIEW

International Law Conference | 14.12.2024, Amritsar, Punjab | Hon'ble Mr Justice Sanjeev Prakash Sharma

SCAN TO VIEW

International Law Conference | 14.12.2024, Amritsar, Punjab | Hon'ble Mrs Justice Manjari Nehru Kaul

SCAN TO VIEW

International Law Conference | 14.12.2024 | Amritsar, Punjab | Hon'ble Mr Justice Harsimran Singh Sethi

SCAN TO VIEW

International Law Conference | 14.12.2024 | Amritsar | Hon'ble Mr Justice Jasgurpreet Singh Puri

SCAN TO VIEW

International Law Conference | 14.12.2024 | Amritsar, Punjab | Hon'ble Ms Justice Lapita Banerji

SCAN TO VIEW

International Law Conference 2024 | 14.12.2024 | Amritsar (Punjab) | Hon'ble Mr Justice Surya Kant

SCAN TO VIEW

International Law Conference | 14.12.2024 Amritsar, Punjab | Chief Justice Shiavax J Vazifdar (Retd)

SCAN TO VIEW

International Law Conference 2024 | 14.12.2024 | Amritsar (Punjab) | Ms Charan Sandhu New York


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Hospitals, Fire Services, Police
and more during emergencies
Be the hero your city needs.
Register on Mybharat portal today!
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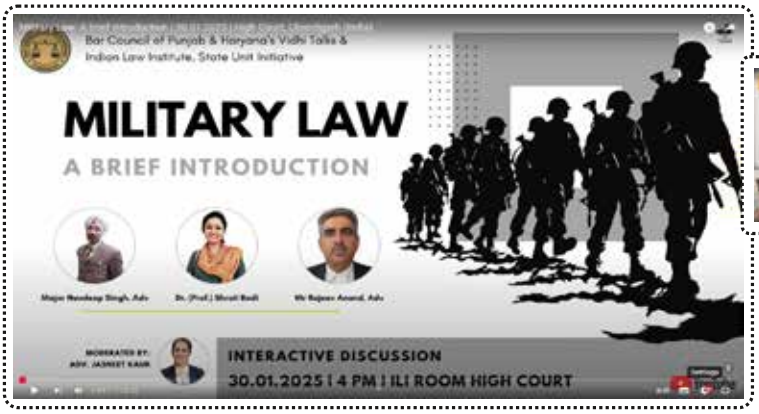
How to read and apply a Judgement? | Justice Vikas Bahl in discussion with young lawyers

SCAN TO VIEW

Public Interest Litigation | 31.01.2025 | Interactive Discussion

SCAN TO VIEW



Military Law: A brief introduction | 30.01.2025 | High Court, Chandigarh (India)

SCAN TO VIEW

Artificial Intelligence & Law: An open discussion | 29.01.2025 | Chandigarh (India)

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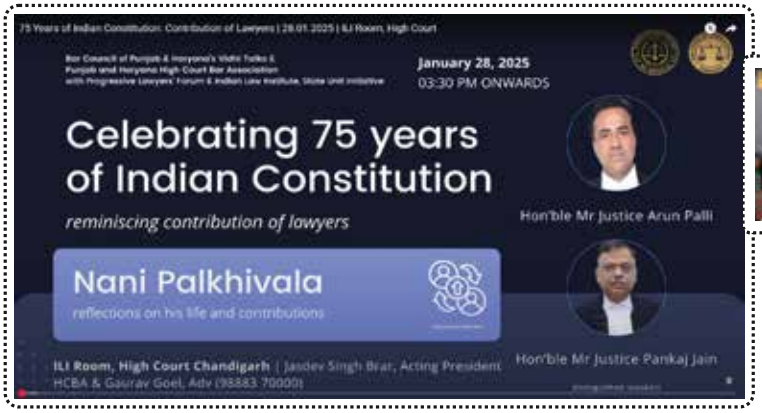


SCAN TO VIEW

75 Years of Indian Constitution: Contribution of Lawyers | 28.01.2025 | ILI Room, High Court

SCAN TO VIEW

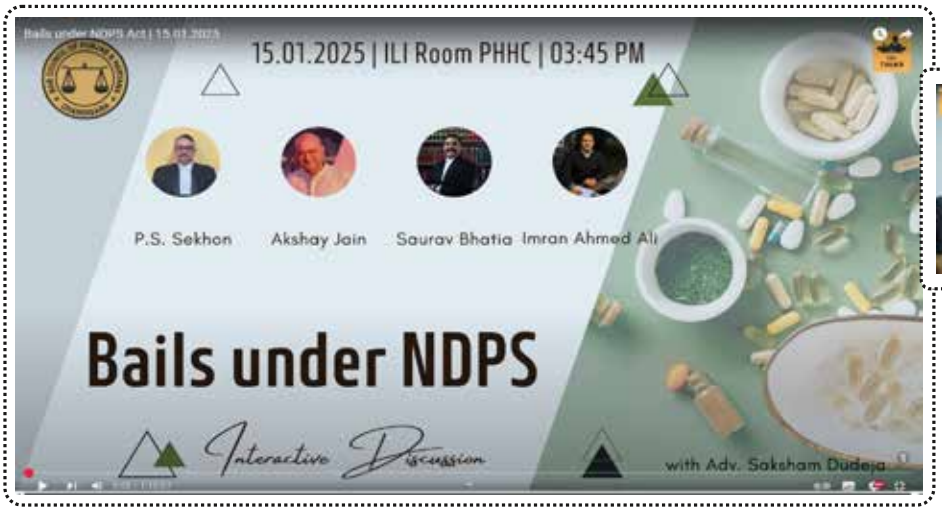
Insolvency and Bankruptcy Code & Companies Act Litigation | 23.01.2025 | Interactive Discussion

SCAN TO VIEW

Mental Health in Legal Profession | 18.01.2025 | Young Lawyers with Chief Justice Ritu Bahri (retd.)

SCAN TO VIEW

Right to be Forgotten? | Interactive Discussion | 16.01.2025



SCAN TO VIEW

Bails under NDPS Act | 15.01.2025

SCAN TO VIEW

Legal Career and Practice in International Institutions | Interactive Discussion

SCAN TO VIEW

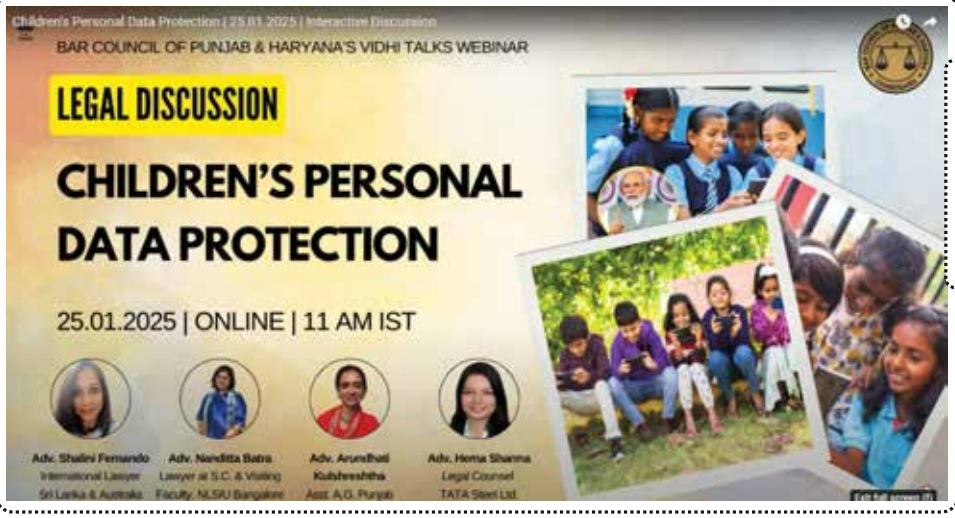
Arbitration Reliefs u/s 9 | Interactive Discussion

SCAN TO VIEW

RERA Laws Overview (Filings, Draftings, etc.) | Interactive

SCAN TO VIEW

No Contest Clauses & Future of Wills | Interactive Discussion



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Children's Personal Data Protection | 25.01.2025 | Interactive Discussion

SCAN TO VIEW

Evolving Global Data Protection Laws | Interactive Discussion | 13.01.2025

SCAN TO VIEW

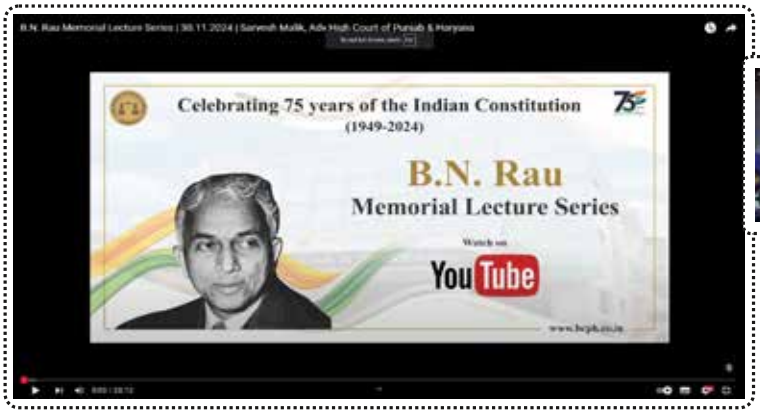
AI & Governance | Interactive Discussion | 12.01.2025

SCAN TO VIEW

Digital Personal Data Protection Rules 2025 | Interactive Discussion | 11.01.2025

SCAN TO VIEW

Digital Personal Data Protection Rules 2025 | Interactive Discussion | 11.01.2025



B.N. Rau Memorial Lecture Series | 30.11.2024 | Sarvesh Malik, Adv High Court of Punjab & Haryana

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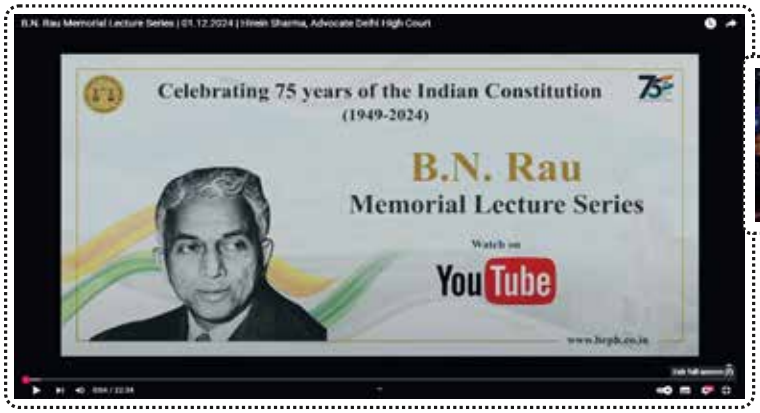

B.N. Rau Memorial Lecture Series | 01.12.2024 | Hirein Sharma, Advocate Delhi High Court

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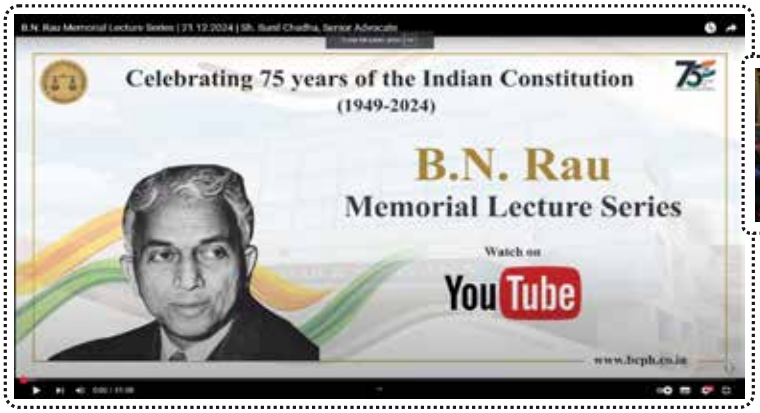

B.N. Rau Memorial Lecture Series | 21.12.2024 | Sh. Sunil Chadha, Senior Advocate

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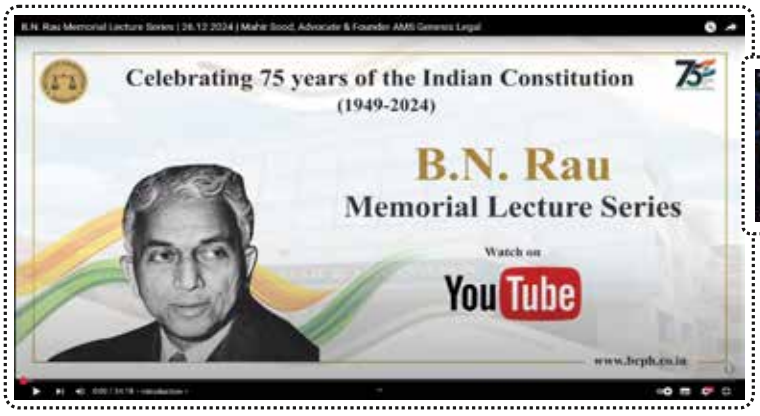

B.N. Rau Memorial Lecture Series | 26.12.2024 | Mahir Sood, Advocate & Founder AMS Genesis Legal

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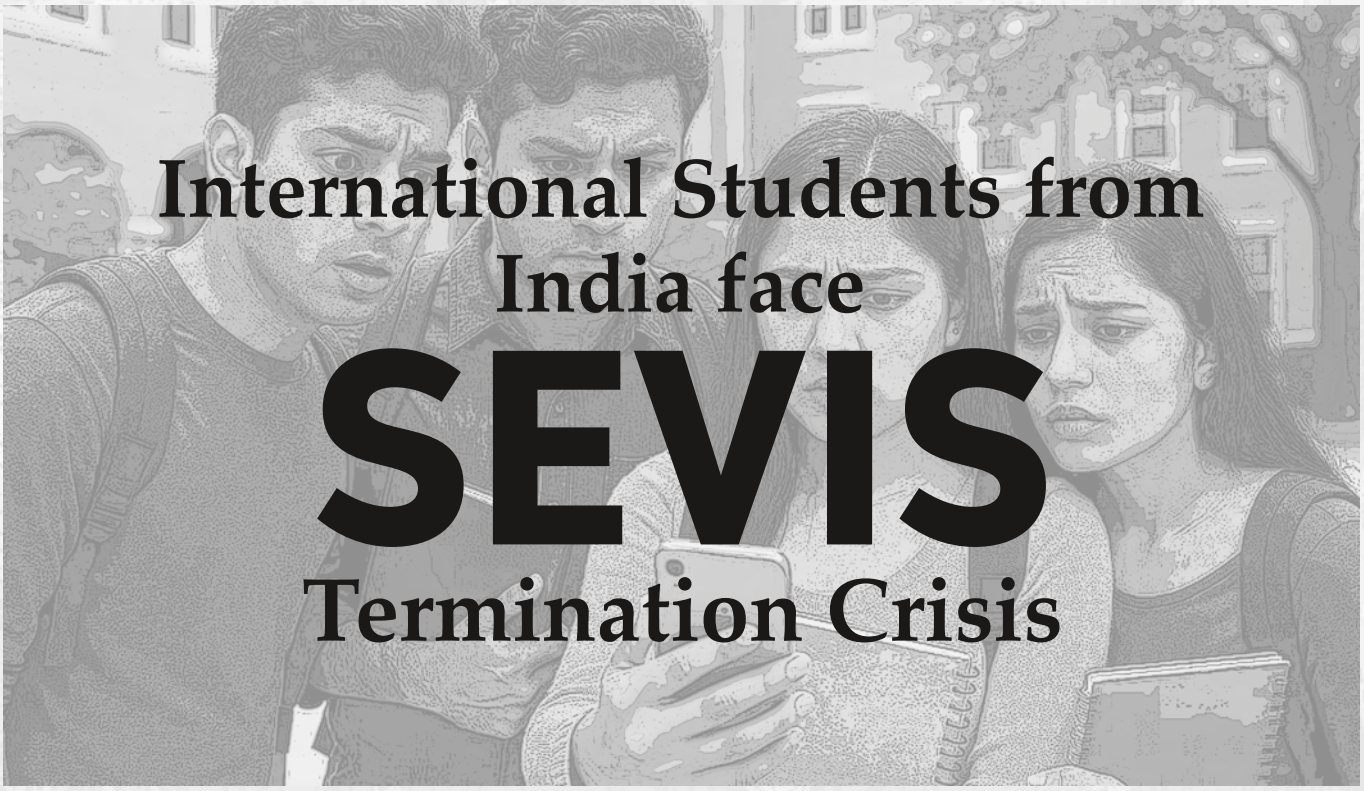

International Students from India face SEVIS Termination Crisis

In 2025, a crisis gripped thousands of Indian international students in the United States as they faced the sudden termination of their **Student and Exchange Visitor Information System (SEVIS)** records, a move that threw their legal status into chaos and threatened their educational and professional futures. SEVIS, a U.S. government database managed by the Department of Homeland Security (DHS), tracks international students on F-1, M-1, and J-1 visas, ensuring compliance with requirements like full-time enrollment and restrictions on unauthorized work. However, in a sweeping and often unexplained series of actions starting in early 2025, hundreds of Indian students saw their SEVIS records terminated, leaving them vulnerable to deportation and sparking widespread legal and diplomatic fallout. This crisis not only disrupted the lives of these students but also cast a shadow over U.S.-India relations and the future of international education in America.

The reasons behind the terminations varied, often catching students off guard. Some were linked to minor infractions—think traffic violations or dismissed misdemeanor charges—while others stemmed from more contentious issues like participation in campus protests or social media posts deemed controversial by U.S. authorities. Many students believed they were fully compliant with visa rules, with some even having prior legal issues resolved in their favor, only to find their SEVIS status revoked without warning. Once terminated, a student's legal standing evaporates, forcing them to either leave the U.S. within 15 days or risk arrest and formal deportation proceedings, which could bar them from returning for years. For Indian students, who

Mr. Chander Mohan Munjal
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form the largest group of international students in the U.S.—over 330,000 in the 2023-24 academic year—the impact was seismic. Nearly half of the 327 reported cases of visa revocations and SEVIS terminations involved Indian nationals, according to the **American Immigration Lawyers Association (AILA)**.

The consequences were immediate and devastating. Students in the midst of degrees or working under Optional Practical Training (OPT) found their plans upended. Universities, reacting to SEVIS updates, disenrolled them, and work authorizations vanished, plunging many into financial distress. Some faced the stark reality of leaving the country overnight, abandoning years of effort, while others turned to the courts for salvation. Legal challenges erupted across states like Georgia, Michigan, and New Hampshire, where courts issued temporary restraining orders (TROs) to halt deportations and reinstate SEVIS records. A notable case in Georgia saw a district court grant a TRO to 133 students, including many Indians, criticizing the lack of due process in the terminations. Immigration attorneys, such as Charles Kuck, blasted the actions as legally shaky and damaging to America's image, warning that the fallout could deter global talent for years.

The U.S. government's stance only deepened the confusion. Officials like DHS's Andre Watson argued that SEVIS terminations didn't automatically revoke visas or mandate deportation, yet universities interpreted them as a loss of status, advising students to leave. This disconnect fueled chaos, exacerbated by the Trump administration's broader immigration crackdown targeting students from countries like India and China. Secretary of State Marco Rubio justified the moves, insisting that students were in the U.S. to study, not to engage in "disruptive activism," though many affected had no such record—some were penalized for trivialities like speeding tickets. Meanwhile, the Indian government stepped in, with its Ministry of External Affairs voicing concern and offering support via embassies, highlighting the diplomatic stakes of a crisis affecting a key partner nation.

The broader implications are hard to ignore. Indian students contribute heavily to the U.S. economy—part of the $40 billion international students inject annually—and bolster fields like technology and science. Yet, this crisis threatens to erode that pipeline. Early signs point to declining applications, with students eyeing Canada or Europe instead, wary of America's unpredictable visa landscape. U.S.-India ties, rooted in education and tech exchange, face strain, and America's soft power takes a hit as its reputation as a welcoming hub for scholars frays. Organizations like NAFSA and the American Council on Education have called for transparency, urging DHS to explain each termination clearly and work with universities to avoid such upheaval.

Ultimately, the SEVIS termination crisis of 2025 lays bare flaws in how the U.S. handles its international students. While security matters, the opaque, heavy-handed approach—lacking notice or appeal—has sparked a reckoning. Courts have offered temporary relief, but the episode underscores a need for balance in safeguarding the nation without alienating the talent that drives its innovation. For Indian students caught in this storm, the fight is personal, but the outcome will shape America's global standing and its promise as a land of opportunity for years to come. **Clearer rules, better communication, and a commitment to fairness are critical to prevent this from becoming a cautionary tale for the next generation of global learners.**

A Century of the Rashtriya Swayamsevak Sangh

Guardian of Indian Heritage, Beacon of Patriotism, and Servant of Society

Mr. Raj Kumar Chauhaan
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As the Rashtriya Swayamsevak Sangh (RSS) marks 100 years of its establishment in 2025, it stands as a unique phenomenon in world history: a non-political, volunteer-driven socio-cultural movement that has influenced the heart of a nation, redefined patriotism, and served millions. With an unwavering commitment to India's civilizational values, cultural heritage, and national unity, the RSS has become synonymous with service, discipline, and a deeply embedded sense of duty towards society and mankind. Here we delve into a century of tireless dedication, exploring in depth the origins, ideology, branches, and enduring contributions of the RSS to the fabric of India.

Introduction: The Genesis of a Movement

Founded on 27th September 1925 by Dr. Keshav Baliram Hedgewar in Nagpur, the RSS was born in the crucible of colonial India with a singular mission: to rebuild a nation fragmented by centuries of invasion, colonial rule, and internal divisions. Dr. Hedgewar envisioned a disciplined cadre of selfless patriots who would serve as moral and cultural sentinels of Bharat Mata (Mother India).

The RSS was never intended to be a

political party-it was conceived as a movement of national regeneration, a mission to awaken the soul of India through cultural resurgence and human character-building. Its methodology was simple yet profound: daily shakhas (units), physical training, intellectual discussion, and self-discipline as tools of national awakening.

The Philosophy: Bharat First, Self Last

The RSS rests on the belief that *India is not just a territory but a sacred civilization, and that its greatest strength lies in its Dharma-based values, unity in diversity, and time-tested traditions. Its philosophy is drawn from the Upanishads, the Gita, and the epics-emphasizing nishkama karma (selfless action), seva (service), shraddha (faith), and tyaga (sacrifice).

It rejects narrow sectarianism, instead promoting an integrated and inclusive vision of Indian nationalism, where every citizen, irrespective of caste, region, language, or religion, is part of the larger national family.

A Hundred Years of Building Human Values and National Character

Over the decades, the RSS has worked relentlessly to *build a culture of discipline, moral integrity, and societal harmony*. Its training emphasizes the development of inner strength, empathy, brotherhood, and fearlessness—qualities that reflect in swayamsevaks across the country.

Whether during national emergencies, wars, pandemics, or communal strife, RSS volunteers have been first responders, risking their lives in service. Its ethos of *"Desh ke liye jeevan dan"* (offering life for the nation) is not mere rhetoric-it is a lived truth across generations of swayamsevaks.

Branches of the RSS: A Galaxy of Seva and Transformation

The Sangh has inspired and nurtured a vast ecosystem known as the Sangh Parivar, each branch operating with autonomy but sharing a unified national vision. These organizations span every dimension of society-from education and labor to health, tribal welfare, and international relief.

Seva Bharati

Active in over 1.7 lakh service projects, Seva Bharati is one of India's largest NGOs. It runs schools, orphanages, hospitals, disaster relief missions, and skill-development centers, especially in slums, tribal belts, and backward regions.

Ekal Vidyalayas and Vidya Bharati

RSS-inspired institutions like Ekal Vidyalaya Foundation have set up over 100,000 single-teacher schools in remote villages. Vidya Bharati runs over 20,000 formal schools, focusing on value-based education, Sanskrit, and holistic learning.

Vanvasi Kalyan Ashram

Dedicated to the empowerment of tribal communities, this branch runs schools, healthcare camps, and cultural programs across forest regions, integrating Vanvasis into the national mainstream without erasing their identities.

Bharatiya Mazdoor Sangh (BMS)

India's largest trade union,

BMS promotes worker rights while emphasizing harmony between labor and management. It challenges Marxist unions with a nationalist, dharmic perspective.

Rashtra Sevika Samiti

The women's counterpart of the RSS, this organization promotes leadership among women, rooted in Indian ethos. It runs shakhas, vocational training, and moral education programs, empowering lakhs of women.

Vishwa Hindu Parishad (VHP)

Tasked with the global cultural mission, the VHP has played a crucial role in reviving Hindu pride, organizing mass movements like the Ram Janmabhoomi, and promoting dharmic dialogue across nations.

Sewa International

This global humanitarian organization works in more than 25 countries, responding to natural disasters, refugee crises, and educational needs-from the COVID-19 pandemic to the Nepal Earthquake.

The RSS in Nation-Building and Crisis Response

The RSS has always responded in times of national need:

1947 Partition Riots: Protected millions displaced during the horrors of Partition.

1962, 1965, 1971 Wars: Provided logistical support and blood donations.

Bhopal Gas Tragedy (1984) and Tsunami (2004): Relief and rehabilitation.

COVID-19: Distributed over 50 million meals, managed quarantine centers, cremated thousands with dignity.

Transforming Education and Culture

The RSS regards education as the foundation of national resurgence. Its institutions prioritize value education, mother tongue instruction, and cultural rootedness. Students are taught not only facts but character, courage, and clarity.

Organizations like Sanskrit Bharati work to revitalize classical languages, while *Sanskar Kendras (value centers) conduct weekly programs instilling patriotism, respect for elders, and environmental consciousness in youth.

Fostering Social Harmony and Upliftment

Contrary to the often misrepresented image of the Sangh, it has long been a champion of social integration. It has launched:

Samajik Samrasta (Social Harmony) programs to end caste discrimination.

- Inter-dining, inter-marriage advocacy across communities.

- Outreach to Muslims, Christians, and tribals, fostering fraternity.

Its belief is that service

transcends religion, and the nation is the supreme identity.

VIII. Global Footprint and the Indian Diaspora

From the United States to Fiji, the UK to Kenya, RSS-inspired organizations promote cultural awareness, yoga, seva, and community service. Hindu Swayamsevak Sangh (HSS) organizes shakhas, language classes, and volunteering programs across 40+ countries.

The Next Century: A Renewed Vision for Bharat

As the RSS enters its centenary, it is evolving to face contemporary challenges:

Promoting digital literacy and innovation among youth.

Addressing climate change and sustainability.

Encouraging entrepreneurship and rural revitalization.

Strengthening Bharatiya identity in a globalized world.

It is also more open to dialogue, youth participation, and transparent communication, signaling maturity and confidence in its mission.

A Legacy of Silent Sacrifice and National Awakening

For a hundred years, the RSS has been the unseen scaffolding of India's civil society. It has neither sought credit nor engaged in propaganda. Instead, it has trained millions in the quiet virtues of service, self-discipline, and love for the motherland.

In an age of slogans and selfies, the RSS reminds us that *true patriotism is silent, sacrificial, and sacred. It is not imposed by law or proclaimed in speeches, but practiced daily-in every act of kindness, discipline, and devotion to the nation.

As India steps into the next century, the Sangh remains its moral compass and cultural guardian-a living example of how tradition, service, and patriotism can build not just a nation, but a civilization that stands tall in the world.

Advocate General, Haryana, Sh. Pravindra Singh Chauhan gracing the Call to Bar Ceremony on 26.12.2024 as Chief Guest and presided over the certificates distribution ceremony for newly enrolled advocates.

Then Advocate General, Punjab, Sh. Gurminder Singh gracing the Call to Bar Ceremony on 12.11.2024 as Chief Guest and presided over the certificates distribution ceremony for newly enrolled advocates.

Trump's Immigration Policies: Legal analysis

Mr. Karamjeet Singh
Member Bar Council

President Donald Trump's administration has embarked on an ambitious and aggressive overhaul of U.S. immigration policy, fulfilling campaign promises to prioritize mass deportations and stringent enforcement. These policies, characterized by executive orders, regulatory changes, and the invocation of obscure legal authorities, have sparked significant legal challenges and raised concerns about constitutional violations, due process, and the rule of law. We explore the legal complications arising from Trump's latest immigration decisions, and the issues arisen from a legal lens.

Key Immigration Decisions in 2025

Since taking office in January 2025, the Trump administration has implemented several high-profile immigration measures:

Revocation of Humanitarian Parole Programs: The administration revoked temporary legal status for approximately 530,000 immigrants from Cuba, Haiti, Nicaragua, and Venezuela under Biden-era humanitarian parole programs. Effective April 24, 2025, this decision has left many vulnerable to deportation.

Invocation of the Alien Enemies Act (1798): Trump has utilized this wartime law to deport alleged Venezuelan gang members, bypassing standard immigration procedures. The

administration argues that the act allows rapid removals without extensive judicial review.

Mandatory Registration for Undocumented Immigrants: A federal judge upheld a requirement, effective April 11, 2025, mandating that all undocumented immigrants register with the government and carry documentation. Non-compliance is a crime, potentially leading to fines or imprisonment.

Targeting Legal Immigrants and Visa Holders: The administration has expanded enforcement to include legal immigrants, such as green card holders and visa holders, particularly those expressing views deemed threatening to national security or U.S. foreign policy. High-profile cases include the detention of a Georgetown University academic and a Columbia University graduate.

Limiting Asylum Access: Trump has ended the right to seek asylum at the U.S.-Mexico border, despite its legal enshrinement, and issued directives to fast-track asylum case denials without hearings.

Attacks on Due Process: The administration has been accused of undermining due process by intimidating law firms, defying court orders, and attempting to defund legal representation for unaccompanied minors.

Birthright Citizenship Challenge: An executive order seeks to end birthright citizenship for children of undocumented immigrants, directly challenging the 14th Amendment.

These actions, while resonating with Trump's base, have triggered a wave of lawsuits and judicial scrutiny, highlighting significant legal complications that may include:

Constitutional Violations and Due Process Concerns

The Trump administration's immigration policies have been criticized for violating constitutional protections, particularly the right to due process under the Fifth and Fourteenth Amendments. The Supreme Court's April 2025 ruling on the Alien Enemies Act emphasized that detainees must receive notice and an opportunity for judicial review, reaffirming the right to habeas corpus. However, the administration's defiance of lower court orders—such as continuing deportation flights to El Salvador despite a judge's injunction—has raised alarms about a potential constitutional crisis.

For example, the case of Kilmar Armando Abrego Garcia, a Salvadoran man mistakenly deported despite a court order, underscores the risks of rapid deportations without adequate oversight. The administration's claim that this was an *"administrative error"* has not quelled concerns about systemic due process violations.

The attempt to end birthright citizenship also faces significant legal hurdles. The 14th Amendment explicitly grants citizenship to all persons born on U.S. soil, and altering this through executive action is widely viewed as unconstitutional. The ACLU and other advocates have filed lawsuits, arguing that such a move requires a constitutional amendment, not unilateral executive action.

Misapplication of the Alien Enemies Act

The use of the Alien Enemies Act, a 1798 law intended for wartime scenarios, has been a focal point of legal contention. Critics, including the ACLU, argue that the act's invocation to deport alleged Venezuelan gang members stretches its scope

beyond its original purpose, as it requires a declared war or invasion. Federal Judge James Boasberg temporarily blocked these deportations in March 2025, citing concerns about due process, though the Supreme Court later lifted this block with caveats for judicial review.

The administration's reliance on vague allegations of gang affiliation, often without substantiated evidence, has further complicated matters. Family members of deportees have contested these labels, and legal experts warn that the lack of transparent criteria risks arbitrary enforcement. The ongoing litigation in Texas courts is expected to revisit the act's applicability, potentially returning to the Supreme Court.

