



DES Shri. Navalmal Firodia Law College, Pune

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Seminar Proceedings of

One Day Seminar on

CHANGING PARADIGMS OF CRIMINAL JUSTICE DELIVERY SYSTEM IN INDIA

25th September 2025



Seminar Proceedings Of
***One Day Seminar on “Changing Paradigms of Criminal
Justice Delivery System in India”***

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ABOUT THE COLLEGE

DES's Shri. Navalmal Firodia Law College is one of the premier law institute established by Deccan Education Society (DES) in 2004 with a view to achieve academic excellence in professional education. The College has always strived to keep pace with the social change and answering responsibly all the demands of complex and intricate global legal set up. We have brought about tremendous metamorphosis in terms of inculcating legal education through innovative pedagogy.

Along with the mandatory curriculum, institute has balanced between co-curricular, extra-curricular and extension activities. The institute has brought about tremendous transformation in terms of inculcating legal education through innovative pedagogy thereby making teaching – learning more student – centric. We believe in education as the way of revolution and ultimate development.

With an objective of bridging the gap between theoretical educations and clinical education, the institution encourages students to take part in moot courts, debates, MUN, parliamentary debates and supports them in joining internships; facilitate field visits, guest lectures, social outreach programs and other experiential learning.

Our enthusiastic and talented teachers have a commitment to mould the young minds by giving them insight into multi-disciplinary aspects of law. Our college library is well equipped with all the latest legal resources to meet the requirements of the student's community. Our alumni body is now making significant note of its existence, which reflects our achievement. Our students have been proving their worth by securing merit ranking in Savitribai Phule Pune University every year. Our college has established various Cells and Departments for holistic development of law students. The institute has a well-planned mechanism for nurturing students for much coveted accolades and laurels, which bring pride to us.

ABOUT THE SEMINAR

The College had organised a one-day seminar on “Changing Paradigms of Criminal Justice System in India” to address the historic and ongoing transformation of the country’s criminal justice delivery framework. This One-Day Seminar seeks to provide a platform for academicians, legal professionals, researchers, and students to engage in meaningful deliberations on the present structure, challenges, and future directions of the criminal justice delivery system in India.

The objective of the seminar was about tracing the historical evolution, analyzing impact of legislative reforms, exploring the contemporary challenges, assessing the effect of new criminal laws and examining the role of technology in resolving dispute and delivering justice. Themes of the seminar included new criminal laws, restorative justice practices in community reintegration, technology and crime prevention, challenges in criminal justice delivery system, victim advocacy, judicial activism etc.

The Criminal Justice Delivery System forms the backbone of a democratic society, ensuring the protection of rights, maintenance of law and order, and promotion of justice. The criminal justice system, which includes the police, prosecution, judiciary, and correctional institutions, forms the basis of India's democratic governance by safeguarding individual rights and maintaining law and order. Despite strong constitutional foundations, the system faced persistent challenges such as trial delays, case backlogs, overcrowded prisons, limited victim protections, and insufficient technological integration. This seminar aimed to bridge the gap between theory and practice by encouraging critical insights, enhance the juvenile justice system and reform-oriented approaches.

The seminar gathered academicians, legal experts, law students, and researchers to critically examine these evolving legal paradigms. Discussions focused on challenges such as understaffed police and judiciary, infrastructural gaps, and the need for broader implementation of forensic and digital tools. Emphasis was placed on fostering a justice system that is not only timely and accountable but also compassionate, ensuring dignity and protection for victims. Overall, the seminar underscored the urgent need for continued reform, multi-stakeholder collaboration, and innovation to build a criminal justice system in India that reflects 21st century realities and constitutional ideals, thereby delivering fair and accessible justice to all citizens.

OBJECTIVES OF THE SEMINAR

The seminar was structured around following key objectives:

1. To trace the historical evolution and foundational principles of the criminal justice delivery system in India.
2. To analyze the impact of legislative reforms and landmark judicial pronouncements on criminal justice administration
3. To evaluate the functioning of key institutions — police, prosecution, judiciary, and correctional services — in ensuring fair and speedy justice.
4. To explore contemporary challenges in reference to juvenile justice, pendency of cases, prison overcrowding, victim rights, and access to justice.
5. To assess the effectiveness of India's criminal justice system in protecting child rights in juvenile justice system.
6. To examine the role of technology, alternative dispute resolution mechanisms, and restorative justice in strengthening the criminal justice delivery system.

SEMINAR STRUCTURE AND SESSIONS

• INAUGURAL CEREMONY

One-day seminar started with inaugural ceremony. The inauguration was arranged at Fergusson Amphitheatre and it started with glimpses of interviews of Chief Guest. The seminar was inaugurated in the presence of Chief Guest **Padma Shri Adv. Ujjwal Nikam**, a legendary Special Public Prosecutor known for his work in landmark cases such as the 1993 Bombay bombings and the 26/11 Mumbai attacks. With a distinguished career spanning over four decades, Adv. Nikam brought practical insight into contemporary legal reforms. The speech given by sir enlightened everyone. The speech of chief guest started with lines "All men are mortal, all kings are men, hence all kings are also mortal". Sir perfectly explained the practical approach of law profession and he brought into limelight important facets of the recently recasted criminal laws.

• TECHNICAL SESSIONS

Session 1 – This session was conducted by **K.P. Nandedkar** Sir, a Retired District Judge. He

shared his view on the topic Judicial Activism and explained the entire concept in detailed manner. He also mentioned various relevant case laws including Vishakha's case. He further stated that Judicial activism in India refers to the proactive role played by the judiciary, particularly the Supreme Court and High Courts, in upholding citizens' rights and promoting social justice beyond traditional dispute resolution. While giving concluding remarks he further stated that Judicial Activism has transformed the Indian judiciary from a passive arbiter to an active agent of reform and justice, ensuring that constitutional values and fundamental rights remain robust and meaningful.

Session 2 – This session was conducted by **Prof. Dr. Alok Sharma**. Ma'am explained various laws related to criminal justice system, especially focusing on origin and purpose of such laws. Further she explained various examples and reasons relating to the importance and effectiveness of our legal system. She specifically mentioned about the issues related to juvenile delinquency. She introduced the importance of family and how society plays an important role in the shaping of young minds. She gave a few examples wherein the wrong influence of society and people around led children to wrong paths choosing illegal and unlawful methods to accomplish things. In conclusion she stated the need of stronger government commitment, improved infrastructure, and increased awareness among stakeholders to build an effective framework for youth rehabilitation.

Session 3 – This session was conducted by **Mr. Prakash Singh** who was a former Director General of Border Security Force, Former DGP of U.P. and Assam, a Padma Shri Awardee and an architect of police reforms in India. Sir talked about the practical approach and reality of present legal system in India. He shared his own experience with respect to change the reform in police system. He tried approaching legal and judicial system through procedure but faced the struggle to bring justice to police reforms. He mentioned the many problems in the system that were and are still persistent like corruption, ineffective judicial or legal system and many more. He also provided us with the advancement of technology and how it affects our lives both positively and negatively as well mentioning the concept of "Internet of Things (IOT)" along with that. He encourage the students with his insightful guidance on legal and judicial system.

Session 4 – This session was conducted by Shri. **Jayant Umranikar**, a retired 1973-batch IPS officer from Maharashtra, former Police Commissioner of Pune and Nagpur, ex-DGP (Special Operations), author, and international law enforcement representative at forums like the UNODC and IAEA. Various issues were discussed by sir, such as the outdated infrastructure, inadequate forensic and cyber-crime training, low public trust, political interference etc. Sir mentioned about the Frazer Commission which gave a report about the working of police administration pre-independence. He called the police the ‘sword arm’ as well as the ‘whipping boy’ for the people, signifying that the police were enforcers as well as the scapegoat. In conclusion sir talked about pendency of cases, shortage of judges, poor infrastructure, unequal access to justice and need of reforms.

- **VALEDICTORY SESSION**

After completion of all technical sessions the seminar ended with valedictory session. The chief guest of the seminar was Hon’ble **Justice J. N. Patel**. Justice Jainarayan Patel (b.1950) practiced law for 12 years in Nagpur before becoming a City Civil Court Judge in 1987 and later presiding over the 1993 Bombay Blast trial as a TADA Judge. Elevated to the Bombay High Court in 1996, he also served as Acting Chief Justice before being appointed Chief Justice of the Calcutta High Court (2010–2012). Known for clear, innovative judgments in diverse fields, he now practices arbitration and serves on law school committees. Sir started his speech by sharing his experience in a court room. The focus of the speech was on Indian Judiciary and stated that presently the justice system is victim centric. He also mentioned various issues such as slow disposal of cases, pendency of cases, unawareness of victims rights. Shri Patel in his concluding remarks urged for judicial sensitivity toward victims’ needs and the integration of restorative justice principles.

The guest of honor for valedictory session was, Shri **Pankaj Deshmukh**, Additional Commissioner of Police, Pune, addressed students on the crucial relationship between law and policing. He explained that the police serve as the frontline enforcers of law, responsible for maintaining order, preventing and investigating crime, and safeguarding citizens within the legal framework. Law defines their powers, duties, and responsibilities, ensuring that policing remains accountable, rights-based, and just. He emphasized that effective policing requires not

only enforcement but also sensitivity to public needs, with trust built through community engagement.

KEY OUTCOMES

For students and young legal professionals, the seminar offered insight into both the doctrinal and practical implications of the new laws. Participants understood the significance of replacing colonial statutes, the potential of technology-driven processes, and the importance of balancing efficiency with fairness. The event promoted multi-disciplinary dialogue and collaboration to ensure effective implementation of reforms.

ACKNOWLEDGMENTS

The success of the seminar was made possible through the dedication and hard work of the organizing committee. Special thanks are due to the conveners, Dr. Sunita Adhav Ma'am and Adv. Ashok Palande Sir, as well as the faculty coordinators, Asst. Prof. Pooja Deo and Asst. Prof. Pradnya Yadav. Their commitment to excellence ensured that the seminar was an enriching and impactful experience for all participants.

CONCLUSION

The seminar on “Changing Paradigms of Criminal Justice System in India” concluded with broad agreement on the urgent need for comprehensive reforms to modernize criminal justice. A key focus was the 2024 implementation of the three new laws - Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA)—replacing colonial-era statutes. These laws aim to make the system transparent, timely, and victim-centric, introducing strict timelines for investigations and trials, digital and forensic evidence management, electronic hearings, and enhanced protections for women and children. In conclusion, the seminar reinforced the vision of a fair, efficient, and accessible criminal justice system that upholds constitutional values, meets the needs of a diverse population, and evolves with contemporary challenges, while inspiring continued advocacy for reform.

FROM THE CHAIRMAN'S DESK



Greetings!

It gives me immense pride to present the proceedings of the One Day Seminar on “Changing Paradigms of Criminal Justice Delivery System in India”, held on 25th September 2025.

Deccan Education Society (DES), since its inception in 1884, has upheld the ideals of its illustrious founders—Lokmanya Tilak, Gopal Ganesh Agarkar, V. S. Apte, and others—by fostering institutions that blend academic excellence with social responsibility. Our commitment has always been not only to impart education, but to shape thoughtful and upright citizens capable of contributing to national progress.

Over the years, DES has established a network of esteemed institutions that have become pillars of excellence in various fields. One of these institutions, Shri. Navalmal Firodia Law College (DES SNFLC), established in 2004, now proudly enters its 22nd year.

Recognizing the changing aspects of legal system, DES SNFLC has consistently aspired to foster meaningful discussions on contemporary issues. On the backdrop of recent introduction of three new criminal laws, Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023, effective from July 1, 2024, we organized a seminar on topic “Changing Paradigms of Criminal Justice Delivery System in India”. As documentation of these deliberations and publication is crucial for preserving and disseminating knowledge, we are pleased to present proceedings of the seminar. This seminar proceedings stand as a testimony to the collective intellectual effort and commitment to advancing knowledge in this field. I am confident that these proceedings will serve as a useful reference and inspire further research and dialogue.

Thank you

Shri. Pramod Rawat
Chairman, Governing Body & Council, DES

FROM THE VICE-CHAIRMAN'S DESK



Dear Scholars, Practitioners, and Esteemed Participants,

It is indeed a matter of pride to witness the successful organization of the One-Day Seminar on “*Changing Paradigms of Criminal Justice Delivery System in India*” by Deccan Education Society’s Shri. Navalmal Firodia Law College, Pune. The seminar provided a significant platform to reflect on changing dimensions of India’s criminal justice system. The seminar and its resulting proceedings reflect the institution’s ongoing commitment to encouraging dialogue on subjects of national importance and contemporary legal relevance.

The contemporary landscape of criminal justice in India is undergoing rapid transformation. It is therefore imperative for legal academia to continuously engage with emerging legal issues, re-evaluate established doctrines, and contribute meaningfully to policy discourse. This seminar was designed to create such a platform where eminent academicians, judicial officers, practitioners, researchers, and students could deliberate upon the challenges, gaps, and evolving solutions within the criminal justice system.

These proceedings are not merely a compilation of academic writings, but a testament to the college’s dedication to fostering rigorous inquiry and encouraging young scholars to participate in national dialogue on law and justice. I am confident that these proceedings will serve as a valuable resource for students, academicians, legal professionals, and policymakers who seek to understand the evolving contours of India’s criminal justice system.

Best Wishes!

Adv. Ashok Palande
Vice Chairman, GB & Council, DES
Chairman, CDC, DES SNFLC

FROM PRINCIPAL'S DESK



Warm Greetings to you all!

It gives me immense pleasure to present this Seminar Proceedings of the the one-day national seminar on “**Changing Paradigms of Criminal Justice Delivery System in India**” organised by *Deccan Education Society’s Shri Navalmal Firodia Law College*. The Deccan Education Society, founded in 1884 by visionary national leaders, has always upheld the values of quality education, character formation, and nation-building. Our institution proudly carries forward this glorious legacy by nurturing responsible, ethically grounded, and socially conscious graduates.

In this backdrop, the subject of this seminar assumes exceptional significance. Criminal Justice Delivery System in India is undergoing various changes such as emerging forms of crime, digital vulnerabilities, issues of procedural fairness, changes in the legal provisions with introduction of new laws, etc. As criminal jurisprudence is changing, it becomes essential for academia to participate actively in analysing, reviewing, and strengthening these transitions.

This seminar brought together experts from diverse fields, enabling participants to gain a multidimensional understanding of the system’s emerging trends. By organising this seminar and compiling the present proceedings, the college has once again reaffirmed its commitment to enriching legal scholarship and providing students a platform for meaningful intellectual engagement.

May this seminar proceeding continue to inspire academic rigour and further meaningful discussions on the criminal justice delivery system in India.

Dr.Sunita Adhav
Principal, DES SNFLC

FROM THE EDITORS DESK

“Our criminal justice system, protecting 140 crore people of India, their honor and their Constitutional rights, has now become completely Indian”

- Prime Minister Shri Narendra Modi

After successful implementation of three new criminal laws to the nation; Union Home and Minister of Cooperation said that our criminal justice system, protecting 140 crore people of India, their honour and their Constitutional rights, has now become completely Indian.

It is our privilege to present the proceedings of one day seminar on **“Changing Paradigms of Criminal Justice System in India”** organized by DES’s Shri. Navalmal Firodia Law College on 25th September, 2025. This seminar aimed to explore and analyze the impact of legislative reforms and landmark judicial pronouncements on criminal justice administration. The criminal justice system, which includes the police, prosecution, judiciary, and correctional institutions, forms the basis of India's democratic governance by safeguarding individual rights and maintaining law and order.

Through insightful research papers and discussions, participants addressed pressing issues in this field. These proceedings reflect the collective intellectual effort to inspire legal and social transformation. We extend our heartfelt gratitude to the authors, presenters, and participants for their valuable contributions and express special thanks to our Principal, Dr. Sunita Adhav, for her guidance and support.

We present this compilation with the hope that it sparks meaningful conversations and drives impactful reforms in the realm of criminal justice delivery system.

Warm Regards,

Editorial Team
DES SNFLC

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SPEEDY TRIAL: REALITY OR MYTH IN THE INDIAN CRIMINAL JUSTICE SYSTEM

- Manasi Mohite

Abstract

"Justice delayed is justice denied", this timeless principle is the foundation of any just and fair legal system. The Constitution of India, Article 21 assures life and personal liberty as a fundamental right to every citizens of the nation and at the core of this is the right to speedy trial. But for the millions of people who are trapped in the maze of the criminal legal system, this right is more aspirational than real. This article explores is the dream of speedy trials difficult to attain, its impact on delivering justice, and why there is an increasing backlog of criminal cases despite constitutional and judicial protection. The concept of speedy trial in India was firmly established in Hussainara Khatoon v. State of Bihar (1979), where the Supreme Court held that prolonged delays in criminal cases violate Article 21 of the Constitution. The Court declared, "Justice delayed is justice denied," making speedy trial a fundamental right. Following this, courts prioritized speedy trials, and the government introduced CrPC amendments to set time limits, establish fast-track courts, and reduce adjournments. Yet, despite these efforts, the serious problem of pending cases continues to hinder timely justice. There are over 4 crore pending cases in courts across the country, many of which are criminal. This huge backlog highlights the seriousness of delays in the criminal justice system. Despite reforms like Fast Track Courts, Lok Adalats, and virtual hearings, delays persist due to inadequate infrastructure, shortage of judges and staff, and frequent adjournments. As a result, both victims and accused persons often wait years for justice. Though the Constitution and the law clearly state that trials should be speedy, it doesn't always happen. As a result, the accused and the victims keep on suffering for years. Countless people charged with crimes spend months or even more than a year in jail before their cases even go to trial. They also keep the victims and their families waiting for justice. These long waits cause suffering and longterm anxiety, as well as a violation of human rights. When cases drag on, faith falters in the system. It convinces them that they will not see justice, destroying the faith of society in the courts The main focus of this research is to see whether the Indian criminal justice

system is truly able to protect the right to a speedy trial or if this right has only become a dream that is very hard to achieve. The Criminal Justice System, though well-intentioned, fails to effectively ensure speedy trials. Complex procedures, security flaws, shortage of judges and staff, and poor infrastructure cause cases to drag on for years. As a result, the right to a speedy trial often remains only on paper. To make speedy trials a reality, the judicial system needs stronger support. More courtrooms and judges should be appointed so that the cases can be heard faster. The stricter timelines must be followed and repeated adjournments should be avoided. Technology such as digital case management and online hearings can also lead to expedited resolutions and prevent delays. If this is done properly, people will not have to wait for years to see justice. The aim of this study is to carefully understand whether the right to a speedy trial is truly followed in India or if it only exists as a promise on paper. It also aims to find out the main reasons behind the delays and to suggest simple and practical reforms that can make this right real and meaningful for everyone affected by the criminal justice system.