Judicial Pushback on Parole Program Terminations

The revocation of humanitarian parole for 530,000 immigrants has faced significant judicial resistance. In April 2025, U.S. District Judge Indira Talwani in Boston issued a temporary injunction, arguing that the Department of Homeland Security's decision was based on an incorrect legal interpretation. The ruling prevents the program's wholesale termination, forcing the administration to justify its actions.

Immigrant rights groups, such as the Justice Action Center, have sued to reinstate the programs, emphasizing the chaos and hardship caused by abruptly stripping legal status. The case highlights the tension between executive authority and judicial oversight, with advocates arguing that the administration's actions violate administrative law by failing to consider public comments or community impacts.

Challenges to Mandatory Registration

The mandatory registration requirement for undocumented immigrants, upheld by Judge Trevor Neil McFadden, has sparked concerns about privacy, discrimination, and historical parallels to oppressive policies, such as Japanese internment during World War II. Critics argue that the rule, implemented as an Interim Final Rule without public comment, violates the Administrative Procedure Act.

The National Immigration Law Center has urged affected individuals to consult attorneys, warning of potential detention and deportation risks. The requirement's broad scope—applying to those 14 and older and mandating fingerprints and addresses—raises questions about enforcement feasibility and its chilling effect on immigrant communities.

First Amendment and Targeting of Legal Immigrants

The administration's targeting of legal immigrants, such as green card holders and visa holders, for their political views has raised First Amendment concerns. The case of Mahmoud Khalil, a Columbia University graduate and legal permanent resident, exemplifies this trend. An immigration judge ruled in April 2025 that Khalil could be deported based on a State Department memo accusing him of undermining U.S. policy, despite no criminal charges. His legal team argues

that this constitutes a *"weaponization of immigration law to suppress dissent."*

Similarly, the detention of a Georgetown University academic and German tourists for their expressed views has prompted international backlash, with Germany updating its travel advisories. These actions test the boundaries of free speech protections and may lead to lawsuits challenging the administration's *"enhanced vetting"* tactics.

Asylum Restrictions and International Law

The termination of asylum access at the U.S.-Mexico border and the policy to fast-track asylum denials without hearings have been criticized as violations of U.S. and international law, including the 1951 Refugee Convention. The American Immigration Lawyers Association has warned that these changes disproportionately harm unrepresented applicants, who face language barriers and complex legal processes.

Litigation is ongoing to challenge these restrictions, with advocates arguing that they undermine the statutory right to seek asylum. The administration's pause on green card processing for

refugees and asylum seekers further complicates legal pathways, potentially leading to additional lawsuits.

Impact on Unaccompanied Minors

The attempt to defund legal representation for unaccompanied minors has drawn sharp criticism. Past data shows that children with attorneys are seven times more likely to secure legal status. A temporary restraining order has restored funding for now, but the administration's push to expedite deportations of minors raises ethical and legal concerns about their right to a fair hearing.

The Trump administration's immigration policies have polarized public opinion and strained judicial resources. While some Americans support the hardline approach—polls show 49% approval for Trump's immigration handling—the expansion to legal immigrants and the defiance of court orders have alienated moderates and drawn international scrutiny.

The administration's actions also risk economic and diplomatic consequences. Immigrants contribute significantly to the U.S. economy, and mass deportations could disrupt industries reliant on their labor. Internationally, allies like Germany have expressed concern over the treatment of their citizens, potentially affecting bilateral relations.

President Trump's 2025 immigration decisions have unleashed a complex web of legal complications, from constitutional challenges to violations of administrative and international law. As the administration presses forward, it risks further legal setbacks and a potential constitutional crisis if it continues to defy judicial orders. **For now, the battle over Trump's immigration agenda is being fought in courtrooms across the country, with profound implications for immigrants, the rule of law, and the nation's moral and legal fabric.**

TRUMP TARIFFS THROUGH A LEGAL LENS

Mr. Amit Rana
Vice-Chairman

A lawsuit in USA filed by Emily Ley Paper Inc. challenges the 20% tariffs on China, arguing IEEPA's use is illegal as tariff power belongs to Congress. Legal experts see a strong basis for this challenge, and more lawsuits are expected, particularly against new reciprocal tariffs. Businesses may face significant financial impacts, potentially raising prices or reducing hiring, adding to the legal complexity.

As of April, President Donald Trump's administration has implemented sweeping tariff policies, declaring a national emergency to impose a 10% duty on all imports and higher rates on specific countries, effective from early April.

These actions, based on the International Emergency Economic Powers Act (IEEPA) of 1977, aim to address large trade deficits and protect American workers. However, this novel use of IEEPA has triggered significant legal debate and challenges.

Delving into history, on April 2, 2025, President Trump declared a national emergency, citing large and persistent trade deficits driven by non-reciprocal trade relationships, currency manipulation, and high value-added taxes by other countries. This led to the imposition of a 10% tariff on all imports, effective April 5, 2025, and individualized higher tariffs on countries with the largest trade deficits, effective April 9, 2025, under IEEPA. These tariffs include a 25% tariff on vehicles imported to the U.S., as noted in recent reports. The Tax Foundation estimates that these tariffs will reduce U.S. GDP by an average of 1.2% and increase taxes by $1,243 per household in 2025, with retaliatory tariffs from countries like China, Canada, and the EU affecting $330 billion of U.S. exports.

The legal landscape surrounding these tariff policies is complex, with multiple fronts of contention:

Statutory Omission and Historical Context

Research suggests that IEEPA (50 U.S.C. 1702) does not explicitly include the power to "tariff" or "tax," despite detailing other powers like regulating imports/exports and foreign transactions. This contrasts with other trade statutes, such as Section 301 of the Trade Act of 1974, which clearly reference tariff authorities. No president has used IEEPA for tariffs in the 48 years since its 1977 enactment, indicating a historical precedent against such use. The legislative history, as per

the House report, shows IEEPA was intended to narrow presidential powers compared to the Trading with the Enemy Act (TWEA), focusing on emergency measures like sanctions rather than broad economic policies like tariffs. The 1975 case United States v. Yoshida upheld TWEA tariffs, but IEEPA's intent, as evidenced by its language, did not include tariffs, especially given Congress's subsequent passage of Section 122 of the Trade Act of 1974 for specific tariff authorities.

Constitutional Challenges: Separation of Powers

The evidence leans toward potential constitutional violations, as the U.S. Constitution grants Congress the power to lay and collect taxes, duties, imposts, and excises under Article I, Section 8, which includes tariffs. Over time, Congress has delegated some authority to the president through acts like the Reciprocal Trade Agreements Act of 1934 and the Trade Expansion Act of 1962, but the non-delegation doctrine limits how much power can be transferred. Critics, including legal scholars, argue that using IEEPA for tariffs circumvents this framework, potentially violating separation of powers. The Supreme Court has emphasized that any delegation must include an "intelligible principle" to limit the president's use, and IEEPA's lack of explicit tariff authority may not meet this standard, especially for generalized tariffs.

Major Questions Doctrine and Judicial Precedent

It seems likely that the Major Questions Doctrine, emerging from cases like West Virginia v. EPA and Biden v. Nebraska, could be applied to challenge IEEPA tariffs. This doctrine requires clear congressional intent for momentous actions, and a universal tariff (e.g., 10% on $3 trillion 2024 imports = $300 billion new taxes, or 20% costing families $4,000 annually) is a "major question" lacking clear IEEPA authorization. Courts should find tariffs outside IEEPA powers, especially for universal tariffs, as there is no judicially administrable principle distinguishing targeted (e.g., 25% on one country) from universal tariffs. Recent cases, such as those involving TikTok and WeChat, show eroding deference to presidential actions under IEEPA, with a 2024 Fifth Circuit ruling limiting IEEPA's property definition post-Loper

Bright. The Yoshida court noted Nixon's tariffs were temporary and limited, suggesting IEEPA tariffs today would likely not meet this standard.

Ongoing Litigation and Potential Court Challenges

The first lawsuit challenging Trump's tariffs was filed by Emily Ley Paper Inc., which imports products from China, in the U.S. District Court in northern Florida. The lawsuit, filed Thursday night (specific date not provided in April 2025), argues that the use of IEEPA for imposing 20% tariffs on China, justified by a national emergency due to fentanyl and precursor chemicals, is illegal. The plaintiff claims financial harm, potentially costing hundreds of thousands of dollars, which may lead to higher prices or reduced hiring. Legal experts, such as Liza Goitein from the Brennan Center for Justice, see a basis for challenge with likelihood of success, while John Vecchione, the lawyer for NCLA, states IEEPA cannot be used for tariffs, even in emergencies. The Retail Litigation Center supports the lawsuit, citing Congress did not give the president such authority. No preliminary injunction is sought to avoid slowing the case, with hopes for a ruling by year-end that the action is unlawful and unconstitutional.

Additionally, lawyers and business groups are considering challenges to new reciprocal tariffs (10% duty on all foreign imports effective early April, higher duties on 60+ trading partners effective April 9), citing weaker legal ground under IEEPA. Many business groups are fearful of challenging Trump publicly, citing potential swift tariff reversals, as seen with paused Canada and Mexico tariffs last month.

Congressional Intent and Legislative Action

Post-Yoshida, Congress passed Section 122 of the Trade Act of 1974 for specific tariffs (up to 15% for 150 days), indicating IEEPA was not meant for tariffs, especially given procedural limits like annual emergency declarations under the National Emergencies Act. A bill by Sens. Chuck Grassley (R-Iowa) and Maria Cantwell (D-Wash.) to end presidential tariffs after 60 days unless Congress extends has gained new Republican supporters, but it is unlikely to move forward, reflecting congressional reluctance to reclaim authority.

International Law Implications

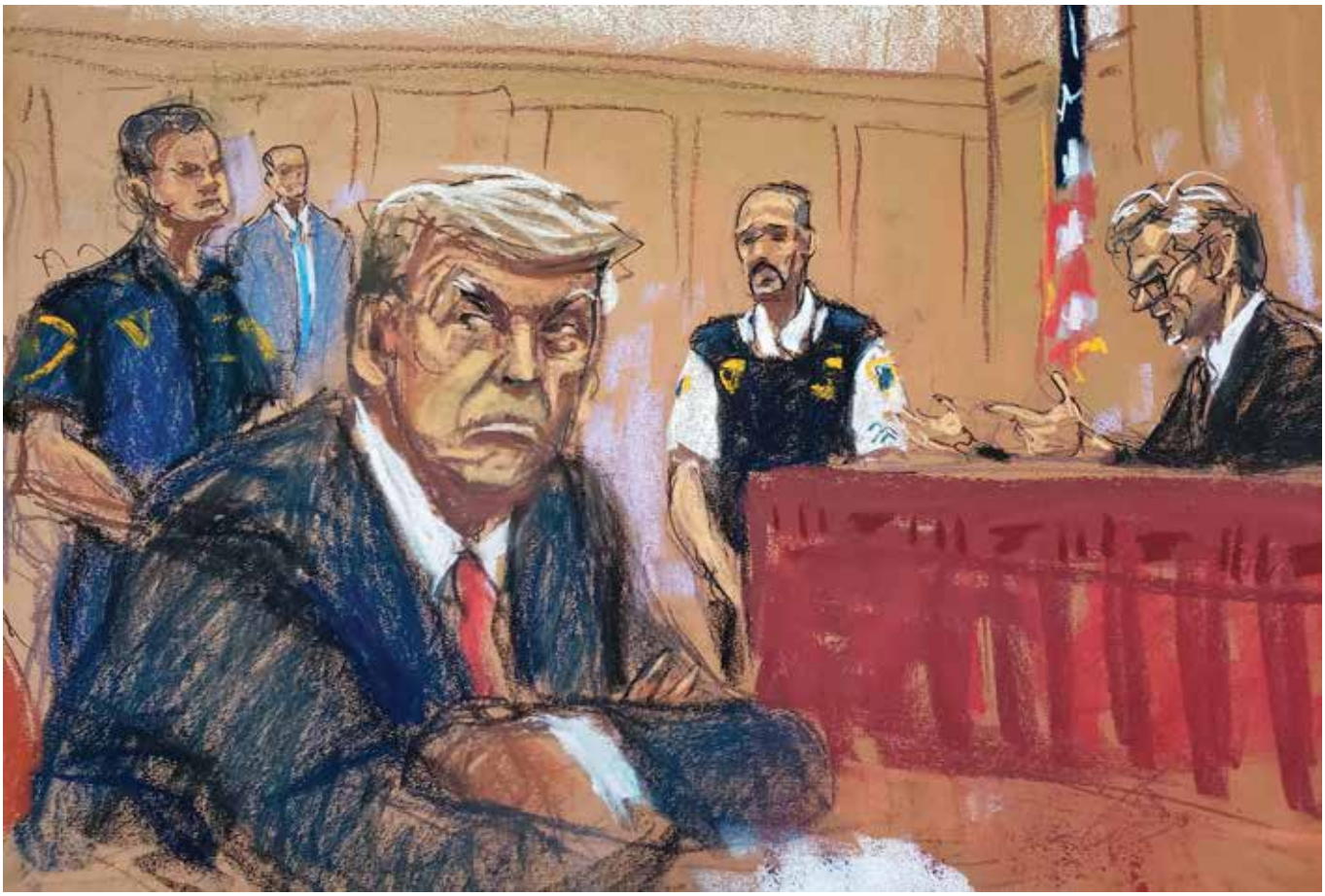
Trump's tariff decisions could also have implications under international law, particularly concerning World Trade Organization (WTO) rules. The WTO's Agreement on Safeguards and other trade agreements may be violated by unilateral tariff impositions without proper justification or consultation, potentially leading to disputes, though resolving such issues is often lengthy and complex.

The legal battles over Trump's tariff policies have significant ramifications:

- **Economic Impacts:** Businesses like Emily Ley Paper Inc. face financial burdens, potentially raising prices or reducing hiring, with broader effects on consumers and the economy, as noted in Tax Foundation estimates.
- **Judicial Strain:** Ongoing litigation is straining judicial resources, with courts handling cases on tariff legality, potentially delaying policy implementation.
- **Political Dynamics:** Congressional reluctance to reclaim tariff authority, as seen with the stalled bill, reflects political challenges in balancing executive and legislative powers.

As of now, Trump's tariff policies under IEEPA are embroiled in a complex web of legal complications, from statutory and constitutional challenges to ongoing litigation. The use of IEEPA for tariffs is novel and controversial, lacking explicit authorization and potentially violating separation of powers. The lawsuit by Emily Ley Paper Inc. and potential further challenges will likely shape the future of these policies, with grave implications for the balance of power, economic impacts, and U.S. trade policy.

ANALYSING TRUMP'S ACTIONS AGAINST U.S. LAW FIRMS



President Donald Trump's actions targeting U.S. law firms and lawyer bodies have ignited widespread debate and concern, particularly within the legal community. Through executive orders and directives, Trump has sought to penalize firms and lawyers perceived as adversaries—often those involved in representing political opponents or challenging his administration's policies. These measures, which include revoking security clearances and restricting access to federal facilities, raise serious questions about the rule of law, the independence of the legal profession, and the integrity of American democracy.

A foundational principle of the U.S. legal system is that every individual is entitled to legal representation, irrespective of their stance or the controversy surrounding their case. Trump's actions, however, appear to target law firms and lawyers for fulfilling this duty, particularly when their work opposes his interests. For example, firms like Perkins Coie and Covington & Burling have faced repercussions for their roles in investigations or cases tied to Trump's political opponents. This targeting risks creating a

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chilling effect, where attorneys may hesitate to accept cases that could invite government retaliation. Such an outcome jeopardizes the right to counsel and equal access to justice, as individuals and entities may find it harder to secure representation for legitimate legal challenges. A justice system where representation hinges on political alignment cannot claim impartiality or fairness.

Also, the executive branch's interference in the legal sphere through these actions represents a troubling overreach of authority. Historically, U.S. Presidents have respected the autonomy of the legal profession, acknowledging that lawyers must operate free from fear of retribution. Trump's approach deviates sharply from this tradition, employing punitive measures like security clearance revocations to punish firms for their professional conduct. This blurring of executive and judicial boundaries sets a perilous precedent, suggesting that future administrations could similarly wield power to suppress legal opposition. If unchecked, such tactics could normalize the use of executive authority to intimidate or silence those who uphold the law, undermining the separation of powers essential to democratic governance.

Alongside, many of Trump's actions against law firms raise significant legal and constitutional red flags. Measures such as revoking

security clearances have already faced judicial scrutiny, with courts questioning their compliance with due process and First Amendment protections. In one instance, a federal judge blocked parts of an executive order targeting Perkins Coie, signaling broader alarm within the judiciary. Legal scholars have argued that punishing firms for their client representation amounts to "blatant viewpoint discrimination," infringing on free speech rights. These challenges suggest that many of Trump's measures may not withstand legal review, potentially being struck down as unconstitutional. Yet, even if courts intervene, the interim damage to the legal profession's morale and public trust in the justice system could prove enduring.

The legal profession operates under considerable strain, and Trump's actions amplify these pressures. Firms engaged in government-related work or high-profile litigation depend on security clearances, federal building access, and government contracts to serve clients effectively. By threatening these resources, the administration disrupts the operations of targeted firms and signals to others that similar penalties await those who take on politically sensitive cases. This environment of uncertainty and fear could degrade the quality and availability of legal services, as firms grapple with operational constraints and attorneys weigh the risks of professional backlash. Over time, the profession's ability to attract top talent and maintain its standards may erode, diminishing its capacity to serve the public.

Undoubtedly, a thriving democracy relies on an independent legal system capable of holding the government accountable. Trump's targeting of law firms and lawyers weakens this critical check on executive power. The legal profession is instrumental in ensuring governmental adherence to the law, and efforts to intimidate or punish attorneys for this role threaten the democratic framework. As scholars have noted, such tactics echo authoritarian strategies aimed at dismantling judicial independence to consolidate control. In the U.S., these actions risk eroding public confidence in the justice system and impairing the legal profession's ability to safeguard against overreach. A democracy where the rule of law is compromised cannot fully uphold its principles.

Honb'le Chief Minister Haryana, Sh. Nayab Singh Saini gracing the occasion as Chief Guest during the Oath Taking Ceremony for newly enrolled advocates on 12.01.2025. Also released fifth edition of COUNSEL.

Law and Tech in Global South

NEWS

1 **El Salvador:** Enacts Latin America's first AI law, promoting a developer-friendly ecosystem (2025).

2 **Nigeria:** Legalizes cryptocurrency, regulated by SEC to boost youth economic participation (April 2025).

3 **India:** BITS Law School partners with USC Gould for tech law education, including AI and antitrust (April 2025).

4 **South Africa:** Amends Cybercrimes Act to tighten cybersecurity, targeting ransomware attacks (March 2025).

5 **Brazil:** Supreme Court upholds data privacy law, fining tech firms for GDPR-like violations (February 2025).

6 **Kenya:** Introduces AI ethics guidelines for public sector, focusing on transparency (January 2025).

7 **Mexico:** Passes law regulating deepfake technology in political campaigns (April 2025).

8 **Indonesia:** Enacts digital ID law to streamline e-governance, raising privacy concerns (March 2025).

9 **Ghana:** Legalizes blockchain-based land registries to combat property fraud (February 2025).

10 **Philippines:** Court rules against unregulated crypto exchanges, mandating BSP oversight (April 2025).

11 **Argentina:** Legalizes e-voting systems with blockchain for municipal elections (March 2025).

12 **Egypt:** Passes cybersecurity law to protect critical infrastructure from cyberattacks (January 2025).

13 **Colombia:** Regulates AI in healthcare, requiring human oversight for diagnostics (February 2025).

14 **Vietnam:** Bans unverified social media accounts to curb misinformation, sparking debate (March 2025).

15 **Morocco:** Adopts drone regulation law for commercial use, boosting tech startups (April 2025).

16 **Pakistan:** Supreme Court orders data localization for tech firms, citing national security (February 2025).

17 **Peru:** Legalizes digital signatures for contracts, streamlining e-commerce (January 2025).

18 **Bangladesh:** Enacts law to regulate fintech startups, focusing on mobile payments (March 2025).

19 **Chile:** Court fines tech firm for algorithmic bias in hiring software (April 2025).

20 **Tunisia:** Introduces open-source software mandate for government systems to cut costs (February 2025).

UK Supreme Court rules Trans Women excluded from legal definition of '*Woman*'

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In a landmark decision on April 16, 2025, the UK Supreme Court unanimously ruled that the legal definition of *"woman"* under the Equality Act 2010 refers to biological sex, excluding transgender women, even those with a Gender Recognition Certificate (GRC).

The ruling, which has sparked intense debate, marks the culmination of a seven-year legal battle initiated by the gender-critical group For Women Scotland against the Scottish government. The case centered on whether trans women with GRCs, which legally recognize their female gender, should be considered women under the Equality Act, particularly for policies like Scotland's 2018 law requiring 50% female representation on public boards. The Court's decision, delivered by Deputy President Lord Patrick Hodge, clarified that the terms *"woman" and "sex"* in the Equality Act denote *"a biological woman and biological sex,"* emphasizing a binary concept of sex. This interpretation overturns the Scottish government's stance that GRC holders should have the same sex-based protections as biological women. The ruling has far-reaching consequences, allowing single-sex spaces—such as changing rooms, domestic violence shelters, and sports facilities—to exclude trans women if

deemed *"proportionate,"* providing clarity for service providers like hospitals and refuges. Gender-critical campaigners, including For Women Scotland, celebrated the decision as a victory for women's rights, with co-founder Susan Smith stating it ensures *"women-only spaces are for biological women."* The group, supported financially by author J.K. Rowling, who donated £70,000, argued that including trans women in the legal definition of *"woman"* would complicate exemptions for women-only services and grant trans women *"greater rights"* in areas like maternity protections.

Outside the court, supporters chanted *"women's rights are human rights,"* reflecting the charged atmosphere. Conversely, trans rights advocates expressed alarm, warning of increased discrimination and exclusion. LGBTQ charity Stonewall called the ruling *"incredibly worrying,"* while trans advocate Ella Morgan told CNN she feared for her safety, citing a chilling effect on trans women's daily lives. Scottish Trans manager Vic Valentine lamented that the judgment reverses 20 years of legal recognition for GRC holders, potentially barring trans people from both men's and women's spaces, leaving them in a legal limbo.

Amnesty International UK, which sided with the Scottish government, noted *"potentially concerning consequences"* but stressed that trans people retain protections against discrimination under the Equality Act's *"gender reassignment"* category. The court itself cautioned against viewing the ruling as a triumph of one group over another, with Lord Hodge emphasizing that trans people are safeguarded against direct and indirect discrimination, as well as harassment, though not under the same sex-based protections as biological women. The decision has practical implications, as seen in cases like an NHS Fife nurse suspended for objecting to a trans woman using a female changing room, with the health board now reviewing its policies. Legal experts, such as employment lawyer Phillip Pepper, suggest the ruling could heighten workplace tensions in the short term but offers long-term clarity for businesses navigating ambiguous equality laws. Some, like Dr. Nick McKerrell of Glasgow Caledonian University, argue it won't immediately overhaul access to services but may prompt reassessments in areas like sports, where the English Football Association recently tightened transgender participation rules.

The ruling also reignites calls to amend the Equality Act, with the Equality and Human Rights Commission (EHRC) supporting clarification, arguing that lawmakers may not have foreseen the complexities of GRCs. Scotland's First Minister John Swinney accepted the judgment, pledging to engage with UK ministers to assess its impact, while trans rights groups vowed to push for legislative reform. Critics of the ruling, including Labour for Trans Rights, allege that gender-critical groups like For Women Scotland have ties to far-right networks, a claim dismissed by supporters who frame the decision as a defense of biological reality.

The ruling's global resonance is notable, with U.S. observers like Imara Jones of TransLash Media suggesting it could bolster American efforts to narrow legal definitions of gender, especially following President Trump's 2025 executive order limiting federal recognition to two sexes. However, U.S. protections under cases like Bostock v. Clayton County differ, extending anti-discrimination laws to transgender individuals. As the UK grapples with this decision, the tension between sex-based rights and trans inclusion remains unresolved, with both sides bracing for further legal and social battles.

China's Retaliation in U.S. Trade War and Deep-Sea Metals Dispute Resolution

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In April 2025, China escalated its response to the intensifying U.S.-China trade war and a burgeoning dispute over deep-sea metals, signaling a strategic counteroffensive against President Donald Trump's aggressive tariff policies. The trade conflict, reignited by Trump's imposition of a 145% tariff on Chinese goods, prompted China to retaliate with a 125% tariff on U.S. imports, effectively severing most bilateral trade and causing a 0.2% projected loss in global merchandise trade, according to the World Trade Organization. Beijing's Ministry of Commerce, while condemning U.S. tariffs as *"unilateral bullying"* that violates international trade rules, paired its 34% retaliatory tariffs—effective April 10—with export controls on critical rare earth elements and magnets, vital for industries like aerospace, semiconductors, and defense.

Seven heavy rare earths, including samarium, gadolinium, terbium, dysprosium, lutetium, scandium, and yttrium, were placed under strict export licensing, halting shipments to the U.S. since April 4, as reported by Reuters. China, which mines 70% and refines 90% of global rare earths, leverages its dominance to disrupt U.S. supply chains, with the New York Times noting that Chinese ports have stopped most magnet exports, requiring stringent testing to ensure compliance. This move echoes China's 2010 export ban to Japan, which spiked rare earth prices tenfold, and its 2023 restrictions on gallium, germanium, and antimony, underscoring Beijing's willingness to weaponize its mineral monopoly. The U.S., reliant on China for 72% of its rare earth imports, faces immediate challenges, as alternative sources like Myanmar and Laos are entangled in China's supply chains, and Brazil's Serra Verde mine ships minerals to

China for processing. U.S. firms like Lockheed Martin, Tesla, and Apple, dependent on these materials, are bracing for disruptions, while startups like Phoenix Tailings aim to scale rare earth recycling from 40 to 4,000 metric tons by 2027 to mitigate shortages. Concurrently, a deep-sea metals dispute has emerged, with China accusing the U.S. of bypassing international law through plans to stockpile seabed minerals like cobalt, nickel, and manganese from the Pacific Ocean, as reported by the Financial Times on April 12. The Trump administration's draft executive order seeks to counter China's dominance in battery minerals and rare earths, aiming to secure domestic supplies amid fears of conflict-related import constraints. China's foreign ministry, citing the United Nations Convention on the Law of the Sea (UNCLOS), insisted that seabed resources are the "common heritage of mankind" and must be managed through the International Seabed Authority (ISA).

Beijing's stance reflects concerns over U.S. unilateralism, as deep-sea mining remains unregulated, with environmental and legal uncertainties complicating exploitation. China's broader retaliation strategy may include targeting U.S. agricultural exports like soybeans and poultry, concentrated in Republican-leaning states, and placing 27 U.S. firms, including DuPont and Google, on export control lists, as can be gauged from X posts and the Atlantic Council. The Chinese Ministry of Commerce filed a WTO complaint against U.S. tariffs, signaling a legal counteroffensive, though Beijing dismissed further U.S. tariff threats as *"meaningless,"* focusing instead on "resolute countermeasures."

Financial markets have reacted sharply, with the Dow Jones dropping 1,400 points on April 4 and gold hitting record highs amid recession fears, per CNBC and Reuters. China's commerce ministry, while open to dialogue, emphasized *"mutual respect"* and warned against trade deals harming its interests, as seen in its April 20 statement to Euronews. The trade war's fallout threatens clean energy transitions, with U.S. EV makers facing battery metal shortages despite exemptions for lithium and graphite, according to the Carnegie Endowment.

Critics argue China's export curbs are a calculated escalation, leveraging its supply chain dominance to pressure the U.S., while supporters of Trump's tariffs claim they incentivize domestic production, though the U.S. lacks immediate capacity to replace Chinese supplies. The deep-sea dispute, meanwhile, exposes gaps in international law, with the ISA's regulatory framework lagging behind rising state and corporate interest in seabed mining.

As both nations dig in, the trade war and mineral disputes risk reshaping global supply chains, inflating costs, and stalling technological and environmental progress, with no clear resolution in sight.

In a first:

UAE uses AI to draft laws

The United Arab Emirates (UAE) has taken a groundbreaking step in the realm of legal technology by becoming the first country to use artificial intelligence (AI) to draft and review laws. This initiative, announced in April 2025, seeks to revolutionize the legislative process by leveraging AI to analyze existing laws, court rulings, and public services, thereby proposing amendments and accelerating the lawmaking process by up to 70%. The UAE's move is a strange but bold experiment in governance, with the potential to transform how laws are created and updated in the digital age.

At the heart of this initiative is the newly established Regulatory Intelligence Office, a cabinet body tasked with overseeing the integration of AI into the legislative process. This office is tasked to utilize AI to create a centralized legislative map that connects all federal and local laws with judicial rulings, executive procedures, and public services, tracking the daily impact of laws on society and the economy using large-scale data to suggest regular updates to legislation. The UAE government expects this

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AI-driven approach to reduce the time and effort required for researching, drafting, and evaluating laws, making the process faster and more precise.

As Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE, stated, "*This new legislative system, powered by artificial intelligence, will change how we create laws, making the process faster and more accurate*." This initiative is designed to project that AI will significantly contribute to the country's GDP by 2030. While the potential benefits are substantial, experts have raised concerns about the reliability and ethical implications of entrusting such a critical task to machines.

AI systems, despite their advanced capabilities, can exhibit biases or make errors in interpreting complex legal texts, with researchers like Oxford University's Vincent Straub warning that AI can be "*unstable and unreliable*" when dealing with nuanced legal issues, sometimes even "*making up answers*." This unpredictability poses risks in a field where precision and context are paramount, and there's the added question of whether AI can fully grasp the social, cultural, and ethical dimensions of lawmaking that often require human judgment.

To address these concerns, the UAE has emphasized the importance of human oversight, ensuring that legal experts review and approve AI-generated drafts before enactment, creating a hybrid approach that combines AI efficiency with human critical thinking and ethical considerations. Beyond its borders, the UAE's experiment could have implications, potentially inspiring other countries to adopt similar technologies and transforming legislative processes worldwide, while also highlighting the growing role of AI in governance and the need for robust regulatory frameworks to manage its use in sensitive areas like lawmaking. As the UAE navigates this uncharted territory, the world will watch closely to see how it balances innovation with the timeless need for human wisdom in the creation of laws.

Nigeria legalizes Cryptocurrency!

Nigeria's relationship with cryptocurrency has been a tumultuous one, marked by initial resistance, widespread grassroots adoption, and ultimately, a landmark legalization in 2025. For years, the West African nation grappled with how to handle the rise of digital currencies, oscillating between outright bans and cautious regulation. The journey from prohibition to acceptance reflects not only the firmness of Nigeria's tech-savvy population but also the government's evolving understanding of the economic potential—and risks—posed by cryptocurrencies. In 2021, the Central Bank of Nigeria (CBN) took a hard stance, banning financial institutions from facilitating cryptocurrency transactions. The CBN cited concerns over money laundering, terrorism financing, and the inherent volatility of digital currencies as reasons for the prohibition. At the time, Nigeria was already one of the world's largest cryptocurrency markets, with millions of citizens turning to Bitcoin and other digital assets as a hedge against the depreciating NAIRA, high inflation, and economic instability. The ban, however, did little to curb enthusiasm. Instead, it pushed crypto trading underground, with peer-to-peer (P2P) platforms like Binance becoming the go-to solution for Nigerians looking to bypass traditional banking systems. Despite the risks, cryptocurrency adoption soared, driven by a young, digitally literate population eager for financial independence and new investment opportunities.

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By 2025, the Nigerian government could no longer ignore the reality:

cryptocurrencies were here to stay. In a bold reversal, the country legalized digital currencies through the Investments and Securities Act (ISA) 2025, officially classifying them as securities. This move, spearheaded by the Securities and Exchange Commission (SEC), aimed to bring the burgeoning crypto market under regulatory oversight, protect investors, and harness the economic potential of digital assets. The ISA 2025 required businesses dealing in cryptocurrencies to register with the SEC and comply with strict guidelines, a step designed to curb fraudulent activities while promoting innovation in blockchain technologies. The legalization was met with widespread optimism, particularly among Nigeria's youth, who saw it as a gateway to greater financial inclusion and a chance to participate in the global digital economy. Crypto advocates hailed the decision as a progressive step, one that could position Nigeria as a leader in Africa's fintech revolution.

International crypto platforms, previously wary of the country's regulatory uncertainty, began eyeing Nigeria as a key market for expansion. The recognition of virtual assets as securities also promised to boost investor confidence, providing a safer environment for trading and investment. However, the path to legalization was not without its challenges. Critics pointed to the rapid implementation of the ISA 2025, raising concerns about regulatory gaps and the SEC's capacity to enforce the new rules effectively.

Nigeria's history of cyberfraud and limited enforcement resources fueled skepticism about whether the government could truly curb scams while nurturing innovation. There were also fears that the economic benefits of legalization might not be evenly distributed, potentially widening the gap between the digitally literate and those left behind.

Despite these hurdles, Nigeria's embrace of cryptocurrency in 2025 marked a turning point. It signaled a shift from fear to cautious optimism, acknowledging that digital currencies could be a force for good if properly managed. As the country treads anew, the success of its crypto experiment will depend on striking a delicate balance between regulation and innovation, ensuring that the benefits of the digital economy are shared widely while safeguarding against its inherent risks. For now, Nigeria stands at the forefront of Africa's cryptocurrency movement, with the world watching to see how it will shape the future of finance on the continent.

The Ripple Effect of Litigation on Unseen Parties in India:

A LEGAL AND SOCIAL PERSPECTIVE

Society is saturated with conflicts, and legal institutions offer ways to settle them. The function of courts in society is somewhat determined by the time at which individuals turn to these organisations for dispute resolution. Litigation is often portrayed as a confrontation between identifiable parties, bound by a clear-cut legal dispute. In the Indian judicial system, the effects of a lawsuit frequently go beyond the individual parties involved, impacting the litigants' families, friends, and even the communities in which they live. Even though litigation is still a legal procedure between defined parties, it can have a "*ripple effect*," causing financial hardship, distress, and damage to one's reputation for individuals not directly involved in the case . Collateral damage is a common occurrence for unseen parties, such as family members and other third parties. The Indian judiciary has increasingly recognised this indirect influence in cases involving familial disputes, defamation, corporate liability, and tort law, occasionally offering remedies and precedents to lessen these negative impacts. When conflicts center on delicate topics like divorce, inheritance, or family property, the effects of litigation on a litigant's family and close friends can be very severe. Family disputes in India sometimes involve indirect parties, including children, ageing parents, and even neighbors, in the tension and strife that comes with court cases. Notably, even though these third parties are not directly involved in the litigation, protracted court battles can have negative social, economic, and emotional effects on them.

The case of *Vijay Kumari & Ors. v. Usha Devi & Ors. (2013)* , adjudicated by Hon'ble Justice Surya Kant, serves as a landmark precedent in recognizing the collateral impact of litigation on unseen parties, particularly vulnerable minors who were not formal litigants but suffered grave injustices due to legal proceedings. The case arose when four minor sisters were left destitute after their father, who had murdered their mother, unlawfully sold their rightful property while serving a life sentence. The

Tapan Masta
Advocate SC & Pb. Hr. High Court

fraudulent transfer of the land, meant to be their primary source of financial security, which was facilitated through the collusion of revenue officials, depriving the children of their inheritance and sustenance. Taking suo motu cognizance under Articles 226 and 227 of the Indian Constitution, the Court intervened to protect the minors' interests, issuing preventive orders to restrain further alienation of the land and directing criminal and disciplinary action against the complicit revenue officials. Invoking the parens patriae doctrine, Justice Surya Kant recognized the state's duty to act as a guardian for vulnerable individuals, directing the Haryana Government to ensure that the girls were provided financial aid, free education, and access to welfare schemes. Additionally, the Punjab National Bank, Kaithal, was ordered to deposit funds into Fixed Deposits (FDRs) for the children's long-term financial security. The ruling also criticized bureaucratic apathy, compelling the Principal Secretaries of Education and Social Welfare Departments to extend immediate assistance to the minors. This case underscores the judiciary's critical role in shielding unseen victims of litigation from legal and financial exploitation, aligning with the privacy and dignity principles established in *K.S. Puttaswamy v. Union of India* , which emphasized the constitutional obligation to protect individuals from undue public exposure and legal adversities. Justice Surya Kant's proactive judicial approach in Vijay Kumari exemplifies how courts can ensure that legal proceedings do not inadvertently victimize those who lack the means to assert their rights, setting a crucial precedent for future interventions in cases involving family disputes, property rights, and social welfare concerns.

The most noticeable indirect emotional and psychological impacts are found in family conflicts. Family members, particularly children, who become collateral victims of the dispute, may suffer from long-lasting emotional harm as a result of divorce, child custody, and inheritance lawsuits. The Supreme Court of India maintained the well-being of children as a top priority in judgements such as *Dhanwanti Joshi v. Madhav Unde* , stressing that the courts must take into account not only the interests of the parents but also the psychological effects on kids involved in custody disputes. The court's ruling recognizes children's position as invisible but impacted parties and emphasizes the significance of protecting them from the conflict of litigation. This ruling reflects the jurisprudential shift towards recognizing the well-being of children and other indirect parties as fundamental, stressing that courts should prioritize shielding them from litigation's deleterious effects. Further reinforcing this perspective, in *Nil Ratan Kundu v. Abhijit Kundu* , the Court held that the child's welfare must supersede the parental dispute's interests. The judgment advocated for minimizing any foreseeable psychological trauma by focusing on the child's best interests and averting protracted legal battles when feasible. This case highlighted an essential aspect of judicial intervention, that courts must act as custodians of the welfare of those indirectly affected, especially minors, within the family law litigation framework. The *Perry Kansagra v. Smriti Madan Kansagra* case is a powerful example of how litigation affects parties who are not recognized. This case, a high-profile custody battle between Perry Kansagra, a British citizen, and Smriti Madan Kansagra, an Indian citizen, brought significant attention to the challenges and responsibilities of safeguarding the welfare of children in cross-border family disputes. The Supreme Court of India ruled in favour of the father for custody, subject to certain conditions that would ensure the mother could maintain contact with the child, demonstrating a delicate balance between parental rights and the emotional and psychological needs of the child. The indirect psychological toll on the kid, who had to deal with the trauma of separation and the difficulties of relocating between several legal jurisdictions, was one of the main factors taken into account in Kansagra. As demonstrated

in *Nil Ratan Kundu v. Abhijit Kundu and Dhanwanti Joshi v. Madhav Unde* , the Court's intervention, in this case, was motivated by a paramount interest in the child's psychological well-being, guaranteeing that custody rulings would not unintentionally impair the child's mental health. The Court established precise guidelines to lessen the child's emotional suffering, requiring both parents to work together to lessen the negative effects of the drawn-out and acrimonious legal proceedings on the child's feeling of security and stability.

A case study of the possible benefits of Alternative Dispute Resolution (ADR) in family court matters is also provided by Perry Kansagra. Even though it was a judicial ruling, the courts urged the parents to work together in order to respect the child's interests. In order to protect the mental health of all family members, especially children, by lessening the adversarial nature of litigation, it emphasizes how mediation could be used as a pre-litigation strategy to resolve parental issues. This is in line with the ideas promoted by ADR clinics such as the Family Dispute Resolution Clinic (FDRC), which aims to minimize the harm done to family members who could otherwise experience protracted emotional strain by resolving such conflicts through early mediation. In the Indian legal landscape, cases like Perry Kansagra thus underscore the judiciary's obligation to shield unseen parties from the repercussions of litigation, especially in sensitive matters involving minors. By promoting ADR as a viable pathway and considering the indirect emotional effects of prolonged legal battles, courts can better serve the welfare of unseen parties, ensuring that litigation does not inadvertently harm the very individuals it seeks to protect .

Corporate litigation, especially cases involving family-run businesses, can have a severe financial impact on the associates and family members of the litigants. The doctrine of "lifting the corporate veil" allows courts to look beyond the corporate entity to hold individuals accountable in cases of fraud or misconduct. The principle was first established by the UK courts in the case of Salomon v. Salomon & Co Ltd , reinforcing that individuals in a company (like family members of a business owner) are generally shielded from personal liability. It has influenced discussions on how family members might or might not be financially impacted by business litigation when they aren't formally involved. Similarly, the Supreme Court of India in its decision in *Balwant Rai Saluja v. Air India Ltd*. applied this doctrine to hold certain individuals liable for corporate actions, showing that family members or associates linked to a litigant could face financial consequences even if they are not formally parties to the suit. Corporate litigation, especially in cases involving high-stakes financial disputes, has profound implications for third parties, particularly family members and shareholders who may not be formal litigants but are financially dependent on the outcome. Litigation concerning corporate governance, shareholder disputes, and tax matters can erode the stability of family-owned businesses and negatively impact indirect stakeholders, including non-party family members, employees, and suppliers who are financially intertwined with the litigant. This tendency is aptly demonstrated by the landmark tax controversy involving capital gains taxes on an offshore transaction, *Vodafone International Holdings BV v. Union of India*. In the end, the Indian Supreme Court decided in Vodafone's favor, concluding that the Indian tax authorities lacked the authority to impose taxes on the transaction. Nonetheless, the case brought to light the possible consequences of business litigation for stakeholders who are not parties. Vodafone's stockholders, including indirect beneficiaries and family trusts, endured protracted financial insecurity throughout the protracted legal battle. This has an impact on the financial stability of organizations and people

connected to Vodafone's international operations in addition to investor trust.
The case is a noteworthy illustration of how financial strain can result from business litigation, which also indirectly affects shareholders' families and other third parties whose financial security is correlated with the success of the company. Such lawsuits can lead to vulnerabilities, particularly for family-owned companies or companies with family shareholders that depend on steady profits. Even though they are not direct participants to the lawsuit, these family members may experience significant financial hardship in the event of unfavourable rulings or protracted litigation.
In defamation suits, the damage to reputation is not only a legal but also a deeply social and familial concern, especially in India's context of closely-knit social and family structures. Reputational harm from defamation can profoundly affect those connected to the litigant, extending beyond the immediate party to encompass family members, associates, and even close professional circles. The Indian judiciary has gradually recognized these indirect consequences, acknowledging that the ripple effects of defamation can lead to significant secondary harm, including social stigma, emotional distress, and financial consequences for family members and associates who are not directly involved in the litigation.
The Supreme Court's decision in *Subramanian Swamy v. Union of India* reflects this awareness. In this case, the constitutionality of Section 499 of the Indian Penal Code, which criminalizes defamation, was upheld, emphasizing that an individual's right to reputation is part of their right to live with dignity under Article 21 of the Indian Constitution. The Court recognized that reputational harm does not occur in isolation but often impacts those connected to the individual, leading to social and economic consequences that can destabilize family relationships, damage career prospects for relatives, and cause social alienation. This acknowledgement underscores the importance of reputational rights, recognizing that harm to one's reputation reverberates through familial and social circles. In Khushwant Singh v. Maneka Gandhi , the Delhi High Court took a similar stance, emphasizing that defamation affects not only the individual directly but also those closely associated with them. The judgment recognized that defamatory statements could lead to social ostracism and a loss of standing for the litigant's family, as well as create stigmatization in broader community settings. For instance, in cases involving allegations of moral impropriety or criminal behaviour, family members, especially children and spouses, often face indirect harm as they encounter social stigma and may even experience isolation within their own social circles.
The underlying principle from both cases is that defamation, by its very nature, often disrupts the lives of those indirectly linked to the primary litigant. In Subramanian Swamy v. Union of India , the Court highlighted that while freedom of speech is a fundamental right, it must be balanced with the right to reputation, a concept that acknowledges the wide-reaching social impact of defamatory statements. This decision implicitly addressed the need for legal protections that take into account the reputational well-being of individuals as well as their familial networks.
Consequently, in cases where defamation causes extensive harm to social and familial relationships, courts are increasingly taking a broader perspective on the implications for those connected to the litigant.
This impact is further magnified in the Indian context, where community ties are strong, and reputation is a highly valued social asset. Defamation cases often result in significant social fallout, with effects that can permeate a person's entire social standing, including their professional relationships and familial connections. This social harm underscores the

judiciary's role in balancing the rights to free expression and reputation, not only to protect the individual litigant but also to consider the collateral damage to the wider circle of family members and associates. In cases involving public figures, the indirect impact on family members can be particularly severe, as media coverage can amplify the defamation's effects. High-profile defamation suits, by virtue of public scrutiny, can lead to even greater reputational damage for family members, whose social lives and professional opportunities may be adversely affected by association. Legal remedies and safeguards against defamation, therefore, play a crucial role in protecting not only the primary litigant's reputation but also the broader interests of family members and close associates who are indirectly affected.

The landmark judgment in *K.S. Puttaswamy v. Union of India* , where the Supreme Court of India recognized the right to privacy as an intrinsic aspect of the right to life and personal liberty under Article 21, has profound implications for third parties indirectly impacted by litigation. This decision acknowledged that privacy is not merely an individual concern but also a societal one, with wide-reaching effects on family members, associates, and those connected to public litigants. In cases involving prominent individuals, especially high-profile family or criminal litigation, the media often intensifies public scrutiny, drawing family members and close associates into the spotlight, and exposing them to unwanted public attention and social stigma. By establishing privacy as a fundamental right, the Puttaswamy judgment creates a framework that could potentially protect the privacy rights of individuals related to litigants, even if they are not directly involved in the legal proceedings. The right to privacy, as interpreted in this ruling, could extend to protect family members and associates from unnecessary media intrusion and public exposure. This legal shield is especially pertinent in an era where media sensationalism can have profound social and psychological consequences for those indirectly connected to litigants. This judgment underscores that privacy protection in litigation does not solely concern the primary litigant's personal rights but also involves a broader consideration for their social and familial networks. When public exposure risks violating the dignity and mental well-being of individuals associated with high-profile litigants, the right to privacy can serve as a safeguard. By interpreting privacy expansively, the judiciary now has a basis to consider the collateral damage of unwanted publicity and potential social backlash on unseen parties, offering them a degree of protection against invasive media practices and preserving their dignity in the face of public scrutiny.

The invisible effects of litigation on family members and other parties are becoming more and more apparent to the Indian judiciary. The courts have taken action to lessen these impacts by acknowledging indirect emotional, financial, and reputational harm, especially in defamation lawsuits, corporate matters, and family disputes. ADR plays a crucial role in family issues because it provides a quicker, less combative way to settle conflicts, lessening the emotional toll on kids and other family members. The judiciary's increasing dedication to a more thorough approach that takes third-party effects into account is further demonstrated by doctrines like the opening of the corporate veil and the acknowledgement of reputational injury. The judiciary must create more precise rules and protections for the invisible parties involved in litigation as India's legal system develops. Third parties may be protected from the collateral damage of litigation by stronger privacy safeguards, greater access to alternative dispute resolution (ADR), and official recognition of bystander emotional distress in tort law. By taking such steps, Indian legal concepts would be more in line with the social reality of close-knit family structures, leading to a more equitable and compassionate legal system that protects not only litigants but also those who are related to them.

Hon'ble Minister for State in Haryana, Mr. Gaurav Gautam, gracing the occasion as Chief Guest during the Certificate Distribution Ceremony for Newly Enrolled Advocates | 10.12.2024

Hon'ble Mr. Justice Sanjiv Berry, gracing the occasion as Chief Guest during the Certificate Distribution Ceremony for Newly Enrolled Advocates | 21.12.2024

Hear the Child, Honor Their Future:

THE VOICE OF THE CHILD

ANIL MALHOTRA, ADVOCATE, IAFL FELLOW &
ANKIT MALHOTRA, ADVOCATE, LLM (LONDON), FELIX SCHOLAR

The Malady

Besides domestic Interparental child custody conflicts raging all over internally , a 30 million global Indians over the globe, have generated an immense spurt in intercountry, interparental child abduction both to and from India. Not being a signatory to the Hague Convention on Civil aspects of International Child Abduction, 1980, child custody disputes are decided in India on the welfare of the child principle. Foreign Court Orders form only one criteria of consideration.

Parental alienation syndrome is writ large. In this back drop, innocent children are pawns in interparental conflicts and find little expression. India is a signatory to the United Nation Convention of Rights of Child (UNCRC), where upon the Juvenile Justice (Care and Protection of Children) Act, 2015, has now found a definition of the "best interest of child". Under the Guardian and Wards Act, 1890, if the minor is old enough to form an intelligent preference, the Court may consider that preference.

Expeditious return of abducted children from India to their foreign homes finds no mechanical application as India does not follow a mirror order jurisprudence as a Non-Haguesignatory country. The extra ordinary parens patriaeconstitutional jurisdiction of Indian Supreme Court and High Courts is invoked in the best interest and welfare of the removed child. In this quagmire, the child's feelings, wishes, desires, apprehensions, fears and innate expressions are lost in the battle of warring parents fighting to establish, superior and preferential parental claims of establishing custody.

In this din of spousal war, the child is a silent spectator. No Indian statute gives him the right to speak his mind. He deserves a right of speech and expression. Indian laws seriously required amendment. This , unfortunately , is. a bridge too far .

Children, are not mere bystanders in the legal

tussles over their destinies. They are the beating heart of each custody dispute—a treasure whose rightful keeper we must discern with the utmost care. In the courts of India, as in all civilized realms, the best interest of the child stands paramount. Yet we dare not forget the child's own voice, for it is often the surest guide to justice.

A Mandate from the Wider World

We do not stand alone in this endeavor. The mighty voice of international law resonates in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), acceded to by India in 1992. This clarion call proclaims a child's right to express views freely in every matter that concerns them, and in Article 3, it enjoins us to make the child's best interests our primary consideration (UNCRC, 1989). In our own land, the Juvenile Justice (Care and Protection of Children) Act, 2015 echoes this refrain, defining the "best interest of the child" as the guiding star of all decisions bearing upon a child's physical, emotional, and social well-being (Section 2(9).

A Child's Voice in the Corridors of Indian Justice

The structure of our domestic law, from the Guardian and Wards Act, 1890, to the Hindu Minority and Guardianship Act, 1956, entrusts courts with the noble duty of ensuring that any guardianship arrangement truly safeguards the child's welfare. A landmark judgment, Nil Ratan Kundu v. Abhijit Kundu (2008) 9 SCC 413, stands testament to this principle, solemnly declaring the child's welfare as the "paramount consideration."

Yet experience has taught us that the child's own utterances, tempered by age and comprehension, lend a perspective no judge should ignore. The Supreme Court in Yashita Sahu v. State of Rajasthan, 2020 SCC OnLine SC 360, underscored that while a child's preference may not be the final word, it can prove an invaluable beacon, guiding us toward a well-rounded resolution.

Supreme Court & High Courts perform a salutary function in exercising their vibrant child protection parens patriae jurisdiction to do justice to children in fit cases , dehors technicalities of law. Sadly , the outmoded & antiquated Guardian & Wards Act , 1890 , prescribing singular guardianship & custody rights , is an antithesis to the rights of the child to a Family Life . Shared parenting , joint custody of both parents & rights of a child to be cared by fathers & mothers are unknown statutory concepts and thus find no recognition in Indian Family Courts .

Guardians, Courts, and the Child's Dignity

In the grand tradition of parens patriae, our courts hold the solemn responsibility of shielding the child's interests. However, in fulfilling that sacred role, we must not stifle the child's spirit. When judges converse with a youngster in private chambers, let it be more than a cursory formality—let it be a genuine bid to glean the child's wishes and fears. If our shared mission is to preserve not only the letter of the law but also the dignity of our youth, we must ensure that no child is treated like a trophy to be awarded, but rather as a cherished individual whose feelings matter mightily.

Shared Custody: A Vision for Cooperation

As the concept of shared custody gains traction, we observe a swift departure from the once rigid notion of sole parental authority. In Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228, the Supreme Court cast a light on these archaic boundaries, suggesting that traditional paternal guardianship should yield to more balanced arrangements. Here, again, the child's voice must inform us. If a joint custody plan is to thrive, it must yield to the rhythms and preferences of the very person at its center.

The Call to Action

Let us, then, rise above petty rivalries and rhetorical grandstanding. The future of a child is too sacred a ground for contentious theatrics. Children are not chattels; they are persons endowed with rights, deserving to be heard and cherished. By inviting their voices into the hallowed halls of justice, we stand true to the spirit of the UNCRC and our Indian jurisprudence.

May we remember that a fair hearing for the child is not only an obligation but also an

honor, for in their fledgling words lie the seeds of tomorrow's society. Let us carry ourselves with compassion, vigilance, and humility as we shape laws and craft judgments that elevate the youngest among us. In so doing, we safeguard the promise of our nation's future—one child at a time.

The Breakthrough : Dawn of a new Jurisprudence

Hon'ble Justice A.Muhamed Mustaque Judge Kerala High Court , author of multiple erudite Judgements on welfare of children in need of care and protection , has innovated and introduced a brilliant and ingenious machinery of child support lawyers ,within the existing infrastructure of existing legal systems.

The Child Legal Assistance Programme (CLAP) is the watershed in this arena of darkness of the child with no voice .The Kerala State Legal Services Authority (KeLSA)was directed to frame a scheme for Child Legal Assistance in guardianship matters and also in matters involving child sexual offences. In the light of the direction, CLAP has been formulated, to appoint lawyers who are willing to independently represent children who will be hereinafter referred to as 'Child Support Lawyer 'in custody matters and all such litigations where child rights are involved in the Courts/Authorities concerned in the State of Kerala. The Project, ie (CLAP) will function under the aegis of the Kerala State Legal Service Authority (KeLSA) constituted under the Legal Services Authorities Act,1987, to extend legal and psychological support to children, and facilitate them to express their views and concern and enable the Courts/Authorities concerned to take a decision to secure the paramount welfare and best interest of the children in the litigation.

Existing laws enunciate best interest phraseology, but provide no instant remedy or mechanism to air views of the child . Child custody battles are platforms of parallel divorce related allegations to establish superior parental authority for child custody . A Child is only a trophy to be won in the bargain . The polarised , alienated, confused ,brainwashed ,dejected child is resigned to fate & becomes a piece of property . By the time the paraphernalia of law provides Counselling , psychological analysis & intervention of mediators , damage done to the child is irreversible.Good in intent , its meaning is lost . A sane analysis is impossible . As Justice Sikri in the Supreme Court Judgement of Vivek Singh Vs Romani Singh sums up , the level playing field of any decision is lost . Reported cases have shown that families break up , children are split amongst parents & the die is cast . Spontaneously and unconsciously , Children loose their right to Family Life.

CLAP & Child Support Lawyer (CSL)

The far fetched wisdom and outreach of Justice Mustaque in creating CLAP with a cadre of CSL is therefore a breakthrough. If a CSL appears as Counsel for the Child at the earliest Court hearing possible , children will have an unpolluted voice to ear their views for the independent consideration and adjudication by the concerned Court. An independent, neutral & impartial opinion of the child will come to the fore . Courts with their wisdom can then separate the chaff from the grain for the true welfare of the child . Honouring a child's view , under immediate interim Court Orders ,both parents can share parental duties and responsibilities , dissolving their mutual acrimony & bitterness in the best interest of a child . A new process of recognition of voice of Child rights will emerge.

The ideology of CLAP & CLS is worth replicating over all jurisdictions under different High Courts in India . It needs no statutory amendments of existing Family Laws , no major overhaul of the existing legal machinery & is simple to implement , effectuate and put in immediate motion . National & State Judicial Academies can facilitate implementation of this innovative programme for knowledge sharing & immediate use . Let us not delay this path of child justice any more

THE DICHOTOMY OF VIEWS ON PRELIMINARY ASSESSMENT UNDER JUVENILE JUSTICE ACT

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The research article analyses the viability of the preliminary assessment conducted under section 15 of the Juvenile Justice Act 2015, as it is the game changer in the real sense. The legislature justifies the law as a measure which would have a deterrent effect on potential juvenile offenders. However, the opponents argue that the law would defeat the objective of having a separate juvenile justice system, and would not serve the goal of deterrence. They instead suggest that efforts be expended in ensuring more effective implementation of the Act focusing on rehabilitation and reformation of the child. Further the article also tries to deliberate upon the psychological aspect of juvenile delinquency. The article evaluates the potency of the mechanism applied for the preliminary assessment report and examines various judicial pronouncements pertaining to child in conflict with law which are necessary for the introduction of a new approach governing juvenile policy in India.

Juvenile laws in India have gone through considerable reforms since its inception. The Juvenile Justice (Care and Protection of Children) Act 2000 and subsequent amendments in 2006 and 2011 retained focus on the child rather than on offence and excluded a punitive approach for any offence committed by children. The shift in focus from the child to the offence started in 2012 with the involvement of a 17 year old in the infamous 'Nirbhaya Case' (Mukesh & Anr vs State for NCT of Delhi wherein the child in conflict with law (CCL) was described as the most brutal of the criminals and juvenile law was portrayed as an antagonist to public safety. Following the outrage, the Parliament enacted the Juvenile

Justice (Care and Protection of Children) Act 2015, which introduced a provision for transfer of cases of children aged between 16 and 18 years involved in heinous offences into the adult criminal justice system.

Section 15 of the Juvenile Justice Act, 2015 provides for the possibility of trial of children aged between 16 to 18 years who are alleged to have committed heinous offences as adults subject to specific conditions. Section 15 of the JJ Act provides for preliminary assessment into heinous offences by Board. The aim of the preliminary assessment is to assess whether the child aged 16 to 18 years has the mental and physical capacity to commit the alleged offence, ability to understand the consequences of the alleged offence and the circumstances in which the alleged offence was allegedly committed. The responsibility and the onus of the preliminary assessment lies with the Juvenile Justice Boards constituted u/s 4 of the JJ Act. Rule l0A(l) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 provides further guidance with respect to implementation of section 15 of the JJ Act.

The Hon'ble Supreme Court in Barun Chandra Thakur v/s Master Bholu & Anr. vide its judgment observed : " we may indicate that the task of preliminary assessment under section 15 of the Act, is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place. Without much elaboration, we leave it open for the Central Government and the NCPCR and the SCPCR to consider issuing guidelines in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015".

There are many prevailing confusions and misunderstandings about preliminary assessment which have been clarified by the very provision that provides for preliminary assessment and by different Court orders and judgments. The first clarification ascertains that preliminary assessment is not a process to extract confession nor to reach a conclusion with respect to the guilt of the child

regardless of the information the child supplied as part of the Social Investigation Report or any other interaction. Relying on any confession by the child is antithetical to the right against self-incrimination guaranteed under Article 20(3) of the Constitution. This means a complete prohibition on reliance of any material, in any format whatsoever, consciously or inadvertently is placed before the Juvenile Justice Board. The same has been observed by the High Court of Delhi in order dated 19 September 2022 passed in Vikas Sangwan vs State , wherein the Court stated its concerns regarding how the Social Investigation Report (SIR) is not to be used against the child in conflict with law. It would be a miscarriage of justice and violative of constitutionally recognised principles to do so.

Preliminary assessment is not a trial and this has been repeatedly clarified by the statute as well. A plain reading of the "explanation" provided in the statute itself specifies that. In Mumtaz Ahmed Nasir Khan and Ors. vs The State of Maharashtra & Ors ., the Bombay Hig8h Court as well as in Pradeep Kumar vs. State (NCT of Delhi) , High Court of Delhi has reiterated that preliminary assessment is not a trial. The judgments clarified that preliminary assessment is not a tool to make comments, or draw conclusions or inference about the merits of the case or the guilt of the child. The judgment added that there cannot be an adversarial approach from the State and the prosecutor. Any such approach adopted would be contradictory to the section 15 of the JJ Act. The court notified to pay limited reliance on prosecution documents like the FIR and the Preliminary Inquiry Report (PIR). It was discerned, “We reiterate that the principles of natural justice are sacrosanct, and all documents relied by the Boards to conduct preliminary assessment shall be mandatorily shared with the child, his/her family and his/her counsel enabling them to examine, scrutinise, dispute, discard, or disprove those documents or claims or even opinions of the psychologist, psycho-social workers and experts engaged, if needed”.

The section 15 of the JJ Act has a very progressive provision of use of experienced psychologists or psycho-social workers or other experts. The opinion of these professionals is valuable input but is not binding on Board. The same has been reiterated by High Court of Delhi in Pradeep Kumar vs. State NCT of Delhi The High Court stated, “It is well within the jurisdiction of the JJ Board to agree or disagree with the preliminary assessment report of the CCL submitted by a psychologist. But the circumstances, in which the alleged offence was committed has to be considered by the JJ Board independently, in which the alleged offence was committed and the JJ Board has to apply a judicial mind”.

Also engagement of "psychologists or psycho-social workers or other experts" for conducting preliminary assessment of heinous offences is not mandatory. This is clear from a plain reading of the statutory provision itself which uses the word "may" leaving it to the discretion of the JJBs. In H.S.Poornesh v. State by Mallandur Police , the Karnataka High Court observed, “In order to do such a preliminary assessment, the Board may take the assistance of experienced psychologists or psycho-social workers experts or other experts. By that itself, it cannot be construed that the JJB under all circumstances of the case and necessarily take the assistance of the experts. If the materials placed before the JJB and the circumstances of the case themselves helps it to arrive at a proper assessment, then, non-taking of any experts opinion or non-taking the assistance of any expert would not take away the validity of its opinion or finding”. Further, the SC in Barun Chandra Thakur vs Master Bholu & Anr. judgement also acknowledges that the Board may have necessary expertise itself and in those instances the external experts are not warranted.

Pendency of preliminary assessment is not a ground to deny bail. Considering the relevance and stakes of the preliminary assessment on the

life of the child, the question of bail assumes significance for this time period. The High Court of Delhi in Dev Vrat vs. Govt of NCT of Delhi stated, "It is only if the developmental needs of the child require that he be kept in custody. Therefore, the bail may be denied on the statutory provision basis only and not for convenience of the preliminary assessment.

There has been sustained advocacy against the hasty implementation of the 2015 JJ Act due to public outrage that arosed after Nirbhaya Case which has not taken into consideration the ground reality of juveniles in the country. The inclusion of section 15 of the JJ Act has been debated by erudite, legal scholars and human rights activists who consider the Act as a backward step in juvenile justice that goes against the various rights of minors, such as right to equality before law (Article 14) guaranteed by the Constitution and international human rights instruments. This differential treatment of minors leads to the violation of child's constitutional right to privacy and right against self-incrimination is also jeopardized when a CCL is assessed preliminarily by the JJB and somehow innocent till proven guilty also seems like a far cry. As of now, preliminary assessment is done at a stage when the trial is yet to commence and there aren't enough facts available about the minor to evaluate their case, which has led to oppositions from several quarters of society. Here's why it is a dichotomy that preliminary assessment u/s 15 compromises child rights.