Keys words: Speedy trial, Article 21, judicial delays, case backlog, criminal justice system

1. Introduction

A swift trial is the hallmark of any proper and effective system of criminal justice. It is more than a convenient procedural tool; it is a basic right that exists in order to guarantee proper speedy delivery of justice. Delayed criminal trials lead to the accused being kept in jail for years without conviction, faded memory of witnesses, and loss of evidence, among others. Overall, it leads to erosion in the public confidence of the legal system. They can create frustration and feelings of helplessness among victims and the accused alike, undermining the very purpose of justice.

In India, the right to a speedy trial is implicit in the guarantee of life and personal liberty under Article 21 of the Constitution. The judiciary has continuously expanded this right to include within its ambit the right to a timely trial, since justice delayed is often justice denied. Despite this constitutional safeguard, the practical implementation of speedy trials in India has faced many challenges over the years.

2. Objectives of the Study:

- **Understanding the Concept:** To explore what constitutes a “speedy trial” and its significance in the India’s justice system for criminal matters.
- **Analyzing Causes of Delay:** To identify and examine the systemic, procedural, and infrastructural factors that contribute to prolonged trials.
- **Examining Judicial and Legislative Efforts:** To assess the steps taken by courts and the legislature to promote expeditious justice, including key judicial pronouncements and legislative reforms.
- **Evaluating Reality vs. Myth:** To critically examine whether the principle of quick dispensation of justice is truly being realized in practice or remains more of an aspirational concept.

By addressing these objectives, this paper aims to provide a comprehensive understanding of the state of speedy trials in India and to shed light on the gap between legal provisions and practical reality.

3. Concept and Importance of Speedy Trial

• **Definition**

A speedy trial is one that is conducted without unnecessary delay, ensuring that justice is delivered efficiently and fairly, and that neither the accused nor the victim suffers from prolonged legal uncertainty.¹ The principle is based on the idea that justice delayed is often justice denied. A delay in trial can have serious consequences, including the psychological, social, and financial impact on the accused, witnesses, and society at large.

• **Importance**

The concept of a swift trial is critical for several reasons:

- **Protection of Personal Liberty:** Prolonged detention before trial can be a severe

¹ *Hussainara Khatoon v. Home Sec’y, State of Bihar*, (1979) 3 S.C.C. 537 (India).

infringement on the accused's fundamental rights. A timely trial safeguards the liberty, dignity, and rights of individuals, preventing arbitrary and extended incarceration.²

- **Maintaining Public Confidence:** The credibility of the criminal justice system depends on its ability to deliver justice promptly. Persistent delays erode public trust and confidence, creating a perception of inefficiency and injustice.³
- **Preventing Social and Economic Consequences:** Long-drawn trials can disrupt the social and economic life of the accused, their family, and even victims. Delays may result in loss of employment, social stigma, and financial hardship, which highlights the societal importance of a speedy trial.⁴

- **Legal Basis**

The right to a speedy trial in India is firmly embedded in both constitutional and statutory provisions:

- **Constitutional Guarantee:** Article 21 of the Indian Constitution guarantees the right to life and personal liberty. The judicial mechanism has consistently interpreted this provision to include the right to a speedy trial, emphasizing that unnecessary delays in the process of administering criminal justice constitute an infringement of fundamental rights.⁵
- **Provisions under the Criminal Procedure Code (CrPC):** Sections 167 (police remand) and 309 (trial of warrant cases) set timelines and procedural requirements to expedite the court proceedings and minimize delay in trials.⁶
- **Judicial Recognition:** The landmark case *Hussainara Khatoon v. Home Secretary, State of Bihar* highlighted the plight of undertrial prisoners and underscored the Supreme Court's recognition of the right to a speedy trial as a fundamental right under Article 21.

4. Challenges in Implementing Speedy Trial

² Criminal Procedure Code, 1973, §§ 167, 309 (India).

³ Id.

⁴ Id.

⁵ Const. of India art. 21.

⁶ Id.

While the principle of a swift trial is well recognized in Indian law, its practical implementation faces numerous systemic and procedural challenges. These obstacles hinder the timely administration of justice and contribute to an ever-growing backlog of cases.

- **Overburdened Courts**

A primary contributing factor for delayed trials in India is the overwhelming number of pending cases. As of recent reports, India has over 4 crore pending cases, a substantial portion of which are criminal matters.⁷ The shortage of judges exacerbates the problem, as the existing judiciary struggles to manage the caseload efficiently. This leads to long waits for hearings, delayed judgments, and frustration among both the accused and the victims.

- **Police Investigation Delays**

Efficient investigation is essential for a speedy trial. However, in India, delays often occur due to inadequate investigation quality, backlog of cases, and procedural lapses. Slow collection of evidence, delayed filing of charge sheets, and lack of coordination among investigative agencies further stall trials, making it difficult to adhere to prescribed timelines.⁸

- **Adjournments and Legal Loopholes**

Frequent adjournments granted by courts, combined with procedural loopholes, contribute significantly to trial delays. Parties often request extensions for legitimate reasons, but this practice can be misused, resulting in prolonged proceedings. Ineffective case management and legal technicalities, such as repeated objections or petitions, further stretch the duration of trials, undermining the very purpose of speedy justice.⁹

- **Infrastructure and Resources**

The lack of modern court infrastructure is another significant challenge. Many courts are overcrowded, under-resourced, and lack digital facilities. Though fast-track courts have been introduced to expedite certain categories of cases, limited resources, insufficient manpower, and outdated systems restrict their effectiveness. The absence of adequate

⁷Supreme Court of India, National Judicial Data Grid, Statistics on Pending Cases, <https://njdg.ecourts.gov.in/> (last visited Sept. 21, 2025).

⁸ Law Commission of India, Report No. 245, Delay in Criminal Trials (2014).

⁹ Id.

technology for e-filing, virtual hearings, and case tracking also slows down proceedings.¹⁰

- **Socio-Political Influence**

High-profile or politically sensitive cases often face additional delays due to socio-political pressures. Influence from powerful individuals, public protests, or media scrutiny can complicate proceedings and contribute to postponements. Such interference can hinder impartial adjudication and exacerbate delays in delivering justice.¹¹

- **Judicial Interventions and Legislative Measures**

The principle of a expeditious trial has been consistently reinforced by both the judiciary and the legislature in India. Over the years, landmark court decisions and legislative reforms have sought to reduce delays and ensure that the criminal justice system operates efficiently.

- **Key Judicial Pronouncements**

The Indian judiciary has recognized that delays in criminal proceedings infringe fundamental rights, particularly the right to life and personal liberty under Article 21 of the Constitution. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Supreme Court emphasized that the right to an expeditious trial forms an essential component of Article 21, drawing attention to the plight of thousands of undertrial prisoners spending years behind bars without conclusion of trial , without a verdict.¹²

Similarly, in *Laxmi Narayan v. State of Maharashtra*, the Supreme Court held that excessive delay in trial constitutes a breach of constitutional guarantees. The Court stressed that the judicial mechanism must work promptly and responsibly to prevent prolonged detention and social injustice.¹³

In *State of Haryana v. Bhajan Lal*, the Court highlighted the importance of timely investigation and prosecution, asserting that delays in investigative procedures can

¹⁰ Ministry of Law and Justice, Fast Track Courts in India: Annual Report (2023).

¹¹ S.P. Sathe, Criminal Justice Administration in India: Challenges and Reforms 112–15 (2019).

¹² *Hussainara Khatoon v. Home Sec'y, State of Bihar*, (1979) 3 S.C.C. 537 (India).

¹³ *Laxmi Narayan v. State of Maharashtra*, (1991) 2 S.C.C. 2077 (India).

compromise the fairness and transparency in trial proceedings and deny justice to both the accused and victims.¹⁴

- **Legislative Measures**

The legislature has also taken steps to complement judicial interventions. Amendments to the Criminal Procedure Code (CrPC) introduced provisions for fast-track courts, aiming to expedite the trial of serious offenses, particularly those affecting women and children.¹⁵

Bail reforms have been implemented to reduce unnecessary pre-trial detention, ensuring that accused individuals are not held in prison during the pre-trial stage without sufficient cause.

Additionally, Section 309 of the CrPC mandates deadlines for submitting charge sheets in warrant cases, aiming to prevent delays at the investigative stage and ensure that trials commence promptly after charges are framed.¹⁶

These judicial and legislative measures collectively demonstrate India's commitment to the principle of speedy justice. However, despite these reforms, challenges such as court backlogs, procedural delays, and inadequate infrastructure continue to impede timely trials.

6. Fast Track Courts (FTCs)

In response to the growing backlog of criminal cases and the urgent need to deliver timely justice, the Government of India introduced Fast Track Courts (FTCs) in the early 2000s. These courts were specifically designed to expedite trials, particularly for heinous crimes such as sexual assault, corruption, and violent offenses. The objective was to reduce the prolonged pre-trial detention of under trial prisoners and to ensure that justice is not delayed for serious offenses.¹⁷

- **Achievements**

Fast Track Courts have shown some success in reducing case pendency in targeted

¹⁴ *State of Haryana v. Bhajan Lal*, (1992) 1 S.C.C. 335 (India).

¹⁵ Criminal Procedure Code, 1973, §§ 309, 436A (India).

¹⁶ *Id.*

¹⁷ Ministry of Law and Justice, Fast Track Courts Scheme: Guidelines and Objectives (2002) (India).

categories. By prioritizing certain cases and streamlining procedures, these courts have managed to deliver quicker verdicts compared to regular courts. This has particularly benefited victims of heinous crimes, who often face prolonged delays in obtaining justice under the normal judicial process.¹⁸

- **Limitations**

Despite their achievements, Fast Track Courts face significant challenges. Many of these courts suffer from insufficient infrastructure and inadequate manpower, limiting their ability to handle large volumes of cases. Moreover, their benefits are often restricted to specific categories of offenses, leaving other cases still subject to prolonged delays. Additionally, logistical and administrative inefficiencies, such as lack of modern technology and case management systems, further hinder their effectiveness.¹⁹

While FTCs represent a positive step towards expediting justice, their limitations highlight the need for complementary reforms, including increasing judicial capacity, investing in infrastructure, and improving procedural efficiency across the entire judicial hierarchy in India.

7. Case Studies Highlighting Delay

Examining specific cases helps illustrate the practical challenges of implementing speedy trials in India. Even high-profile cases, which receive extensive media attention and public scrutiny, are not immune to procedural delays, highlighting the systemic issues that plague the legal system in criminal matters.

- **Best Bakery Case (2002 Gujarat Riots)**

The Best Bakery case, arising from the 2002 Gujarat riots, is a stark example of how delayed justice can affect victims and accused alike. Despite the gravity of the crimes and widespread public attention, the trial dragged on for several years. Factors such as witness intimidation, repeated adjournments, and procedural hurdles contributed to the prolonged

¹⁸ National Judicial Data Grid, Fast Track Court Case Statistics, <https://njdg.ecourts.gov.in/> (last visited Sept. 21, 2025).

¹⁹ S.P. Sathe, Criminal Justice Administration in India: Challenges and Reforms 118–21 (2019).

litigation, delaying the delivery of justice and eroding public confidence in the system.²⁰

- **Nirbhaya Case (2012 Delhi Gang Rape)**

The 2012 Delhi gang rape, widely known as the Nirbhaya case, drew national and international attention due to its brutality. While the trial progressed relatively faster compared to other criminal cases, it still took several months before the verdict was delivered, and the death sentence of the convicts was executed only in 2017. The case highlighted both the importance of timely justice for public trust and the reality that procedural and appellate safeguards, while necessary, can extend the duration of trials significantly.²¹

- **Observation**

These case studies underscore that even in instances of intense public scrutiny, systemic challenges—such as procedural delays, overburdened courts, and investigative inefficiencies—persist, impeding the realization of the constitutional right to a speedy trial. They serve as a reminder that legal reforms alone are insufficient without effective implementation and systemic support.²²

8. Reality vs. Myth

The principle of a expeditious or swift trial in India exists both in law and in judicial practice, yet its implementation often paints a contrasting picture. From a legal standpoint, the right to a speedy trial is firmly entrenched in the Indian Constitution under Article 21, and reinforced by statutory provisions in the Criminal Procedure Code. Landmark Supreme Court judgments, including *Hussainara Khatoon v. Home Secretary, State of Bihar* and *Laxmi Narayan Vs State of Maharashtra*, have consistently affirmed that undue delay in criminal trials amounts to a violation of fundamental rights.²³

²⁰ Zahra Hirji, Best Bakery Case: A Long Road to Justice, Al Jazeera (Feb. 28, 2022), <https://www.aljazeera.com/news/2022/2/28/best-bakery-case-india> (last visited Sept. 21, 2025, 11:00 AM IST).

²¹ Press Trust of India, Timeline of Nirbhaya Case and Convict Execution, The Hindu (Mar. 1, 2017), <https://www.thehindu.com/news/national/nirbhaya-case-timeline> (last visited Sept. 21, 2025, 11:05 AM IST)

²² S.P. Sathe, Criminal Justice Administration in India: Challenges and Reforms 115–18 (2019).

²³ *Hussainara Khatoon v. Home Sec'y, State of Bihar*, (1979) 3 S.C.C. 537; *Laxmi Narayan v. State of Maharashtra*, (1991) 2 S.C.C. 2077 (India).

However, despite clear legal mandates, the practical implementation of speedy trials often falls short. Systemic challenges such as overburdened courts, inadequate infrastructure, delays in police investigations, frequent adjournments, and procedural inefficiencies mean that many trials take years to conclude. Even high-profile cases with significant public attention, like the Best Bakery case (2002 Gujarat riots) and the Nirbhaya case (2012 Delhi gang rape), experienced substantial delays, demonstrating that the promise of speedy justice is often aspirational rather than real.²⁴

While India's legal framework recognizes the importance of timely justice, the translation of this principle into practice remains inconsistent. Judicial pronouncements and legislative measures establish the ideal of a speedy trial, but structural and procedural limitations prevent its consistent realization. Consequently, speedy trial in India frequently remains more of a legal **aspiration than a lived reality for the accused, victims, and society at large.**

9. Conclusion and Suggestions

The right to a speedy trial is a fundamental pillar of justice and personal liberty in India. Although the judiciary and legislature have consistently emphasized its importance, practical implementation is frequently hampered by structural and procedural inefficiencies. Achieving the vision of timely justice requires systemic reforms, better infrastructure, and a commitment to accountability throughout the criminal justice system. Until these measures are effectively implemented, the promise of a speedy trial often remains more of an aspiration than a lived reality for accused persons, victims, and society at large. Following are the suggestions by the author.

- Increase judges and courts – to reduce case backlog and speed up trials.
- Strengthen police and investigation processes – to ensure timely and accurate evidence

²⁴ Zahra Hirji, Best Bakery Case: A Long Road to Justice, Al Jazeera (Feb. 28, 2022), <https://www.aljazeera.com/news/2022/2/28/best-bakery-case-india>; Press Trust of India, Timeline of Nirbhaya Case and Convict Execution, The Hindu (Mar. 1, 2017), <https://www.thehindu.com/news/national/nirbhaya-case-timeline> (last visited Sept. 21, 2025, 11:05 AM IST).

collection.

- Strict adherence to timelines and case management – to prevent unnecessary delays.
- Expand fast-track courts – with adequate infrastructure and manpower for efficiency.
- Encourage use of technology – e-filing, virtual hearings, and digital evidence to streamline proceedings.
- Limit adjournments and procedural loopholes – to ensure trials progress without avoidable interruptions.

BROKEN HOMES, BROKEN LAWS: A CRIMINOLOGICAL STUDY ON THE ROLE OF DYSFUNCTIONAL FAMILIES IN JUVENILE DELINQUENCY

- Adv. Abhilasha Kulkarni
- Ms. Shivanee Deshpande

Abstract

The trajectory of an individual's life is often determined by the family environment in which they are nurtured, making family dynamics an essential determinant in the study of crime and criminality. Criminological research has consistently shown that the roots of deviant behaviour amongst minors are frequently embedded in their childhood experiences, where neglect, abuse, and unresolved domestic conflict cultivate a psychological environment conducive to antisocial tendencies. The doctrine of social learning, propounded by Albert Bandura, explains how children imitate behavioural patterns observed within their immediate environment. When aggression, violence, or disregard for social norms are normalised within the family, the child subconsciously internalises these behaviours, translating them into delinquent acts during adolescence and adulthood.

The study of Criminal Psychology explores the moot problem of "whether an individual is born a criminal or made a criminal" because of the external factors that influence and shape him. It helps in the assessment of natural abilities, acquired characteristics, intelligence, attitude and personality of an individual. The study provides essential insights into juvenile behaviour, enabling better assessment of risks, needs and potential for rehabilitation

From a psychological standpoint, the attachment theory developed by John Bowlby stresses that children deprived of stable parental affection are more likely to develop insecure attachments, leading to mistrust, anger, and rebellion against authoritative figures. One of the main pathways to mens rea and actus reus can be a child who grows up witnessing domestic abuse or parental separation. The sociological strain theory by Robert Merton highlights that children from broken or dysfunctional homes, often denied legitimate avenues of success, turn towards crime as an alternative means of achieving social recognition.

In Indian jurisprudence, the Juvenile Justice (Care and Protection of Children) Act, 2015 recognizes the need of care, protection, development, treatment, rehabilitation and social reintegration of children in conflict with law, keeping in mind a child-friendly approach. Furthermore, the Indian judicial system has aligned itself by actively participating through its membership in the UN Conventions such as Convention on Rights of Child 1989, UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing rules) and the UN Rules for the Protection of Juveniles deprived of their liberty, 1990.

The doctrinal intersection of criminal law and family law reinforces the argument that the state has a dual responsibility: to prevent crime by strengthening the family unit and to reform rather than retribute juvenile in conflict with law. This study underscores the urgent need for policy reforms and interventions aimed at strengthening family structures and providing rehabilitative frameworks that can redirect vulnerable juveniles away from the path of crime.

The research aims to study the effect of emotional neglect and domestic conflict within dysfunctional families and its contribution in the development of anti-social behaviour in juveniles. The study expands towards the global radius of international juvenile regulations and other relevant provisions that can be reflected in the domestic laws, suggesting various reformative measures in the juvenile justice system of India. This study underscores the urgent need for adopting policy reforms and interventions aimed at strengthening family structures and providing rehabilitative framework that can redirect vulnerable juveniles away from the path of crime.

Key words: emotional neglect, juvenile justice system, rehabilitative framework, social learning, UN Standard Minimum Rules for the Administration of Juvenile Justice.

1. Introduction:

Crime is characterised as antisocial, immoral, or wicked conduct that contravenes the esteemed norms, beliefs, conventions, and traditions of a certain society. Steven Jones has defined crime as an act which is both forbidden by law and revolting to the moral sentiments of the society. The purpose of criminal law is to punish criminals and

discourage future crimes, hence understanding what constitutes illegal behaviour is essential.

All illegal actions, in general, need to pass these standards-

1. Commission or omission of an act (actus reus)
2. Criminal Intent or Guilty Mind (Mens Rea)
3. Prohibited conduct under existing law
4. Backed by a sanction or punishment

Prof. Edwin H. Sutherland has suggested that no single theory can offer a satisfactory explanation for crime causation; therefore, in the absence of a single theory of crime causation, criminologists have offered different explanations to justify their own theory to explain delinquent behaviour. Most criminologists have preferred a multiple approach to criminal behaviour, which suggests that crime generates not as a result of one solitary factor but as a result of combination of variety of factors.

Factors that impact criminal behaviour include mobility, culture conflicts, political ideology, religion, economic condition, influence of media and social media, education and ecological influence. Sutherland opines that out of all the social processes, the family background has perhaps the greatest influence on criminal behaviour of the offender. This study aims to evaluate the impact of dysfunctional families in contributing to the development of criminal tendencies and primarily in juveniles.

2. Historical Evolution and Modern Ramifications:

In the past, as human civilisation evolved through different stages, the idea of crime appears to have changed along with social regulations. Only crimes against the state and religion were committed in the 12th and 13th centuries. Therefore, murder was not considered a crime, but treason, rape, and blasphemy were. Family ties were stronger than communal ties in the tenth century. Through self-redress and private retribution, the harmed individual and his close family members could seek amends. In order to absolve themselves of responsibility, the perpetrators would have to pay "bot" or "blood money"

as reparation.

Religion had a significant impact on civilisation in the past. Ordeals were viewed as a divine means to demonstrate an accused person's guilt or innocence. By the early 18th century, the notion that crime was a form of divine intervention had been abandoned, and scientific research on crime had emerged. It was decided that the offender was the only one who could be held criminally responsible for his crime. Although the technological developments of the early 21st century were celebrated, they also led to the emergence of cybercrimes, which had a detrimental effect on crime rates.

Throughout ages, there has been a significant shift in family arrangements. Ancient family structures were often extended or joint families with multiple generations living together and emphasizing collective solidarity and tradition. These families provided the child with security and made love and help accessible in the form of extended family. On the other hand, due to shifting societal attitudes and the tendency to abandon children without providing them with moral or emotional care, modern families have evolved to encompass a variety of forms, such as nuclear, single-parent, and same-sex households.

3. Constitutional Perspective:

The constitution of India, being the supreme law of the land, has bestowed certain powers on the Parliament to enact special laws for the welfare of children. The state is duty bound to make special provisions to safeguard the rights of children under the following articles:

- The prohibition imposed on the state under Article 15(3)¹ from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them does not prevent it from making any special provision for women and children. Exercising this right the Parliament has enacted several laws like Juvenile Justice (Care and Protection) Act, 2015, Protection of Children from Sexual Offences Act, 2012 (POCSO), Immoral Traffic Prevention Act, 1987, Child Labour (Prohibition and Regulation) Act, 1986, The Prohibition of Child Marriage Act, 2006.

¹ INDIA CONST.art.15, cl.3

- In accordance with Article 21A that guarantees free and compulsory education to all children of the age of 6-14 years, the state has enacted the Right of Children to Free and Compulsory Education Act, 2009²
- In pursuit of Article 39 of the Constitution, the state is imposed with the duty to prevent abuse of children³, provide them with opportunities and facilities to develop in a healthy manner, with freedom and dignity, and protect them from exploitation and moral and material abandonment⁴
- Article 45 of The Indian Constitution has empowered the state to make provisions for early childhood care and education to children below the age of 6 years.⁵
- Under Article 47 the Constitution has imposed a duty on the state to raise the level of nutrition and standard of living and to improve public health.⁶

4. Conceptual Frameworks:

This segment of the study highlights the key elements in relation to broken homes and the role of dysfunctional families in juvenile delinquency and related legislation.

- **Broken Homes:**

Family may be either structurally normal or a broken family. A structurally normal family is the one in which both parents are alive and live together in harmony and affection with their children. While a family is designated as broken if the children do not live with both the parents either because one of the parents is dead or a separation has occurred between the parents⁷

The broken home is a home, which is broken psychologically or physically. The former is described as a tyranny ruled over by its meanest member. Physically broken home is one in which one or both parents are missing, dead, divorced, deserted, or committed to prison. In a psychologically broken home there is a constant bickering, little respect for

² INDIA CONST.art21A

³ INDIA CONST.art39, cl.e

⁴ INDIA CONST. art, 39, cl f

⁵ INDIA CONST. art 45

⁶ INDIA CONST. art47

⁷ S.M.A. Qadri, *Ahmed Siddique's Criminology and Penology* 113 (6th ed. 2009).

the right of each individual and the child is pushed around or ridiculed. In such homes the child is too often rejected, never having the genuine experience of belonging and becomes, as a result, desolate, anxious, restless or often hostile.⁸

- **Juvenile Delinquency:**

The term “Delinquency” is derived from the Latin word “Delinquer” which means to omit. Juvenile Delinquency refers to a large variety of disapproved behaviour of children and adolescents and for which some kind of admonition, punishment or corrective measure is justified in the public interest.⁹

- **Juvenile Justice (Care and Protection) Act, 2015:**

Sec. 2(35) Juvenile means a child below the age of 18 years.¹⁰

Sec. 2(13) Child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offence.¹¹

- **Child Abuse:**

Child Abuse is not just physical violence directed at a child. It is any form of maltreatment by an adult, which is violent or threatening for the child. This includes neglect, physical abuse, and emotional, psychological or sexual abuse.¹²

- **Neglected Children:**

A neglected juvenile is an individual under 18 years of age whose need for safety, well-being, and development are insufficiently addressed by a parent or other guardian. The failure to deliver needed care, referred to as an act of omission, may be either deliberate

8 J.P.S.Sirohi, Criminology and Penology, Pg 108, (6th Edition, 2004).

9 Prof N.V. Paranjape, Criminology and Penology with Victimology, 2015, Pg no 626, (16th Edition, 2015)

¹⁰ Juvenile Justice (Care and Protection) Act, 2015, s. 2(35), no. 2 of 2016, Acts of Parliament, 2016 (India)

¹¹ Juvenile Justice (Care and Protection) Act, 2015, s. 2(13), no. 2 of 2016, Acts of Parliament, 2016 (India)

¹² Gov't of the Neth., *What Is Child Abuse?*, <https://www.government.nl/topics/child-abuse/what-is-child-abuse> (last visited Oct. 17, 2025)

or inadvertent and can result in considerable harm. It encompasses physical, medical, emotional, or educational neglect.

- **Criminal Personality:**

According to Morten Prince, Personality is the sum total of all the biological innate dispositions, impulses, tendencies, appetites and instincts of the individual and the dispositions and tendencies acquired by experience.

A criminal personality denotes a collection of psychological qualities and characteristics linked to persons who exhibit chronic illegal activity, including impulsivity, violence, diminished empathy, poor self-control, narcissism, lack of regret or guilt, extroversion, and psychoticism. This notion is associated with psychological theories indicating that internal mental and emotional characteristics, together with biological and environmental influences, may predispose an individual to criminal behaviour.¹³

- **Foster Care:**

“Foster care” means placement of a child by the committee for the purpose of alternate care in the domestic environment of a family other than the child’s biological family that has been selected, qualified, approved and supervised for providing such care¹⁴.

- **Special Home:**

“Special Homes” means an institution established by a state government or by a voluntary or a non-governmental organisation for housing and providing rehabilitative services to children in conflict with law, who are found, through enquiry, to have committed an offence and are sent to such institutions by an order of both.¹⁵

5. Criminological Theories Vis-à-vis impact of Family Dynamics on Juveniles:

- **Attachment Theory:**

¹³ Dr. S.R. Myneni, Criminal Psychology, New Era Law Publications, 184, (1st Edition 2018)

¹⁴ Juvenile Justice (Care and Protection) Act, 2015, s. 2(29), no. 2 of 2016, Acts of Parliament, 2016 (India)

¹⁵ Juvenile Justice (Care and Protection) Act, 2015, s. 2(56), no. 2 of 2016, Acts of Parliament, 2016 (India)

The Attachment Theory was propounded by a British psychiatrist and psychoanalyst, John Bowlby. This theory asserts that infants are biologically predisposed to form a strong emotional bond with their primary care-givers. This attachment is critical for a child's survival and has a lifelong impact on their social and emotional development.

According to Bowlby, the attachment system essentially asked the following fundamental question: is the attachment figure nearby accessible and attentive? If the child perceives the answer to this question to be “yes” or if he or she feels loved, secure, confident, behaviourally, he or she is likely to explore this environment and play with others and be sociable. However, if the child perceives the answer to this question to be “no” the child experiences anxiety and abandonment.¹⁶

- **Strain Theory:**

Robert Merton’s Strain Theory, is a sociological explanation for why some people commit crime or break rules. The theory explains how a gap between society’s goals and means to achieve them can lead to deviant behaviour. Social structures including families may create pressure by promoting success ideals while limiting access to legitimate opportunities. The strain theory remains useful for understanding links between inequality, social pressures and crime rates.¹⁷

- **Theory of Learning – Classical Conditioning**

Behaviouristic approach of personality states that only the study of directly observable behaviour and of the stimuli and reinforcing conditions that control it could serve as a basis to understand the human behaviour, normal and abnormal. The roots of behavioural perspective are in pavlov’s study of classical conditioning.¹⁸

This hypothesis delineates a form of learning in which an organism associates a neutral stimulus with a significant one, resulting in the neutral stimulus eliciting a newly acquired

¹⁶ R. Chris Fraley, Adult Attachment Theory and Research: A brief overview, Journal of personal and social psychology, <https://labs.psychology.illinois.edu/~rcfraley/attachment.htm#:~:text=Bowlby%20argued%20that%2C%20over%20the,with%20others%2C%20and%20be%20sociable> (last visited on 15th Oct. 2025).

¹⁷ Charlotte Nickerson, Merton’s Strain Theory of Deviance in Sociology, Simply Psychology, <https://www.simplypsychology.org/mertons-strain-theory-deviance.html> (last visited on 18th Oct. 2025).

¹⁸ Dr. S.R. Myneni, Criminal Psychology, New Era Law Publications, Pg no 192, (1st Edition 2018).

response. He formulated this notion in the late 19th and early 20th centuries, grounded in his renowned experiment with dogs.

6. Candid Portrayal of Dysfunctional Families:

The British Home Secretary, Mr. Butler, once said that the natural consequences of Broken Homes are lack of parental control, absence of security and want of love and affection towards children which are contributing factors for Juvenile Delinquency.

According to psychologists, the formation of the basic personality of a child is complete within the first ten to twelve years of his life, and it is obvious that the family's impact in this period is almost exclusive¹⁹. Sutherland opines that out of all the social processes, the family background has the greatest influence on the criminal behaviour of the offender.

Children predominantly interact with their parents and relatives inside the family unit and are likely to adopt criminal inclinations if they observe similar behaviour in their parents or family members. The family institution is expected to provide the fundamental requirements of children; it is crucial for a kid to perceive a sense of privilege and safety inside the family, as well as to feel loved by their parents.

A feeling of security, warmth, and dependability fosters in children the values of love, respect, and responsibility towards others. Consequently, the family unit serves as the primary context in which a kid unconsciously adapts to their surroundings and internalizes essential life values, like respect for others, faithfulness, reliability, and co-operation, via personal experiences.

A child raised in a dysfunctional household is predisposed to engage in anti- social behaviour. The absence of parental supervision resulting from death, divorce, abandonment, ignorance, or sickness may provide a conducive environment for children to engage in illegal behaviour. Moreover, frequent quarrels between parents, excessive

¹⁹ S.M.A. Qadri, Ahmed Siddique's Criminology and Penology, 112, (6th Edition, 2009).

control by one parent over the other, abusive behaviour towards children, unemployment, low income or continued long absence of parents and parental immorality may contribute to child neglect, resulting in a lack of appropriate avenues for the child's abilities and perhaps leading to criminal behaviour.

After a careful study of the family background of a number of delinquents, the following generalisations, which are significant from the point of view of crime causation, are deduced:

- The delinquents usually prefer to stay away from their family, parents and homes.
- The family life of most delinquents is usually disrupted, and their parents are either dead, deserted, divorced, alcoholic, or criminalistic.
- Experience has shown that most of the delinquents are subjected to physical punishment by the parents in their childhood; consequently, they hardly show any respect for the members of the family.
- Uncongenial conditions of home because of domination by one member of the family favouritism, jealousy over severity, and neglect also contribute to delinquency among members of a family.²⁰

Delinquents are encouraged to follow criminality in their homes. In either of the following ways:

- The parents may not themselves be associated with the criminal act, but they might deliberately avoid preventing their children from indulging in criminal acts.
- Children may learn criminal patterns through the process of imitation. They begin to learn similar behaviour from their parents or other members of the family.
- The parents who have embraced criminality as a way of life like those of professional thieves, pickpockets, and prostitutes, often train their children for the vocation²¹.
- Conversely, it is indeed accurate that a counter-process may occur in which criminal parents take all necessary measures to prevent their children from

²⁰ Prof N.V.Pranjape, Criminology and Penology with Victimology, Pg no 89, (16th Edition, 2015).

²¹ Donald Taft, Criminology- A cultural Interpretation, 1964 pg no 145, (Collier-Macmillan: London, 1964).

emulating their behaviour and to steer them away from criminality. A prostitute, for instance, typically ensures that her children are kept away from dubious professions.

7. Changing Family Dynamics:

Family is recognised as the cradle of personality and character in an individual's life. Revolutionary alterations in socio-economic situations have fundamentally transformed family structures. The family's function has diminished, and its self-sufficiency compromised owing to the external pursuits of its members. The modern wife is no longer restricted to fulfilling her conventional responsibilities.

The joint family structure in India is undergoing structural alteration owing to modernity, industrialization and urbanization. The ramifications of the evolving structure of childhood encompass heightened individualism, diminished social safety nets, altered intergenerational relationships, and a transformation in values.

The elevated cost of living in metropolitan regions necessitates that both parents engage in outdoor employment to financially support their families, thereby leaving their children at home without parental supervision. Furthermore, contemporary luxuries entice youth to engage in illicit methods to fulfil their desires. All these variables collectively contribute to a significant rise in juvenile delinquency in metropolitan settings. The swiftly evolving dynamics of modern day life complicate the ability of children and adolescents to adapt to new lifestyles. They face the issue of cultural clash and are unable to distinguish between good and wrong. This may compel them to commit a crime.

8. Snippets of the provisions under the Juvenile Justice Act

The Juvenile Justice Act penalizes acts of cruelty against children, the employment of children for acts such as begging, administering narcotic substances to children, utilizing them for the supply or smuggling of alcoholic liquor or narcotic substances, and the physical, mental and sexual exploitation of children.

The legislation has enabled both state and central governments to create diverse childcare facilities, including Children's Homes, Fit Facilities, Foster Care, Observation Homes, Open Shelters, Places of Safety, Special Homes, and specialist adoption agencies for the protection and rehabilitation of children.

The legislation has established many bodies, including the Child Welfare Committee and the Juvenile Justice Board, to promote the welfare and social reintegration of children in conflict with the law and those in need of care and protection.

The legislation designates the Special Juvenile Police Unit, Child Welfare Police Officer, Probation Officer, and District Child Protection Unit to investigate and visit all child care institutions to ensure operational transparency and prevent child abuse within these facilities. The roles, responsibilities, and powers are clearly delineated under the legislation.

9. Global Perspective

Introduction and Overview of the Juvenile Justice System The "Havana Rules," officially referred to as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, were enacted in 1990 to set basic worldwide standards for juvenile justice systems.

Their principal objectives are to diminish the detention of minors, safeguard their fundamental rights, and advocate for alternatives to incarceration, underscoring that liberty restriction should be a measure of last resort. The regulations include directives for professionals overseeing juvenile justice, encompassing all aspects from arrest and trial to detention facility criteria and child welfare during and post-detention.

10. Personalised Care

The needs, condition, and specific requirements of each kid must be evaluated individually to guarantee they receive suitable care. **Emphasis on Rehabilitation and Reintegration:** The regulations advocate for the reform and rehabilitation of children

rather than only punitive approaches. Access to Fundamental Services: Minors should have access to education, healthcare, recreational activities, and the right to sustain connections with their community and family.

The Beijing Rules constitute the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, providing recommendations for member states to ensure fair, compassionate, and effective treatment of juvenile offenders. They do not establish rules for Beijing; instead, they provide a comprehensive framework for nations to enhance and refine their juvenile justice systems. Fundamental principles encompass prioritising rehabilitation, employing custody solely as a last option, guaranteeing legal representation, safeguarding privacy, and addressing adolescents' social, educational, and occupational requirements.

11. Fundamental Tenets of the Beijing Rules Prevention and Wellness

The regulations underscore proactive strategies to enhance adolescent welfare, leveraging families, educational institutions, and communities to facilitate personal growth and mitigate delinquency.