Recently the High Court of Madhya Pradesh in case of Rishab Atle Minor Through Next Friend (Father) Jaikishan Atle vs The State of Madhya Pradesh , Hon'ble Justice Subodh Abhyankar observed, "As a parting note, this Court is once again at pains to observe that juveniles in this country are being treated rather too leniently, and that the Legislature, to the utter misfortune of the victims of such crimes, has still not learnt any lessons from the horrors of Nirbhaya. Overwhelming medical evidence proves the demonic conduct of the CCL and his mindset can also be gathered from the fact that he has also absconded from the observation home, and presently is at large, probably lurking in some dark corner of the street, for yet another prey, and there is nobody to stop him. And, although such voices are being raised time and again by the Constitutional Courts, but to the utter dismay of the victims, they have not been able to make any impact on the legislature even after a decade of Nirbhaya which took place in the year 2012".

It is argued that when a CCL is deemed to be treated as an adult even before trial has commenced it hits the concept of natural justice and derails the very philosophy on which the juvenile justice law was enacted. Sometimes the results of psychological assessments are used as 'the' tool to order a judicial transfer when the offence is of a heinous nature that overturns the principle of presumption of innocence until proven guilty . In Durga vs State Of Rajasthan , while hearing the case of a 17-year-old girl who was convicted as an adult, the High Court of Rajasthan noted that no account had been taken of the circumstances under which the child was driven to commit the offence. The girl had suffered a violent marriage and killed her drunk husband after persistent abuse by him. The court concluded that the juvenile board passed the order for judicial transfer 'in an absolutely mechanical and laconic manner'.

Psychological assessments invariably lead to children sharing information which reflect behavioural traits that can be used against them waiving the right against self-incrimination. The law has no provision for seeking consent of children before subjecting them to an intrusive assessment. For example, a child may admit to committing an offence under influence of drugs. The defence counsel may use such information to press for a judicial transfer of the child thereby, ignoring the

child's history of addiction as was found in the order of the Sessions Court in Jhabua, Madhya Pradesh where two children aged 16 to 17 years apprehended for brutally stabbing a 14-year-old were awarded life imprisonment . As per some legal researchers the tools used in India for psychological testing are adapted from developed foreign settings, which do not match with our socio-cultural-economic contexts and can have serious consequences for CCL. Judges and psychologists lack knowledge of each other's domains. Judges and prosecutors are not thorough on subject of child psychology and cannot understand the psychological contents of reports. Similarly, psychologists have little knowledge of law to determine which tests to apply for a specific legal question.

From psychological angle, there are several dimensions of adolescence that distinguish young offenders from adults in ways that mitigate culpability. For accused aged 16-18 years, it has been seen that they have tendency to achieve higher levels of stimulation than adults due to hormonal reasons so they end up taking impulsive decisions . There may also be biological reasons for the same, such as important structural changes take place during adolescence in the frontal lobes, most importantly in the prefrontal cortex. They have more rapid and extreme mood

swings (extreme levels of emotional arousal) which are associated with difficulties in self-control. These psychosocial and emotional factors lead to immature actions and are a key factor for them to commit offences .

It thus becomes easy to imagine that how individuals whose decisions are subjected to developmental influences, peer influence, parental neglect, poor risk assessment, sensation seeking and poor impulse control- fall prey to engaging in a criminal misconduct.

Adhering to this ethos, recently Punjab and Haryana High Court in case of Abc(Minor) vs State Of Union Territory Chandigarh made significant observations in a case involving a juvenile accused of sodomy u/s 377 IPC and Section 6 of the POCSO Act. The Court set aside an order passed by the JJB to try the minor as an adult, asserting that the Social Investigation Report, painted a different picture, highlighting the CCL's neglect by his father and emotional distress, which was not given due consideration by the JJB in the preliminary assessment.

The court highlighted that the primary objective of the JJ Act, is not to punish juveniles but to offer a reformative and protective environment. The Hon'ble court pointed out that the preliminary assessment, a crucial aspect of the juvenile justice process, must be approached with caution. It noted that the task of determining whether a juvenile should be tried as an adult requires expertise and should not be taken lightly. The Court emphasized that this assessment is not a trial but rather an evaluation of the child's ability to comprehend the nature and consequences of their actions. While setting aside the order of the Juvenile Justice Board, to try a juvenile as an adult, Justice Kuldeep Tiwari quoted poet Nida Fazli's poem;

"Jin Chiraagon Ko Hawaon Ka Koi Khauf Nahi, Un Chiraagon Ko Hawaon Se Bachaya Jaye"

(Those lamps that are not fearful of strong winds, they must be protected from the winds, let's do that)

CHILD ABUSE
PROTECTION MECHANISM

Ms Rahish Pahwa

Every legal system recognize and it is a matter of fact as well that children of tender age are not so matured since neither they own such physical strength to look after themselves nor have mental capacity to take their own decision. The parents, guardians or the other care takers are saddled with responsibility for taking care of them. As a matter of course the parents or guardians also owe a duty to take decision for them till the time they develop an understanding and capacity to evaluate the things and to watch their interest while taking decisions.

Parenting is very tough task with no off as such. It so

happens that during this parenting process or the child caring process, in name of watching best interest of child or in the name of discipline the child, some kind of punishments are given for the so called, bad/uncivilized behavior, nefarious or mischievous activities of child. These activities in children may range from telling lies, not eating food, stealing money from parents pocket, unnecessary crying, not doing home work, scoring less in exams, creating nuisance in front of guests etc etc. The punishments for such activities may be physical or emotional.

Physical - Beating , Spanking, Slapping, Beating with some objects like danda, belt or some time the rolling pin, throwing water or some thing else.

Mental – Threatening as not to give food, not to take market, rebuking in front of outside people or relative, and scolding, comparing with siblings or friends and locking in rat room.

Some way or other, it is considered necessary component of parenting and rather a right of parents.

It is not true always that a child is given corporal punishment due to their misbehavior, rather, more than half of times, they are the victims of parental anger, frustration or stresses owing to variety of reasons like financial constraints, lack of time, over worked mothers, strained relationships, disputed matrimony, broken marriages and so on so forth ; the list is unending as there is no factual reason for awarding punishment.

It is, actually dreadful when punishment causes injuries of any kind to the child either physically or mentally. It may cause fracture, broken limbs, burning, It has been evidently established that persistent emotional punishments also cause stress, depression, anxiety, low esteem , lack of confidence or other kinds of mental disorder. Sometimes the children are given such rough treatment that they even turn delinquent. Sometimes they are driven to commit suicide or leave the house or develop a feeling of hatred towards parents. So, in no way, it does any good and instead harm the person. Here, it is child abuse.

It is not wrong to state that there is direct relation between the corporal punishment and child abuse. It is matter of degree intent and form. In broader sense, a prolonged practice of deliberate infliction of physical pain which leads to some kind of actual or anticipated injury either physical, emotional, to the child is said child abuse.

Child Abuse goes a step ahead and takes within its ambit neglecting behavior on the part of parents. Therefore, failure of parents to provide basic necessities, food and clothing, medical care supervision for health, safety is also a form of abuse. Neglect also indicates lack of love and affection without which the parenting would be an empty formality.

World Health Organization takes within its fold all forms of physical, emotional ill treatment, sexual abuse, neglecting treatment, exploitation, maltreatment which may result in actual or potential threat to health, survival and development.

In some countries, recognition of this concept is dated back to the 18 centuries. Yet, on global map, it is recalled for having originated from Geneva Declaration of Rights of Children in the year 1926, which obligated the adult folks to bear certain duties towards children for their well being and upbringing in times of need. Apart from, certain other declarations from time to time, these obligatory duties had taken some concrete shape in the year 1948 in Universal Declaration of Human Rights. Article 25 of this Declaration entitled women and children to have special care, assistance and social protection. This Declaration was merely in the form of document which laid down moral code of conduct which carried no legal binding. It is only in the year 1989, UN adopted United Nation Convention on rights of child, the first internationally legally binding document. This convention outlined a frame work for improving living conditions of children. It contains 44 articles which focused on four areas i. e. Survival Rights, Political Rights, Development Rights and Participatory Rights.

Article 19 mandates all States parties to take appropriate legislative, administrative social and educational measures to protect the child from all forms of physical and mental violence, injury, abuse, neglected treatment, maltreatment, sexual abuse, exploitation of child while in care of parents, legal guardian or any other person.

Convention does not say what forms punishment should be practiced. Even in terms of maintaining discipline, it is not specified as to which form of punishment the parents should or should not use. Laconically, all it says and means is that any form of punishment involving violence is unacceptable. There are ways to discipline a child that are effective to teach children about social behavior.

It is for the Government to review its laws in the light of Convention. Government should ensure that children are properly cared for and protected from any form of violence. In some countries law defines what sort of punishment is considered excessive or abusive.

In India, in so far as the legislative side is concerned, the State has placed absolute ban on Child abuse or corporal punishment as an international commitment.

The Constitution, supreme law of land vide Article 15 grants liberty to State to make special provision for women and children. Directive principle of State Policy also require the State to safeguard the interest of child from being abused.

Protection Mechanism – In strict sense these laws are not protective. It awards punishment when some injury has been caused or child has been subjected to cruelty or abuse. It is only punitive. There should be awareness of Pscho fear and Psyco Fair. Pscho fear or fear of punishment in the of mind of predator regarding consequences/implication of wrong doing or any offence. Pscho fair in the mind of supposed victim regarding consequences/implication of false accusation.

The focus of approach should be Preventive, to Protective to Punitive

JUSTICE H.S. BEDI
A GENTLEMAN JUDGE
(Harry Bedi)

Justice Harjit Singh Bedi (Harry Bedi) belonged to a family of agriculturists from Sahiwal (Montgomery), now in Pakistan. He is a direct descendent of Guru Nanak Dev Ji. 17th in line. His father was, Tikka Jagjit Singh Bedi. After partition, his family was settled in Fazilka, a small township near the India-Pakistan Border.

He was born on September 5, 1946. He breathed his last on November 21, 2024. His life journey of 78 years was unique. He joined Bishop Cotton School, Simla in 1954. His school mates have described him in different hues. A man of utter simplicity. He was intelligent, dedicated and committed to his firm views. He was not a man who could be defeated easily on any intellectual matter. He was confident. He was assured. He spoke in a soft manner. He had clarity of thought. He was always among the toppers in his class. He was obedient. He was shy. He

was no brawn. Not the daring kind.

Some of his friends of 1962 class have spoken for him and of him. Harry loved his dogs and guns. His love for dogs has continued throughout. They remained with him wherever he went. When the body was brought for the last time on November 22, 2024 at his farm house, one had to see how the pair condoled the death of the master. They were the best bodyguard and protector of Justice Bedi.

In 1960, during the phase of cold war, Khrushchev had made a frightening speech at the United Nations. It culminated with an exhibition of shoe thumping in 1960. It appeared the world was at the brink of another world war. Three friends, Guzdar, Vijay Khurana and Harry decided to write a letter to Khrushchev urging him to show restrain. The three of them sat in a class room with Harry in the centre. The letter was written. Of course, the author was Harry. There was a letter box behind the Headmaster's office. The letter was duly dropped in the letter box. Two days later, at the dinner time, Fred Brown announced with a smile on his face – Khrushchev come and get your letter, the post man cannot deliver it. Harry got up. Collected the envelop much to the amusement of all around. All in all, Harry has been described one of the finest specimens of a good product that Bishop Cotton School saw past its hallowed portals.

Justice Bedi did his law from Delhi University in 1972. He was enrolled as an advocate with the Bar Council of Punjab and Haryana on July 17, 1972. While being an advocate, he was appointed as Part Time Lecturer in Law in 1974. I was already on the regular faculty since 1969. My association with him dates back to 1974. This 50 years journey was of Togetherness. He taught till 1983- short of a decade. Those were the years when our friendship matured. He was Deputy Advocate General, Punjab from 1983 to 1987. He was given senior's gown in 1987. He was also appointed Additional Advocate General in which position he continued till 1989. He remained Advocate General (Punjab) till the end of 1990. He was elevated as Additional Judge of Punjab & Haryana High Court on March 15, 1991. He was further elevated as Chief Justice of Bombay High Court on October 3, 2006. Thereafter, the third elevation was to the Surpeme Court on 12.01.2007. I had the a joy of attending all the three swearing in ceremonies. He retired from the top court on 05.09.2011. What a journey ! From an advocate to senior advocate to judge of the High Court to the Chief Justice of the High Court and retired as Judge of the apex court of the country. A happy blend of a lawyer and a judge. His father, Tikka Jagjit Singh Bedi was a judge of Punjab & Haryana High Court who retired in 1969. Now, his son, Jasjit Singh Bedi is adorning the Bench of the same court. Three generations of judges. Doing of justice is flowing in the veins of Bedi family.

I wish to make a confession. When I sat down to weave this Tribute, I was in a dilemma – should I or

should I not. My daughter Shruti got married to his son Jasjit on March 1, 2002. I have genuinely experienced him. As a judge (before 2002). As a human being, throughout. I ask myself, what is the difficulty! Therefore, I am sharing what I have experienced.

I took pre-mature retirement from Panjab University in 1991. Joined the Bar. I often use to appear in his court till the year 2001. He was a perfect mix of Socrates Recipe. Hear courteously. Consider soberly. Answer wisely. Decide impartially. His court use to be the lawyer's court. The lawyers could give their best. The court environment was congenial. It was a learning experience for young lawyers. He was not technical. He was compassionate and humane judge. The young lawyers were encouraged. Justice Bedi was liberal in his approach.

He remained a judge of constitutional courts for more than 20 years. He was truly an gentleman judge. His court craft. His court management. He would never lose his temper. A judge is measured by the judgments, he delivers. A judge speaks through his judgments. Judgments are not meant to be intellectual pieces of literature. They must speak of the courage, the empathy and the humanism of the judge. Above all, the sense of fairness, of openness and transparency.

In Rathinam v. State of T.N. (2011) recorded: *"The insinuation that the rich are always aggressors and the poor always the victims, is too broad and conjectural supposition"*. This speaks of the balanced mind of Justice Bedi. He could never be easily swayed. In a three judge bench matter of **Dasgupta v. Vijay Singh Sengoor (2010), Justice Bedi spoke candidly:** *"A public interest litigation is to be invoked sparingly and with rectitude and any order made in this situation must be reasonable and must not reflect the pique of the court…….as it is not the court's business to attempt to run the Government in a manner which the court thinks is the proper way."*

Once again, Justice Bedi did not trip into the domain of the government. He believed that judges must realize that they are *'humans'*. To do justice to humans is the best kind of service.

Above all, he was a good human being. During his 13 retirement years, he lived a life of a commoner. He never exhibited his position. Talking to him, one always felt, what a cultivated and well nurtured mind. He was 'humility wrapped in humanity'. Permit me to be personal. Justice Bedi, got a Mandir constructed at the farm house. A Pandit performed the puja at the time of installing the different Idols. What a gesture! Truly, in Guru Nanak's spirit. We all belong to one human family.

Edmund Burke spoke of: *The cold neutrality of an impartial judge. That was Justice Bedi. He would always be remembered fondly.*

Equally, we would miss him dearly.

Dr. Balram K Gupta
Professor Emeritus
Senior Advocate
Former Director, NJA and CJA

JUSTICE M.C.CHAGLA
UNIQUE AND A GREAT JUDGE

Justice MC Chagla was born on September 30, 1900. He was elevated as a judge of the Bombay High Court in 1941. At the advent of Indian Independence, he was elevated as the first Indian Chief Justice of Bombay High Court on August 15, 1947. Sir Leonard Stone was the Chief Justice. There was no legal or constitutional obligation on his part to step down from the office he was occupying. He believed that after India had attained independence, only an Indian should be the Chief Justice.

Justice Chgla's judicial journey was spread over 17 years. There were some unique elements of his journey. He adopted the practice of not reading the paper books before hand. He followed this practice throughout his judicial journey. He firmly believed that it was a mistake for a judge to go to the court after reading the paper books. The judges tend to make up their minds after reading the paper books. This making up their mind may be tentative. Yet, it requires a very strong mind to change an opinion once made. He even appealed to the SC judges not to read the SLPs before hand. The response was that if they do not read before hand, it would consume much more time. Chagla disagreed. He believed that if the judge can pin down the lawyer to the essential point, it would not take more time. Rather less time. In the present times, the work has increased manifold. The judges read their petitions in advance. Therefore, the moot point is whether, Justice Chagla's recipe is more digestible and less time consuming or not? I pause for a meaningful response. In any case, Chalga was different from other judges. Even during his own time.

Justice Chagla developed the habit of dictating the judgments in the open court as soon as the arguments concluded. How did this happen? It was the first occasion when an important point

was argued before Chagla. The two counsel opposing each other were K.M.Munshi and Taraporevala. Chagla hesitated for a moment. Took courage. Called the stenographer and dictated the judgment there and then. Thereafter, it became a habit with him. On another occasion, Chagla was sitting with Chief Justice Beaumont hearing income-tax references. When the arguments concluded, the Chief told Chagla, 'I have lost my voice. You fire off the judgment'. To deliver the judgment extempore on a subject which was new to him, was a daunting task. Chagla dictated the judgment smoothly. When he concluded, he told the Chief, 'I wish you had given me some notice'. Chief smiled and said, 'My dear boy, you have done very well. I do not think any notice was necessary' In his 17 long years of judicial journey, he reserved only one or two judgments. This too, in order to achieve unanimity. This feat, no one else has been able to accomplish. He believed that judgments should be founded on first principles. He illuminated justice. He humanized the law. He even humanized the taxing laws. Tax and equity are strangers. He demonstrated that they need not be sworn enemies. His contribution to the growth of income tax law is monumental. His judgments reflected his burning desire to do 'real' and 'complete' justice. His judgments had no dark corners. In fact, they were Light Lamps.

Justice Chagla's court was an academy of legal and judicial education. In fact, a laboratory for shaping the judges. How should a judge conduct the court? In Roses in December (his autobiography), he wrote : "Discourtesy to the Bar is essentially evidence of weakness in the judge. Losing one's temper while counsel is arguing is a reflection only of judge's own failing and his inability to control the Bar. One thing I always tried to keep uppermost in my mind was a sense of my own fallibility." There was no other court like Justice Chagla's court. The atmosphere of the court. The bright face. The unflagging attention. The courtesy. The humour. The kindness. Above all, the complete confidence. In his court, there was always sunshine. There was dignity. No ill will. Justice Chagla always had an open mind. No case was ever decided in his court till the last word was spoken. The man was as great as the judge.

The younger and the senior members of the Bar always preferred to argue their matters in Justice Chagla's court. The younger members felt comfortable and could give their very best in his court. Even when they were opposed by the senior counsel. H.M.Seervai, Nani Palkhivala and Y.V.Chandrachud and many more grew and matured in his court. He selected and appointed Nani Palkhivala and Y.V.Chandrachud as part time faculty in the Bombay University. They both in turn proved to be excellent law teachers. They were loved by students because their lectures were full of wit and wisdom.

His judgments were readable. Understandable. Digestible. Brief and precise. Reading his judgments, one felt that one was attending the wedding reception of Law and Literature. He believed that literature was the best preservative to make the judgments endurable. Roses in December came to be prescribed as a text Book for Masters Course in English literature in the Bombay university. It perpetuates his different roles that he played. It weaves and knits his life journey. Beautifully. His mind was creative and innovative. He had a knack of humanizing the law.

Justice Chalga headed the commission of inquiry appointed by GOI in early 1958, while being the Chief Justice. The inquiry was regarding the financial transactions involving large sums. T.T.Krishnamachari was the Finance Minister in the cabinet of Prime Minister Pandit Nehru. M.C.Setalvad, the then Attorney General of India assisted the commission. The report was submitted within 24 days on 14.02.1958.

As a consequence, TTK had to resign. Obviously, Pandit Nehru was not happy. Dr. Rajinder Prasad the President of India considered the Report 'one of the best judgment ever delivered'. Nani Palkhivala described the report as a landmark in the history of public life of the country. The first test of a Rotarian is : Is it the Truth? Justice Chagla was a true Rotarian without being a Rotarian.

In July, 1958, PM Pandit Mehru was in Bombay. Chagla was called to Raj Bawan. He was told, you have written enough judgments. Now you be the Indian Ambassador to US. He wanted him to resign from Chief Justiceship immediately. This act of Chagla has been criticized by late Sh.M.C.Setalvad. Earlier, Setalvad himself had recommended Chagla's name for Chief Justiceship of India. It seems, the PM did not want the CJI to be from outside the Supreme court. The thumb rule of seniority has been followed except when supersessions took place. Chagla did not want to say, no to the PM. In any case, Chagla was not himself seeking the ambassadorial position. The resignation was immediate. In this situation, Chagla while being the judge and Chief Justice could have never favoured the government particularly GOI. Moreover, he was truly known to be an independent judge. In his autobiography Chagla had shared that Lord Reading was the Chief Justice of England during the war of 1914. He was asked by the PM of England to go to Washington as ambassador. Reading willingly agreed. It may be added meaningfully that the relationship of Chalga with the PM was rather cool after the TTK affair. Thus, it is apparent that the PM wanted to utilize the services of Chagla in a different capacity. He had full confidence in him. TTK inquiry left no doubt. He could never be influenced. This brings out the true role of a judge.

Chagla during his judicial journey (17 years), he never missed the court for a day. He sat even when he had fever or attack of gout. In sickness and sorrowness. His wife would ask him, are you paid extra when you work even when you are sick? He believed that to hold court on time and every day was the Rule of Law for the judges. He even told the brother judges that if he died in office, the court must not be closed. If you wish to show respect, you must work. This discipline is important.

It was February 9, 1981. He was playing a game of 'Bridge' at Willington Club in Mumbai. He had just made a 'Grand Slam'. He went to the dressing room. There he quietly passed away. Only the fortunate one's get such a peaceful death. May I add, only those who do real justice to others. It is more than 44 years that Chalga has not been with us. How deeply and fondly we miss his recipe of doing complete justice. I urge the judges to mould their courts in the mould of Justice Chagla's court.

Justice Chagla was unique as a judge. It is difficult to find another Chagla.

Dr. Balram K Gupta
Former Director, NJA & CJA
Justice M.C.Chagla National Awardee

WWW.INDIANEXPRESS.COM
PRESS, MONDAY, MARCH 17, 2025

Balram Gupta gets Capital Foundation National Award

EXPRESS NEWS SERVICE
CHANDIGARH, MARCH 16

PROF EMERITUS and Senior Advocate Dr Balram K Gupta was conferred with the Capital Foundation Justice MC Chagla National Award by Justice Madan B Lokur, Chairman, UN Internal Justice Council in the presence of Justice AK Patnaik at the Constitution Club in Delhi on Sunday.

Gupta was recognised for his outstanding and distinctive contribution in "shaping and mentoring judges in India and abroad".

Earlier, he was the guest orator at the Sri Lankan Judges Institute and was honoured with a glass plaque by Chief Justice of Sri Lanka Justice Priyasath Dep PC. He also led the Indian Delegation to Canadian Judicial Institute, Ottawa.

He was also given the Punjab State Nayaya Rattan Award. He is the recipient of Life Time Achievement Award from Rotary International District 3080 for connecting Rotary with Judiciary through his writings, orations and memorial lectures.

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Hon'ble Mr. Justice Harkesh Manuja, gracing the occasion as Chief Guest during the Certificate Distribution Ceremony for Newly Enrolled Advocates | 26.11.2024

Hon'ble Mr. Justice Rajesh Bhardwaj, gracing the occasion as Chief Guest during the Certificate Distribution Ceremony for Newly Enrolled Advocates | 26.03.2025

FUTURE LEGAL EDUCATION: ONLINE LEARNING & VIRTUAL MOOT COURTS

Advocate Govind Arora

It's a profession built on tradition-education focused more and more on rigid classroom instruction, physical libraries, and in-person moot court experience. However, technology is continuously changing legal education and training into innovations that have been responding to the needs of the 21st-century legal landscape. Such tools as online learning and virtual moot courts transform the field, bringing challenges as well as opportunities.

The Rise of Online Learning in Legal Education

Online learning has picked up greatly in recent times, especially during the COVID-19 pandemic when most educational institutions globally shifted their teaching and learning processes to virtual platforms. No exception was law schools, where the adoption of technology was an important means to continue teaching and learning. One of the greatest benefits of online learning is its accessibility. Students from diverse geographical locations can now enroll in law programs without relocating, breaking down barriers for those from rural or underprivileged backgrounds. Flexibility in scheduling allows students to balance their studies with internships, part-time jobs, or other commitments, fostering a more inclusive environment. Online learning saves a lot of money on the cost of attending a traditional law school. Transportation, accommodation, and paper materials costs are cut down. Also, most of the online materials like e-libraries and open-access journals are free of charge, which saves a lot on legal research. Advanced tools like video lectures, interactive quizzes, and discussion forums can be embedded on online platforms. Techniques such as AI are being used to create customized learning experiences, make course

content adaptable to one's needs, and give instant feedback on assignments. There are also attempts with virtual reality simulations where actual courtroom settings can be replicated for more effective learning. Online legal education still has several disadvantages despite its advantages. The lack of face-to-face interaction limits students' ability to develop essential soft skills like public speaking, negotiation, and teamwork. Moreover, the access of stable internet as well as more advanced devices creates a problem in the learning of students who are from an economically disadvantaged background. Another issue would be the possible loss of the Socratic method that legal education so often thrives upon, in terms of spontaneous in-class discussion. While the tools for engaging through online platforms exist, it remains hard to equal classroom debates in their spontaneity and depth.

Virtual Moot Courts: Innovation in Advocacy Training

Traditionally, moot courts have been part and parcel of legal education and, in a broad sense, provided students with an opportunity to exercise their research, drafting, and advocacy skills. Virtual moot courts have made a revolution out of this by harnessing the technology to present a new dimension in advocacy training. Virtual moot courts have democratized access to mooting opportunities. Students do not have to travel to participate in prestigious competitions as before, therefore reducing the barriers of logistics and finances. More students can benefit from exposure at national and international levels.

Virtual moot courts require digital competency, which is also becoming very applicable in modern practice. Case file management to presentation of arguments via video conferencing among others is covered in these virtual moot courts; hence, skills in today's technological legal world cannot be missed. Most virtual moot court sites now use AI-based feedback tools, which evaluate the participants' performance based on criteria like clarity, argument structure, and delivery. These are all actionable items, and they really help students refine their advocacy skills. Although virtual moot courts provide various benefits, it is also riddled with several challenges. Disruptions to connectivity and technical failure can halt proceedings. Also, the lack of physical presence in virtual moot courts may make traditional courtroom simulations seem less intense and realistic. Another important challenge is maintaining fairness and integrity. Ensuring that participants adhere to ethical standards, such as avoiding unauthorized assistance during virtual sessions, remains a concern. Organizers must implement robust protocols to uphold the credibility of virtual moot court competitions.

The Role of Technology in Shaping Future Legal Education

Technology is not a facilitator alone but a force of change within legal education. Besides online courses and virtual moot courts, quite a few technologies are changing how legal knowledge can be imparted and acquired. AI and machine learning is revolutionizing the way legal research and education occur. Chatbots and AI-powered research platforms grant access to case laws, statutes, and even legal opinions faster than ever and save time and maximize efficiency. It also uses the analytics of cases to predict possible outcomes, offering students a sense of practical applicability of strategies in law courts. The emergence of gamification is a novel

method to engage students in learning complex legal concepts. Interactive simulations, role-playing games, and scenario-based quizzes are more engaging and effective ways to learn. For example, a student can simulate virtual negotiations or contract drafting in a safe environment. Blockchain technology is being researched to ensure academic integrity in online legal education. Institutions can be assured of the authenticity of degrees and certificates by recording and verifying credentials on a tamper-proof ledger. This also streamlines the verification process for employers. Online platforms promote international collaboration with both peers and professors from around the world, promoting a cross-border perspective that aligns well with the more globally integrated world in which they will practice. Preparing for a Hybrid Future A combination of the old and new trends will be future legal education-technology hybrid. Sure, technology will offer many benefits, but let's not downplay the power of face-to-face interactions and experiences. Blended learning models, which include both online and offline methods, are the norm. For example, theoretical lectures can be given online, and practical training such as mock trials and client counseling sessions can be conducted in the classroom. In this way, a comprehensive learning experience is assured. Lifelong learning among legal professionals also incorporates the use of technology. There are online certification courses, webinars, and virtual workshops through which professionals can be up to date on recent developments in the legal sector and new skills. This also allows for a continuous engagement process with professionals that will not cause an inconvenience to their practice. Integration of technology into legal education is not simply a response to the current problems but an inevitable strategic evolution in the direction of a more representative, efficient, and internationally pertinent system. For instance, e-learning and online moot courts indicate how technology transforms traditional models; it has exposed students to so many unprecedented possibilities for learning and growth.

However, such transformations come with its own set of challenges. Problems in the spheres of accessibility, engagement, and integrity have to be overcome. With the ability to take both innovation and tradition in balanced portions, legal education in the near future will also be dynamic but resilient, offering aspiring lawyers those skills and that knowledge necessary for success in such a changing environment.

The future of legal education is, therefore, in embracing technology as a catalyst for innovation and inclusivity. The paradigms of traditional education are being revolutionized by online learning and virtual moot courts. It is going to make a system more accessible and flexible as per the needs of a globalized and tech-driven legal profession.
However, a balance must be struck to retain the essential human elements of legal training, such as mentorship, collaboration, and ethical grounding. Institutions must invest in hybrid models and technological advancements while ensuring that students develop critical thinking, communication, and practical skills.
Legal education can prepare the next generation of lawyers to thrive in a rapidly changing world by fostering a synergy between technology and tradition, thus equipping them to address complex legal challenges with confidence and competence.

THE EVOLUTION OF GROUP COMPANY DOCTRINE IN INDIA

Samriddhi Kapoor

Arbitration is an ad hoc method of dispute resolution which is based on parties' consent. The consent to arbitration is encapsulated and enshrined in the arbitration agreement and is therefore crucial in the arbitration process. International conventions and national legislations set a harmonised standard regarding the requirement of a valid arbitration agreement for an arbitral tribunal to have jurisdiction to hear the dispute and for the purpose of enforcing the award. Despite the fact they are usually entered into between the parties involved, arbitration agreements may cover non-signatories in certain circumstances. Judicial and arbitral tribunals are rather tiptoeing in handling these cases because of the basic tenet of arbitration – it should not be compelled or forced on those who have not agreed to it. Many of the doctrines which push non-signatories into arbitration agreements are clearly defined origins grounded on contract, company and agency laws. Though one can list quite a number of exceptions, the worthiest of mention is the "*group of companies*" doctrine. It must be mutual – that is, the parties must agree to the same thing in the same sense as is envisaged under section 7 of the

Arbitration and Conciliation Act, 1996. In as much as many legal concepts have been employed to expand the coverage of arbitration agreements to third parties, one of them is the "group of companies" doctrine.

There are cheers and jeers over the "group of companies" concept. Although recognized in most civil and common law countries, it has been criticized for eroding the doctrine of piercing the veil of incorporation. Unlike the decisions of common law countries' courts, the Indian courts seem to be dispose in principle of corporate entities' independence.

According to the doctrine, a non-signatory to an arbitration agreement can be deemed as bound to the agreement where the non-signatory belongs to the same corporate group as the signatory; and it was the intention of both the signatory and the non-signatory that the non-signatory would be bound by the provisions of the agreement. This intent is usually inferred from the parties'; grounded in domestic law, the 'group of companies' doctrine originates from international arbitration jurisprudence.

Consent to arbitration does not have to be expressed in words of agreement but can be inferred. This means that a non-signatory can be restrained by an arbitration agreement even if he never signed it, if he gains from the agreement. Selecting the circumstances and extent to which third parties shall be bound to arbitration is still an evolving field of law anywhere in the world, including in India. One of such issues is the group of companies doctrine. It holds a group of companies as one economic unit for purposes of liabilities and responsibilities. Group companies that exercise employment and economic cooperation and are used as a single economic entity may be legally responsible for each other's activities. This doctrine is commonly applied in the international arbitrations between the multi-national companies. The aforesaid complexity becomes even more pronounced in multi-party, multi-claiming procedure, involving international characteristics.