- **Equity and Non-Discrimination:** All minors, irrespective of colour, gender, or other status, must be treated equitably under the law.
- **Emphasis on Rehabilitation:** The main objective is to promote the personal growth of juvenile offenders and reduce their necessity for legal involvement.
- **Detention as a Final Measure:** Imprisonment should be evaded wherever feasible, and when required, it should be for the minimal duration and segregated from adult institutions. Juveniles possess the right to legal representation, the right to contact with their attorneys, and the right to an equitable legal process that minimises unwarranted delays. The regulations are designed to safeguard the mental and physical well-being, privacy, and dignity of minors.
- **Alternatives to incarceration:** States have to endeavour to substitute incarceration with community-oriented strategies, including stringent oversight or placement within familial or educational environments. Professionalism and Training:

Individuals engaged in the juvenile justice system must possess sufficient training and exhibit professionalism in their conduct.

12. Conclusion and Suggestions:

The Role of Counsellors in Crime Prevention:

“Ask for help. Not because you are weak. But because you want to remain strong.”

~LesBrown

The collaboration between mental health professionals and law enforcement to preemptively prevent crime is somewhat novel. Therapists are legally obligated to report abuse involving the elderly and children, as well as any indications from a client of severe intent to harm themselves or others. “The more you can talk to a therapist about, the more likely you will be helped to change your behaviour”, says licensed Marriage and Family Therapist , David Joel Miller when answering the question Do Therapists Have to Report a Crime? After home, school is the place where most of the daily hours are spent.

It is important that a child feels safe and heard at places other than home. Development of a child and nurturing of values shall be embedded in a safe and secure environment where seeking help is accessible in the form of counsellors making the child feel heard and leaving traces of improvement and optimism. Appointment of counsellors should be made mandatory at all educational institutes where the counsellor plays a crucial role.

Various awareness sessions should be conducted at multiple educational institutions where the counsellor is made to feel more like a friend than a doctor or psychologist. The Central Government's child line services are accessible 24/7 for children requiring care and protection from imminent abuse. These programs link children with relevant authorities such as medical professionals, counsellors, and law enforcement agencies. Nevertheless, effective knowledge of these amenities remains deficient in society. “We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait; the child cannot! Right now is the time his bones are being formed, his blood is being made and his senses

are being developed. To him, we cannot answer 'tomorrow'; his name is today. - "Gabriela Mistral"

One study which brought out the element of parental rejection as a contributory factor in delinquency was made by Ruth Topping at the New York State training school; the personality characteristics of the aggressive delinquents included an acute desire for acceptance and affection, aggressive speech flavoured with threats to kill people and a sense of having a hard life and being faced with unequal odds. Another study of 500 children in a Michigan child guidance clinic revealed that many of the aggressive ones in the sample had experienced psychological rejection by their parents. The aggressive attitudes can be attributed to the inadequate socialising influence due to lack of affection²²

It is indeed accurate that a counter-process may occur in which criminal parents take all necessary measures to prevent their children from emulating their behavior and to steer them away from criminality. A prostitute, for instance, typically ensures that her children are kept away from dubious professions.

²² S.M.A. Qadri, Ahmed Siddique's Criminology and Penology, 113, 6th Edition, 2009

VICTIM COMPENSATION SCHEME IN INDIA: AN ANALYSIS

- Aditya Gadve

Abstract

One of the most pivotal elements in the Criminal Justice System of India is the Victim Compensation Scheme, which provides financial assistance to the victims of crimes and their families. The goals of the scheme are to reduce the physical, emotional, and economic trauma of the victims and to facilitate their rehabilitation process. This paper has looked at the effectiveness of the Victim Compensation Scheme on a national level in India, examining its strengths, weaknesses, and areas for improvement. This fund facilitates the operation of state-level compensation schemes. The amount of compensation varies with the nature and severity of the crime. Specifically, this amount is pre-specified for different categories of victims. Despite this excellent initiative, several challenges impede the effectiveness of the scheme. These include a general unawareness among victims and other stakeholders, delays in procedures, and variations in the amount of compensation and eligibility criteria within different states. This research examines how these challenges have impacted the overall effectiveness of the scheme and looks to identify potential areas of reform. This paper examines the strengths and weaknesses of the scheme and outlines the improvements that are needed in awareness, accessibility, and procedural efficiency by analyzing existing literature, case laws, and stakeholder opinions and views. The research also examines the models of other countries and offers an insight into international best practices that could be replicated within an Indian context. The findings of the present study add to the current understanding of the Victim Compensation Scheme of India and help inform policy reforms and implementation strategies to further improve the effectiveness of the scheme in providing relief and rehabilitation to victims of crimes. By identifying areas for improvement and proposing evidence-based recommendations, the study hopes to support the development of a more responsive and victim-centric compensation scheme that meets the complex needs of victims and their families.

Key Words: - Victim, Compensation, India, Rehabilitation, Policy Reforms

1. Introduction

Compensation to the victim is an important aspect of justice, whereby the person who suffered because of the heinous crime gets financial support to reconstruct his or her life. Though the Indian law recognizes such compensations, no uniform scheme exists across states, resulting in large discrepancies. This paper critically analyses the prevailing state-specific victim compensation schemes, examines the emerging disparities, and attempts to propose a nation-wide compensation structure befitting the doctrine of justice, equality, and fairness.

It will focus on crimes like acid attacks, murders, and sexual offenses, which leave the victim and their legal heirs to bear long-term physical, psychological, and financial burdens. This inconsistency in state compensation schemes adds to these burdens and is in contradiction to the equality before law guaranteed by the Constitution.

2. Aims and Objectives of the Paper

- **Aim:**

To critically examine the functioning, adequacy, and implementation of the Victim Compensation Scheme (VCS) in India and to suggest reforms for improving justice delivery to victims of crime.

- **Objectives:**

- **To trace the evolution of victim compensation laws in India**, particularly under Section 357A of the Code of Criminal Procedure (CrPC), 1973, and analyse how the legislative framework has developed to support victims of crime.
- **To study the implementation of victim compensation schemes across different states**, identifying disparities in procedures, quantum of compensation, and accessibility.
- **To evaluate the role of judiciary, legal aid authorities, and police in ensuring victims receive compensation**, with a focus on best practices and shortcomings.
- **To assess the adequacy of the compensation amounts** in relation to physical,

emotional, and economic harm suffered by victims.

- **To identify gaps and challenges in the current scheme** (e.g., procedural delays, lack of awareness, bureaucratic hurdles), and propose policy and legal reforms.
- **To highlight the role of victim compensation in restorative justice**, and how it contributes to the broader aim of victim empowerment and rehabilitation.

3. Rationale and Significance

The Victim Compensation Scheme (VCS) in India represents a pivotal shift in the country's criminal justice framework, moving from an offender-centric system toward a more victim-oriented approach. Historically, the Indian legal system has prioritized the prosecution and punishment of offenders, often overlooking the needs and rights of victims. However, crime leaves a deep and lasting impact on victims—physically, emotionally, and financially. Recognizing this, the introduction of Section 357A in the Code of Criminal Procedure (CrPC), 1973, was a landmark development that mandated state governments to create compensation schemes for victims who have suffered harm as a result of a crime. Despite its progressive intention, the actual implementation of VCS across states remains inconsistent, with numerous reports highlighting issues such as low awareness among victims, procedural delays, inadequate compensation, and bureaucratic hurdles in accessing relief. This research is significant as it seeks to critically analyse the effectiveness of the scheme, highlight state-wise disparities, and suggest measures for reform. The study gains further importance in the context of India's obligations under international human rights frameworks, which emphasize the right to justice, compensation, and rehabilitation for crime victims. By addressing the shortcomings of the current system, this research can contribute to creating a more balanced and humane justice process that not only punishes offenders but also adequately supports and restores victims. Crime not only affects the state but severely disrupts the life of the victim—emotionally, physically, and financially. While the criminal justice system in India traditionally focuses on punishing the offender, victim rights have historically received limited attention. The Victim Compensation Scheme (VCS), introduced under Section 357A CrPC, marked a significant shift toward a victim-centric approach by recognizing the state's

responsibility in ensuring support and reparation.

However, despite its progressive intent, the implementation of the scheme across various states has been done inconsistently, plagued by many challenges in regard to low disbursal rates, delays and insufficient compensation. It is here that this inconsistency lies as a critical area of legal research and reform.

4. Research Problem

The fundamental research problem that forms the foundation of this study is the large gap that exists between the legal framework governing victim compensation in India and its actual implementation on the ground. While Section 357A of the Code of Criminal Procedure, 1973, casts a statutory obligation on every state government to establish a Victim Compensation Scheme (VCS) for providing financial support to victims of crime, the translation of this mandate into practice has been spotty, fragmentary, and often ineffectual. The victims throughout the country go through a host of challenges in receiving their compensation, regarding non-awareness about their rights, complicated procedural needs, lack of support at legal and institutional levels, and infirmities within the processing and disbursal of their compensation. No uniformity has been maintained amongst the states as regards quantum of compensation, eligibility criteria, or method of enforcement, leaving similarly placed victims unequal before the law. Further, most of the victims, especially from marginalized sections, cannot negotiate the legal system to claim their entitlements because of socio-economic barriers and lack of legal literacy of both their rights and procedures. The existing scheme also fails to address the psychological trauma and long-term rehabilitative needs of victims, thereby reducing the scheme to a tokenistic monetary relief rather than a restorative tool of justice. The present research, therefore, critically investigates why the victim compensation scheme, despite its statutory underpinning, failed to get translated into meaningful measures of relief for victims and how institutional, procedural, and policy-level reforms can bridge this chasm. The study shall identify whether the present scheme meets its objectives and what changes are necessary to make it an effective instrument of victim-centric justice in India.

5. Who are victims

The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power brought about an internationally important turning point in the development of the pro-victim movement. This Declaration defined a ‘victim’ as an individual who has suffered harm, physical or mental injury, emotional suffering, economic loss, and impairment of fundamental rights through acts or criminal laws, regardless of whether the perpetrator has been recognized, captured, or prosecuted.¹

The victim is for the first time defined under newly inserted section 2(wa) by the Criminal (Amendment) Act, 2009 and according to the “victim means a person who has suffered any damage or injury suffered because of the conduct or omission for which the accused person has been prosecuted, and the term “victim” includes his or her guardian or legal heir”. In 2009 the Criminal Amendment Act provided an enlarged definition of victim which not only included the injured person himself but also the dependents of the victim.²

In the case of **Jagjeet Singh and Others (S) v. Ashish Mishra Alias Monu**³ and Another, while discussing the rights of victims in the criminal justice system, the Supreme Court elaborates on the definition and the importance of victim participation. The Supreme Court stressed that "representation should be provided to the victims during criminal proceedings" and confirmed that a victim has the right to appeal an acquittal order.

6. Objective of Compensation

Compensation means anything given to make things equal; to compensate for loss, compensation, remuneration, or payment. Recompense means to give monetary or in-kind recompense for loss or injury; to pay money to victims of crime, or to those persons' legal representatives, or to anyone who has suffered financial or non-financial loss. Compensation for victims of crime means something given in reparation, i.e., equal rendered. Compensation is to compensate the victim or legal representative of the deceased for their losses.

¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

² The Code of Criminal Procedure (Amendment) Act, No. 5 of 2009, § 2(wa), India Code (2009).

³ *Jagjeet Singh & Ors. v. Ashish Mishra alias Monu & Anr.*, (2022) 9 SCC 321 (India).

According to Black's Law Dictionary, 'Compensation means payment of damages or any other act that court order to be done by a person who has caused injury to another and must therefore make the other whole.'⁴

In India, the concept of compensation is mentioned and can be awarded to victims of crime under five statutory provisions. The statutory provisions include the Fatal Accidents Act, 1855; Motor Vehicles Act, 1988; Criminal Procedure Code, 1973; Probation of Offenders Act, 1958; and Constitutional Remedies for Human Rights violation.

In the Shantilal case and **Smt. P. Ramadevi v. C.B. Saikrishna case**, Supreme Court of India held that compensation is something given to make things equivalent, anything is given to make amends for loss, recompense, remuneration, or pay. Hence in the legal sense compensation can mean an act of the court that orders a certain sum of money that the person dignified would receive equal value for his loss or be compensated for his injuries.⁵

The Hon'ble Supreme Court emphasized the necessity of victim compensation in **Maru Ram v. Union of India**⁶ "A crime victim cannot be a 'forgotten man' in the criminal justice system." He is the person who has suffered the most. His family is distraught, particularly because of the death and bodily injuries. This is in addition to issues like loss of honour and shame. An honour or a life lost cannot be restored, but cash recompense can provide some comfort."

7. Historical overview of victim compensation in India

Victim compensation is not a novel concept. Traditionally, criminal justice systems worldwide have recognized that reparation is owed to victims of crime. In India, it gained formal recognition in the 1980s, finding further development with the addition of Section 357A of the Criminal Procedure Code (CrPC) in 2009, making it compulsory for all states to formulate a scheme for victim compensation. Now, with the passage of the Bhartiya Nagarik

⁴ Black's Law Dictionary 354 (Bryan A. Garner ed., 11th ed. 2019).

⁵ Shantilal v. State of M.P., (2007) 11 S.C.C. 243 (India); Smt. P. Ramadevi v. C.B. Saikrishna, (1988) 3 S.C.C. 438 (India).

⁶ Maru Ram v. Union of India, (1981) 1 S.C.C. 107, 147 (India).

Suraksha Sanhita (BNSS), Sections 357A and 357B of the CrPC have given way to Section 396 of the BNSS, so continuity in victim compensation is ensured along with cleaning up the legal framework.⁷

The implementation has been anything but uniform despite this provision. While some states have been quite proactive in establishing comprehensive compensation schemes, others lag behind either due to financial constraints or bureaucratic inefficiencies. This inconsistency thus results in differences in how victims are supported across different regions in India, with many victims either receiving inadequate or delayed compensation.

The Honourable Supreme Court, in the case of **Murali S Deora vs. Union of India**⁸ [2001 (Section 357A, 1973) SCC 765], upheld that the fundamental right guaranteed under Article 21 of the Constitution provides that no person shall be deprived of life without the due process of law. The Court insisted that the Right to Life ensures not only mere animal existence but also a human life and livelihood. In the instance of victims of acid attacks, such as the petitioner in this case, their right to lead a dignified and fulfilling life has been irreparably demolished due to the actions of the perpetrator. The Supreme Court has underscored the fact that no amount of compensation can restore what is lost; the state has an unequivocal obligation to protect victims and ensure that they are adequately supported financially, physically, and emotionally.

This decision underlines the importance of victim compensation as an integral part of justice and places the onus on the state to safeguard the interests of victims, especially those with irreparable loss, such as acid attack survivors. These strong legal principles notwithstanding, the reality remains that many states cannot give timely or adequate compensation, leaving the victims vulnerable without support.

8. Development of Concept of Victim Compensation

Compensation to victims is considered as a major component towards ensuring victim justice. Right to compensation has been given an important place under the United Nations

⁷The Code of Criminal Procedure, 1973, No. 2 of 1974 (India), § 357A (as inserted by Criminal Procedure (Amendment) Act, No. 5 of 2009) (India); The Bharatiya Nagarik Suraksha Sanhita, 2023, § 396 (India).

⁸8Murli S. Deora v. Union of India, (2001) 8 S.C.C. 765 (India).

Declaration of basic Principles of Justice, 1985, which was adopted by the General assembly at its 96th Plenary Meeting, 29th November, 1985.⁹ This declaration provides that the State is responsible for compensating victims, in case compensation from the offender or from other sources is not available.

The Malimath Committee in its report in 2003¹⁰ addressed the issue of victim compensation and recommended that the victim shall be given a right to adequate compensation. The Committee recommended that in case of compensation being inadequate, victim shall have a right to prefer an appeal. The obligation of State to recompense the victim was recognized irrespective of the status of the offender, or whether the offender was apprehended or not, convicted or acquitted. Setting up of Victim Compensation Fund under the Legal Services Authority was also recommended.

226th Report of Law Commission of India, 2009¹¹ was presented before the Supreme Court of India for the inclusion of acid attacks as specific offences in the Indian Penal Code and a law on compensation for victims of crimes. The Commission recommended for enactment of a law to establish Criminal Injuries Compensation Boards at central, state and district levels to ensure compensatory justice to victims.

9. Constitutional Framework and Legislative History

Compensation in India has been ordered to be paid in public law remedy with reference to Article 21 of the Constitution.¹² The Supreme Court, in cases where the State or other authorities failed to protect life, dignity, and liberty of the victims, ordered the payment of monetary compensation along with rehabilitative support by way of doing justice to the victims.

⁹Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

¹⁰Gov't of India, Ministry of Home Affairs, Committee on Reforms of Criminal Justice System: Report 151–54 (Mar. 2003) (Chairman: Justice V.S. Malimath).

¹¹ 11Law Comm'n of India, 226th Report on Compensatory Justice for Victims of Crime (2009), <https://lawcommissionofindia.nic.in/reports/report226.pdf>. (last visited on October 14, 2025).

¹² Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.R. 225 (India) (recognizing the right to life and personal liberty under Ind. Const. art. 21 and allowing remedies including compensation).

Some amendments have been carried out in the criminal laws in India in the last few years giving rights to victims of crime at different stages of criminal justice system. One such development that has taken place in India is award of compensation to a victim of crime.

41st Report of the Law Commission of India which was submitted in the year 1969, dealt with section 545 of the Code of Criminal Procedure of 1898 and stated that the importance of the recoverability of compensation ought to be enforceable in a civil court in the same way as the public remedy to tort is available.¹³ The meaning of the word “**substantial**” excluded all cases where nominal compensation may be found recoverable. The Code of Criminal Procedure Bill, 1970, which attempted to revise Section 545 and reintroduced it in the shape of Section 357 as it stands today in the Code of Criminal Procedure, 1973.¹⁴ The word “substantial” was deleted and it changed the entire approach to demarcation. Further, two new sub-sections were added. Subsection (3) of the section contemplates payment of compensation, even when no fine is imposed on the accused. Subsection (4), on the other hand, deals with the jurisdiction and powers of courts in respect of this section. It states that an Appellate Court, the High Court, or any other superior court may pass an order for the award of compensation while exercising revisionary powers.

Section 357 of the Cr.P.C. covers two contingencies. First, where the sentence is one including a fine or a sentence, including a sentence of death, of which the fine forms part; in that contingency the court, under subsection (1), is empowered to direct that out of the fine recovered the whole or part should be applied in the manner indicated in that subsection. But the statute goes further and covers the contingency where the sentence passed is not one including a fine. Under subsection (3) of Section 357, the court, at the time when judgment is delivered, is empowered to order the accused person to pay by way of compensation a certain sum to the person who has suffered loss or injury due to the crime committed.¹⁵

¹³Law Commission of India, Forty-First Report: On the Code of Criminal Procedure, 1898, and the Proposed Amendments 1969, paras.

¹⁴Section 545 CrPC and the recoverability of compensation in civil courts as a public law remedy; noting that the term “substantial” excluded nominal compensation and that the 1970 CrPC Bill revised § 545 into § 357 CrPC, 1973, deleting “substantial” and adding two new sub-sections).

¹⁵ Code of Criminal Procedure, § 357 (India) (providing for two contingencies: (1) where the sentence includes a fine, empowering the court under subsection (1) to apply the fine for compensation; and (2) where the sentence does not include a fine, empowering the court under subsection (3) to order the accused to pay compensation to the victim at the time of judgment).

A reading of Section 357 of the Cr.P.C. thus reflects the foresightedness of the legislature in providing for a range of categories entitled to receive compensation. These include the “costs incurred in prosecution” by means of Section 357(1a); “any person” who has suffered loss or injury due to the offense; “persons” who, under the Fatal Accidents Act, 1855, have a right to claim damages from the person convicted; and a “Bonafide purchaser” of the property which formed part of the offense.¹⁶

10. Current situation of victim compensation schemes

The current situation of victim compensation schemes in India is marked by significant disparities across different states, leading to an uneven distribution of financial support for victims of heinous crimes.

- **Variations across states**

Under Section 357A, each state in India was mandated to draft its own victim compensation scheme, leading to a patchwork of different standards. With the introduction of Section 396 of the BNSS, the framework for victim compensation continues, but disparities remain. Compensation amounts, eligibility criteria, and procedural requirements vary diametrically between states.

These differences often stem from the financial capacity of individual states and their political will to prioritize victim welfare. Resulting in some States establishing more progressive schemes with higher pay outs, while smaller states and Union Territories lag behind due to limited financial resources or other priorities.

- **Delayed disbursement**

Victims often face significant delays in receiving compensation, which can take weeks or even months. This delay exacerbates their financial distress and may hinder access to timely medical treatment and support services.

¹⁶ Code of Criminal Procedure, § 357(1)(a), (3) (India) (providing for compensation to cover costs incurred in prosecution, any person who has suffered loss or injury due to the offense, persons entitled under the Fatal Accidents Act, 1855, and bona fide purchasers of property forming part of the offense).

Unable to cope with the prolonged wait for compensation, many victims are forced to seek judicial intervention by filing writ petitions under Article 226 of the Constitution. For instance, in **Rajesh Thoppil vs. DLSA Kannur**¹⁷, the petitioner, a victim of an acid attack, lost his eyesight and was left without interim compensation for over six months following the incident. The High Court had to intervene to ensure that he received the necessary financial support. Similarly, in **Rincy vs. State of Kerala**¹⁸, Rincy and her minor son, who were brutally attacked with acid in 2015, had yet to receive their full and final compensation as of 2024. She, too, had to approach the High Court to compel the authorities to fulfil their obligation. These cases highlight the systemic inefficiencies in disbursing the victim compensation timely.

11. Judicial Approach

The Supreme Court, in the case of **Suresh and Anr. V. State of Haryana**¹⁹, highlighted certain inherent limitations in Section 357. These limitations include the fact that Section 357 can only be invoked upon conviction, and even then, it is at the discretion of the judge and subject to the financial capacity of the accused to pay. Another limitation is the considerable time taken in the disposal of criminal cases, while victims often require immediate relief and cannot afford to wait for a lengthy conviction process. Additionally, the amount of compensation depends on the financial capacity of the accused, for which evidence is rarely collected. Victims often face challenges in making a representation for compensation due to a lack of legal aid or other resources. Given the low conviction rates, Section 357 is considered insufficient in addressing the needs of the victims.

Expressing concerns for the well-being of crime victims, the Supreme Court, in the case **State of Gujarat v. Hon'ble High Court of Gujarat**²⁰, recommended that the State should enact a law to allocate a portion of wages earned by prisoners as compensation for deserving

¹⁷Rajesh Thoppil v. District Legal Services Authority, Kannur, W.P.(C) No. 29756 of 2024, ¶ 3, 2025 Ker. 1204 (Ker. H.C. Jan. 8, 2025).

¹⁸18Rincy v. State of Kerala, WP(C) No. 35297 of 2023 (Ker.) (Oct. 28, 2023).

¹⁹Suresh and Anr. V. State of Haryana is on, <https://indiankanoon.org/doc/42131728/>, (last visited on September 15, 2025).

²⁰State of Gujarat v. Hon'ble High Court of Gujarat is on, <https://indiankanoon.org/doc/199405/>, (last visited on September 14, 2025).

victims. This compensation could be paid directly to the victims or through a common fund established for this purpose or through another feasible method. The importance of reparations, restitution, and protection of victims' rights was emphasized, as the justice system would lose its meaning if victims were not properly attended to.

In the case of ***Bodhisattva Gautam v. Subhra Chakraborty***²¹, the Supreme Court ordered the appellant to pay interim maintenance of Rs. 1,000/- per month to the victim during the pendency of the criminal case. The Court recognized the need to provide immediate relief to the victim.

In ***Palaniappa Gounder v. State of Tamil Nadu***²², the Supreme Court observed that compensation orders under Section 357(1) could only be issued when the court imposes a fine or a sentence that includes a fine. However, with the introduction of Sections 357A and 357B, the scope of the victim compensation framework expanded. Prior to this amendment, it was solely the responsibility of the accused to compensate the victim after the trial, while the State had no obligation to provide compensation. The victim compensation scheme is retrospective in nature, ensuring that deserving victims are not denied compensation even if the crime occurred before the implementation of the scheme. Compensation under Section 357-A is granted when a fundamental right of the victim is violated, and denying or delaying compensation would perpetuate such violation and inflict grave inhumanity on the victim.

In the case of ***Ashwani Gupta v. Govt. of India***²³, the Delhi High Court recognized that mere punishment of the offender may not offer significant solace to the victim's family. As civil action for damages can be a lengthy and complex process, the compensation provided under Section 357 would serve as a useful and effective remedy.

A three-Judge Bench of the Delhi High Court in ***Karan v. State NCT of Delhi***²⁴, reiterated that there exists a mandatory duty on the Court to apply its mind to the question of victim compensation under Section 357 of the CrPC in every criminal case. The court is duty-bound

²¹*Bodhisattva Gautam v. Subhra Chakraborty* is on, <https://indiankanoon.org/doc/642436/>, (last visited on September 14, 2025).

²²*Palaniappa Gounder v. State of Tamil Nadu* is on, <https://indiankanoon.org/doc/662559/>, (last visited on September 15, 2025).

²³ *Ashwani Gupta v. Govt. of India* is on, <https://indiankanoon.org/doc/1488982/>, (last visited on September 15, 2025).

²⁴*Karan v. State NCT of Delhi* is on, <https://indiankanoon.org/doc/84704070/>, (last visited on September 15, 2025).

to provide reasons, in every criminal case, based upon which it has exercised its discretion in awarding or refusing the compensation. While observing that the quantum of the compensation is to be determined by the courts, based on factors such as the gravity of the offence, severity of mental and physical harm/injury suffered by the victim, damage/losses suffered by the victims and the capacity of the accused to pay, the court laid down certain guidelines and steps to be followed in this regard.

12. Conclusion

Thus, victim compensation laws, being an integral part of the criminal justice system, as they seek to provide amelioration to the victim in the form of financial assistance and support to the victim of crime, have seen significant improvement in India in recognizing and addressing the rights of victims, though there still remain areas which are to be considered. Some of such areas are: the limited scope and inadequate awareness among victims; complicated and time-consuming process of compensation; inconsistency in the award of compensation; insufficient funding by the government; need for rehabilitation and support services alongside monetary compensation; incorporation of marginalized and vulnerable victims into the system.

There is a need felt for the introduction of legislations as in other States such as Canada, Australia, England, New Zealand, Northern Ireland and the USA providing for restitution by courts administering criminal justice. However, till comprehensive legislation is enacted, Victim Compensation Schemes in India should be treated as a broader institution beyond the scope of Section 357 or Section 357A. These schemes should encompass a program which coordinates criminal provisions, civil remedies, rehabilitative assistance, role of courts and state liability. Existing laws in India need to be reformed and redesigned to meet the international standards. Victims also need to be involved and participatory, not for the purposes of making recommendations only but as active participants in reforming the compensation scheme into an inclusive process that empowers them.

The present procedure to get compensation under most schemes is cumbersome and inflexible, and needs to be simplified. Requirements like medical reports have the effect of

delaying compensation, which may well be urgently required by the victim. Provisions for interim compensation should also be specified and made. Furthermore, most schemes appear to be content with merely providing compensation and do not take into account the rehabilitative measures that are necessary and the psychological trauma the victim has undergone. Psychological support and rehabilitative measures should be specified to facilitate the victim's reintegration into society. Coordination among the various components of the justice delivery system, namely, courts, police, District Legal Services Authorities, and State Legal Services Authorities, should be facilitated in this direction. Every agency should enlighten the victim and facilitate her receiving compensation as quickly as possible. Additionally, the courts themselves, at the end of a trial when they feel that such assistance is required, should recommend compensation.

Since compensation is still a nascent doctrine in this country, the courts must be more proactive and empathetic in their approach. The award of compensation should receive as much emphasis as the conviction and sentencing elements. The courts should function as protectors of the needy by offering significant support to victims across various spectrums, with rehabilitation and restitution playing an integral part.

ROLE OF TECHNOLOGY IN CRIME PREVENTION

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Abstract:

The rise of sophisticated technological concepts has transformed the core ideas of preventing crimes, leading to a time when digital advancements serve as tools for both active police work and intricate systems of monitoring control. This study thoroughly examines how technology interacts with crime prevention methods, placing its focus in the context of digital criminology, algorithmic fairness, and predictive security systems. It explores various aspects that shape these interactions.

Contemporary crime prevention methods now focus more on predicting potential threats rather than reacting to them immediately, utilizing advanced technologies such as AI, machine learning, and real-time analysis for better outcomes. Closed-circuit television (CCTV), enhanced by facial recognition software, automated license plate recognition systems, biometric authentication tools, and geospatial crime mapping, has been intricately integrated into law enforcement frameworks. These tools enhance situational awareness and operational agility by strategically deploying policing resources based on predictions made from historical crime data and behavior patterns. They provide valuable insights that can be used to make informed decisions about where and when police should intervene. This approach ensures efficient use of limited resources and improves overall effectiveness in combating crime.

The growth in cyber-forensic tools and digital investigation techniques has broadened the scope of crime prevention to online spaces, where cybercrimes, digital extortions, and identity thefts become more complex. Forensic data extraction, digital footprint tracing, and blockchain-based evidence management systems are improving the precision and acceptance of digital evidence in legal cases.

The Incorporation of these technologies into the criminal justice system presents significant difficulties. Algorithmic opacity, data discrimination, and systemic surveillance bias can exacerbate pre-existing social disparities and unfairly target marginalized groups. The unchecked

use of surveillance systems without proper supervision leads to major concerns about privacy loss, misuse of data, and lack of democratic control.

This study combines various disciplines, drawing insights from criminology, IT, law, and public policy to examine both the advantages and challenges of using tech for crime prevention. Technology can greatly improve police efficiency and prevent crime when used correctly, but it depends on proper use, open government, and strict rules for this to work well. Without these protections, the tech legal system could turn into an electronic dictatorship in disguise for enhancing security.

In conclusion, this research adds to discussions about how digital changes affect police work, providing an insightful look at both benefits and risks from technological advancements in crime reduction. Innovations must be guided by ethical considerations, efficiency in service delivery should align with equitable outcomes, and safeguarding against threats requires respect for civil liberties.

Key words : Predictive policing, algorithmic surveillance, biometric security, cyber-forensics, digital criminology, crime analytics, ethical governance, law enforcement technologies.

1. Introduction:

In the age of digital transformation, the framework for crime prevention has experienced a significant evolution. The previously reactive, incident-driven model of policing is progressively being replaced by technology-driven, predictive strategies aimed at foreseeing criminal activities before they occur. The incorporation of artificial intelligence (AI), machine learning algorithms, biometric technologies, and real-time surveillance systems has transformed the operational methods of law enforcement agencies, allowing them to discern patterns, chart criminal behavior, and allocate resources more effectively. These advancements are not simply improvements in operations; they signify a fundamental restructuring of the relationship between the criminal justice system and data, governance, and civil liberties.¹

¹ Richard A. Berk, Annual Review of Criminology, Artificial Intelligence, Predictive Policing and Risk Assessment for Law Enforcement <https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-051520-012342> (last visited on 12th Oct. 2025)

This study aims to investigate how emerging technologies are transforming crime prevention strategies within the dynamic realm of digital criminology. By analyzing the intersection of predictive policing, algorithmic fairness, and cyber-forensics, the research delves into the dual nature of innovation in law enforcement. While sophisticated tools such as facial recognition-enabled CCTV, automated license plate recognition (ALPR), geospatial crime mapping, and blockchain-based evidence systems provide considerable improvements in efficiency and accuracy, they also introduce serious ethical and legal dilemmas. Concerns such as algorithmic opacity, data-driven discrimination, and systemic surveillance bias pose risks of worsening existing social disparities and violating fundamental rights.²

Moreover, the digitization of crime, which appears in forms such as identity theft, cyber extortion, and online fraud, necessitates a corresponding advancement in policing strategies. Digital forensics, footprint analysis, and decentralized ledger technologies have become essential in addressing these crimes. However, the swift implementation of these tools frequently outstrips the establishment of comprehensive oversight mechanisms and legal protections.

By employing an interdisciplinary framework that incorporates criminology, information technology, legal studies, and public policy, this paper provides a critical analysis of both the potential benefits and risks associated with technology-driven crime prevention. It posits that the integration of technology within criminal justice systems should adhere to the principles of ethical governance, transparency, and accountability. In the absence of these guiding principles, the technologies intended to bolster public safety could undermine democratic values and convert the justice system into a tool of unrestrained control.³

2. Evolution of Crime Prevention Approaches

- **Traditional Crime Prevention**

² P. Karthikeyan, Hari Mohan Pande, Velliangiri Sarveshwaran , Artificial Intelligence and Blockchain in Digital Forensic, <https://www.taylorfrancis.com/books/edit/10.1201/9781003374671/artificial-intelligence-blockchain-digital-forensics-karthikeyan-hari-mohan-pande-veliangiri-sarveshwaran> (last visited on 14th Oct. 2025).

³ David S. Wall, *Cybercrime : The Transformation of Crime in the Information Age* (Polity Press, 2024).

Historically, crime prevention methods were predominantly based on human intelligence and reactive strategies. Law enforcement agencies relied on eyewitness testimonies, informants, and physical patrols to identify and address criminal activities. The early 20th century witnessed the emergence of policing models such as the “broken windows” theory, which advocated for tackling minor offenses to avert more serious crimes, and community policing, which aimed to foster trust between police officers and the communities they serve. These strategies aimed to deter crime by ensuring social order and visibility. Nevertheless, their effectiveness was frequently hampered by limited resources and the fundamentally reactive nature of these approaches, where interventions primarily took place after criminal acts had occurred.⁴

- **Shift Toward Predictive and Preventive Models**

Over the past twenty years, advancements in technology have facilitated a significant shift from reactive to predictive and preventive approaches in crime control. Predictive policing utilizes data analytics, machine learning, and statistical models to anticipate potential crime hotspots, identify probable offenders, and enhance the allocation of police resources. Instruments such as crime mapping and offender profiling examine historical crime data alongside social indicators to predict where crimes are most likely to occur. For instance, police departments in cities like Los Angeles and Chicago have adopted predictive systems that direct patrols to high-risk areas prior to the occurrence of crimes, fostering a more proactive strategy. This transition not only boosts policing efficiency but also aids in crime prevention rather than solely responding to incidents.⁵

- **Emergence of Intelligent Surveillance and Data-Driven Law Enforcement**

The rise of real-time surveillance technologies and AI-enhanced tools signifies a major advancement in contemporary crime prevention. Intelligent surveillance encompasses extensive

⁴ George L. Kelling & Catherine M. Coles, *Fixing Broken Windows : Restoring Order & Reducing Crime in Our Community*, <https://archive.org/details/fixingbrokenwind0000kell> (last visited on 17th Oct, 2025).

⁵ David Weisbird & Cynthia Lum, *The Diffusion of Computerized Crime Mapping in Policing : Linking Research and Practice*, https://www.researchgate.net/publication/228356278_The_Diffusion_of_Computerized_Crime_Mapping_in_Policin_g_Linking_Research_and_Practice (last visited on 17th Oct, 2025).

CCTV networks supplemented with facial recognition software, behavioral analytics, and automated alert systems capable of promptly identifying suspicious activities. These technologies facilitate ongoing monitoring in public areas such as airports, stadiums, and urban centres, equipping law enforcement with immediate actionable intelligence. In addition to surveillance, biometric systems like fingerprint, iris, and voice recognition enhance the precision of identity verification and improve border and access control. Furthermore, algorithmic crime detection tools scrutinize large datasets from social media and prior crime reports to identify patterns and forecast criminal behavior. Nevertheless, while these technologies offer the promise of improved security and efficiency, they also raise issues regarding privacy, potential biases in algorithms, and the danger of establishing surveillance states. Consequently, their adoption requires thorough ethical and legal examination.⁶

3. Technological Tools in Crime Prevention :

The function of technology in contemporary crime prevention is diverse, incorporating a broad array of tools that utilize data, automation, and sophisticated analytics to bolster law enforcement capabilities. This section delves into some of the most significant technological tools currently employed, their advantages, and the challenges they pose.⁷

- **Predictive Policing and Crime Analytics**

Predictive policing signifies a fundamental change from conventional reactive law enforcement to a proactive approach that anticipates criminal activity before it occurs. At its essence, predictive policing employs historical crime data in conjunction with machine learning algorithms to discern patterns and forecast where future crimes are likely to transpire. By examining factors such as time, location, and the nature of previous offenses, predictive models create “hotspot” maps that inform police deployment and resource distribution.