GENISIS OF THE DOCTRINE

The "group of companies" doctrine belongs to Dow Chemicals v. Isover Saint Gobain (herein referred as Dow Chemical's case). While admitted in French courts and some of the ICC tribunals, it has been received with a lot of criticism. The doctrine's central dispute is found in its propensity to avoid the concept of contractual relationship or independent juridical person and the consent in international arbitration.

In this case, Dow Chemical Group, a U.S. company, and its subsidiaries, which were not signatories to the original contract, initiated arbitration proceedings against Isover Saint Gobain concerning a distribution agreement for thermal insulation products. Isover challenged the jurisdiction, arguing that the subsidiaries were not parties to the arbitration agreement. However, the ICC Tribunal upheld its jurisdiction by relying on the newly conceived "group of companies" doctrine, which recognized that although the parent company and its subsidiaries were separate legal entities, they constituted "one and the same economic reality" due to their corporate structure. This doctrine was unprecedented in contract law until this case, where the Tribunal also established a threefold test to determine when a non-signatory could be bound by an arbitration agreement:

(i) the existence of a closely-knit group structure with substantial control exercised by one entity over another.

(ii) the active involvement of the non-signatory in the contract's conclusion, performance, and termination.

(iii) the shared intention of all parties, including both signatories and non-signatories, to bind the non-signatories to the arbitration agreement.

The Dow Chemical case thus marked the beginning of the "group of companies" doctrine, which has since been recognized and upheld by courts in Sponsor A.B. v. Lestrade, particularly in France, where non-signatories have been held accountable under arbitration agreements based on their integral role in the contractual relationship.

INDIAN APPROACH : NECESSITY FOR THE DOCTRINE.

The 'group of companies' doctrine was primarily introduced in India to prevent disputes in complicated transactions involving numerous parties and contracts from becoming fragmented. The Arbitration Act does not specifically mention this idea,

but the phrase "party and any person claiming through or under him" found in Sections 8, 35 , and 45 of the Act has been used by the judiciary to interpret and support the doctrine. Several court rulings have supported this interpretation; these are covered in more detail below.

- **The Chloro Control Case , The 246th Law Commission Report & 2015 Amendment :-**

The Dow Chemical case was actually the turning point that recognised the group of companies doctrine in mainstream of commercial arbitration. The tribunal held that a non-signatory could be deemed as party to an arbitration clause if it could be seen as being involved in the making of the contract which included arbitration clause, the execution and the implementation of the contract and termination of the same, thus making it the real party to the contract as well as to the arbitration agreement. This decision introduced into the arbitration practice the idea of aggregative approach to the group of companies while actually they are legal entities that exist separately.

The group of companies doctrine was first developed and practised in India in Chloro Controls India (P) Ltd. v. Severn Trent Water Purication Inc. (Chloro Controls) . Thus, this case achieved two quite important things. Initially, it reviewed the conditions of the application of the arbitration agreement to the non-signatories which would be possible only if the following condition prevail; In setting up these exceptions the Supreme Court said that, to qualify the parties:

- o must have a contract with the signatory.
- o must have a connection with the subject matter of the contract;
- o must be part of a composite transaction.

This is what is referred to by some legal scholars as the three times, or the so-called 'mutual intentions' test. Secondly, the Court made a distinction between the use of the word 'arbitration' in sections 45 and 8 of the Arbitration and Conciliation Act, 1996 (A&C Act). As was pointed out, referring to Section 45, the term 'any person' refer to a wider legislative purpose than just the amigos who signed the arbitration agreement. Therefore, the Court allowed non-signatories to be referred to arbitration on condition that they were in compliance with the test of 'mutual intentions.

In 2014, immediately after the Chloro Controls case, the Law Commission of India in its 246th report considered the provisions of the Arbitration and Conciliation Act relating to the meaning of 'party'. The Law Commission complained that it [the existing definition] was "too restrictive", applicable only to a person who is a signatory to the arbitration agreement. With reference to the interpretation given in Chloro Controls relating to section 45 of the Act, the Commission has sought to add clause to section 8 of the Act. They pointed out that while the phrase 'person claiming through or under a party', upon which section 45 of the A&C Act is based, has been excluded from section 8, resulting in the absence of congruency between the provisions laid down in Parts I and II of the Act. In response to this, the Commission sought to add to Section 8 to make provision for it as is done in Section 45. In more detail, the Commission proposed to modify the definition of 'party' provided for in Section 2(h) of the Act. In 2015, the Indian legislature enacted these recommendations, modifying Section 8 to permit a reference to arbitration 'by a party to an arbitration agreement or any person claiming through or under him'.

All the foregoing developments have found their way into the Supreme Court and have in the process been shaped further. In Ameet Lalchand Shah v. Rishabh Enterprises (Ameet Lalchand) , the Court discussed the Chloro Controls case, the 246 th Law Commission report along with the 2015 amendment with regard to Section 8 of the Act. This meant that the Court was of the view that where there were disputes that cut across several agreements, the claims could only be determined if all the agreements and the parties involved were to be referred to arbitration.

What must be borne in mind is that the 'mutual intentions' test was not restricted to references under section 8 of the Act. In Cheran Properties Ltd. v. Kasturi and Sons Ltd. (Cheran Properties) the question that arose was on the enforcement of an arbitral award against a non-signatory. Typically, Section 35 of the Act has stated that an award is final and binds the parties and persons claiming under them The Supreme Court in the

present application has further strengthened the Chloro Controls' threefold test to include a group of companies doctrine to point out that its purpose is to achieve a mutual intention of the parties, which suggests that both the signatories and non-signatories were intended to be bound. The Court also saw the phrase "persons claiming under them" to mean that the intention of the legislation was to extend the operation of arbitral awards to non-signatories.

Interestingly, the group of companies doctrine was elaborated an attempt to reconcile the doctrine of separate legal personality with the group of companies doctrine in MTNL v. Canara Bank. She said that although it is necessary for the arbitration agreement to strictly follow company and legal requirements each company is an independent legal entity with its rights and obligations although through what is called the group of companies doctrine a non-signatory to an arbitration agreement may be regarded as bound by the agreement if the conduct of the parties evidenced a clear intention to extend the agreement to the signatory and the non-signatory. She pointed out that unlike the case of joining separate entities into one, this doctrine makes non-signatories bound by the arbitration agreement under the 'mutual intentions' test without blurring the entity's identity.

In the recent case of ONGC Ltd. v. Discovery Enterprises Ltd, Justice D.Y. Chandrachud examined the group of companies doctrine. He considered precedents such as Indowind Energy Ltd. v. Wescare (India) Ltd., Chloro Controls, Ameet Lalchand, Cheran Properties, and MTNL. Based on these cases, he identified several factors that should be considered when applying this doctrine:

1. the mutual intent of the parties.
2. the relationship of a non-signatory to a party that is a signatory to the agreement.
3. the commonality of the subject matter.
4. the composite nature of the transaction; and
5. the performance of the contract.

However, this interpretation of the group of companies doctrine is flawed for several reasons. The "mutual intent" of the parties is not just one of the factors but the conclusion that determines whether the doctrine applies. Including it as a factor complicates the well-established "mutual intentions test" unnecessarily. Additionally, the core "mutual intentions" test is threefold, involving the direct relationship between the non-signatory and the signatory party, the direct commonality of the subject matter, and the composite nature of the transaction in question.

- **Cox & Kings Case**

The group of companies doctrine was recently considered by the Supreme Court of India and the matter was referred to a larger Bench. In the Cox and Kings case two different views were presented by the constitution Bench consisting of three Judges of the Supreme Court. The majority judgement was rendered by the Chief Justice N. V. Ramana, who was unanimous with Justice A. S. Bopanna in so far as the applicability of the group of companies doctrine in India was concerned. On the other hand, Justice Surya Kant endorsed the application of the said doctrine but at the same time referred certain legal issues to the larger Bench.

Chief Justice Ramana criticized the group of companies doctrine stating that the 'joinder [of non-signatories 'undermines the commercial reality and the advantages of maintaining the distinctiveness of subsidiary companies' and that 'concepts like single economic entity are economic notions that are challenging to enforce as legal principles'. However, the doctrine of the group of companies does not bypass the principle of separate juridical personalities and, in the same way, it does But as indicated earlier, the MTNL case was mainly anchored on the principle of 'mutual intent. ' As a result the views of the Chief Justice on the group of companies doctrine in India mere different suspicions when he concentrated on the obiter of the case and not the ratio.

Additionally, the Chief Justice was very clear when enunciating that the 'group of companies' doctrine needs to be exercised with great care, and that merely by pointing to the fact that a non-signatory is part of a group of affiliated companies, it would be possible to seek to bring into a signing party the arbitration clause agreed to by the other party.

Even this criticism is misplaced, as the relationship between the signatory and the non-signatory

is only one of several factors considered when determining "mutual intent."

The Chief Justice referred two key legal questions to a larger Bench:

(a) Whether the phrase "claiming through or under" in Sections 8 and 11 could be interpreted to include the "group of companies" doctrine?

(b) Whether the "group of companies" doctrine, as established in the Chloro Controls case and subsequent judgments, is valid in law?

The Chief Justice and Justice A. S. Bopanna have also rejected to assimilate the group of companies doctrine with the principles of international business and have also observed that the same cuts-down the fundamental principles of arbitration that are based on consent. Most of them deplored the observation that the application of the doctrine appeared to be dominated more by reasons of efficiency and fiscal expediency than by legal rationality. Of course this leads to that profound question of whether convenience should trump consent and party autonomy when forming legal doctrines such as the group of companies.

On the other hand, Justice Surya Kant, in expressing his dissenting opinion, appeared to have more lenient perception as to the doctrine. He was right pointing out that the joining of a third party to arbitration based on the integration of a group of companies as 'single economic unit' is no longer the key of the concern of the group of companies. However, the doctrine is predominantly founded on the assumed consent deduced from the behaviour of an entity in the group of companies.

Justice Surya Kant made some suggestions of how a non-signatory might behave; the non-signatory might bargan by appearing to lead a contract while not signing it and then back away from obligations by not signing the contract. His approach looks at observing the conduct of the party that was never a signatory to the particular contract, but can he or she feign to be bound to it or not?

On December 6, 2023, the Supreme Court of India delivered Judgment in Cox & Kings Ltd. vs. SAP India Pvt. Ltd :-

By a Constitution Bench of five learned judges. This offered some leukotomy on the formulation of the Group of Companies Doctrine under the Indian Legal System. The doctrine underscores that non-signatory may be attracted to the operation of the agreement to arbitrate so long as there is consensus among all the parties such that both the signatories and non-signatories are intended. The judgment underlined the fact that the doctrine cannot be cast as operating negatively to other rules of law such as agency, estoppel and interrelatedness of issues. Third, the Court observed that legal proceedings could be said to be excluded at the arbitration stage by reference to communications even though the Act defined an arbitration agreement to mean a written agreement. The Bench unanimously determined that the doctrine is not delimited by the existence of an arbitration agreement; non-signatory companies can also be embraced in arbitration under this principle.

Therefore, the trend of the 'group of companies' in India continues to represent the daily critical discussions about freedom of contract and the treatment of arbitration agreements when applying to non-signatories. The doctrine derived from international jurisprudence, in an effort to respond to business relations, in which collectively the members of a group may be legally a separate entity. Indian courts over the years especially through Chloro Controls case and recent judicial pronouncement have woken up to this doctrine while addressing it by the 'mutuality of intent' rather than by association alone. However, as has been seen in the recent Cox & Kings case also there is lot of judicial concern with respect to its compatibility with the basic principles of Arbitration Act and its effect on the principle of commercial freedom. Thus, the future of the doctrine in Indian law will depend on the two-fold process of purporting their meaning and ensuring that it does not offend the twin principles of consent and the corporate personalities of separate bodies.

Author is a 5th year law student of UPES, Dehradun.

Illegal Bangladeshi Migration into India: Legal, Political, and Constitutional Dimensions

INTRODUCTION

India's northeast, especially the state of Assam, has been grappling with a demographic crisis rooted in large-scale illegal migration from erstwhile East Pakistan and, post-1971, Bangladesh. This influx has not only strained resources but also imperiled the socio-cultural fabric and internal security of the region. The Indian legal and political system, in its attempt to address the issue, created mechanisms such as the Illegal Migrants (Determination by Tribunals) Act, 1983—a law that, ironically, ended up shielding illegal migrants rather than facilitating their detection and deportation.

The journey from the Assam Agitation to the Supreme Court's landmark judgment in Sarbananda Sonowal v. Union of India (2005) and the controversial Ordinance of 25 July 2005, is a telling illustration of the tension between electoral politics, national security, and constitutional propriety.

Historical Backdrop: The Assam Agitation (1979–1985)

The Assam Agitation was a mass civil movement led primarily by the All Assam Students' Union (AASU) and All Assam Gana Sangram Parishad (AAGSP), demanding the identification and expulsion of illegal migrants. The agitation was fueled by demographic changes, electoral manipulation through the inclusion of illegal migrants in voters' lists, and fears of cultural obliteration.

The movement culminated in the Assam Accord signed on 15 August 1985 between the leaders of the movement and the Government of India. A key

Mr. Raj Kumar Chauhaan
Member Bar Council

provision of the accord was the promise to detect, delete, and deport foreigners who entered India after 24 March 1971, the cut-off date for legal migration from Bangladesh.

III. The IMDT Act, 1983: An Umbrella for Illegal Immigrants

Enacted during the height of the Assam Agitation, the Illegal Migrants (Determination by Tribunals) Act, 1983, applied exclusively to Assam. It was widely criticized for being protective of illegal immigrants rather than effective in identifying and deporting them.

Key Features of the IMDT Act:

Burden of Proof: Unlike the Foreigners Act, 1946-where the burden of proof lies on the person to prove he is not a foreigner-the IMDT Act placed the burden on the complainant or the State to prove someone's illegal status.

Exclusive to Assam: The Act was not applicable to the rest of India, thereby creating discriminatory treatment and undermining the uniform application of national law.

Inefficacy: Tribunals under the Act functioned with little accountability, and very few illegal migrants were ever identified or deported.

Impact:

Rather than addressing illegal migration, the IMDT Act was seen as a political tool to appease vote banks at the cost of national security and demographic integrity, especially in Assam and other northeastern states.

Supreme Court Judgment:

Sarbananda Sonowal v. Union of India (2005) – Striking Down the IMDT Act

The watershed moment in this legal-political battle came in Sarbananda Sonowal v. Union of India, reported in (2005) 5 SCC 665, where the Supreme Court of India declared the IMDT Act as unconstitutional, arbitrary, and violative of the right to life under Article 21 of Indian citizens.

Key Observations of the Supreme Court:

Demographic Invasion:

- The Court observed that the unchecked influx of illegal migrants from Bangladesh is a threat to the "integrity and sovereignty of India."
- The judgment referred to it as "external aggression and internal disturbance", citing Article 355 of the Constitution, which mandates the Union to protect States against such threats.

Violation of Fundamental Rights:

- The Court held that the right to life under Article 21 includes the right of citizens to live in peace and security, which the IMDT Act undermined by hampering the deportation of illegal migrants.

Unconstitutional Classification:

- By applying the IMDT Act only to Assam and leaving the rest of India under the Foreigners Act, the law violated Article 14 (Right to Equality) due to arbitrary classification.

On Burden of Proof:

- The Court criticized the reversal of burden, stating it made detection almost impossible, and held that placing the burden on the State defeats the purpose of immigration control.

Severe Judicial Language:

- The bench, comprising Justice R.C. Lahoti (CJI) and Justice P.K. Balasubramanyan, strongly condemned the law, declaring: "The IMDT Act has created the biggest hurdle and is the main impediment or barrier in the identification and deportation of illegal migrants."

The Foreigners Act, 1946: The Legal Norm

In contrast to the IMDT Act, the Foreigners Act, 1946, is a robust national law that governs the detection and deportation of illegal immigrants.

Salient Provisions:

- Section 3: Empowers the central government to make orders regarding foreigners.
- Section 9: Burden of proof lies on the person to establish that he is not a foreigner.
- Section 14: Provides penalties for illegal stay. Post the IMDT judgment, the Supreme Court ordered that all investigations in Assam must now be conducted under the Foreigners Act and the corresponding 1964 Tribunal Order.

Ordinance of 25 July 2005: Executive Overreach or Electoral Appeasement?

Barely weeks after the judgment, the Government of India issued an Ordinance dated 25 July 2005, amending the Foreigners (Tribunal) Order, 1964. This move was widely criticized as a veiled attempt to revive the IMDT regime and circumvent the Supreme Court's ruling.

Key Provisions of the 2005 Ordinance:

- Allowed illegal migrants in Assam to be tried under tribunals similar to the IMDT format.
- Again tried to shift the burden of proof on the authorities, diluting the Foreigners Act's structure.

This act of executive defiance was a political maneuver aimed at safeguarding the electoral interests of the ruling parties by avoiding the disenfranchisement of large numbers of illegal Bangladeshi migrants who had managed to enter voter rolls.

Judicial Reassertion: Sarbananda Sonowal (II) and Criticism of the Ordinance

In Sarbananda Sonowal (II), reported in (2007) 1 SCC 174, the Supreme Court took strong exception to the 2005 Ordinance, holding that the new amendments were nothing but a cloak to reinstate the defunct IMDT mechanism.

Judicial Remarks:

- The Court termed the ordinance and amendments as a "fraud on the Constitution".
- It reiterated that illegal immigration is no less than an act of aggression, and any law facilitating it is a breach of the Union's constitutional obligations under Article 355.

Consequences and Legislative Developments

NRC and the Assam Accord Implementation:

The National Register of Citizens (NRC) update in Assam, supervised by the Supreme Court, was a direct result of its ruling in Sonowal. The process aimed at identifying bona fide Indian citizens, based on the 24 March 1971 cut-off date agreed under the Assam Accord.

Citizenship Amendment Act (CAA), 2019:

While not specific to illegal Bangladeshis per se, the CAA granted citizenship to non-Muslim migrants from Bangladesh (among other countries), which again politicized the issue, drawing criticism that it discriminates on religious lines and undermines the Assam Accord.

The saga of the IMDT Act, its judicial invalidation, and subsequent executive attempts to nullify judicial mandates, illustrates the classic clash between electoral populism and constitutional nationalism. Illegal migration is not merely a law and order issue—it is a challenge to sovereignty, national identity, and constitutional responsibility. The judiciary, through the Sarbananda Sonowal judgments, upheld the supremacy of the Constitution and the inalienable right of Indian citizens to demographic stability and internal security. The government's ordinance of 2005, though masked as administrative reform, was a blatant attempt to subvert judicial pronouncement, and it stands as a reminder that executive actions must always operate within the four corners of the Constitution.

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STATUS OF WOMEN AS ENSHRINED IN THE INDIAN CONSTITUTION

Ms. Monita Mehta, Advocate

The rights available to women in India can be categorized into two main types: fundamental rights and statutory rights. Fundamental rights are those provided by the Constitution of India, while statutory rights are granted through various laws (Acts) passed by Parliament and state legislatures. The concept of gender equality is embedded in the Indian Constitution, particularly in the Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles. The Constitution not only ensures equality for women but also authorizes the government to adopt policies of positive discrimination to benefit women. In the context of a democratic framework, Indian laws, development policies, plans, and programs have been directed toward promoting women's progress in various areas. India has also ratified several international treaties and human rights conventions, committing to securing equal rights for women. One significant commitment was the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993. Despite these legal protections, Indian women continue to face significant challenges, including physical and mental suffering, and their overall well-being is at risk. One contributing factor is the lack of awareness about both their legal and constitutional rights. Unfortunately, many women are not fully informed about the rights available to them. In this

article, I will discuss some of the legal and constitutional rights women are entitled to. The Constitution of India guarantees equality to women and empowers the state to implement measures of positive discrimination to eliminate the economic, educational, and political disadvantages women face. Key provisions such as Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42 are particularly significant in ensuring justice and equality for women. These provisions affirm equality before the law, prohibit discrimination based on sex, and ensure equal opportunities in matters related to employment.

The Indian Constitution was framed during a time when the social status of women in India was extremely poor and required urgent reform. Women were subjected to both physical and mental abuse, and they struggled to secure their rightful place and dignity in society. There was a pressing need for laws to uplift their social standing and provide protection against such abuse. Dr. B. R. Ambedkar, the principal architect of our Constitution, took significant and necessary steps to empower Indian women, aiming to make them independent and socially resilient. Today, we can witness a transformative shift in the status and image of Indian women, thanks to the constitutional reforms and the efforts of women themselves. As a result of these changes, women have secured a respected position in society and are now treated on par with men. Women today are present in all fields-whether in space exploration, corporate sectors, politics, entertainment, or defense, to name just a few. It is indeed gratifying to observe the progress women have made over the past four decades. However, despite these advancements, it still seems that many women today face challenges in maintaining their dignity and freedom. Mental and physical abuse of women remains prevalent, leading to a sense of insecurity among them. In my view, with a proper understanding of their legal and constitutional rights, women's position in society can be further strengthened. There are numerous legal provisions designed to protect women from such abuse. Let us now look at some of the issues women face and the remedies the law offers. After independence, several initiatives were introduced to improve the social condition of women and provide them with opportunities to unlock their potential and contribute positively to the nation's development. It is true that the position and progress of any nation today are directly tied to the economic status of its women. The provisions that have enhanced the status of women can be divided into two categories: constitutional provisions and parliamentary provisions. However, awareness about these constitutional and parliamentary measures is still limited. To ensure better awareness and understanding of these provisions, we will discuss them in detail. I intend to examine whether the constitutional status of women is clearly defined and assess the legal validity of the provisions ensuring women's equal status.

CONSTITUTIONAL PROVISIONS FOR WOMEN IN INDIA:

The Constitution includes numerous provisions aimed at ensuring the dignity and self-respect of women. As previously mentioned, Dr. B. R. Ambedkar, the architect of the Indian Constitution, took steps to ensure that it protected the social and legal rights of women. Below are some of the provisions in the Indian Constitution designed to benefit women.

Article 14:- Article 14 of the Constitution of India guarantees equality before the law and equal protection of the laws for all individuals within the territory of India. This crucial provision offers women equal legal protection against crimes directed at them. It also lays the foundation for the creation of various laws and acts aimed at safeguarding and enforcing the legal rights of women in India.

Article 15:- Article 15 of the Constitution of India guarantees

that no individual shall face discrimination based on religion, race, caste, sex, place of birth, or any combination of these factors within the territory of India. At the time of Independence, women faced significant discrimination, but this began to be eradicated with the introduction of Article 15. Additionally, Article 15(3) grants the State the power to implement special provisions for the welfare of women and children.

Article 16:- Article 16 of the Constitution of India guarantees equal employment opportunities to all Indian citizens. According to this article, there should be no discrimination in employment within the State based on religion, race, caste, sex, descent, place of birth, residence, or any combination of these factors. Today, we observe women excelling in politics and the corporate world, and they are now holding significant positions in the government and government-run organizations.

Article 39:- Article 39 of the Constitution of India guarantees women the benefits of the Directive Principles of State Policy. These principles serve as guidelines for the government in formulating laws at the state level. Article 39(a) of the Directive Principles directs the state to adopt policies ensuring that both men and women have equal rights to a sufficient means of livelihood, while Article 39(c) mandates equal pay for equal work for both genders.

Article 42:- Article 42 of the Constitution of India imposes a duty on employers to ensure fair and humane working conditions, as well as provide maternity benefits. In practice, however, the situation for women in corporate workplaces is often poor, with many being exploited by their superiors and employers. Given this reality, the provisions of Article 42 are crucial, as it now becomes the responsibility of employers to ensure that all employees have access to appropriate and supportive working conditions.

Article 243:- Article 243 of the Constitution of India guarantees reserved seats for women in Gram Panchayats. This opportunity for women to participate in local governance has significantly improved their social status in rural areas. These are just a few of the rights granted to Indian women by the Constitution to uphold their dignity and social respect. Additionally, to safeguard these constitutional rights, various legal measures have been implemented by state governments, which we will explore in detail in this article.

LEGAL STATUS OF WOMEN IN INDIA

After India gained independence, there was a pressing need for statutory laws to ensure the well-being of women. In response to this need, several legal provisions were established, and various parliamentary enactments were passed by the Indian Parliament to guarantee a dignified life for women. Parliamentary reforms refer to the enactment of laws and statutory acts designed to protect the rights of women and address crimes committed against them. These laws have played a crucial role in promoting and safeguarding women's rights in society. However, I believe that women should be granted the same rights that men have long enjoyed in our society, as women constitute a significant portion of the Indian population, and their welfare is vital for the nation's social and economic progress on the global stage. To ensure the implementation of constitutional provisions for women's welfare, there was a need for specific laws to be enacted by both state and local governments. While a woman can be a victim of any crime in society, not all crimes are categorized as crimes against women, with only a few crimes primarily affecting women. Nevertheless, substantial progress has been made through these legal measures, which have empowered women and helped them navigate a male-dominated society. Now, let us explore some of the major

crimes against women, along with the legal provisions that punish these offences. Crimes recognized as offences against women may include:

Child marriage :- Child marriage is a grave offense against children, as it not only ruins the future of the child but also harms society as a whole. It hinders social progress and reduces access to educational and employment opportunities in the global market. Practicing this unspoken tradition becomes a burden on society. A significant step was taken by the Law Commission of India by establishing a minimum marriage age of 18 for women and 21 for men.

Female infanticide: - Female foeticide refers to the identification and killing of a female fetus before birth. It is one of the most brutal forms of violence against women. This practice has been prevalent in society for ages, and it is deeply troubling that even today, in an era where we consider ourselves educated and civilized, this custom is still widespread. The government has taken various measures to raise awareness about the consequences of this crime. Numerous awareness campaigns are conducted to inform the public about the physical, mental, and social impacts of female foeticide. *Under the Pre-Conception and Pre-Natal Diagnostic* Techniques (PCPNDT) Act, anyone who violates its provisions or the rules made under it can face up to three years of imprisonment and a fine of up to ten thousand rupees. In the case of a repeat offence, the punishment can extend to five years of imprisonment and a fine of up to fifty thousand rupees. The Maharashtra government has even recommended that female foeticide be treated as murder, and an amendment to the PCPNDT Act, 1994, could be crucial in reducing the incidence of female foeticide in Indian society.

Trafficking and Prostitution :- Trafficking of women is a global criminal activity that involves the use of force, coercion, and deceit to transport women and children across borders for exploitation and sexual purposes. It is deeply tragic to realize that in India, where women are revered as goddesses (Devi) and worshipped as Devi Shakti, they are also treated as a source of income through fraudulent means. Prostitution is one of the most pressing issues worldwide, negatively impacting women in numerous ways. Generally, prostitution refers to the act of engaging in sexual activities for money. It is a problem that spans the globe. In India, there are several laws aimed at curbing prostitution, such as the Suppression of Immoral Traffic in Women and Girls Act, 1956, and the Immoral Traffic (Prevention) Act, 1956. Additionally, various state governments have established commissions to protect women and young girls from falling victim to this practice.

Domestic violence:- The Domestic Violence Act, 2005, has become a significant law addressing the issue of domestic violence against women. Generally, domestic violence refers to the mental, physical, emotional, and financial abuse of a woman by her family members. In this context, "family" includes the husband, his parents, siblings, relatives, and sometimes even friends. Despite considering ourselves educated and often speaking about morality, ethics, and human civilization, we tend to ignore the fact that a nation's progress is incomplete without giving proper respect to women. In India, domestic violence is recognized as a criminal offence under Section 85 of the Bhartiya Nyay Sanhita, 2023. Domestic violence refers to cruelty by a husband towards his wife, which can take the form of physical, mental, financial, or emotional abuse. The Domestic Violence Act, 2005, was enacted to address cases of domestic violence in India. This law represents a crucial step in recognizing domestic violence as a punishable crime. Before this law, women affected by domestic violence had two legal remedies: one through civil courts and the other through the use of Section

498A Indian Penal Code in criminal courts.

Eve teasing: - Eve teasing is often not considered a serious crime like assault or murder, which is why it is frequently overlooked. However, from a woman's perspective, eve teasing is indeed a significant offense as it makes her feel uncomfortable and unsafe. Eve teasing typically involves making inappropriate comments, passing lewd remarks, or gesturing in a vulgar manner towards women. Women often have to endure such behavior and deal with it regularly. In cases of eve teasing, young women should not remain silent but should speak up. They should inform their family members and file a report at the nearest police station. In such situations, the family should support the woman rather than confining her to the house.

Acid throwing:- Recently, the issue of acid attacks on young women has become a serious concern. There are various types of acids, all of which are extremely harmful to humans. In some cases, acid attacks can be so severe that they cause damage to bones and eyes. With easy access to these acids, incidents of acid attacks have become alarmingly common. It is disheartening that despite the increasing number of acid attacks on women, there is no specific law in place to address such cases, aside from Sections 124 and 124(2) of the Bharatiya Nyay Sanhita , 2023. The National Commission for Women (NCW) has called for a clear and dedicated law to handle such crimes. The NCW even proposed a draft of the Prevention of Offences (by Acids) Act, 2008, which was submitted to the Union Ministry of Women and Child Development for review and final recommendations, but since then, no further progress has been made on the matter.

Fraudulent Marriage:- Kudos to the Indian Parliament for enacting the new criminal law, the Bharatiya Nyaya Sanhita 2023, which introduces a new offense of fraudulent marriage. This offense is outlined in Section 83 of the Bharatiya Nyaya Sanhita, which specifies that anyone found guilty of fraudulent marriage may face imprisonment for a term that could extend up to seven years, along with a fine. Additionally, individuals may be penalized for their deceptive conduct.

Extortion:- Extortion involves concealing information or creating a false impression about something that, if known, could negatively impact a person's intended marriage. The prevalence of fraudulent marriages has increased in recent times, especially in India, where parents of daughters are often eager to marry them off to NRIs (Non-Resident Indians). Parents hope to secure a prosperous future for their daughters by marrying them to wealthy NRIs. Often, they don't inquire deeply about the NRI men, trusting that their daughter will marry a wealthy individual who will fulfill all her desires and provide a

luxurious life abroad. However, this misplaced trust in NRIs can lead to issues such as false commitments, misleading information, second marriages, and even infertility.

Exploitation at work place:- While it is widely acknowledged that in today's world, women have moved beyond the traditional role of homemaker and have proven themselves to be better leaders than men, they are excelling in every field. Women are now earning recognition, awards, and honours for their accomplishments. They have shattered all barriers and silenced those who once doubted their professional abilities.

Rape: - Rape is another grave crime against women, and its occurrence is steadily rising at an alarming rate. Reports of rape and abduction cases have become increasingly prevalent in both print and electronic media, which is indeed a tragic reality for all of us. The growing number of rape cases serves as a stark reminder that our moral values remain inadequate, despite our efforts to promote respect for women's dignity. Simply put, the term 'rape' refers to sexual intercourse or assault by another person without the consent of the victim. Provisions related to rape are outlined in Sections 63 and 64 of the Bharatiya Nyaya Sanhita. Section 63 details the conditions required to constitute the offence of rape, while Section 64 prescribes the punishment for committing rape. According to Section 64, anyone convicted of rape shall be sentenced to imprisonment for a term not less than ten years, which may extend to life imprisonment, and they will also be subject to a fine.