⁶ Marcus Smith & Seumas Miller, Biometric Identification, Law and Ethics <https://link.springer.com/book/10.1007/978-3-030-90256-8> (last visited on 18th Oct. 2025).

⁷ Mohammad A. Hassan, Ghassan Samara Mohammad Abu Fadda (2022)

Cities such as Los Angeles and Chicago have been at the forefront of implementing predictive policing systems like PredPol and the Strategic Subject List, respectively. In India, Crime Mapping Analytics utilizes comparable tools to predict criminal behavior and enhance patrol route efficiency. The primary advantage of these systems lies in their ability to increase policing efficiency by concentrating efforts on high-risk areas, thus preventing crimes before they happen and minimizing response times.

Nevertheless, predictive policing faces criticism. Research such as that conducted by Lum and Isaac (2016) underscores the danger of perpetuating existing biases. Given that these systems depend on historical data, any over-policing or discriminatory practices reflected in past data can result in the disproportionate targeting of marginalized communities, thereby worsening social inequalities instead of alleviating them.⁸

- **Video Surveillance and Facial Recognition :**

The advancement of video surveillance has progressed from rudimentary Closed-Circuit Television (CCTV) systems to advanced platforms that utilize Facial Recognition Technology (FRT), significantly altering the monitoring of public spaces. Contemporary CCTV networks frequently incorporate AI-driven software capable of scanning faces in real-time, identifying suspects, and observing crowd dynamics.

Airports, stadiums, and urban areas have embraced FRT to bolster security, facilitate the swift identification of suspects, and manage large-scale events. For instance, during international summits or sporting events, facial recognition technology assists law enforcement agencies in quickly identifying individuals on watchlists, potentially averting threats before they arise.

However, the extensive use of FRT brings forth significant ethical dilemmas. Unconsented mass surveillance violates privacy rights, as highlighted in the pivotal Indian Supreme Court case Justice K. S. Puttaswamy (Retd.) v. Union of India, which affirmed the right to privacy as a fundamental constitutional right. In the absence of stringent regulations and transparency, such surveillance

⁸ Perry, W.L., McInnis, B., Price, C.C., Smith, S. & Hollywood, J.S. (2013). *Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations*. RAND Corporation

systems may evolve into instruments of widespread state control, disproportionately impacting vulnerable communities.⁹

- **Biometric Security Systems**

Biometric security systems, including fingerprint scanning, iris recognition, and facial mapping, are essential for identity verification and access control. These systems are widely implemented in border security to deter illegal crossings, within correctional facilities for inmate management, and in national identification programs to reliably establish the identities of citizens.

India's Aadhaar initiative, recognized as the largest biometric identification system globally, illustrates both the advantages and controversies associated with such technology. Although it has facilitated welfare distribution and enhanced identity management, apprehensions regarding data security and potential privacy violations remain. Centralized biometric databases, if not adequately safeguarded, present risks of misuse, hacking, or unauthorized surveillance, underscoring the necessity for robust data protection regulations.¹⁰

- **Automated License Plate Recognition (ALPR)**

Automated License Plate Recognition (ALPR) systems utilize cameras in conjunction with optical character recognition to capture and analyze vehicle license plates in real-time. Law enforcement agencies utilize ALPR to track stolen vehicles, monitor traffic infractions, and identify suspicious behaviors, such as vehicles traveling between known crime hotspots.

ALPR systems significantly bolster policing capabilities by facilitating swift vehicle identification and historical tracking. However, their implementation has ignited legal discussions concerning privacy and the requirement for warrants. Detractors contend that ongoing vehicle tracking without

⁹ The Cambridge Handbook of Facial Recognition in the Modern State (Cambridge University Press, 2024)

¹⁰ John R. Vacca, Biometric Technologies and Verification System (2007)

judicial oversight may result in mass surveillance, potentially violating civil liberties and representing an abuse of authority.¹¹

- **Geospatial Crime Mapping :**

Geospatial crime mapping entails the real-time examination of spatial data to recognize and illustrate crime trends across various geographic areas. By amalgamating crime reports, emergency calls, and socio-economic information, law enforcement agencies can identify trends, locate hotspots, and allocate resources more efficiently.

These systems are increasingly integrated with emergency response frameworks, allowing for the expedited dispatch of police units to regions exhibiting rising crime indicators. Furthermore, geospatial analytics aids in long-term strategic planning by uncovering underlying factors that contribute to criminal behavior in specific neighbourhoods.¹²

- **Cyber-Forensics and Blockchain Evidence :**

As criminal activities increasingly transition to digital platforms, cyber-forensics has become vital for extracting, preserving, and presenting digital evidence for legal proceedings. Sophisticated forensic tools are capable of recovering deleted files, tracing cyber-attacks, and analyzing communication metadata, thereby enhancing the capacity to prosecute intricate cybercrimes.

Cutting-edge technologies such as blockchain are being incorporated into the management of digital evidence to guarantee the immutability and integrity of data. The decentralized ledger of blockchain offers a tamper-proof chain of custody, which bolsters the credibility of digital evidence in judicial settings. Pilot initiatives, like those launched by the Maharashtra Cyber Police, illustrate

¹¹ U.S. Office of Justice Programs, Automatic License Plate Recognition Systems : Police and Operational Guidance for Law Enforcement <https://www.ojp.gov/library/publications/automated-license-plate-recognition-systems-policy-and-operational-guidance>, (last visited on 19th Oct. 2025).

¹² Joel Hunt, NIJ, From Crime Mapping to Crime Forecasting : The Evolution of Place- Based Policing, <https://nij.ojp.gov/topics/articles/crime-mapping-crime-forecasting-evolution-place-based-policing>, (last visited on 19th Oct. 2025).

how blockchain can thwart evidence tampering and enhance transparency in cybercrime investigations.¹³

4. Challenges and Criticisms :

Although the incorporation of technology into crime prevention strategies provides numerous advantages, it also introduces intricate challenges that cannot be ignored. These challenges encompass legal, ethical, and technical aspects, prompting fundamental inquiries regarding fairness, accountability, and the safeguarding of civil liberties in the digital era.

- **Algorithmic Opacity and Lack of Explainability :**

A significant concern regarding the application of artificial intelligence (AI) and machine learning in law enforcement is the absence of transparency, commonly known as algorithmic opacity. Numerous predictive policing tools function as "black boxes": their internal decision-making mechanisms remain obscured and incomprehensible to those affected by them, including law enforcement officials, judges, and most importantly, the general public.

The absence of explainability compromises the principle of due process, as individuals are unable to effectively contest or appeal decisions made by a non-transparent algorithm. For example, if an individual is identified as a potential suspect due to a risk score produced by predictive software, they may never be made aware of the criteria or data that contributed to this determination.

As noted by Yeung and Harkens (2023), algorithmic policing has the potential to undermine constitutional protections by presenting enforcement decisions as objectively data-driven, while in truth, they may be influenced by biased assumptions or flawed reasoning. This fosters a perilous illusion of objectivity, where the authority of machines is seldom scrutinized, even in cases where

¹³ P.Karthikey, Hari Mohan Pande Velliangiri Sarveshwaran, Artificial Intelligence and Blockchain in Digital Forensic (River Publishers, 2023).

the outcomes are unjust. In democratic societies that value the rule of law, this poses a significant constitutional challenge.¹⁴

- **Discrimination and Bias in Policing Algorithms :**

One of the most thoroughly documented concerns regarding predictive technologies in policing is their propensity to perpetuate and even intensify existing social biases, including those related to race, caste, religion, or class.

Algorithms are developed using historical crime data—data that is itself shaped by human decisions. In regions that have been historically over-policed, communities of color or marginalized caste groups are more likely to exhibit higher recorded crime rates, not necessarily due to an actual increase in crime, but rather because of heightened surveillance and arrests. When algorithms are trained on such biased datasets, they inevitably learn and reproduce those biases.

A notable instance is the Chicago Police Department’s Strategic Subject List, a predictive policing tool that disproportionately targeted African-American individuals and neighbourhood’s. Although the system professed to be objective, a later investigation uncovered that it systematically flagged individuals based on their associations and previous interactions with law enforcement rather than on actual criminal behavior.

In India, there are similar concerns that crime prediction systems may perpetuate historical biases against Dalit, Adivasi, or Muslim communities, particularly in regions where communal tensions and caste discrimination are widespread. These consequences not only undermine the equity of law enforcement but also exacerbate existing societal rifts.

- **Surveillance, Privacy, and Civil Liberties :**

¹⁴Starthprints,https://strathprints.strath.ac.uk/85083/1/Yeung_Harkens_PL_2023_How_do_technical_design_choices_made_when_building_Part_1.pdf, (last visited on 19th Oct. 2025).

Mass surveillance is a fundamental aspect of technology-driven crime prevention; however, it carries significant implications for individual privacy and civil liberties. As surveillance technologies grow more advanced and widespread, the right to privacy faces increasing threats.

In India, the pivotal case of Justice K. S. Puttaswamy (Retd.) v. Union of India (2017) affirmed privacy as a fundamental right under Article 21 of the Constitution. The court highlighted that any infringement upon this right must be lawful, necessary, and proportionate. Nevertheless, numerous surveillance technologies currently employed in India, such as the facial recognition systems utilized by the Delhi Police, function within legal grey areas, lacking clear protections, consent protocols, or judicial oversight.

In Europe, the European Court of Human Rights (ECHR) determined in *Zakharov v. Russia* (2015) that Russia's mass surveillance practices breached Article 8 of the European Convention on Human Rights. The court concluded that surveillance conducted without adequate oversight is inconsistent with the democratic principles of transparency and accountability.

These rulings highlight a wider issue: unregulated surveillance not only endangers individual liberties but also shifts the power dynamics between citizens and the government. In contexts with fragile democratic institutions or restricted press freedoms, the abuse of surveillance technologies can swiftly lead to authoritarianism.

- **Legal and Regulatory Gaps :**

One of the most significant institutional obstacles in the implementation of technology for crime prevention is the lack of comprehensive legal and regulatory frameworks. In numerous countries, including India, the adoption of AI, facial recognition, and predictive analytics in law enforcement is advancing more rapidly than the establishment of laws to regulate them.

India's Digital Personal Data Protection Act (DPDP), 2023, marks a crucial advancement in data governance. It delineates the responsibilities of data fiduciaries and grants individuals specific rights concerning their personal data. Nevertheless, the act has faced criticism for its ambiguous language, extensive exemptions for government entities, and inadequate enforcement mechanisms.

Importantly, there is no explicit provision addressing predictive policing, facial recognition, or algorithmic accountability within law enforcement.

On an international scale, there is also a lack of a cohesive legal framework governing the cross-border utilization of surveillance data, digital evidence, or AI-driven law enforcement tools. This regulatory gap permits both state and non-state actors to function with minimal accountability.

The absence of judicial oversight regarding the deployment of these technologies is particularly alarming. Warrants are frequently unnecessary for real-time surveillance or data gathering. Furthermore, many technologies are introduced under the guise of national security, which further protects them from public examination or legal challenge.

- **Ethical Governance and Lack of Democratic Oversight :**

Ultimately, the ethical application of technology in policing is hindered by the absence of institutional checks and democratic oversight. Technologies with significant implications are often implemented without public consultation, ethical assessment, or adequate parliamentary discussion. Consequently, the public possesses limited awareness of how their data is utilized, who has access to it, or what options are available in the event of misuse.

This top-down deployment model poses the risk of establishing "electronic dictatorships," a phrase that refers to authoritarian regimes utilizing digital tools for mass control and repression. The Social Credit System in China, along with its extensive facial recognition infrastructure, serves as a cautionary example. In these systems, surveillance and predictive analytics are employed not only to deter crime but also to monitor political dissent, stifle freedom of expression, and exert control over populations.

To prevent such scenarios, democratic societies must advocate for transparency, accountability, and public involvement in the creation and execution of law enforcement technologies. The establishment of independent review boards, conducting privacy impact assessments, and

performing open-source algorithm audits should be essential elements of any technology adoption strategy.¹⁵

5. Interdisciplinary Responses: Bridging Law, Technology, and Policy :

The incorporation of technology in crime prevention offers both opportunities and considerable challenges that necessitate multidisciplinary strategies. Tackling these issues requires the integration of legal protections, ethical AI practices, criminological knowledge, and progressive policy frameworks.

- **Legal Safeguard:**

Safeguarding fundamental rights such as privacy, due process, and non-discrimination must remain a top priority. Constitutional protections should restrict surveillance capabilities by mandating judicial approval, particularly for sensitive technologies like facial recognition and Automated License Plate Recognition (ALPR). This ensures that the application of technology by law enforcement is transparent and subject to oversight. Establishing judicial review processes and requiring transparency reports can further mitigate abuse and foster public confidence.

- **Ethical AI and Transparent Design:**

The prevention of crime through technology is significantly dependent on AI systems that need to be both auditable and explainable to all stakeholders involved. Ethical AI frameworks prioritize fairness to prevent biases that may unjustly affect certain communities; accountability to ensure responsibility for mistakes or misuse; and contestability to enable individuals to dispute unfavorable decisions made by algorithms. Conducting independent audits of predictive policing software is vital to uncover and address hidden biases or inaccuracies prior to their extensive implementation.¹⁶

¹⁵ Yeung, k., & Harkens, A., Algorithmic Policing : The Rise of Artificial Intelligence in Crime Control, 23 J. of Law and Society 147 (2023)

¹⁶ “Technology, Transparency, and Democratic Control” (California Law Review, 2025)

- **Criminological Perspectives :**

Although technology can improve the efficiency of policing, it should function as a supportive tool for human decision-making rather than a replacement. The integration of technology with community policing enhances collaboration between law enforcement and the public, thereby improving the quality of intelligence and legitimacy. Additionally, crime prevention initiatives must consider the fundamental socio-economic issues such as poverty and inequality that contribute to criminal behavior, ensuring that technological solutions are integrated into wider social strategies.

- **Policy Innovations :**

To effectively prevent crime, it is necessary to implement innovative policies that encourage public involvement in decisions regarding surveillance and data usage, thus strengthening democratic governance. Nations should establish national frameworks that incorporate ethical standards into the implementation of crime prevention technologies. Moreover, in light of the global nature of cybercrime and data exchanges, international cooperation

and agreements on data sharing, privacy safeguards, and the handling of forensic evidence are crucial to maintaining justice and human rights on a global scale.¹⁷

6. Recommendations :

- **Establish Clear Legal Frameworks for Law Enforcement Technologies**

Implement comprehensive legislation that governs the utilization of AI, facial recognition, surveillance systems, and predictive policing instruments.

Ensure that the processes of data collection, processing, and storage are regulated by stringent legal standards that conform to constitutional and international human rights principles.

¹⁷ United Nations Office on Drugs and Crime (UNODC), Handbook on police Accountability, Oversight and Integrity (2011)

Mandate judicial warrants or independent oversight prior to the deployment of intrusive technologies such as real-time surveillance or biometric monitoring.

- **Mandate Algorithmic Transparency and Audits**

Require independent audits and impact assessments of algorithmic tools both prior to and during their deployment.

Make the logic behind algorithms and their data sources publicly accessible whenever feasible (particularly for governmental applications), except in cases where such disclosure would genuinely threaten national security.

Embrace Explainable AI (XAI) principles to guarantee that both users (law enforcement) and subjects (citizens) comprehend the decision-making processes involved.

- **Implement Ethical AI Design and Bias Mitigation Protocols**

Create AI systems that are:

- Tested for bias using diverse datasets,
- Regularly assessed for disparate impacts,
- Aligned with ethical AI standards such as fairness, accountability, non-maleficence, and transparency.

Establish internal ethics committees and engage external civil society experts in the evaluation of new technologies prior to their public implementation.

- **Strengthen Data Protection and Privacy Safeguards**

Revise or enhance legislation such as India's Digital Personal Data Protection Act (DPDP), 2023, to encompass:

- Specific provisions addressing law enforcement technologies,

- Principles of data minimization,
- Stringent access controls, and
- User rights, including the ability to contest or opt out of surveillance.

Introduce Data Protection Authorities (DPAs) endowed with the authority to investigate law enforcement data practices and impose penalties.

- **Establish Democratic Oversight and Public Accountability**

Create autonomous oversight entities (e.g., Police Technology Commissions) endowed with investigative and veto authority over surveillance technologies.

Mandate public consultations and parliamentary discussions prior to the introduction of new surveillance or predictive technologies.

Disseminate transparency reports detailing the usage, locations, and justifications for technologies such as FRT or ALPR.

- **Encourage Community-Focused, Technology-Enhanced Policing**

Merge community policing frameworks with technological applications, fostering increased trust, transparency, and local engagement.

Utilize technology as a supplement rather than a substitute for human judgment and relationship-driven policing.

Ensure that crime prevention initiatives are reflective of local socio-economic conditions, rather than solely reliant on algorithmic results.

- **Establish Specialized Training and Capacity Development**

Equip law enforcement personnel with education in digital literacy, data ethics, and the legal limitations of surveillance.

Implement compulsory certification programs for the application of high-risk tools such as predictive analytics or biometric systems.

Educate judges, attorneys, and policymakers on the technical ramifications of algorithmic decisions within the criminal justice system.

- **Embrace a "Human Rights by Design" Philosophy**

Incorporate human rights impact evaluations during the design, procurement, and implementation stages of crime prevention technologies.

Emphasize privacy-preserving technologies such as federated learning, anonymized datasets, and encrypted communications.

7. Conclusion :

The incorporation of cutting-edge technology into crime prevention signifies a major advancement in how societies uphold law and order in the digital era. Instruments like predictive policing algorithms, biometric identification systems, video surveillance, and cyber-forensics provide unparalleled capabilities for anticipating, detecting, and addressing criminal behavior. These technologies empower law enforcement agencies to utilize resources more effectively, improve investigative precision, and potentially lower crime rates through proactive measures.