Dowry :- The practice of a bride bringing a dowry, consisting of property or money, to her husband upon marriage has been a longstanding issue, especially in India, where it has a deep-rooted history of exploitation. In India, there are several legal provisions aimed at alleviating the suffering of women in cases of dowry-related domestic abuse. The Indian legal system has made such practices illegal. Section 80 and Section 85 of the Bharatiya Nyaya Sanhita allow women to file complaints and claim their rights in cases of mistreatment or harassment by their husband's family, as outlined in the Protection of Women from Domestic Violence Act, 2005. Dowry demands are a significant and leading cause of increasing domestic violence. Each year, a large number of dowry-related cases, along with incidents of mental and emotional abuse, are reported in India. Tragically, these dowry disputes often lead to extreme acts such as poisoning, suicides, and severe physical and emotional torment by the husband and his family. To address the growing number of dowry-related abuse cases, the "Protection of Women from Domestic Violence Act, 2005" was enacted to reduce domestic violence and protect women's rights.

WOMEN AND EDUCATION

In rural India, there is a common belief that educating young girls is unnecessary, as they are expected to stay at home or work in the fields. In many rural areas, an uneducated girl is considered pure and untouched, which often leads to better marriage proposals. The caste system also plays a significant role in hindering a girl child's right to education. While the Indian

Constitution grants women equal rights to men, social customs, religious norms, and practices often override these constitutional rights. Traditionally, parents are more likely to invest in their son's education and skill development, while girls are expected to focus on homemaking and child-rearing. Women are seen as caregivers, while men are considered the breadwinners. Married girls typically do not have access to educational opportunities, and child marriage, in particular, infringes upon their educational rights. It deprives them of future possibilities and violates the provisions of the Convention on the Rights of the Child (CRC).

In the context of Islamic law, as interpreted by Islamic fundamentalists, women are expected to submit to their husbands and follow restrictive dress codes, such as wearing a burqa when going out. Polygamy is permitted, and young girls are often married off early to preserve their virginity, which severely limits their opportunities for education and work. In such an environment, it is difficult for a young girl to hope for an education. Religious and social inequalities within Sharia law further restrict girls' access to education. Islamic law fundamentalists, who see themselves as protectors of tradition, argue that female education undermines traditional roles and the value of women's domestic responsibilities. They view girls as soldiers fighting to protect the principles of Islamic law. Additionally, they believe that educating women destroys the boundaries that define their traditional roles. Such religious laws violate the rights of young girls, and the lack of sex education in Muslim communities puts young girls at increased risk of HIV/AIDS due to the practice of hazardous polygamy.

Women's rights refer to the entitlements and freedoms that are afforded to women of all ages in various societies. In some regions, these rights are protected and upheld by law, local customs, and social behavior, while in others, they may be ignored or suppressed. In India, despite women comprising a smaller portion of the population compared to many other nations, it is expected that Indian women should be a socially empowered and strong group. However, despite the principles of gender equality being enshrined in the Indian Constitution and the State being empowered to implement positive discrimination for women, they continue to face societal discrimination.

In ancient India, women enjoyed equal rights and status as men in various aspects of life. They were educated, married at mature ages, and often had the autonomy to choose their spouses. However, during the medieval period, the status of women in society declined. The British colonial era saw several reformers advocating for the social and economic upliftment of women, leading to the abolition of practices such as Sati, Jauhar, and Devadasis.

Today, whether in health, education, mortality rates, or other development indicators, Indian women continue to face significant challenges. Despite over a century of efforts to improve the economic and social status of women, India ranks 118th out of 177 countries on gender equality. While child marriage has been illegal since 1860 with the passing of the Child Marriage Restraint Act in 1929, it remains widespread. According to UNICEF's "State of the World's Children 2009" report, 47% of women aged 20 to 24 in India were married before the legal age of 18, with 56% in rural areas.

The Immoral Traffic (Prevention) Act was passed in 1956 to combat human trafficking, yet cases of trafficking continue to rise. The Dowry Prohibition Act was enacted in 1961, but dowry-related issues persist. Though pre-natal sex determination is banned, India still faces a skewed sex ratio due to the practice of female foeticide. The Indecent Representation of Women (Prohibition) Act was passed in 1987, but violations still occur. Finally, the Protection of Women from Domestic Violence Act came into effect in 2006; however, domestic violence remains prevalent, particularly in lower-income groups.

Cryptocurrency Taxation

Bridging Innovation & Governance

Paras Chauhan

This article focuses on cryptocurrency taxation, its legal complexities, regulatory frameworks, and economic policies in today's digital age. The rise of cryptocurrencies driven by blockchain technology has disrupted the existing global economic systems, creating gaps in existing legal structures, and creating a need for regulatory frameworks. The article classifies international taxation policies into four categories: countries like Portugal or UAE with zero tax policies, which welcome innovativeness but may lead to misuse; moderate tax regimes exemplified by Germany or the United Kingdom which encourage taxation compliance but still provide moderates incentive; high-tax regimes like the U.S. and Japan, ensuring oversight but potentially deterring innovation; and blockchain-incentivizing nations that promote technological growth with selective taxation.

India's revamping of tax including 30% tax on all crypto earnings and 1% TDS is a considerable legislative measure in regulating cryptos as ensuring greater transparency and investor protection is achieved. With the rise of cryptocurrencies changes in the financial and legal system around the

world are inevitable and as such the author stresses the key issues to be addressed by policymakers: innovation and regulation in a globally aligned approach.

The development of cryptocurrencies fundamentally altered the mechanisms of value transfer as well as the ownership of assets. These digital properties manage to bypass traditional finance channels because they apply blockchain technology, which provides security and transparency through decentralization. But their rapid uptake has given rise to a number of complexities with regulation and taxation, thereby necessitating government across the globe to create laws that safeguard opportunities for innovation while availing and control.

Cryptocurrencies are used by society for a number of reasons such as investment, trading, and value storage. They are actively traded on cryptocurrency exchanges and enable smooth transfers between digital assets as well as conversion into fiat cash. While cryptocurrencies provide several benefits, such as cost-effective cross-border transactions, they also carry hazards such as severe price volatility, fraud, and abuse in money laundering etc . To address these concerns and to safeguard consumers, regulatory frameworks are being developed and expanding globally , highlighting the importance of responding to this ever-changing financial environment.

Cryptocurrencies: Currency or Asset? Under Indian law, cryptocurrencies and Non-Fungible Tokens (NFTs) have been categorized as "Virtual Digital Assets" (VDAs) as outlined under Section 2(47A) of the Income Tax Act. Such assets are generated through cryptographic measures in terms of information, code, number or a token, with the exception of Indian or foreign currencies and in which a blockchain is used. Simply put, VDAs include all forms of crypto assets cryptocurrencies, NFTs, and tokens while excluding instruments like gift cards or vouchers.

India's Regulatory Landscape

India's legal prescription of cryptocurrencies has been undergoing a sea change in recent times. In 2018, the Reserve Bank of India (RBI) imposed a stringent ban, ordering the banks and associated institutions from conducting any transactions in cryptocurrencies. This was a Federal Government measure, driven by fears regarding tax avoidance, seigniorage income loss and even economic catastrophe caused by the decentralized instruments. However in 2020 , the Supreme Court lifted the embargo placed on the trade of bitcoin by the RBI leading to massive gains in the latter's market. To manage this change, the authorities placed a tax on virtual currencies transactions in the year 2022 aimed at curbing speculative trading

In 2021 , the government proposed the Cryptocurrency and Regulation of the Official Digital Currency Bill , which aimed at developing a regulatory policy but it never progressed to the parliament, leaving a legal void and ambiguity in the status of cryptocurrencies. In March 2023, the Ministry of Finance approved the implementation of the Prevention of Money Laundering Act (PMLA), which includes VDAs for compliance with anti-money laundering rules and KYC legislation.

By 2024, the Securities and Exchange Board of India (SEBI) has proposed a multi-regulatory framework to oversee cryptocurrency operations, signalling a trend towards more structured regulation. While SEBI recognises the complicated issues of this industry, the RBI remains concerned about the potential economic hazards presented by cryptocurrencies. This changing regulatory framework emphasises the difficult balance of

encouraging innovation and safeguarding financial stability. speculative trading

+Both the economy and crypto sector face significant implications from the regulatory measures adopted by SEBI and RBI. These policies aim to stabilize the financial system, mitigate risks, and protect investors, potentially boosting economic stability and investor confidence. However, overly stringent laws could hinder technological development. These restrictions impact market dynamics, India's position in the global crypto ecosystem, and the integration of digital assets into traditional financial systems.

Taxation of Cryptocurrency in India

The Union Budget 2022 marked a significant milestone in India's governance of digital assets by introducing cryptocurrency taxation. The VDA's were used to refer to a variety of digital assets, including cryptocurrencies and NFTs. Key features include:

1. All income earned from the transfer of VDAs shall be subject to a fixed rate of 30% taxation .
2. Tenants cannot take advantage of claims about their expenses paid , except for the purchase price.
3. No digital asset can be used to cover losses from the trade of other digital assets or any other sort of income .
4. A taxation responsibility arises when a digital asset is given as a gift and that tax is imposed on the recipient .
5. Any transaction of Virtual Digital Assets that exceeds ⌾50,000 (or ⌾10,000 in specified circumstances) incurs a 1% TDS.

Cryptocurrencies are regarded as 'virtual digital assets' and subjected to a structured tax regime. Gains from cryptocurrency trading are taxed under Section - 115BBH at a flat rate of 30% , plus a 4% cess. This applies uniformly to all investor's individual or commercial regardless of short-term or long-term gains. Section 194S levies a 1% TDS on crypto-transactions above ⌾50,000 (or ⌾10,000 in some cases) in a fiscal year. The goal is to improve monitoring and compliance for high-value digital transactions, demonstrating India's willingness to regulate the booming cryptocurrency industry while protecting revenue interests and guaranteeing transparency in digital transactions.

International Perspectives on Crypto Taxation

Globally, approaches to cryptocurrency taxation vary, reflecting different regulatory priorities, economic objectives, and attitudes toward digital assets. These can be broadly categorized as:

1) Tax-Heaven: To attract investors and stimulate blockchain innovation, countries such as Portugal, UAE, and El Salvador levy low or no taxes on crypto-transactions. These initiatives establish them as global hubs for digital assets, which benefits their economies. However, they risk facilitating money laundering and increasing reliance on volatile markets.
2) Moderately taxed jurisdictions: The same multiplier is most likely applicable to other low-tax jurisdictions. However, their frameworks can occasionally overwhelm small investors since compliance difficulties are more sophisticated than following the fundamental rules.

- Germany: Long-term

investments are encouraged by the tax exemption for cryptocurrencies kept for more than a year. On the other hand, short-term gains over €600 are subject to income tax at rates determined by the taxpayer's income bracket. Germany's dual goals of encouraging sustainable investment practices and making money from aggressive trading are reflected in this strategy.

- United Kingdom: The UK makes a distinction between cryptocurrency income and capital gains. Depending on the taxpayer's income, profits from the sale or exchange of digital assets are liable to capital gains tax (CGT) at rates of 10% or 20%, with a £12,300 yearly tax-free limit. Furthermore, earnings from mining or staking are subject to ordinary income tax rates, illustrating the UK's efforts to control both professional and speculative cryptocurrency operations.

3) High-Tax Jurisdictions - Countries that impose high tax regimes are stringent on the regulations and tax obligations that come along with cryptocurrency transactions. Such nations generally look at cryptocurrency as a tax revenue generator or a tax on speculation which might help in some aspects but certainly can hurt new technology and force the companies to move to territories that are more welcoming to crypto.

- United States: The IRS's perspective is that the cryptos are treated like any other property or real estate and come under capital gains tax. Cryptocurrency held for less than a year draws ordinary income that is subject to maximum rates of 37% depending on the income tax bracket of the holder, while those held for more have a maximum capital gain tax range of 0% - 20%. A mining or staking activity generates taxable income, which further contributes towards the tax.
- Japan: Earnings from cryptographic currencies are taxed with the Taxation Rate Classification Act into "Other Earnings income" that is income at a progressive rate of between 5% - 45%.

4) Blockchain-Incentivizing Nations: Some countries have been able to have an incentive for the development of blockchain technology whilst implementing certain taxes for the regulation of and monetization of such technology. These jurisdictions aim to foster blockchain innovation while addressing critical concerns related to transparency and compliance.

In conclusion, *cryptocurrency taxation continues to evolve, navigating the delicate balance between promoting innovation and maintaining regulatory control. High-tax jurisdictions often focus on fiscal oversight, sometimes at the cost of innovation, while zero-tax nations adopt strategies aimed at attracting investment. India's approach, with its flat tax rate and strict tracking systems, underscores the complexities of managing such a dynamic asset class in a diverse economy. To retain its position as a prominent player in the global digital economy, India must align its domestic policies with internationally recognized best practices.*

Author is a student of UILS, Panjab University, Chandigarh.

Hon'ble Mr. Justice Harpreet Singh Brar, gracing the occasion as Chief Guest during the Certificate Distribution Ceremony for Newly Enrolled Advocates |15.01.2025

Hon'ble Mr. Justice Tribhuvan Dahiya, gracing the occasion as Chief Guest during the Certificate Distribution Ceremony for Newly Enrolled Advocates | 12.02.2025

ANALYSING THE MISUSE OF SECTION 498A OF THE INDIAN PENAL CODE

(SECTION 85 AND 86 OF BHARTIYA NYAYA SANHITA, 2023)

Prerna Chandna

The recent story of a Bengaluru techie Atul Subhash, who committed suicide after claiming that his wife and her family were harassing him, has sparked a heated discussion over the abuse of laws intended to safeguard women. Atul Subhash aged 34, who lived in Pune, was discovered dead under suspicious circumstances. According to the reports, his spouse and in-laws on-going harassment was causing him a lot of mental stress which ultimately led him to take this drastic step. This case of misuse of the dowry and domestic violence law by the women and her in-laws has sparked a national discussion on the need of a gender-neutral legislation and the psychological toll that the false accusations put on the husband's mental health.

SECTION 498A OF INDIAN PENAL CODE

Section 498A of the Indian Penal Code (IPC) deals with the criminal offence of cruelty against a married woman by her husband or his relatives.

Section 498A: Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:

For the purposes of this section, "cruelty" means:

(a) Any willful conduct which is of such a nature as to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any

property or valuable security, or is on account of failure by her or any person related to her to meet such demand.

SECTION 85 AND 86 OF THE BHARTIYA NYAYA SANHITA, 2023

Section 85 and Section 86 are nothing but verbatim reproduction of Section 85 and 86.

Section 85 of the BNS:

Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

Section 86 of the BNS:

For the purposes of Section 85, "cruelty" means:

(a) Any willful conduct which is likely to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand.

MISUSE OF THE LAW

Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues between the husband and the wife.

A. Against Husband, Parents And Their Relatives

As education, financial stability, and modernization have increased, many women and their families have used Section 498A of the IPC as a weapon rather than as a shield/protection in a rightful manner. They have misused the Law and have unnecessarily harassed the husbands and their family members in order to extract money. Such instances also have a negative effect on the mental health of the individual and his loved ones plus tarnishes the reputation of good and innocent men and their families.

B. Blackmailing

These days, a lot of cases where Section 498A is used end up being fabricated because the wife (or her close family members) are merely attempting blackmail when she is having problems in her marriage. As a result, Section 498A complaint is typically followed by a demand for a sizeable amount of money in order to resolve the matter out of court.

C. Degradation Of The Marriage

The Court have particularly ruled that the laws are being abused and exploited to the point where they were striking at the very core of the marriage. Women have started abusing Section 498A of the Indian Penal code by using it as a means of getting even or escaping the marriage.

MALIMATH COMMITTEE REPORT, 2013

The Malimath Committee, formally referred to as the "Committee on Reforms of the Criminal Justice System," was established under the leadership of Justice V.S. Malimath, who previously served as the Chief Justice of both the Karnataka and the Kerala High Courts.

The Malimath Committee examined the problem of the abuse of Section 498A in its findings.

The committee had put forth several important recommendations concerning Section 498A, which include:

A. The committee advised the implementation of rigorous protections to avert the unjust detention of individuals charged under

Section 498A of the Indian Penal Code. It underscored the necessity of performing comprehensive investigations prior to any arrests and ensuring that due process is adhered to throughout all phases of the legal process.

B. The committee recommended the promotion of alternative dispute resolution methods, including mediation and counselling, to amicably address matrimonial conflicts and to deter the submission of false complaints under Section 498A of the Indian Penal Code.

C. The Committee further suggested that counselling services provided within the Women's Cell be carried out by qualified and experienced family counsellors. This approach is intended to filter out trivial cases from the beginning, thereby ensuring that the application of Section 498A of the IPC is limited to exceptional circumstances.

D. The committee proposed the implementation of measures to penalize individuals (wives and their families) who submit false complaints under Section 498A of the IPC with the intent to harass the accused husband. It advised the establishment of stringent penalties for those who exploit this provision for improper purposes.

JUDICIAL VIEW ON THE MISUSE OF THE LAW

In the case of Preeti Gupta Vs State of Jharkhand

The Judges reiterated that "It is a matter of common knowledge that matrimonial litigations are rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society. The courts are receiving a large number of cases emanating from section 498A of the Penal Code, 1860 which is not good from the point of view of the society.

In the case of G.V. Rao Vs L.H.V. Prasad

Their Lordships observed therein with which we entirely agree that: "there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious outfalls resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal cases. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

In the case of Arnesh Kumar Vs State of Bihar

In recent years the number of marriage problems have skyrocketed due to modernization and financial independence and ego differences. In our nation, the institution of marriage is highly valued. With the stated goal of preventing women from being harassed by their husbands and their family members, Section 498-A of the Indian Penal Code was introduced. The section is being used as a weapon rather than as a protective shield. Since the offence under this section is cognizable and non-bailable offence, arrest of husband and his family members causes a lot of harassment.

Police officers are directed to investigate the matter properly where Section 498A, Dowry Prohibition Act is involved and look into the

genuineness of the matter and only after reasonable satisfaction the arrests need to be made.

In the latest judgement passed in the case of Achin Gupta Vs State of Haryana & Anr.

In the Matrimonial Dispute implicating Husband and his close relatives, the Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. If the wife wants to harass, the FIRs drafted by the professionals implicating all, the Court need not shut its eyes and raise its hands in helplessness, saying that FIR and charge sheet papers disclose the commission of a cognizable offence. The Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. It is stated that Section 85 and 86 of Bhartiya Nyaya Sanhita, 2023 are nothing but verbatim reproduction of Section 498A of the IPC.

PROTECTION AGAINST SECTION 498A

In Law, if there is something that is misused then there are certain remedies available against such misuse also. The safeguards available to the Husbands, their parents and relatives are mentioned as below:

A. Anticipatory Bail

After the wife files a FIR under Section 498-A, if the person feels or fears that he might be detained on false charges, he can hire a good criminal defence lawyer and get a ruling/order from the High Court or the Court of session. To obtain protection against Section 498-A Indian Penal code, an Individual may apply for anticipatory bail under Section 438 CrPc.

B. Quashing of FIR

The Court has the inherent power to issue orders, stop abuse of law or otherwise to ensure that the ends of justice are met if it is satisfied that the evidence adduced shows the innocence and not guilty. There is a right to file a petition before the High Court to have a fraudulent FIR quashed under Section 482 of the CrPC.

C. Restitution of Conjugal Rights

In accordance with Section 9 of the Hindu Marriage Act, the aggrieved party may file a petition before the District court for the restoration of the conjugal rights when the wife withdraws from the society or leaves the marital residence and lives with her family.

D. Defamation Charges

The husband has the right to file a defamation case against

his wife if a person in the community with a good reputation, a good name, and fame feels insulted by the wife's attempt to damage their reputation, feels that such imputation will hurt them, and the wife filed a false case against him under 498-A of the IPC.

Section 498A of the IPC changed into enacted to guard married girls from cruelty, however its misuse has brought about the harassment of harmless own circle of relatives members. Several case laws, such as the ones stated above, have highlighted the want to work out warning in such instances and behaviour right initial inquiries earlier than making arrests. To deal with the complexities surrounding the misuse of Section 498A IPC, there may be a want for cautious consideration, balanced approaches, and improved focus approximately felony remedies. Encouraging counselling and mediation to remedy marital disputes can foster a greater equitable and simply society whilst safeguarding the rights of all events involved.

The Expanding Threat of ARTIFICIAL INTELLIGENCE to Intellectual Property Rights

Deepti Chhabra

The advent of artificial intelligence (AI) in the 21st century has redefined industries, catalyzing unprecedented innovation and efficiency. From healthcare and transportation to entertainment and finance, AI has permeated nearly every facet of human activity.

However, alongside these advancements, AI presents profound challenges to the intellectual property rights (IPR) framework, necessitating critical examination of issues concerning ownership, originality, and ethical governance. As AI continues to grow in sophistication, it raises complex questions that traditional IPR frameworks are ill-equipped to address. This analysis delves into the ramifications of AI on IPR, with a particular focus on creative works such as music production, voice replication, and the broader implications for patent law.

AI and Copyright Paradigms

AI systems have reached a level of sophistication where they can autonomously generate art, music, literature, and cinematic content. This technological prowess demonstrates AI's transformative potential, enabling creators to push the boundaries of imagination and innovation. However, these advancements provoke significant concerns regarding copyright paradigms. For instance, when AI-generated outputs mimic the stylistic nuances of established creators or rely on datasets comprising copyrighted materials, the delineation of ownership becomes contentious. The ambiguity surrounding whether the rights reside with the AI developer, the end-user, or the original content creators has precipitated complex legal disputes across jurisdictions.

Moreover, the sheer scale and speed at which AI systems can generate content exacerbate these concerns. Unlike human creators who operate within temporal and physical limitations, AI systems can produce vast amounts of derivative or entirely new works in seconds. This capacity challenges the traditional notion of originality and

raises alarms about market saturation with AI-generated content that could undermine the value of human creativity. Consequently, regulators face mounting pressure to adapt copyright laws to address the unique attributes of AI-driven creation.

The AI-Driven Replication of Iconic Voices

One particularly disconcerting application of AI is its capacity to replicate the voices of celebrated individuals. Recent instances underscore this phenomenon, with reports of AI driven simulations of renowned singers and actors. A notable case involves Bollywood icon Amitabh Bachchan, whose inimitable voice has been replicated using AI technologies.

Unauthorized voice replication infringes not only on intellectual property but also on personality and publicity rights, raising pressing ethical and legal concerns.

This phenomenon encapsulates two pivotal issues:

1. Economic Implications: Unauthorized voice usage undermines the commercial value of an individual's unique vocal signature, which often serves as a critical asset in endorsements, entertainment, and branding. Celebrities invest years cultivating their personal brand, and the erosion of this exclusivity through unauthorized replication could have long-lasting financial repercussions.

2. Ethical and Dignity Concerns: The unconsented replication of a voice constitutes a breach of personal dignity and accentuates the moral dilemmas surrounding AI's applications. Beyond the financial domain, such practices raise questions about identity, consent, and the ethical boundaries of technological innovation.

Furthermore, voice replication technologies can be weaponized for malicious purposes, including impersonation, fraud, and misinformation campaigns. The potential misuse amplifies the urgency for stringent regulations to curb the unauthorized deployment of such technologies.

Challenges to the Patent Regime

The influence of AI extends beyond copyright to disrupt traditional patent frameworks. AI's capability to invent novel products and methodologies has triggered debates on whether AI systems qualify as inventors under existing patent law. Landmark cases, such as the DABUS AI patent filings, have elicited divergent responses globally, with some jurisdictions recognizing AI as a co-inventor, while others uphold the exclusivity of human inventorship. These developments highlight the pressing need to reconcile AI's contributions with the human-centric foundations of patent law.

The challenge lies not only in determining inventorship but also in defining the scope of patentability for AI-driven innovations. For example, should an invention generated through AI optimization processes be considered distinct from its human-assisted counterpart? Additionally, as AI systems increasingly rely on vast datasets to develop new inventions, questions arise about the ownership and ethical sourcing of the underlying data. Addressing these issues is critical to maintaining the integrity and fairness of the global patent system.

Recalibrating IPR in the AI Era

Addressing these multifaceted challenges necessitates a comprehensive overhaul of current IPR policies.

Key recommendations include:

1. Codification of AI-Generated Content Protocols: -Developing explicit legal frameworks to clarify the attribution and ownership of AI-generated works. These protocols should consider the roles of developers, users, and dataset contributors in the creation process.
2. Enhanced Enforcement Mechanisms: - Instituting stringent measures to penalize the unauthorized deployment of AI for voice replication, artistic mimicry, or other infringing activities. Enhanced enforcement could involve the creation of specialized regulatory bodies tasked with monitoring AI-related IPR violations.
3. Multistakeholder Collaboration: - Facilitating dialogue among policymakers, technologists, legal experts, and rights holders to establish balanced regulatory standards. Collaborative approaches ensure that regulations remain adaptive to technological advancements while safeguarding the interests of creators.
4. Public Education and Advocacy: - Promoting awareness about the ethical dimensions of AI and the societal imperative of respecting intellectual property. Public discourse can foster a culture of accountability and informed decision-making among consumers and developers alike.
5. Incentives for Ethical AI Development: - Encouraging developers to adopt ethical practices through incentives such as grants, awards, and recognition for innovations that respect IPR and uphold societal values.

While AI signifies a leap forward in technological progress, it concurrently destabilizes the traditional constructs of intellectual property rights. From the replication of iconic voices, such as that of Amitabh Bachchan, to the creation of original yet derivative artistic works, AI challenges the boundaries between creativity and appropriation. The implications extend beyond the creative domain, influencing patent regimes and raising broader ethical concerns about identity and consent.

To fully harness AI's potential while safeguarding the rights of creators and individuals, legal and ethical frameworks must evolve to address these emergent complexities. Policymakers, industry leaders, and society at large must collaborate to establish an equilibrium that fosters innovation without compromising the foundational principles of intellectual property. Achieving this balance is pivotal to ensuring that the benefits of AI are distributed equitably, sustainably, and responsibly in an increasingly digital era.


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Paul Clement

DEFENDING BIG US LAW FIRMS AGAINST TRUMP

Mr. Harpreet Singh Multani
Member Bar Council

In the high-stakes arena of American law, few names carry the weight of Paul Clement, a conservative legal doyen now thrust into a battle that could reshape the boundaries of executive power. In March 2025, President Donald Trump unleashed a series of executive orders targeting prominent law firms—WilmerHale, Perkins Coie, and Jenner & Block—suspending their security clearances, restricting access to federal buildings, and canceling government contracts. Widely seen as retaliation against firms that represented Trump's adversaries, these actions sparked a firestorm in the legal world. Enter Paul Clement, the "LeBron James of lawyers," who has taken up the mantle to defend WilmerHale in a lawsuit that pits the rule of law against presidential authority. With over 130 Supreme Court arguments and a career defending conservative causes, Clement's involvement is not just a legal maneuver—it's a defining moment for the independence of the legal profession in US.

Born in 1966 in Cedarburg, Wisconsin, Clement's path to legal stardom was meteoric. He graduated summa cum laude from Georgetown University, studied at Cambridge, and earned a magna cum laude degree from Harvard Law School. His career began in the Department of Justice, culminating in his role as the 43rd U.S. Solicitor General under

George W. Bush from 2005 to 2008. There, he argued cases like Gonzales v. Raich (2005), defending federal authority over state marijuana laws. In private practice, Clement's resume reads like a highlight reel of constitutional law: he challenged the Affordable Care Act in National Federation of Independent Business v. Sebelius (2012), defended the Defense of Marriage Act in United States v. Windsor (2013), and secured a landmark Second Amendment victory in New York State Rifle & Pistol Association, Inc. v. Bruen (2022). After parting ways with Kirkland & Ellis in 2022 over its retreat from gun rights cases, he co-founded Clement & Murphy PLLC, a boutique firm where he continues to reshape legal realm.

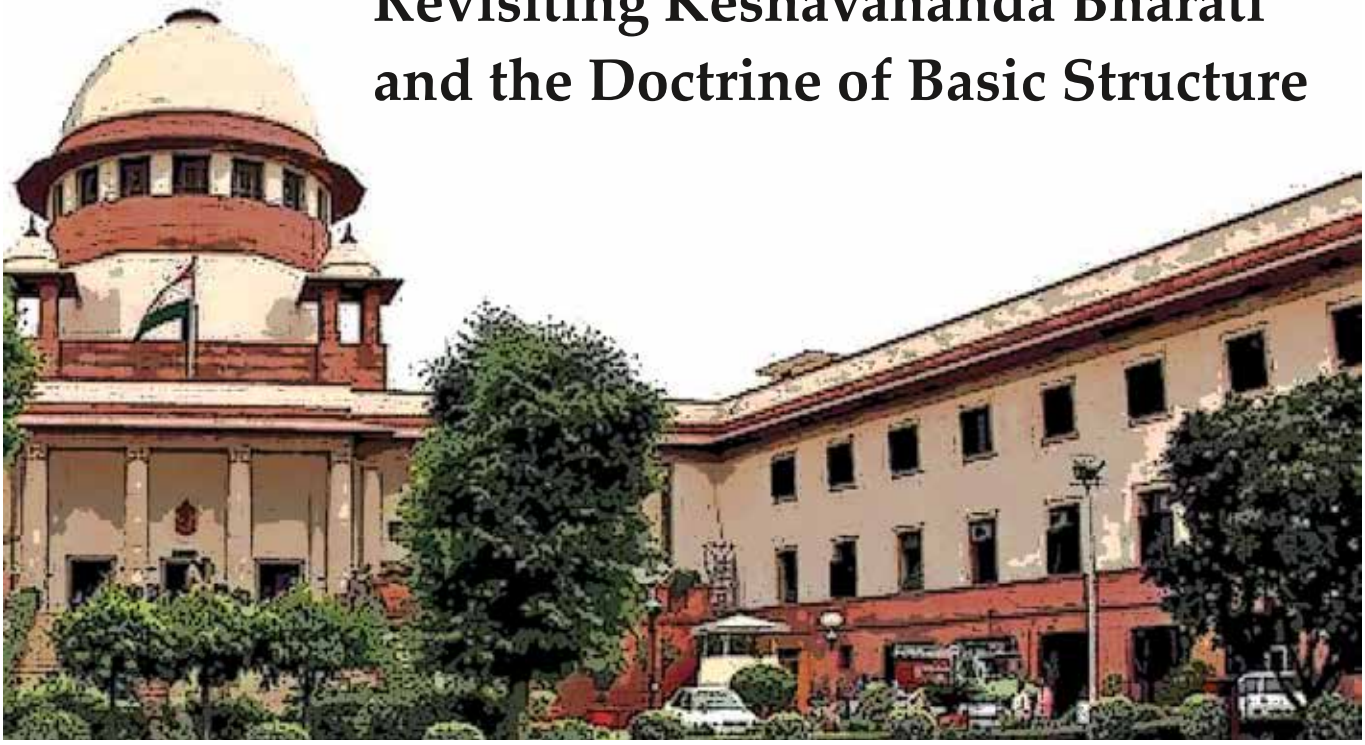
Trump's executive orders, signed in March 2025, targeted firms with ties to his political foes. WilmerHale, for instance, was linked to Robert S. Mueller III, the former special counsel who investigated Russian interference in the 2016 election. The orders, including one on March 27, directed the Director of National Intelligence, Tulsi Gabbard, to suspend security clearances for WilmerHale's staff, effectively barring them from federal facilities and threatening their ability to serve clients. Similar measures hit Perkins Coie and Jenner & Block, with Trump citing their "partisan representations" as justification. The legal community erupted, viewing the moves as an assault on the adversarial system, where lawyers must freely represent clients without fear of government reprisal. Clement's lawsuit on behalf of WilmerHale argues that Trump's orders violate the First Amendment's protections of free speech and association, the Sixth Amendment's right to counsel, and the separation of powers. Filed in federal court, the suit contends that the orders intimidate lawyers from representing clients critical of the administration, threatening the core of American justice.

On March 28, Judge Richard J. Leon issued a temporary restraining order halting parts of the executive actions, signaling judicial skepticism. Clement's brief, described as a "scorcher," frames the orders as an unprecedented attack on the legal profession's independence. The case has drawn bipartisan support, with former solicitors general like Donald Verrilli and Elizabeth Prelogar condemning Trump's actions as a dangerous overreach. Deepak Gupta, an appellate lawyer, praised Clement's fit for the case, noting his "steadfast commitment to lawyers' obligation to zealously represent unpopular clients." This isn't Clement's first stand on principle, he's twice left Big Law firms to pursue cases aligned with his beliefs, earning respect even from ideological opponents. The implications of this battle are profound. A victory for WilmerHale could reinforce the sanctity of the legal profession, ensuring lawyers can represent clients without fear of executive retaliation. A loss, however, might embolden future administrations to wield similar tactics, chilling legal representation and public access to justice.

Legal scholars see this as a test of the checks and balances that define American democracy. Critics of Trump's orders argue they undermine the rule of law, while supporters claim they address partisan bias in the legal industry. The debate has polarized observers, but Clement's involvement lends it undeniable gravitas. His conservative credentials make his challenge to a Republican president all the more striking, showing his commitment to principle over politics. As the case unfolds, it's clear that Paul Clement is not just fighting for WilmerHale but for the soul of the legal system in US. The outcome will echo far beyond the courtroom, shaping how power, law, and justice coexist in America.

The Constitution's Moral Compass:

Revisiting Keshavananda Bharati and the Doctrine of Basic Structure



Vasundhra Chauhan
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The Keshavananda Bharati v. State of Kerala, AIR 1973 SC 1461, judgment is widely regarded as the most seminal and transformative constitutional decision in Indian legal history. Pronounced on April 24, 1973, by a 13-judge bench-the largest ever in the history of the Supreme Court of India-it laid down the Basic Structure Doctrine, a judicial innovation that continues to define the limits of Parliament's power to amend the Constitution.

Background and Context

The case arose in response to attempts by the Indira Gandhi-led government to neutralize the effects of previous judgments such as Golak Nath v. State of Punjab (1967), where the Supreme Court had ruled that Parliament could not amend Fundamental Rights. To override this decision, the 24th and 25th Constitutional Amendments were enacted, asserting the unqualified power of Parliament under Article 368 to amend *"any part"* of the Constitution.

It was against this backdrop that Swami Keshavananda Bharati, head of a religious mutt in Kerala, challenged the constitutionality of land reform laws that affected his property rights. Although the case began as a property rights matter, it quickly escalated into a foundational inquiry into the very nature of the Constitution and the limits of parliamentary sovereignty.

The Verdict and the Birth of the Basic Structure Doctrine

In a sharply divided 7:6 majority, the Court held that

while Parliament has wide powers to amend the Constitution under Article 368, it cannot alter or destroy its *"basic structure."* This meant that certain fundamental features of the Constitution are beyond the reach of legislative amendments, regardless of the size of the parliamentary majority.

The majority did not provide an exhaustive list of what constitutes the *"basic structure,"* but several judges articulated essential elements such as:

- Supremacy of the Constitution
- Sovereign, democratic and republican nature of the Indian polity
- Secularism
- Separation of powers
- Federalism
- Judicial review
- Rule of law
- Free and fair elections
- Unity and integrity of the nation
- Fundamental rights

Justice H.R. Khanna famously observed that the power to amend is not the power to destroy. This concise yet profound statement underpins the philosophy of the judgment.

Constitutional Significance

The basic structure doctrine fundamentally redefined constitutionalism in India. Prior to Keshavananda, Parliament was believed to be nearly supreme in its amending powers. This judgment, however, established the Supreme Court as the ultimate guardian of the Constitution, capable of invalidating amendments that damage its foundational framework.

It shifted Indian constitutional theory from a model of parliamentary sovereignty to constitutional supremacy, aligning with the global democratic trend toward entrenched constitutionalism.

Moreover, the doctrine acts as a bulwark against authoritarianism, ensuring that transient political majorities cannot dismantle the liberal democratic fabric of the nation. It has been invoked repeatedly to strike down constitutional amendments and executive actions that infringe upon the Constitution's core values- such as in Minerva Mills v. Union of India (1980), Indira Gandhi v. Raj Narain (1975), and more recently in Kesavananda Bharati reaffirmed in I.R. Coelho v. State of Tamil Nadu (2007).

Criticism and Enduring Legacy

Despite its monumental significance, the doctrine has not escaped criticism. Skeptics argue that it confers excessive power to an unelected judiciary, allowing judges to overrule the will of Parliament. The absence of a precise, textual definition of the "basic structure" further fuels concerns about subjectivity and judicial overreach.

However, these critiques have not diminished its institutional entrenchment and normative authority. The doctrine has withstood the test of time, remaining untouched by successive constitutional amendments and repeatedly reaffirmed by the judiciary. It is now considered a cornerstone of Indian constitutional jurisprudence.

The Keshavananda Bharati judgment is not merely a legal decision; it is a constitutional milestone that has preserved India's identity as a democratic, secular, and rights-based republic. It exemplifies the judiciary's role as the sentinel of constitutional conscience, guarding against both legislative absolutism and executive excess. The doctrine of basic structure continues to breathe life into the Indian Constitution, ensuring that while laws may change with time, the fundamental principles that define the nation endure across generations.

Cybercrimes and the Law

Deafferenting the Loopholes in Indian Legislation

Advocate Harsh Bargat

The rapid digital transformation over the last few decades has revolutionized the way people, businesses, and governments operate. Although this shift has brought unparalleled convenience and connectivity, it has also created new vulnerabilities that cybercriminals are quick to exploit. Cybercrimes, ranging from phishing scams and ransomware attacks to cyberstalking and identity theft, pose a significant threat to personal privacy, economic stability, and national security.

This increase in cybercrime is particularly disturbing in India where internet penetration and digital adoption are growing exponentially. Even though it has legal frameworks like the Information Technology Act, 2000, the very dynamic nature of technology often overshoots what the legislature can do and how the enforcement could respond.

Rise of Cybercrime in India: Easier-to-understand Stats and Examples of New Types of Online Crimes.

India's increasing reliance on digital infrastructure has led to a parallel rise in cybercrimes. According to a recent report by the National Crime Records Bureau (NCRB), cybercrime cases in India increased by over 11% in 2022 compared to the previous year. This upward trend highlights the growing threat posed by cybercriminals who exploit technological advancements to target vulnerable users and systems.

Key Statistics:

Cyber Attacks: India is also listed among the top 10 most

affected countries from ransomware attacks in 2022. Major sectors, especially healthcare and finance, are mainly targeted.

Online Banking Fraud: Cybercrime activities, like online banking fraud, siphoned off more than INR 1,000 crores. Online digital payment systems call for an immediate secure digital system.

Phishing Incidents: There has been a 20% increase in phishing attacks in the last year, where criminals send fake emails and messages to individuals to extract sensitive information from them.

Emerging Types of Cybercrimes:

Deepfake Scams:

Cybercriminals create realistic but fake videos of people to defame or extort money. Deepfake technology, powered by AI, is used to create highly convincing but entirely fabricated videos or audio recordings of people. These videos can make it seem like someone is saying or doing something they never actually did, which is a powerful tool for cybercriminals to exploit. For example, a deepfake might be used to impersonate a CEO or high-profile figure, leading to fraudulent financial transactions or extortion schemes. ◎ *Crypto jacking:*

Unauthorized use of someone's computer to mine cryptocurrencies has become a significant issue, often going undetected for long periods.

Crypto jacking is the process whereby cybercriminals hijack someone's computer or network to mine cryptocurrencies without their consent or knowledge. This is done by infecting the victim's system with malicious software that runs in the background, consuming processing power to mine cryptocurrency. Crypto jacking differs from traditional ransomware because it does not lock out the victim but uses their resources to generate profit for the attacker. The victim usually stays unaware for a long time since the mining process usually runs silently without any visible signs. 2. The effects of crypto jacking can be severe, especially for organizations with large networks of computers. The unauthorized mining of cryptocurrency can slow down systems, increase electricity consumption, and cause hardware damage due to the continuous high load on the machines. As cryptocurrency mining becomes more resource-intensive, the impact of crypto jacking grows, particularly for businesses that rely on high-performance computing. Organizations that fail to secure their systems against such attacks may end up with heft repair cost, loss of productivity, and even leaked data to malicious parties.

Social Media Exploitation:

Cyberstalkers and online harassers leverage social media outlets to intimidate, blackmail, or disseminate false information about victims. Social media is now the most targeted battleground for cyberstalkers who are either coercing, harassing, or manipulating.

Using some of the information online for the children such as pictures, updates, or details, cyberstalkers may intimidate, blackmail, or even label their victims. The anonymity of these sites allows cybercriminals to engage in acts that might be more challenging or impossible in real life. Exploitation through social media can run the gamut from spreading unfounded rumors to threatening messages, with most offenders developing false profiles to further manipulate or control their victims. 2. Other than personal harassment, social media exploitation can also be used to commit other

dangerous crimes, like identity theft or financial extortion.

This is because cybercriminals can exploit a victim's online presence to make fake accounts and gather sensitive personal information in an endeavour to conduct fraudulent activities. Cybercrimes carried out through social media are also public, meaning that they may reach a larger audience and be more harmful to the victim's reputation, which is harder to repair.

Cyberbullying:

Cyberbullying is the act of using digital platforms, like social media, messaging apps, or websites, to harass, intimidate, or target an individual with harmful or abusive behavior.

Unlike traditional bullying, cyberbullying can occur 24/7, with no physical boundaries or safe spaces. Anonymous posts, hurtful messages, or the spreading of rumors often harass victims, leading to a cycle of emotional and psychological distress. The rise of social media platforms has made cyberbullying a widespread issue, particularly among teenagers and young adults who feel isolated or vulnerable. The emotional impact of cyberbullying is devastating, including anxiety, depression, low self-esteem, and in extreme cases, suicide. The anonymity provided by the internet often emboldens perpetrators, making it easier for them to carry out their harmful actions without fear of immediate consequences. Additionally, the rapid spread of harmful content can make it difficult for victims to escape, as hurtful

comments or posts are often widely shared, and this magnifies the harm. Cyberbullying laws are coming into place in different regions, but the problem is still tough to handle since the digital environment is constantly changing.

Software Piracy:

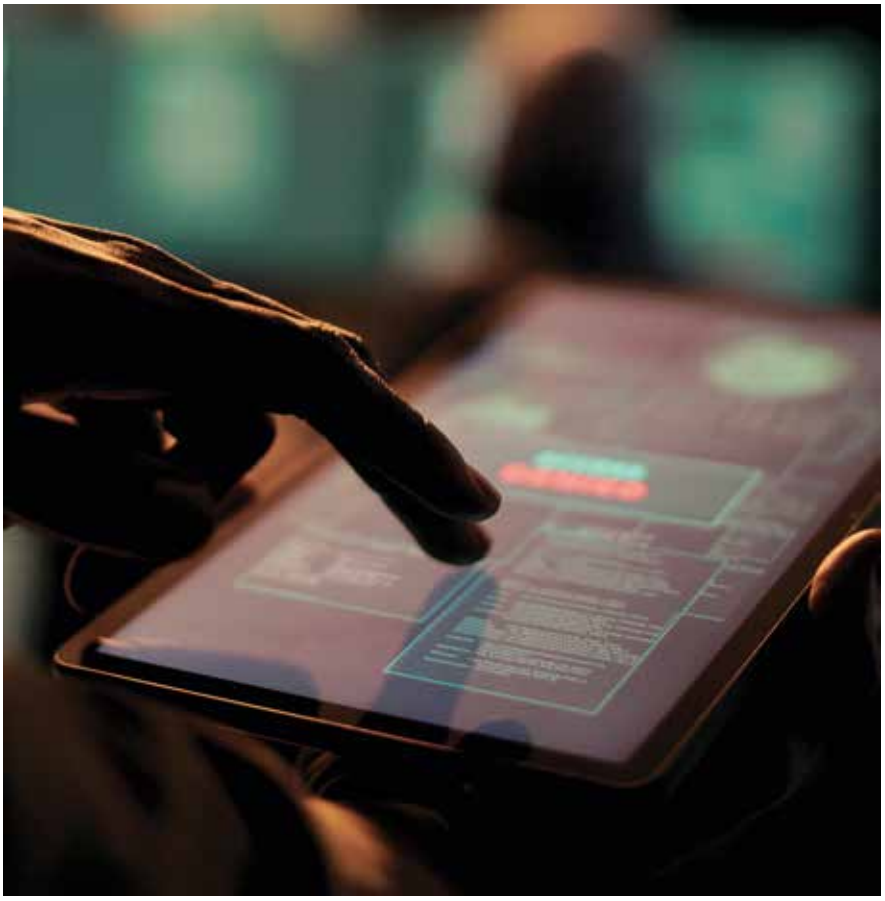
It is the illegal distribution, copying, or use of software without the proper authorization from the developer or copyright holder.

This can include downloading cracked versions of software, distributing pirated software, or using unlicensed copies of programs. Software piracy may not seem like a victimless crime, but it undermines the software industry by depriving creators of their due revenue and disincentivizing innovation. Pirated software is also bundled with malware or other malicious code, which exposes users' personal data and devices to a higher risk. But software piracy goes further than financial losses because it may deter investment in

new technologies and lower the chances of job creation in the software development industry. Some organizations may inadvertently buy pirated software, which may attract legal consequences, fines, or reputational damage. With the rise of cloud-based services and subscription models, it has become even harder to fight against software piracy, but growing awareness about the risks involved with pirated software has led to stronger enforcement and legal actions in most countries.

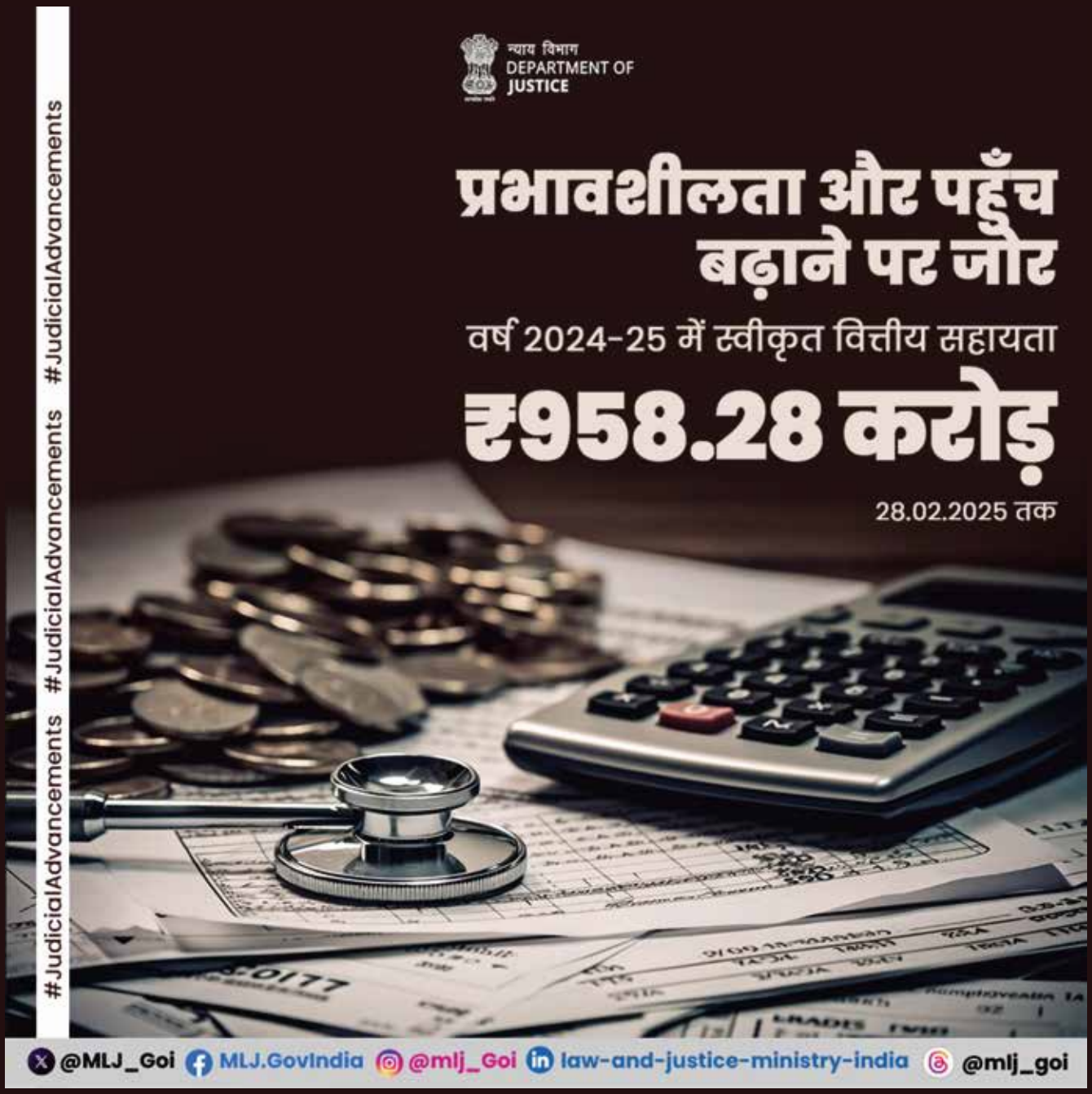
Hacking:

Hacking is the unauthorized access to or manipulation of computer systems, networks, or digital devices. The reason cybercriminals hack can range from stealing sensitive data to interrupting service and taking over a system for harmful purposes. Access is obtained using vulnerabilities in the software, hardware, or the security of a network. It might be accomplished using phishing, brute-force attacks, or malware against security systems. The most often targeted organizations that fall victim to hacking are banking organizations, state or government administrations, and the huge corporations but even individuals, not being a lesser victim either.



Today, cybercrime has emerged as an ever-present and fast-evolving threat in the digital world affecting both individuals, businesses, and governments across the globe. Since digital penetration continues to grow in India, a spurt in cybercrimes calls for immediate legislative reform and more stringent cybersecurity measures. Even though information technology laws like the Information Technology Act, 2000 exist, still, there are huge holes in recent areas such as deepfakes, crypto-jacking, exploitation of social media, cyber terrorism, etc.

Cybercrimes continually evolve and challenge the legal machinery to be even more dynamic; there is inadequate legislation, an issue of proper jurisdiction, and insufficient reporting rates contribute to the ever-growing problem in the country. It is paramount for India that cyber laws undergo upgradation for increased international co-operation and greater effectiveness in enforcements. Enhancing the competence of law enforcers along with judicial elements for complex procedures related to crimes is also significantly needed.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A critical focus on Cyber Crime - a special reference to India

Dr. Jaiveer Singh Malik, Adv. Punjab & Haryana High Court, Chandigarh

As we all know, this is an era where most things happen on the internet, ranging from internet management to online transactions Because the website is considered a global platform, anyone can access resources from anywhere on the Internet. Few use internet technology for crimes like unauthorized access to other websites, fraud etc. The term "Cyber Law" was introduced to stop or punish cybercriminals. Internet law can be defined as part of the legal system that operates on the Internet, on the Internet, as part of the legal system.

Keywords: - cyber, crime, internet, e-mail, fraud, technology and legal etc.

Introduction

Computers have made people's lives easier and are used in a wide variety of applications worldwide, from individuals to large organizations. Briefly, a computer can be defined as a machine that stores and can manage/process information or instructions given by the user. The majority of computer users have been using their computers, personally or otherwise, for decades. From here, 'cybercrime' was born. This led them to participate anti-legal activities in society. Cybercrime can be defined as a crime that takes place on a computer or computers and on the internet in general, especially on the internet. Then came the term 'cyber law'. There is no specific definition, but we can only define it as the rules of the internet. Cyber laws are laws that regulate the internet. Computer generated crime, digital and electronic signatures, data protection and privacy and other cyber laws. The United Nations General Assembly proposed India's first law based on the "United Nations Model Trade Agreement" (UNCITRAL).

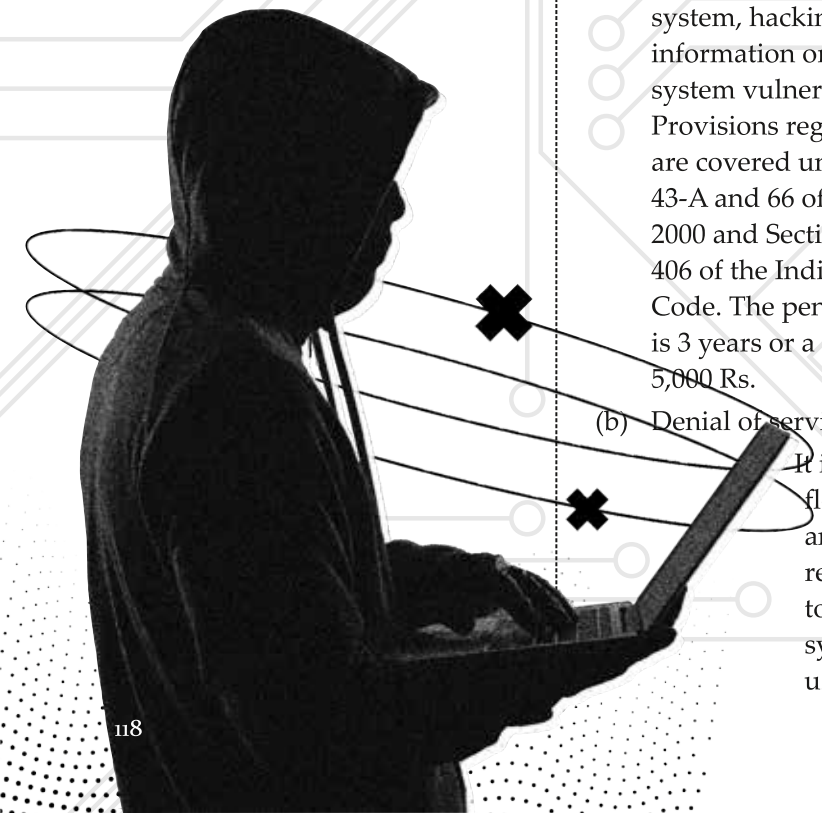
Cyber Crime

The term "Cyber Crime" was first proposed by Sussman and Heuston in 1995. Cybercrime cannot be defined as a single definition; it would be more accurate to think of it as a sum of these activities and is based on types of crimes that affect these activities. Data or systems. These are illegal activities in which a digital device or information system is the device or target, or may be a combination of both. Cyber crime is also classified as electronic crime, computer

related crime, e-crime, cyber crime, and age related crime etc. also known as. In simple terms, we can define 'cybercrime' as crime or crimes that occur through electronic communication or information systems. These types of crimes are generally illegal activities involving computers and networks. With the development of the Internet, the number of cyber crimes is also increasing because when a crime is committed, the criminal no longer needs to have on his body. The unique thing about cybercrime is that the victim and perpetrator may never meet. Criminals often choose to operate in countries with weak or non-existent laws to reduce the chances of detection and prosecution.

History and Evolution

Human civilization has come a long way: from the abacus to the modern supercomputer. This transition is one of the most important human activities as it changes the way of life and affects the lives of everyone except the choices of a few people living far away. Although this transition took time, long enough for technological evolution to occur. Cyber-criminals have evolved over time and adapted their strategies according to the advancement of technology in committing cybercrime. Technically, criminals prefer to operate in cyberspace as no actual activity is involved and cybercrime offers high financial rewards and risk of arrest due to unknown factors involved in cybercrime on the internet. Cybercriminals have used sophisticated or sophisticated propaganda to promote the sustainable development of the country. There has been an increase of worldwide in recent years. The more people connect to the e-world, the greater the chance of being exposed to malware, viruses and phishing attacks.



TYPES OF CYBER CRIME IN INDIA

(a) Hacking

Hacking involves gaining unauthorized access to a system, hacking, gathering information or testing system vulnerabilities. Provisions regarding theft are covered under Sections 43-A and 66 of the IT Act, 2000 and Sections 379 and 406 of the Indian Penal Code. The penalty for theft is 3 years or a fine of upto 5,000 Rs.

(b) Denial of service

It is known as a flood machine and what is required to try to flood the system. It also uses bots for operations. Section 43(f) of the IT Act provides protection against viruses, worms etc. It provides for a prison sentence of up to three years or a fine of up to 5 thousand Rupees. When worms are solitary, viruses need hosts. Under the IT Act, 2000, provisions have been made under Sections 43-C, 66 and 268 of the Indian Penal Code.

(c) Credit Card Fraud

Credit card fraud begins with the theft of a physical card or account information. Fraud provisions are contained in IT ACT, 2000 Sections 66 C and 66 D and Indian Penal Code, 1860 Sections 468 and 471.

(d) Phishing

A malicious person or group that harms users. They do this by sending emails or creating web pages designed to collect someone's online bank credit card or other login information. Sections 66-C, 66 D and 74 of the IT Act are punishable with imprisonment up to 3 years or fine.

(e) Cyber Stalking

Cyber stalking can be defined as the use of electronic communications to harass or threaten someone (for example, by sending threatening emails). Provisions are made under Section 72 and Section 354 C (Voyeurism) of the Indian Penal Code under the IT Act, 2008. Article 67 also provides for imprisonment of up to three years and

fine.

Review Literature

That Criminal takes advantage of fast internet speed and convenience of the internet to carry out mass activities and various criminal activities. On the page, he emphasized that it is the responsibility of all internet users to be aware of cyber crimes and the cyber laws enacted to combat cyber crimes. He also talked about the types of cyber crimes that can help people identify the crimes they have committed. Parmar and Patel (2016) concluded in their study that the majority of internet users cannot keep up to date with the latest information on cyber legislation and computer security, regardless of their IT connection. Worse of internet users are not IT related They suggested that people-oriented behavior should be taken into account in developing internet laws in India.

Here are some steps you can take to prevent cybercrime:

(a) Using strong passwords: The first line of defense in security is password protection. These may be the words you see most often every time you log into your account, but a strong password makes a big difference in the security of your account. This is especially important when it comes to cyber-stalking (someone searching for all your information on your computer or social media) and hacking (unauthorized access to your computer or information).You can also protect your password by using a secure password generator or by ensuring that the password you choose contains a combination of letters, numbers and symbols. . People who are unaware of this fraud also fall into this trap. These messages or contacts are fake and should be reported to the police or banking authorities.

(b) Never provide your credit/debit card information to a secure site: If the payment site does not support https or requests your credit/debit card information even though it is not required, never enter your information. Additionally, a reliable page must have a good design. If you do not meet any of these criteria, do not provide your credit card information.

(c) Protect your Wi-Fi: Secure, Unlocked (since you have 8 sites, make sure they are password protected). If you prefer a password, make sure only people in your household can access your Wi-Fi network. Another step you can take is to make sure your phone or computer's Bluetooth is turned off when not needed.

(d) Report crime quickly: The Information Technology Act 2000 was created to help businesses use information technology (IT). It also shows the disciplinary process in the IT sector. The Indian Penal Code 1860 also included cyber crimes. Fake websites, threatening messages via email, hacking, etc. These are some of the actions included in the rules above. There are crime cells that can be monitored in each city. If a person suspects that he/she has been victimized on the internet, he/she should immediately contact the authorities who have the necessary information.

"Some leading case laws on the cyber crime are discussed here.

"The Bank NSP Case" In this case a management trainee of a bank got engaged to a marriage. The couple used to exchange many emails using the company's computers. After some time they had broken up their marriage and the young lady created some fake email ids such as "Indian bar associations" and sent mails to the boy's foreign clients. She used the banks computer to do this. The boy's company lost a huge number of clients and took the bank to court. The bank was held liable for the emails sent using the bank's system.

"Bazee.com case" In December 2004 the Chief Executive Officer of Bazee.com was arrested because he was selling a compact disk (CD) with offensive material on the website, and even CD was also conjointly sold-out in the market of Delhi. The Delhi police and therefore the Mumbai Police got into action and later the CEO was free on bail.

"Parliament Attack Case" The Bureau of Police Research and Development, Hyderabad had handled this case. A laptop was recovered from the terrorist who attacked the Parliament. The laptop which was detained from the two terrorists, who were gunned down on 13th December

2001 when the Parliament was under siege, was sent to Computer Forensics Division of BPRD. The laptop contained several proofs that affirmed the two terrorist's motives, mainly the sticker of the Ministry of Home that they had created on the laptop and affixed on their ambassador car to achieve entry into Parliament House and the fake ID card that one of the two terrorists was carrying with a Government of India emblem and seal. The emblems (of the 3 lions) were carefully scanned and additionally the seal was also crafty created together with a residential address of Jammu and Kashmir. However careful detection proved that it was all forged and made on the laptop.

"Andhra Pradesh Tax Case" The owner of the plastics firm in Andhra Pradesh was arrested and cash of Rs. 22 was recovered from his house by the Vigilance Department. They wanted evidence from him concerning the unaccounted cash. The suspected person submitted 6,000 vouchers to prove the legitimacy of trade, however when careful scrutiny the vouchers and contents of his computers it unconcealed that every one of them were made after the raids were conducted. It had been concealed that the suspect was running 5 businesses beneath the presence of 1 company and used fake and computerized vouchers to show sales records and save tax. So the dubious techniques of the businessman from the state were exposed when officials of the department got hold of computers utilized by the suspected person.

"Cyber Law in India Following are the sections under IT Act, 2000

1. Section 65- Temping with the computers source documents Whoever intentionally or knowingly destroy, conceal or change any computer's source code that is used for a computer, computer program, and computer system or computer network. Punishment: Any person who involves in such crimes could be sentenced upto 3 years imprisonment or with a fine of Rs.2 lakhs or with both.
2. Section 66- Hacking with computer system, data alteration etc whoever with the purpose or intention to cause any loss, damage or to destroy, delete or to alter any information that resides in a public or any person's computer. Diminish its utility, values or affects it injuriously by any means, commits hacking Punishment: Any person who involves in such crimes could be sentenced upto 3 years imprisonment, or with a fine that may extend upto 2 lakhs rupees, or both.
3. Section 66A- Sending offensive messages through any communication services
   - any information or message sent through any communication services this is offensive or has threatening characters.
   - Any information that is not true or is not valid and is sent with the end goal of annoying, inconvenience, danger, insult, obstruction, injury, criminal intention, enmity, hatred or ill will.
   - Any electronic mail or email sent with the end goal of causing anger, difficulty or mislead or to deceive the address about the origin of the messages. Punishment: Any individual found to commit such crimes under this section could be sentenced upto 3years of imprisonment along with a fine.
4. Section 66B- Receiving stolen computer's resources or communication devices dishonestly receiving or retaining any stolen computer, computer's resources or any communication devices knowingly or having the reason to believe the same. Punishment: Any person who involves in such crimes could be sentenced either description for a term that may extend upto 3 years of imprisonment or with a fine of rupee 1 lakh or both.
5. Section 66C- Identify theft Using of one's digital or electronic signature or one's password or any other unique identification of any person is a crime. Punishment: Any person who involve in such crimes could be sentenced either with a description for a term which may extend upto 3 years of imprisonment along with a fine that may extend upto rupee 1 lakh.
6. Section 66D- Cheating by personation by the use of computer's resources Whoever tries to cheats someone by personating

through any communication devices or computer's resources shall be sentenced either with a description for a term that may extend upto 3 years of imprisonment along with a fine that may extend upto rupee 1 lakh.