Nevertheless, the revolutionary potential of technology is accompanied by intricate ethical, legal, and social dilemmas. In the absence of robust frameworks to regulate their use, these tools may exacerbate existing disparities by embedding biases within algorithms, disproportionately targeting marginalized groups, and perpetuating systemic discrimination. Additionally, mass surveillance poses a threat to essential civil liberties, including privacy and protection from unwarranted governmental intrusion. The lack of transparency in many AI-driven systems further complicates accountability, as decisions impacting individuals may be made without clarity or avenues for redress.¹⁸

¹⁸ Andrew D. Selbst, Disparate Impact in Big Data Policing, 52 Ga. L. Rev. 109(2017)

To utilize technology for the purpose of justice instead of injustice, a multifaceted strategy is necessary. First, strong privacy protections and thorough data governance frameworks must protect individuals' rights while facilitating effective law enforcement. Second, the algorithms that support crime prevention tools need to be transparent and subject to audit, enabling independent experts and impacted communities to assess their fairness and precision. Third, ethical AI principles should be integrated at every phase of design and implementation to guarantee that technological solutions are in harmony with societal values such as fairness, accountability, and respect for human dignity.¹⁹

Furthermore, public engagement and democratic oversight are vital for legitimizing the application of these technologies. Policymakers and law enforcement agencies must collaborate with civil society, specialists, and the general public to foster trust and ensure that the advantages of technology do not infringe upon fundamental freedoms. Clear policies, judicial protections, and continuous ethical review processes can avert the unchecked expansion of surveillance states or the rise of 'electronic dictatorships.'

Ultimately, the future of crime prevention technology must be inclusive, transparent, and accountable. Technology should act as an enhancement to human judgment and democratic values, rather than a substitute for them. When implemented with care, these advancements can improve public safety while maintaining the essential values of justice and freedom that are the bedrock of a secure and fair society in the 21st century.²⁰

¹⁹ Elizabeth E. Joh, *Ethical AI in American Policing*, 3 *Notre Dame J. on Emerging Tech.* 261 (2022).

²⁰ Kirstie Ball and Kevin D. Haggerty, "Democratic Surveillance"

VICTIM-CENTRIC REFORMS IN THE NEW CRIMINAL LAWS: TOWARDS RESTORATIVE JUSTICE

– Adv. Pranjal P. Lawar

Abstract -

India recently, in 2023, overhauled its colonial-era criminal justice system by replacing the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act with three new laws i.e., the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA). The introduction of these new criminal laws was driven by the intent to modernise India's justice system, enhance procedural efficiency, and ensure that the process is more attuned to the experiences of victims. Historically, most reforms within India's criminal framework have been predominantly offender-focused, which often left victims sidelined and without a meaningful voice in proceedings. This study seeks to explore whether the latest legislative framework genuinely redirects attention towards victims and to assess how effectively it embodies the underlying ideals of restorative justice.

The Bharatiya Nyaya Sanhita (BNS) brings with it several notable substantive reforms. It not only increases the severity of punishment for certain offences but also introduces mechanisms such as Zero FIRs and E-FIRs, designed to make the process of reporting crimes faster and more accessible to victims. These innovations signal a deliberate recognition of victims' rights and the need to ensure their protection within the justice process. The Bharatiya Nagarik Suraksha Sanhita (BNSS) complements these substantive shifts through significant procedural enhancements for instance, by granting victims the right to be heard before the Government withdraws a case, and by strengthening safeguards such as in-camera trials and the preservation of victims' anonymity in sensitive matters. At the same time, the Bharatiya Sakshya Adhinyam (BSA) updates the evidentiary framework by widening the scope of admissible electronic and digital evidence, a change that holds particular importance in addressing cybercrimes and other technology-based offences. Taken together, these measures represent a discernible movement towards positioning the victim at the core of criminal proceedings, reflecting an evolving philosophy of justice in India.

This study assesses these reforms through the view of restorative justice, which emphasises

active victim participation rather than focusing solely on punishment at the same time enlightening the victims about the procedural aspects of trials and making the process more transparent and avoiding procedural irregularities. To situate India's reforms within a broader context, also considers global frameworks such as the UN Declaration of Basic Principles of Justice for Victims of Crime (1985) and countries like the UK and South Africa, where restorative justice practices and victim participation have been more systematically integrated into law and policy.

While the criminal justice reforms mark a clear step forward in recognizing the rights of victims and becoming victim-centric but they may encounter significant challenges like variations across state-level compensation schemes, low awareness among victims, administrative delays, and insufficient financial and institutional support continue to limit the effectiveness of these reforms. Unless these barriers are addressed, many of the victim-centric provisions risk remaining largely symbolic and futile.

India's new criminal justice system represents meaningful progress in acknowledging victims as active participants in the justice process. However, for realizing the full potential of restorative justice, it requires not only legislative metamorphosis but also a pragmatic approach.

Key Words: criminal justice system, justice process, state-level compensation schemes, Victims of Crime, Zero FIRs.

1. Introduction

The criminal justice system, conventionally, has primarily focused on punishing offenders rather than addressing the needs of victims. In India, this approach has deep historical roots, shaped by colonial-era legislations like the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act, which prioritised state interests and procedural uniformity over individual victim welfare.¹ However, with growing recognition of victims' rights and the psychological, social, and economic impact of crimes on individuals and communities, there has been a paradigm shift globally towards victim-centric approaches that emphasise

¹ Indian Penal Code 1860; Code of Criminal Procedure 1973; Indian Evidence Act 1872.

restorative justice.² Restorative justice seeks not merely to punish offenders but to repair harm, promote reconciliation, and restore social equilibrium by actively involving victims in the justice process.³

The enactment of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA) in 2023 represents a landmark reform in India's criminal law framework. These statutes explicitly embed principles that prioritise victims' rights, protection, and participation at multiple stages of the criminal process. For instance, the new laws introduce mechanisms for victim impact statements, mandatory compensation schemes, greater involvement of victims in trial proceedings, and provisions ensuring speedier justice through time-bound investigations and trials reflecting a conscious move towards restorative and participatory justice models. This shift is significant because it aligns India with international norms on victim rights, such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, while also addressing longstanding gaps in the domestic system.⁴

Victim-centric reforms are not only a legal necessity but also a social imperative. Traditional adversarial models often marginalise victims, limiting their access to justice and leaving psychological trauma unaddressed.⁵ By incorporating restorative principles, the new laws seek to balance the scales, ensuring that victims are not passive observers but active stakeholders. This approach acknowledges that justice is multidimensional as it encompasses reparation, rehabilitation, and community harmony, alongside retributive measures. Furthermore, these reforms recognise the diversity of victims' needs, providing special protections for vulnerable groups, including women, children, and marginalised communities, thereby promoting inclusivity and fairness within the justice system.

² United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes (2006).

³ Howard Zehr, The Little Book of Restorative Justice (2nd ed, 2015).

⁴ United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res 40/34, 1985.

⁵ Andrew Ashworth, Principles of Criminal Law (9th ed, 2019).

While these reforms are promising, their practical implementation poses challenges. Effective victim participation requires robust institutional mechanisms, sensitisation of law enforcement, judicial training, and awareness campaigns.⁶ Without these, the victim-centric vision risks remaining aspirational rather than operational. Nevertheless, the legislative shift reflects a clear intention to redefine criminal justice in India, moving from a solely offender-focused paradigm to a more holistic, victim-oriented system that embraces restorative justice as a guiding philosophy.

2. Historical Evolution of Criminal Justice Principles

The trajectory of victim rights in Indian criminal justice is best understood through the colonial legacy of criminal law and subsequent post-independence developments.

- **Colonial Framework and Neglect of Victims**

The Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 were primarily designed as instruments of colonial governance. Their overriding objective was the maintenance of order and the protection of state authority, not the redress of victims' grievances.⁷ Criminal trials were structured as contests between the state and the accused, with victims reduced to witnesses. Restitution, compensation, and victim participation were conspicuously absent.

This adversarial model reflected the utilitarian philosophy of British criminal law, which prioritised deterrence and retribution over victim restoration.⁸ As a result, victims had little agency, no right to appeal acquittals, and a minimal role in prosecutorial decisions.

⁶ Government of India, Report on Implementation of Victim Compensation Schemes, Ministry of Home Affairs (2024).

⁷ K.D. Gaur, Criminal Law: Cases and Materials 45 (2018)

⁸ Andrew Ashworth, Victims' Rights, Defendants' Rights and Criminal Procedure, in Criminal Justice and the Delivery of Justice 185 (1999).

- **Post-Independence Recognition of Victim Rights**

After independence, the Indian Constitution introduced rights-based protections, particularly under Article 21, the right to life and personal liberty. The judiciary gradually expanded Article 21 to include victim compensation and rehabilitation. In *Rudul Sah v. State of Bihar*, the Supreme Court recognised compensation as a constitutional remedy for unlawful detention.⁹ Similarly, in *Bodhisattwa Gautam v. Subhra Chakraborty*, the Court ordered interim compensation to a rape survivor, emphasising that victims of sexual violence deserve immediate relief.¹⁰

Legislative measures also began to incorporate victim-centric elements. The CrPC Amendment of 2008 introduced Section 357A, mandating state governments to establish victim compensation schemes. However, implementation varied widely across states, and many victims remained unaware of their rights, so in *Laxmi vs. Union of India*, issues surrounding sections 357A and 357C of CRPC were discussed.

- **Law Commission Reports and Policy Evolution**

Over the years, a number of Law Commission of India reports have drawn attention to the consistent marginalisation of victims within the criminal justice system. The 154th Report (1996) was among the first to advocate a distinctly victim-oriented approach, urging greater participation rights and the provision of adequate compensation. More than a decade later, the 226th Report (2009) revisited the issue, placing particular emphasis on the need for witness protection measures and rehabilitation programs for victims. Yet, despite these thoughtful recommendations, the actual legislative progress that followed was limited and fragmented, with most reforms continuing to prioritise offender-focused procedures over the genuine empowerment of victims.

⁹ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 (India).

¹⁰ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490 (India).

- **Towards Restorative Justice**

Internationally, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) marked a paradigm shift, urging states to ensure access to justice and fair treatment, restitution, compensation, and assistance for Victims of abuse of power. In India, however, restorative practices found a limited foothold, often confined to community-based dispute resolution through Lok Adalats and mediation in minor offences. The mainstream criminal justice system remained largely punitive.

3. Legal Perspective under the New Criminal Law Reforms

The replacement of the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act with the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) was hailed as a decisive departure from India's colonial legacy of criminal law. Although much of the public discourse around these reforms has focused on modernisation and administrative efficiency, an equally significant aspect lies in their professed commitment to victim-centric justice. To understand whether these new enactments truly succeed in repositioning victims at the centre of the criminal process, it becomes necessary to undertake a closer examination of their substantive provisions and procedural safeguards, viewed in light of the earlier colonial framework that they seek to replace.

Under BNSS, significant provisions are the recognition of Zero FIRs and E-FIRs under Section 173 BNSS, which permit victims to lodge complaints at any police station irrespective of territorial jurisdiction and, for the first time, electronically. Under the earlier CrPC, a First Information Report could only be registered at the station where the crime occurred, i.e., Sec 154 CrPC, often resulting in victims being turned away on jurisdictional grounds. In sensitive cases such as sexual violence, this created an additional layer of trauma for survivors. The BNSS removal of such barriers represents an important equalising provision to access justice, even if its effectiveness will depend on the infrastructure to support digital reporting and the

training of police officers who receive such complaints.¹¹

The BNS also codifies offences that were absent in the IPC. Acts of organised crime in Section 111, terrorist acts in Section 113, and mob lynching in Section 103(2) have now been specifically criminalised. Under the IPC, courts often had to stretch generic provisions on unlawful assembly or conspiracy to cover these harms, which not only delayed trials but also obscured the recognition of victims as distinct subjects of these crimes. The express inclusion of such offences under the BNS is significant because it affirms the gravity of the harm experienced by victims and symbolically validates their suffering within the statutory text. Moreover, it allows courts to order more tailored sentences and remedies, enhancing the sense of justice for affected communities.¹²

Another dimension of victim-centricity lies in the integration of restitution and compensation. While the CrPC, through its 2008 amendment, introduced Section 357A mandating state compensation schemes, the IPC itself never provided for victim compensation as a substantive remedy. The BNS, by contrast, directly links certain offences with the possibility of restitution, particularly in cases of sexual assault and grievous harm. Sections 64 to 70 of the BNS reinforce the judiciary's responsibility not only to punish the offender but also to recognise the victim's need for redress. This represents a notable departure from the earlier punitive emphasis of the IPC, although the absence of a uniform, centralised compensation framework may still lead to uneven implementation across states.¹³

The BNSS, which has replaced the CrPC, takes forward the victim-oriented narrative by granting victims a limited yet important voice in procedural matters. A striking example is Section 360, which requires courts to hear victims before allowing the withdrawal of prosecutions. Under the earlier Section 321 of the CrPC, the decision to withdraw was entirely

¹¹ BNSS, No. 46 of 2023, Sec. 173; cf. Code of Criminal Procedure, 1973, Sec. 154.

¹² Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec. 111–113, 120; see also Indian Penal Code, 1860 (no express provision on terrorism or lynching).

¹³ Id. Sec. 64–70; cf. CrPC, 1973, Sec. 357A.

between the prosecutor and the state, with the victim having no standing to object even if withdrawal jeopardised their interests. This reform marks a symbolic recognition that victims are stakeholders in the process and not mere bystanders. At the same time, the ultimate discretion still rests with the prosecution and judiciary, leaving victims with a consultative role rather than determinative power.¹⁴

The BNSS further enhances procedural dignity for victims by expanding the scope of in-camera trials under Section 366 (Proviso). The CrPC had limited such trials primarily to cases of rape. The new provision extends this safeguard to other sensitive contexts, including human trafficking and offences against minors, and strengthens the obligation of courts and media to protect victims' identities. Combined with the statutory requirement of investigations under Section 193(2), which mandates that investigations in sexual offence cases be completed within two months, the BNSS demonstrates a conscious legislative effort to mitigate secondary victimisation caused by prolonged exposure to the justice system. These provisions resonate with the restorative justice principle of minimising harm to victims during the adjudicatory process.

Another important continuity with reformist intent is the regime of plea bargaining. Introduced into Indian law in 2005, plea bargaining under the CrPC remained largely peripheral, with little meaningful participation by victims. The BNSS retains this mechanism but expands it in scope and insists that victims' consent and participation form an integral part of the settlement. Theoretically, this aligns with restorative justice principles by enabling victims to negotiate outcomes rather than being passive recipients of prosecutorial choices. However, the danger of coercion, unequal bargaining power, and token consultation remains real, which means the implementation of these provisions will need careful judicial oversight.¹⁵

The BSA, which replaces the Indian Evidence Act, 1872 has perhaps the most technical yet

¹⁴ BNSS, *supra* note 16, Sec. 360; cf. CrPC, 1973, Sec. 321.

¹⁵ *Id.* Sec. 265A–265L.

profound implications for victims. The admissibility of electronic evidence under Section 65B has been broadened and streamlined. Under the IEA, the rigid requirement of a certificate for electronic records often led to genuine evidence being excluded, frustrating victims of cybercrime, fraud, and technology-driven offences. The BSA clarifies and simplifies these rules, allowing for wider acceptance of digital evidence such as emails, CCTV footage, and metadata. For victims, this substantially improves the chances of their cases being heard on the merits rather than collapsing on technical grounds.

Additionally, the BSA continues and strengthens presumptions that aid victims, such as the presumption of absence of consent in sexual offences under Section 120. While the IEA also contained this presumption, its scope was limited. The new law makes the presumption broader and places a heavier evidentiary burden on the accused in certain cases, reflecting a legislative choice to trust victims' testimonies and prioritize their dignity. Equally significant are the safeguards introduced against improper or irrelevant cross-examination, which historically subjected victims of sexual offences to humiliating questioning. By empowering courts to restrict such practices, the BSA aligns the trial process more closely with the restorative aim of preserving victims' dignity.

Taken together, the BNS, BNSS, and BSA represent a departure from the colonial framework that marginalised victims, but the reforms are uneven. On one hand, they enhance access to justice through mechanisms like e-FIRs, give victims a consultative role in prosecutorial decisions, and strengthen evidentiary protections. On the other hand, they stop short of embedding restorative justice as a foundational principle.

4. Global Perspective

The Indian criminal law reforms of 2023 cannot be fully appreciated without situating them in a broader international context. Across the world, discussions on criminal justice have gradually evolved beyond the confines of a purely retributive framework, one centred almost

exclusively on punishing offenders. Contemporary perspectives increasingly advocate for restorative approaches that prioritise victim participation, accountability, and collective healing within communities. When viewed through this global lens, India's recent legal reforms reveal both meaningful progress and persistent shortcomings in its journey toward aligning domestic practices with internationally recognised standards of victim-centric justice.

One of the earliest and most influential global frameworks is the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). The Declaration urged member states to ensure that victims are treated with compassion, are granted access to justice, and are provided with restitution, compensation, and assistance.¹⁶ It marked an international consensus that victims should no longer be relegated to the periphery of criminal trials. In several jurisdictions, this document became the foundation for statutory and policy reforms.

The United Kingdom offers a more developed model through its Victims' Code, first introduced in 2006 and subsequently updated in 2015 and 2020. The Code legally entitles victims to specific rights, such as being informed of case progress, participating in decisions, receiving protection, and accessing support services.¹⁷ Importantly, it places enforceable obligations on criminal justice agencies, making victims' rights justiciable in practice. Compared to the Indian framework, which only creates fragmented entitlements across different statutes, the UK approach is more holistic. For example, while the BNSS grants victims a right to be heard before withdrawal of a case, there is no comprehensive statutory guarantee of information-sharing or victim services comparable to those mandated in the UK.

South Africa represents one more instructive jurisdiction, particularly for its integration of restorative justice practices into the mainstream criminal justice system. Rooted in the philosophy of the post-apartheid Truth and Reconciliation Commission, South Africa has

¹⁶ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

¹⁷ Ministry of Justice, Code of Practice for Victims of Crime in England and Wales (2020).

embraced victim-offender mediation and community conferencing as part of its sentencing and diversion processes.¹⁸

Similarly, Canada and New Zealand have institutionalised restorative justice in a manner that provides both symbolic and practical empowerment to victims. In Canada, restorative justice programs are supported by federal policy and often operate alongside the formal system, especially in cases involving Indigenous communities. New Zealand has gone further by legislating restorative conferencing, particularly in the juvenile justice sphere, where victims participate in determining reparative outcomes. These approaches recognise the emotional and relational dimensions of harm, which punitive frameworks often ignore. India's reforms, while progressive in expanding victims' procedural rights, remain largely tied to traditional adversarial processes and lack mechanisms for meaningful dialogue between victim and offender.