7. Section 66E- Privacy or violation Whoever knowingly or with an intention of publishing, transmitting or capturing images of private areas or private parts of any individual without his/her consent, that violets the privacy of the individual shall be shall be sentenced to 3 years of imprisonment or with a fine not exceeding more than 2 lakhs rupees or both.
8. Section 66F- Cyber terrorism

A. Whoever intentionally threatened the integrity, unity, sovereignty or security or strike terror among the people or among any group of people byI. Deny to any people to access computer's resources.

II. Attempting to break in or access a computer resource without any authorization or to exceed authorized access.

III. Introducing any computer's contaminant, and through such conducts causes or is probable to cause any death or injury to any individual or damage or any destruction of properties or disrupt or it is known that by such conduct it is probable to cause damage or disruptions of supply or services that are essential to the life of people or unfavorably affect the critical information's infrastructure specified under the section 70 of the IT Act.

B. By intention or by knowingly tries to go through or tries to gain access to computer's resources without the authorization or exceeding authorized access, and by such conducts obtains access to the data, information or computer's database which is limited or restricted for certain reason because of the security of the state or foreign relations, or any restricted database, data or any information with the reason to believe that those data or information or the computer's database obtained may use to cause or probably use to cause injury to the interest of the independence and integrity of our country India. Punishment: Whoever conspires or commits such cyber crime or cyber terrorism shall be sentenced to life time imprisonment.

9. Section 67- Transmitting or publishing obscene materials in electronic form whoever transmits or publishes or cause to publish any obscene materials in electronics form. Any material that is vulgar or appeal to be lubricious or if its effect is for instance to tends to corrupt any individual who are likely to have regard to all relevant circumstances to read or to see or to hear the matter that contained in it, shall be sentenced on the first convict with either description for a term that may extend upto five years of imprisonment along with a fine which may extend upto 1 lakh rupee and in the second or subsequent convict it can be sentenced either description for a term that may extend upto ten years along with a fine that may perhaps extend to two lakhs rupees.
10. Section 67A- Transmitting or publishing of materials that contains sexually explicit contents, acts etc in electronics form Whoever transmits or publishes materials that contains sexually explicit contents or acts shall be sentences for either description for a term which may extend upto 5 years or imprisonment along with a fine that could extend to 10 lakhs rupees in the first convict. And in the event of the second convict criminal could be sentenced for either description for a term that could extend upto 7 years of imprisonment along with a fine that may extend upto 20 lakhs rupees.
11. Section 67B- Transmitting or publishing of materials that depicts children in sexually explicit act etc in electronics form Whoever transmits or publishes any materials that depict children in sexually explicit act or conduct in any electronics form shall be sentenced for either description for a term which may extend to 5 years of imprisonment with a fine

that could extend to rupees 10 lakhs on the first conviction. And in the event of second conviction criminals could be sentenced for either description for a term that could extend to 7 years along with a fine that could extend to rupees 10 lakhs.

12. Section 67C- Retention and preservation of information by intermediaries

I. Intermediaries shall retain and preserve such information that might specify for such period and in such a format and manner that the Central Government may prescribe.

II. Any intermediaries knowingly or intentionally contravene the provision of the sub-section. Punishment: Whoever commits such crimes shall be sentenced for a period that may extend upto 3 years of imprisonment and also liable to fine.

13. Section 69- Power to issue direction for monitor, decryption or interception of any information through computer's resources

I. Where the Central government's or State government's authorized officers, as the case may be in this behalf, if fulfilled that it is required or expedient to do in the interest of the integrity or the sovereignty, the security defence of our country India, state's security, friendly relations with the foreign states for preventing any incident to the commission of any cognizable offences that is related to above or investigation of any offences that is subjected to the provision of sub-section (II). For reasons to be recorded writing, direct any agency of the appropriate government, by order, decrypt or monitor or cause to be intercept any information that is generated or received or transmitted or is stored in any computer's resources.

II. The safeguard and the procedure that is subjected to such decryption, monitoring or interception may carried out, shall be such as may be prescribed.

III. The intermediaries, the subscribers or any individual who is in the charge of the computer's resources shall call upon by any agencies referred to the sub-section (I), extends all services and technical assistances to:

a) Providing safe access or access to computer's resources receiving, transmitting, generating or to store such information or

b) Decrypting, intercepting or monitoring the information, as the case might be or

c) Providing information that is stored in computer.

IV. The intermediaries, the subscribes or any individual who fails to help the agency referred in the sub-section (III), shall be sentenced for a term that could extend to 7 years of imprisonment and also could be legally responsible to fine".

The rise and expansion of recently created technologies start star to function numerous cybercrimes in recent a long time. Cybercrime has gotten to be extraordinary dangers to mankind. Protection against cybercrime could be a imperative portion for social, social and security angle of a nation. The Government of India has ordered IT Act, 2000 to bargain with cybercrimes. The Act advance change the IPC, 1860, the IEA (Indian Evidence Act), 1872, the Banker's Books Prove Act 1891 and the Save Bank of India Act, 1934. Any portion of the world cyber wrongdoing may be begun passing national boundaries over the web making both specialized and legitimate complexities of examining and arraigning these violations. The worldwide harmonizing endeavors, coordination and co-operation among different countries are required to require activity towards the cyber crimes.

Our fundamental reason of composing this paper is to spread the content of cyber wrongdoing among the common individuals. At the conclusion of this paper "A Critical Focus on Cyber Crime a special reference to India" we need to say cyber violations can never be recognized. In the event that anybody falls within the prey of cyber assault, it would be ideal if you come forward and enroll a case in your closest police station.

The Emerging Trend of False Rape Accusations:

A threat for the society

Disha Sharma

Rape is an a bominable crime that is a cynical crime for the society and causes significant harm to victims and degrades communal confidence in humanity as well as in judicial system. However, there has been an unexpected increase in the exploitation of rape allegations in recent times , which are sometimes used for personal benefits , financial incentives, or other hidden goals. Such malafide claims not only devastated the lives of innocent people, but they also undermined the credibility of genuine victims who seek justice. This matter of sensitivity demands a cautious approach to guarantee that genuine victims are protected , while also protecting people from false accusations. There should be a balance between protecting genuine victims and safeguarding against abuse of the legal structure.

Impediments to False Allegations

False accusations of rape have far-reaching consequences both in personal and professional atmosphere of a persons life. Even if the accused are ultimately found innocent, the effects might include highly significant reputational damage, emotional distress, and financial instability in one's life. The shame which is associated along with being labeled as a rapist can linger, harming both personal and professional relationships. Furthermore, false charges can undercut the severity of actual rape cases, causing suspicion among law enforcement and the judges, complicating the process of hearing and validating genuine victims.

India's Legal Landscape

India's laws provide strong protections for women, particularly Section 375 of the Indian Penal Code (IPC), which defines rape and specifies the accompanying sanctions. However, the legal structure does not provide as strong protections against false allegations, putting the innocent at risk. Section 211 of the IPC, which intends to

penalize false claims, is rarely used due to the high burden of proof required to demonstrate ill purpose.

The judiciary has addressed this concern in various decisions. In State of Punjab v. Gurmit Singh (1996), the Supreme Court stressed the importance of protecting victims of sexual abuse. Simultaneously, in Priya Ramani v. M.J. Akbar (2021), the court recognized the importance of ensuring that the accused are not vilified without due cause. These judgments underline the need for a balanced approach to justice.

Suggested legal reforms

- Stringent Verification Mechanisms: Putting a place for stronger preliminary inquiry methods which can help distinguish between real and bogus cases efficiently . Law enforcement authorities should be provided with the necessary training sessions and resources to conduct such delicate investigations honestly and unbiasedly.
- Enhancing Witness Protection: A robust witness protection program is critical to ensuring that genuine victims feel safe and sound while pursuing legal action, hence reducing the likelihood of false charges based on fear or on compulsion by anyone.
- Awareness Initiatives : Public awareness campaigns should be conducted to educate individuals on the significant consequences of false allegations, as well as their broader ramifications in educational institutions, offices and workplaces. Law enforcement, judicial, and community training programs can all contribute immensely to the development of a fair and responsible culture.
- Assistance for the wrongly Accused: Offering therapy and legal supporting those who have been wrongly accused might help ease their emotional and financial difficulties by making them feel safe in the environment they live in. Furthermore, establishing dedicated fast-track courts could speed up the conclusion of such cases.

Grave Judicial Obligation

It is very crucial to realize that the main goal of rape legislation is to protect survivors and help them get justice as soon as possible. The urgent need of time to address the sexual violence should not be overshadowed and horrored by the occurrence of fraudulent claims on the innocent . However, the public's trust in the legal system will be threatened by the possibility of these laws being abused. We can protect the rights of both the guilty and survivors by implementing well-considered reforms as by the end of the day the judiciary still believes that a person is innocent until proven guilty

Mali

BARRICK GOLD FACES LEGAL ACTION

Mr. Chetan Verma
Member Bar Council

Barrick Gold, a major Canadian mining company, operates the Loulo-Gounkoto gold mine complex in Mali, one of Africa's largest.

In 2025, it faced significant legal challenges from the Malian government, rooted in disputes over taxes and changes to Mali's mining code, which increased government shares and royalties.

In January 2025, Mali seized about $245 million in gold from Barrick's site, claiming $500 million in unpaid taxes, which Barrick denied. This led to Barrick suspending operations and detaining employees. By February, an agreement was reached where Barrick agreed to pay $438 million for the release of assets and employees, but by April, Mali hadn't executed it, closing Barrick's office in Bamako.

The dispute likely affects Mali's gold revenue and Barrick's global operations, showing challenges for foreign investors in politically sensitive regions, with potential arbitration looming.

The dispute's origins trace back to 2023, when Mali introduced a new mining code that increased the government's share in mining projects and raised royalty taxes from around 6% to 10.5%, alongside requiring companies to divest a 35% share of new projects to Malian investors, up from 20%. This policy shift, aimed at boosting national revenue, led to tensions with several mining companies, including Barrick Gold, which owns 80% of the Loulo-Gounkoto complex, with the Malian government holding the remaining 20%. The situation with Barrick became particularly contentious, culminating in a series of legal and administrative actions in 2025.

The crisis peaked in January 2025, when the Malian government, under its military junta, reportedly seized approximately three tonnes of gold valued at around $245 million from Barrick's mining

site. This seizure was part of a broader claim that Barrick owed about $500 million in unpaid taxes, a figure Barrick vehemently denied, asserting it had already paid $85 million to the Malian government in October 2024 as part of ongoing negotiations, according to Reuters.

Alongside the gold seizure, several Barrick employees were detained, further escalating the conflict and prompting Barrick to suspend its mining operations on January 14, 2025, citing breaches of trust and international law, as detailed in Reuters. This suspension was described as "regrettable but necessary" by Barrick, emphasizing its commitment to finding an amicable solution, as noted in Barrick's official statement.

The standoff led to intense negotiations, culminating in an agreement on February 19, 2025, where Barrick agreed to pay a total of 275 billion CFA francs, approximately $438 million, to the Malian government, in return for the release of seized gold, detained employees, and the resumption of operations at Loulo-Gounkoto, as reported by Reuters. This agreement was seen as a potential resolution, with Mali forecasting a slight recovery in industrial gold output to 54.7 metric tons in 2025, assuming Barrick resumed operations, according to a document seen by Reuters.

However, the resolution proved short-lived.

By April 2025, Barrick reported that the Malian government had failed to execute the agreement, leading to further strain. On April 14, 2025, Barrick issued a statement calling for responsible leadership and indicating its readiness to pursue international arbitration and legal remedies against the government and individuals acting in bad faith, as detailed in Mining Review Africa. This threat of arbitration was not new, as Barrick had previously sought fair resolution through arbitration in December 2024, reflecting its commitment to established dispute resolution processes, as noted in Barrick's official statement.

The situation escalated further on April 17, 2025, when Mali closed Barrick Gold's office in Bamako, citing ongoing mining disputes, as reported by CIM Magazine. This closure added another layer of complexity, suggesting that the legal and operational challenges were far from resolved, despite the earlier agreement.

The implications of this dispute are significant for both parties. For Mali, a country heavily reliant on gold exports, the suspension of operations at Loulo-Gounkoto, which contributed substantially to its economy, posed a risk to its revenue streams and employment, especially given the 23% plunge in gold output to 51.7 tons in 2024, as noted in Reuters. The continued tensions could deter future foreign investment, particularly in the mining sector, which is vital for Mali's economic stability.

For Barrick Gold, the situation in Mali represents a considerable operational and financial risk. The company has invested billions in its Malian operations, which are crucial for its global gold production. The ongoing dispute not only disrupts current operations but also raises questions about the stability of its investments in other high-risk jurisdictions. The potential for international arbitration, as threatened in April 2025, underscores the importance of bilateral investment treaties and international law in protecting foreign investors, as seen in Barrick's readiness to leverage such mechanisms.

More broadly, the Barrick-Mali dispute highlights the delicate balance multinational corporations must navigate when operating in countries with complex political landscapes, particularly under military-led governments. The use of legal instruments such as asset seizure and office closures can create uncertainty, deterring investment, while companies must ensure compliance with local laws and regulations while safeguarding their interests through international legal avenues.

As of late April 2025, the situation remained unresolved, with both sides entrenched in their positions. The outcome of this dispute will likely have lasting effects on the relationship between foreign investors and the Malian government, as well as on the global mining industry's approach to operating in politically sensitive regions.

WHAT'S YOUR 'SITTING' AT THE BAR

Advocate Amit Jaiswal

There are many established practices and traditions associated with legal profession, court room practice and mannerism therein which have been observed, respected and followed by Advocates without question since ages. One such practice is to address the Court while standing at the Bar. This age old practice is observed almost across the globe since centuries. And there is a gamut of terminologies, lexicon, practices and phrases that has come to be associated with it. Thus while choosing an Advocate a client do ask about her 'standing at the Bar'. Union of India, different States and the departments/corporations under them all have their standing/additional standing counsels to represent them before different Courts. The mere imagination of Court room would conjure up images of Advocates fiercely putting forward their cases in full frame. Though the law is a dynamic concept but certain age old practices are generally considered sacrosanct and are being observed without any question. However just when you start to believe that something has been settled at that very moment suddenly someone raise her hand.

This time a fiesty Advocate from Ludhiana has questioned the rationale of Advocates standing up in Courts while arguing. He approaches the issue from a completely different angle. He sees that while judges and Advocates are similarly qualified then making the Advocates stand in court while addressing their cases is violation of their human rights by terming the practices as " inhuman treatment of advocates". He also feels that this practice is a colonial era relic. To get to the depth of the matter our protagonist Advocate has even filed RTI application before Supreme Court administration. The reply to RTI from Supreme Court says that there is no rule which mandates an Advocate to stand while arguing which only strengthens the case and cause of our protagonist.

While many senior advocates have termed the initiative by this fiercely independent Advocate as unnecessary still the move has the potential of changing the way the Court rooms and practices associated with it are concerned. Besides making a Court a more egalitarian place the concept has the potential of totally transforming the view of a Court room, conduct of Advocates and also the entire lexicon and all the traditions associated with Court room practice and we may usher into a new era where the 'sitting' of the Advocate will count instead of 'standing'.

So far so good however there is another reason for Advocates to stand while arguing and that one important aspect has totally been missed in this crusade for equality and dignity. And that reason is the unearthly queries emanating from the bench which does not actually allow the Advocates to sit down. It is here where this noble idea may meet its nemesis. It appears that all said and done the Advocates may still find it convenient to argue standing because the eldritch queries arising from the bench may not allow the Advocates sit down and argue though theoretically they can.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Notable updates from

International Legal Institutions

Amit Rana
Vice Chairman BCPH

Iran v. Canada, Sweden, Ukraine, and UK at the ICJ

- **Update:** On April 17, 2025, Iran filed an application before the ICJ against Canada, Sweden, Ukraine, and the United Kingdom, appealing a decision by the International Civil Aviation Organization (ICAO) Council. The case likely relates to disputes over aviation incidents or regulations, though specific details of the ICAO decision remain limited in public reports.
- **Significance:** This marks a rare instance of Iran leveraging the ICJ to challenge multiple Western states, potentially escalating tensions over aviation law or past incidents (e.g., the 2020 downing of Ukraine International Airlines Flight PS752). The ICJ's handling of this case could clarify the scope of ICAO's authority and state accountability in aviation disputes.
- **Critical Perspective:** Iran's move may be strategic, aiming to counter Western sanctions or deflect domestic criticism. The ICJ's jurisdiction could be contested, as ICAO appeals often face procedural hurdles. Limited transparency in the filing raises questions about the case's substantive merits versus

its political motivations.

2. Sudan v. United Arab Emirates at the ICJ

- **Update:** On March 5, 2025, Sudan instituted proceedings against the UAE before the ICJ, alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide. Public hearings on Sudan's request for provisional measures were scheduled for April 10, 2025.
- **Significance:** This case underscores the ICJ's role in addressing allegations of genocide, a high-stakes legal threshold. It reflects Sudan's attempt to internationalize its conflict-related grievances, possibly linked to UAE's alleged support for militias in Sudan's civil war. The outcome could influence regional dynamics in the Horn of Africa.
- **Critical Perspective:** Sudan's filing may be politically motivated to pressure the UAE, given the lack of public evidence detailing the genocide claims. The ICJ's provisional measures, if granted, could strain UAE's international standing, but enforcement remains a challenge given the court's advisory nature in such cases.

3. **South Africa v. Israel:** ICJ Extends Counter-Memorial Deadline

- **Update:** On April 14, 2025, the ICJ extended the deadline for Israel to file its Counter-Memorial to January 12, 2026, in the case brought by South Africa alleging violations of the Genocide Convention. The case stems from South Africa's 2023 filing over Israel's actions in Gaza.
- **Significance:** This procedural update keeps the high-profile case active, with global attention on whether the ICJ will rule on genocide allegations. The extension suggests complex legal arguments, potentially involving voluminous evidence from both sides. The case continues to shape discourse on international humanitarian law.
- **Critical Perspective:** The extension may reflect Israel's strategy to delay proceedings, given the case's political sensitivity. South Africa's pursuit aligns with its historical stance on Palestine but risks being seen as symbolic without enforceable outcomes. The ICJ's limited enforcement power could undermine the case's practical impact.

4. **ECHR Rules Bulgaria's Trial Impartial**

- **Update:** On April 1, 2025, the European Court of Human Rights (ECHR) ruled that Bulgaria's Supreme Administrative Court did not violate Mihail Doynov's right to a fair trial and judicial impartiality, despite the court being both a defendant and decision-maker in his case.
- **Significance:** The ruling clarifies the ECHR's standards for judicial impartiality, particularly in cases where courts are parties to disputes. It reinforces Bulgaria's judicial framework while highlighting the ECHR's role in ensuring fair trial rights across Europe.
- **Critical Perspective:** The decision may be seen as overly deferential to national courts, raising concerns about conflicts of interest in judicial systems. Critics might argue the ECHR missed an opportunity to set stricter precedents for impartiality, especially in countries with weaker judicial independence.

5. **ECHR Finds Ukraine Violated Rights in 2014 Odesa Clashes**

- **Update:** On March 13, 2025, the ECHR ruled that Ukraine violated the European Convention on Human Rights by failing to prevent and effectively investigate violence during the May 2, 2014, clashes in Odesa, which killed 48 people amid pro-

Russian and pro-Ukrainian protests.

- **Significance:** The ruling holds Ukraine accountable for human rights failures during a pivotal moment in its conflict with Russia-backed separatists. It underscores the ECHR's role in scrutinizing state responses to civil unrest, with implications for ongoing war-related cases.
- **Critical Perspective:** The ECHR's focus on 2014 events may seem misaligned with Ukraine's current war challenges, potentially distracting from broader Russian accountability. The ruling could also fuel domestic criticism in Ukraine, where Odesa remains a sensitive issue.

6. **ECHR Rules Ukraine's Surveillance Unlawful**

- **Update:** On February 13, 2025, the ECHR unanimously ruled that Ukraine violated the right to respect for private life through unlawful surveillance of three public officials and their lawyer, involving phone tapping and covert video monitoring.
- **Significance:** This decision strengthens protections against state surveillance in Europe, reinforcing the ECHR's role in balancing anti-corruption efforts with

privacy rights. It may prompt Ukraine to reform its surveillance laws.

- **Critical Perspective:** The ruling highlights tensions between national security and human rights, especially in wartime Ukraine. Critics might argue the ECHR undervalues the context of corruption probes, while others see it as a necessary check on state overreach.

7. **CJEU Advisor Backs WhatsApp in Data Privacy Case**

- **Update:** On March 29, 2025, an Advocate General at the Court of Justice of the European Union (CJEU) supported WhatsApp in its legal challenge against the European Data Protection Board (EDPB), suggesting companies can directly contest EDPB decisions.
- **Significance:** The opinion could reshape data privacy enforcement in the EU, empowering tech firms to challenge regulatory overreach. If adopted, it may lead to more litigation against EU data protection bodies, affecting GDPR implementation.
- **Critical Perspective:** The CJEU's potential alignment with WhatsApp raises concerns about weakening data protection frameworks, favoring corporate interests. However, it could also curb bureaucratic overreach, clarifying the EDPB's authority.

8. **ICC Urged to Act on Netanyahu's Hungary Visit**

- **Update:** On April 1, 2025, Amnesty International called on Hungary to arrest and surrender Israeli Prime Minister Benjamin Netanyahu to the ICC during his visit, citing ICC arrest warrants for alleged war crimes. Hungary, an ICC member, faced pressure to comply.
- **Significance:** This highlights the ICC's challenges in enforcing arrest warrants against high-profile figures, especially in politically sensitive contexts. It tests Hungary's commitment to international criminal law

amid its close ties with Israel.

- **Critical Perspective:** Hungary's likely refusal to act underscores the ICC's enforcement limitations, particularly when state sovereignty and geopolitics collide. Amnesty's call may be symbolic, as practical outcomes depend on Hungary's political will, which leans toward non-compliance.

9. ICJ Advisory Opinion on Climate Change Obligations

- **Update:** The ICJ is preparing to issue an advisory opinion on states' obligations to combat climate change, following a March 29, 2023, UN General Assembly resolution initiated by Vanuatu. In 2025, 45 written statements from states and organizations were filed, indicating robust global engagement.
- **Significance:** The opinion could define state responsibilities under international law for climate action, potentially influencing Paris Agreement compliance and climate litigation worldwide. It marks a landmark moment for environmental justice at the ICJ.
- **Critical Perspective:** Advisory opinions are non-binding, limiting their enforceability. The ICJ's balancing act between cooperative frameworks (e.g., Paris Agreement) and disruptive climate challenges may produce a cautious ruling, disappointing activists seeking bold mandates.

10. ILC Session Shortened Due to UN Financial Crisis

- **Update:** The International Law Commission (ILC) reduced its 2025 session to five weeks (April 28 to May 30, 2025) due to the UN's financial crisis, as per UN General Assembly Resolution 79/121. Key topics include jus cogens norms, state official immunity, and sea-level rise.
- **Significance:** The shortened session limits the ILC's capacity to advance codification of international law, potentially delaying progress on critical issues like climate-induced displacement and state accountability. It reflects broader UN funding challenges.
- **Critical Perspective:** The financial crisis exposes vulnerabilities in global legal institutions, prioritizing budgetary constraints over substantive law development. The ILC's focus on technical topics may seem disconnected from urgent global crises, raising questions about its relevance.

Honorary Secretary's Desk

Surinder Dutt Sharma

It is with great pride and a sense of accomplishment that I write for this sixth issue of COUNSEL, the Bar Council of Punjab & Haryana's law journal/magazine. Launched in 2023, COUNSEL has quickly established itself as a vibrant platform, fostering academic and intellectual contributions from Hon'ble Judges, Chief Ministers, Parliamentarians, esteemed Members and Office-bearers of the Bar Council, Senior Advocates, Academicians, advocates, lawyers, and law students. The depth and diversity of these contributions reflect the strength of our legal fraternity and our collective commitment to enriching legal thought and practice.

As the Honorary Secretary, I see COUNSEL as a reflection of the Bar Council's forward-thinking vision. Our profession stands at a critical juncture where technology, globalization, and evolving societal needs are reshaping the way we practice law. In this rapidly changing environment, the State Bar Council envisions a future where we not only adapt but lead-ensuring that the rule of law remains strong and that justice is accessible to all.

Bar Council of Punjab & Haryana remains deeply committed to fostering an environment that empowers legal professionals to rise to these challenges. We see COUNSEL as part of this larger mission-a space where ideas are exchanged, where new thinking is encouraged, and where we can critically examine the direction in which the law is headed. Through dialogue, research, and the dissemination of knowledge, we aim to support the growth of the legal profession and uphold the highest standards of legal practice.

We invite each of you to continue being active participants in this journey, whether through contributing to COUNSEL, mentoring younger members of the bar, or engaging with the State Bar Council's many initiatives aimed at professional development.

Let us continue to work together to make our profession stronger, more inclusive, and more impactful in the years to come.

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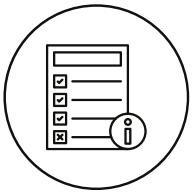

About the Journal

In furtherance of the publication of the sixth issue for the first half of year 2025, the Bar Council of Punjab and Haryana hereby invites research articles/papers, experience stories, short notes, case studies/commentaries, brief essays, any creative works and book/movie/series reviews on law and related areas for publication in the next Punjab and Haryana Bar Council Law Journal Q7| 2025.

The journal is a peer reviewed publication from State Bar Council of Punjab and Haryana. It is an endeavor of the statutory body to encourage legal knowledge sharing platforms and promote inclusive growth in the legal fraternity through academic discussions.

Topic

The journal invites submission on '*any broad topic of Law and related research, also creative pieces*' not limited to any particular theme.

The authors are free and welcomed to write on any topic that they wish to contextualize. However, preference by the Bar Council shall be given to scholarly research papers, raw articles, simple and easy to understand papers, short commentaries, original manuscripts and creative works highlighting any law related, anywhere across the globe.

Other

The piece should be accompanied by an abstract in about 150 words along with a declaration that the paper has not been published or sent for publication elsewhere. If it contains reproductions, then a declaration to that effect.

- Word Limit: 800 - 1000 words
- Authorship: Maximum of three

The main text should be in Garamond, size 12 with a 1.5 line spacing and the footnotes shall be in size 10 with 1.0 line spacing. This shall be strict compliance for papers to be accepted for the review process.

The editors reserve the right to delete or edit any article or part there of whose content is found to be offensive, defamatory, out rightly unethical, or if it is suggestive of discrimination in any form of racism, sexual, gender, religious, illegal or terror activities, and/or another. The article is subjected to rejection if its content is likely to offend or provocate the religious or political sentiments of the reader.

There is no publication fee. A process of peer-review shall be used to scrutinize all the submissions. Following this, the authors of selected papers will be notified of the results.

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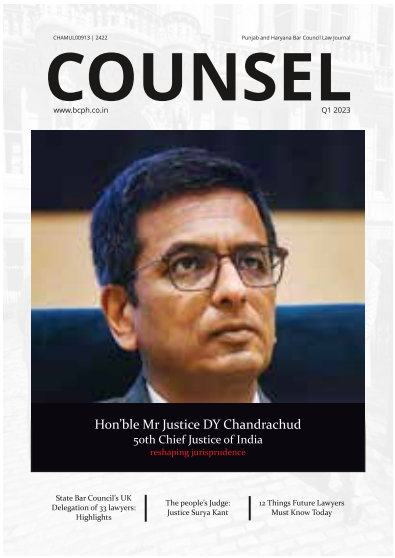

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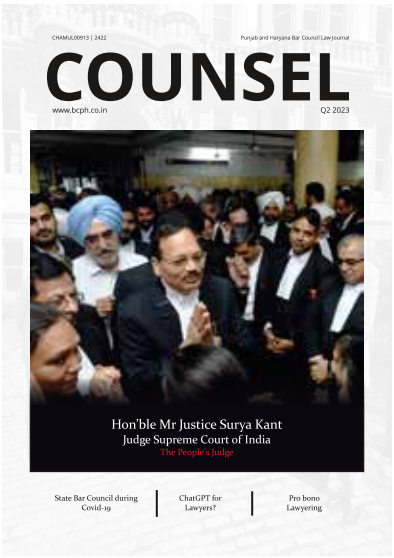

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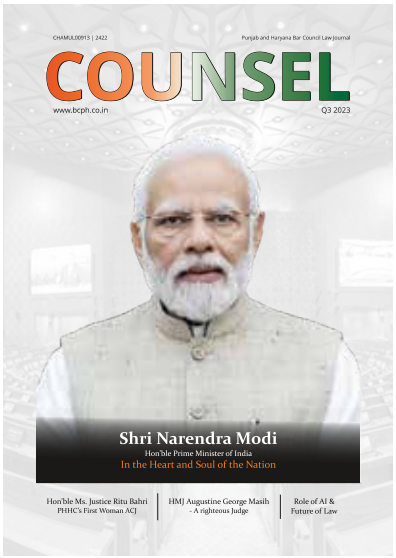

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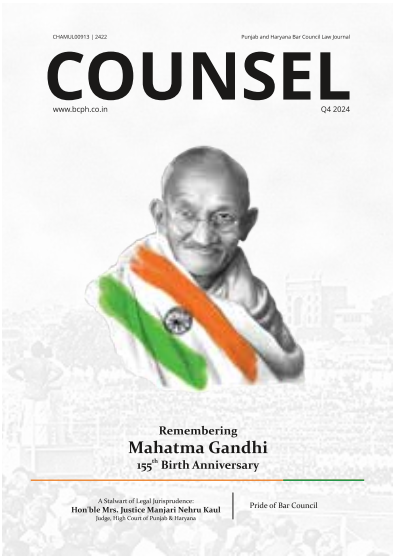

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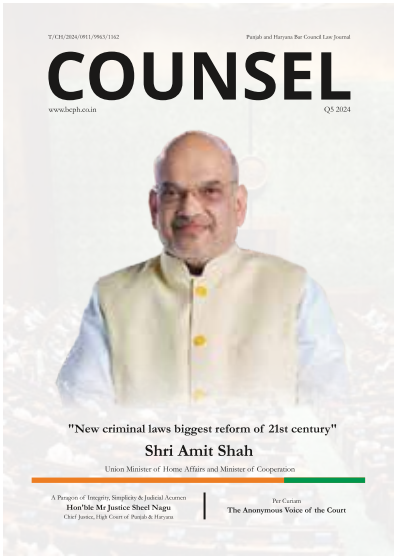

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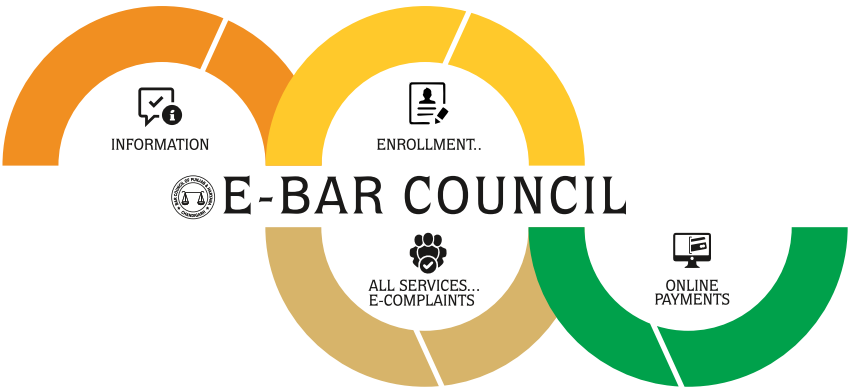

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1

1961

In 1961, the Advocates Act was passed, through which the Bar Council of India came into being and the responsibility of Legal Education was entrusted to BCI.

2

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