5. Judicial Interpretation

The judiciary has historically played a decisive role in shaping the contours of victims' rights in India, often compensating for the legislative silence of colonial-era statutes. Long before Parliament undertook comprehensive reform in 2023, the Supreme Court and High Courts developed a body of jurisprudence that gradually shifted the system from being entirely offender-centric to one that recognised victims as stakeholders in criminal justice. These judicial interventions not only provided compensation and protection but also laid the groundwork for many of the statutory provisions now codified in the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA

One of the earliest cases was *Rudul Sah v. State of Bihar*, where the Supreme Court ordered the State to pay compensation to a man illegally detained for over fourteen years.¹⁹ While

¹⁸ Ann Skelton & Cheryl Frank, Restorative Justice in South Africa: Current Practices and Future Prospects, 17 S. Afr. J. Crim. Just. 57, 65 (2004).

¹⁹ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 (India).

compensation had previously been seen as a civil law remedy, the Court innovatively linked it to the violation of fundamental rights under Article 21 of the Constitution. This decision was transformative in recognising that victims of state excesses are entitled to monetary relief directly from constitutional courts. It also foreshadowed the eventual statutory incorporation of victim compensation under Section 357A of the CrPC in 2008 and its expansion under the BNS.

Another critical development came in *Delhi Domestic Working Women's Forum v. Union of India*, where the Court directed the establishment of mechanisms for victim support, including legal aid and counselling for rape survivors.²⁰ At a time when the CrPC made no specific provision for victim rehabilitation, this judgment signalled judicial willingness to read into Article 21 an affirmative duty of the state to assist victims of sexual violence. Similarly, in *Bodhisattwa Gautam v. Subhra Chakraborty*, the Court ordered interim compensation to a rape victim during the pendency of the trial, reiterating that compensation was an integral part of the right to life and dignity.²¹ These rulings collectively cemented the principle that victims are not passive witnesses but rights-holders entitled to immediate relief and procedural dignity.

In more recent years, the judiciary has continued to advance victim-centric principles. In *Laxmi v. Union of India*, the Supreme Court issued directions on the regulation of acid sales and ordered enhanced compensation and medical assistance for victims of acid attacks.²² This judgment reflects a proactive judicial role in not only adjudicating individual disputes but also framing systemic guidelines to protect and rehabilitate victims. It also demonstrates the Court's awareness that statutory reforms alone cannot suffice unless implemented through detailed administrative frameworks.

The expansion of victims' participatory rights was evident in *Reena Hazarika v. State of Assam*, where the Court observed that victims are entitled to be heard in bail proceedings and

²⁰ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14 (India).

²¹ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490 (India).

²² *Laxmi v. Union of India*, (2014) 4 SCC 427 (India).

emphasised the importance of incorporating victims' perspectives into judicial discretion.²³ Although the CrPC did not explicitly recognise such rights, the Court treated victim participation as essential to the fairness of criminal trials. This judicial approach influenced the BNSS, which now expressly grants victims a right to be heard before the withdrawal of prosecution under Section 360.

Beyond compensation and participation, the courts have also intervened to protect the dignity of victims during trial. In *State of Punjab v. Gurmit Singh*, the Court held that the testimony of a rape survivor does not require corroboration if it is otherwise credible and reliable, thereby easing the evidentiary burden on victims.²⁴ This principle is now reflected in Section 114A of the BSA, which presumes the absence of consent in sexual offences once the prosecution establishes basic facts. The judiciary thus anticipated and influenced statutory reforms by expanding the evidentiary value of victims' testimonies.

Comparative jurisprudence abroad highlights similar trends. In the United Kingdom, the House of Lords in *R v. Davis* stressed the need to balance the rights of defendants with the protection of vulnerable witnesses, permitting the use of special measures such as anonymity and video testimony.²⁵

Despite these advances, Indian judicial interpretation remains limited in certain respects. Compensation orders, while frequent in constitutional writs, are often inconsistent in quantum and implementation, leading to disparities across cases.

6. Challenges in Implementation

While the enactment of the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA) represents a clear normative

²³ *Reena Hazarika v. State of Assam*, (2018) 13 SCC 289 (India).

²⁴ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

²⁵ *R v. Davis*, [2008] UKHL 36 (U.K.).

shift towards recognising victims as central actors in criminal justice, translating legislative intent into lived reality presents formidable challenges. Legal reform, especially in a country as vast and diverse as India, cannot succeed through statutory text alone; it requires institutional preparedness, cultural receptivity, and resource allocation. Without these, many of the victim-centric provisions risk remaining symbolic rather than substantive.

One of the foremost challenges is the **lack of awareness** among victims themselves. Numerous studies on victim compensation schemes under Section 357A of the CrPC revealed that many victims were not even aware that they could claim compensation.²⁶ This problem persists under the new codes. Provisions such as the right to be heard before withdrawal of prosecution (BNSS Sec. 360) or the facility of Zero FIRs (BNSS Sec. 173) will mean little if victims are not informed of their availability. Awareness campaigns, victim information booklets, and legal aid outreach remain patchy and urban-centric, leaving rural victims at a disadvantage.

The **capacity of law enforcement agencies** poses another structural hurdle. While the BNSS enables electronic registration of FIRs, many police stations in rural and semi-urban areas lack the infrastructure or trained personnel to process digital complaints effectively.²⁷ Victims may be promised access on paper but denied it in practice due to technological and logistical deficiencies. Similarly, statutory mandates for time-bound investigations and trials, for instance, the requirement to complete sexual offence investigations within two months often falter in the face of inadequate forensic facilities, overburdened courts, and a shortage of prosecutors. Delays in investigation and trial not only frustrate victims but also risk re-traumatizing them through prolonged engagement with the justice process.

A related concern is the **fragmented approach to compensation and rehabilitation**. Although the BNS reinforces compensation obligations, it does not establish a uniform national

²⁶ Law Commission of India, 226th Report: Proposal to Amend Section 357A of the Code of Criminal Procedure, 17 (2009).

²⁷ Pratiksha Baxi, Access to Justice and the Problem of Police Infrastructure in India, 47 Econ. & Pol. Wkly. 12, 15 (2012)

fund. Instead, victims remain dependent on state-level schemes, which vary drastically in quantum, eligibility, and efficiency of disbursement.²⁸

Cultural and attitudinal barriers also obstruct victim-centric justice. The criminal justice system continues to operate under a deeply entrenched **retributive philosophy**, where success is measured in terms of conviction rates rather than victim satisfaction. Judges and prosecutors often resist victim participation, perceiving it as disruptive to the adversarial balance between prosecution and defence. Moreover, police practices frequently reflect patriarchal and hierarchical biases, especially in cases of gender-based violence, where victims are discouraged from pursuing complaints or pressured into compromises. These socio-cultural impediments are as significant as legal ones, for they shape the everyday experiences of victims navigating the system.

Finally, **resource constraints** cannot be ignored. Implementing victim support services requires trained counsellors, legal aid professionals, witness protection measures, and rehabilitative infrastructure.

7. Capacity Building and the way forward-

If the 2023 reforms are to fulfil their promise of victim-centricity, statutory provisions alone will not suffice. What is required is the creation of institutional mechanisms, cultural shifts, and sustained investment in infrastructure that collectively empower victims as active participants in the justice process.

A primary step lies in strengthening victim support services. While the BNSS and BNS have expanded procedural and substantive rights, there is no national framework to guarantee victims access to counselling, shelter, or legal aid. In contrast, the United Kingdom's Victims'

²⁸ Mrinal Satish, Victim Compensation in India: Judicial Innovation and Legislative Reform, 6 Indian J. Criminology 54, 61 (2015).

Code creates enforceable entitlements to such services. India must develop a centralised victim services authority that coordinates across states, ensuring uniformity and quality of assistance. Such an authority could administer emergency relief, medical care, psychological counselling, and long-term rehabilitation, moving beyond the current fragmented state-level schemes.

Equally crucial is training for police, prosecutors, and judges. Without cultural and institutional sensitivity, victim-friendly provisions risk being undermined in practice. Training programs should emphasise trauma-informed policing, gender sensitivity, and restorative practices. Studies have shown that victims' first encounter with the police often shapes their willingness to pursue justice, yet insensitive handling remains a persistent problem. By embedding victim-centric training into the curricula of police academies, judicial colleges, and prosecutorial institutes, India can begin to shift institutional culture towards one that recognises victims' dignity.

Another essential area is the standardization and expansion of compensation schemes. While the BNS provides for compensation linked to certain offences, the quantum and process of disbursement remain state-dependent. A National Victim Compensation Fund, uniformly applicable across India, would reduce disparities and ensure timely relief.

Restorative justice programs must also be institutionalised. International experience demonstrates that structured mediation and conferencing programs can provide victims with a sense of closure that traditional trials often fail to achieve. In New Zealand, restorative justice conferencing is a statutory requirement in juvenile cases, and victims play an integral role in shaping reparative outcomes. India could pilot similar programs in cases involving property offences, juvenile crimes, and even certain categories of interpersonal violence, provided that victim participation is voluntary and safeguarded against coercion. Over time, restorative processes could complement formal adjudication, offering victims a choice between adversarial trial and mediated restoration.

Community-based initiatives should not be overlooked. India's experience with Lok Adalats demonstrates the potential of informal dispute resolution, but these forums have often been criticized for prioritizing compromise over fairness. With appropriate guidelines, Lok Adalats or community mediation centers could be reimagined as restorative spaces where victims' voices are genuinely heard. Civil society organizations, women's groups, and NGOs already working in victim support could be integrated into this ecosystem, ensuring that restorative practices are not limited to paper but become embedded in community justice.

Taken together, these measures represent a roadmap for transforming India's criminal justice system into one that is not only legally victim-centric but also institutionally and culturally supportive. The legislative reforms of 2023 have opened the door, but whether the system truly becomes restorative will depend on sustained commitment to building capacity across all levels of governance. Unless victims are provided with consistent support, genuine participation, and avenues for healing, the statutory reforms may remain a symbolic break from colonial law rather than a substantive leap towards justice.

8. Conclusion

A deeper analysis reveals that these reforms, while progressive, are best described as incremental rather than revolutionary. Victims now have the right to lodge zero FIRs and e-FIRs, to be heard before withdrawal of prosecutions, and to benefit from in-camera proceedings in sensitive cases. Compensation provisions are more robust, and the law has begun to embrace the realities of cybercrime and technology-driven offences through expanded evidentiary rules. These developments undoubtedly reflect a departure from the offender-centric model of the past.

At the same time, the reforms stop short of embracing a fully restorative justice framework. Victim participation, though acknowledged, remains largely consultative rather than determinative. The way forward must therefore involve capacity building and cultural transformation. India requires a centralized victim services authority, uniform compensation

mechanisms, and systematic training of police, prosecutors, and judges in trauma-informed practices.

India's new criminal codes thus represent a beginning, not an endpoint. They acknowledge the victim's voice but have yet to amplify it fully; they recognize the need for dignity but have yet to institutionalize restorative pathways. To move beyond symbolism, India must embrace a pragmatic model of justice that balances retribution with restoration, punishment with healing, and state control with victim empowerment. Only then can the criminal justice system evolve into one that not only punishes wrongdoers but also restores, empowers, and supports those who have suffered harm.

JUVENILE DELINQUENCY IN THE DIGITAL AREA

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ABSTRACT

In contemporary times, young people grow up in an environment heavily influenced by advanced technology. Digital tools support their education, allow them to remain socially connected, and encourage innovation and creativity. However, the same digital space also creates opportunities for some juveniles to engage in unlawful or harmful activities. Such technology-related offenses have serious implications for educators, administrators, law enforcement authorities, and the judiciary. Unlike traditional crimes, cyber offenses are often executed discreetly, without geographical limitations, and their consequences are both immediate and longlasting.

The Involvement of juveniles in cybercrime is often linked to their age, curiosity, immaturity, and the influence of peers. Offenses in this category include cyberbullying, identity theft, hacking of systems, online harassment, circulation of offensive or obscene material, copyright violations, financial frauds, cyberstalking on social media, and at times, participation in organized cybercriminal groups. Many of these acts do not stem from deliberate malice but may arise from experimentation, thrill-seeking, or ignorance of legal and ethical boundaries. Nevertheless, the outcomes are severe, often causing emotional harm to victims, disturbing social order, and exposing juveniles themselves to a pattern of deviant behavior.

In India, the regulatory framework addressing these issues is primarily based on the Juvenile Justice (Care and Protection of Children) Act, 2015, the Information Technology Act, 2000, and relevant provisions of the Indian Penal Code. While these statutes are designed to reform juvenile offenders and encourage positive behavioral changes, the law also permits juveniles between the ages of sixteen and eighteen to be tried as adults in cases of heinous cyber offenses. Despite this framework, enforcement remains problematic due to challenges in detecting and proving cybercrimes, preserving electronic evidence, and ensuring adequate vigilance from parents, schools, and institution. The prevention of juvenile cyber offenses requires collective and coordinated efforts. Effective strategies include imparting digital literacy to children, parental monitoring of online activities, integrating cyber safety into school curricula, providing

psychological counseling where necessary, and fostering safer and more accountable digital environments. Simultaneously, strengthening legal provisions, upgrading cybersecurity mechanisms, and ensuring accountability must go hand-in-hand with rehabilitative measures to address the root causes of delinquency.

Ultimately, the misuse of technology by juveniles illustrates both the advantages and risks of digital progress. Protecting young users and society at large requires a balanced approach— combining education, awareness, legal safeguards, and reformative justice. Families, schools, communities, and the state must work in partnership to shield children from the lure of cybercrime and to guide them towards constructive and responsible use of technology.

Key Words: cyber bullying, Juvenile Cyber Crime, Obscene material circulation, Copyright violation, Heinous offences, Financial fraud, Cyber stalking, Anonymity

1. Introduction

Technological advancements have significantly transformed the ways in which humans interact, communicate, and share information, creating new opportunities for innovation and socioeconomic growth. However, the widespread use of digital platforms, mobile technologies, and global networks has also introduced a range of challenges, particularly concerning the behavior of young people. Increasingly, minors are not only passive beneficiaries of technological progress but are also actively involved in utilizing these tools for both intentional and unintentional illegal activities. The digital environment has blurred the boundaries of criminal behavior, making actions that once required substantial resources, technical expertise, or physical access now possible with ease and anonymity. This shift has led to a rise in technology-facilitated juvenile offenses, which include a wide range of activities from cyberbullying and online harassment to more serious crimes like unauthorized access to computer systems, sextortion, and digital identity theft.

A major concern is the prevalence of cyberbullying,¹ where the anonymity and wide reach of social media amplify the psychological impact on victims. Another troubling trend is the increasing involvement of juveniles in online sexual offenses, particularly the creation and distribution of sexually explicit content, often without fully understanding the long-term legal, social, and psychological consequences. Moreover, the growing technical skills of youth have enabled them to engage in unlawful computer trespass, hacking, and data breaches, leading to significant financial losses and lasting emotional distress. Other digital crimes, such as counterfeiting, identity fraud, and sending threats through electronic platforms, further highlight the expanding criminal opportunities made possible by technology.

These patterns of delinquency are influenced by multiple factors, such as peer pressure, unrestricted access to digital tools, lack of awareness about online risks, and limited digital literacy. Many juveniles fail to recognize the permanence of their digital footprints or grasp the serious legal implications of their online actions. These circumstances create critical legal and societal challenges, requiring states, judicial bodies, and law enforcement agencies to develop responses that balance accountability, deterrence, and victim protection with rehabilitative and restorative justice principles for minors. Therefore, the rise of technology-facilitated juvenile crime necessitates the implementation of comprehensive.

2. Legal Framework

The Indian legal framework seeks to balance accountability with reformatory justice, addressing the complexities of technology-facilitated juvenile offenses through a multifaceted approach. The Juvenile Justice (Care and Protection of Children) Act, 2015,² emphasizes rehabilitation, reintegration, and child welfare, while allowing juveniles aged 16-18 to be tried as adults for serious crimes. The Information Technology Act, 2000, and the Indian Penal Code, 1860,³ offer additional provisions to regulate cyber misconduct and digital offenses. Research indicates the

¹ Hinduja, Sameer & Patchin, Justin. *Cyberbullying: An Exploratory Analysis of Factors Related to Offending and Victimization*. 29. Deviant Behavior - DEVIANT BEHAV. 129-156 (2008)

² Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

³ Information Technology Act, 2000, § 66C, 66E, 67, 67B, No. 21, Acts of Parliament, 2000 (India).

need for mandatory reporting of online child sexual abuse, due diligence by internet service providers, log retention periods, and an integrated approach combining legal reforms, technological interventions, and educational programs. By implementing this holistic strategy, the Indian legal framework aims to prevent juvenile delinquency and support the rehabilitation and reintegration of juvenile offenders into society.

Effective cybersecurity governance requires that legislative and regulatory mechanisms remain adaptable to the ever-changing landscape of cyber threats.

It is essential to strengthen the national cybersecurity architecture, enhance the technical and institutional capacities for digital forensics, and promote robust inter-agency coordination between law enforcement agencies and private sector technology entities.⁴ At the same time, within the context of juvenile justice, rehabilitation and social reintegration should remain the primary focus, ensuring that minors who come into conflict with the law are not subjected to long-term stigma but are instead given access to education, vocational training, and opportunities for constructive participation in society.

3. Objectives of Technology-Facilitated Crimes By Juveniles

- **Gain and Illicit Material Benefits**

A considerable number of juveniles engage in cyber-offenses such as phishing, hacking, online financial fraud, and identity theft, primarily to obtain pecuniary or material benefits without legitimate effort.⁵

⁴ Ministry of Electronics & Information Technology, Gov't of India, *National Cyber Security Policy* (2013), available at https://www.meity.gov.in/static/uploads/2024/02/National_cyber_security_policy-2013_0.pdf (accessed Sept. 24, 2025).

⁵ J. Holt & Adam M. Bossler, *Cybercrime in Progress: Theory and Prevention of Technology-Enabled Offenses* (Routledge 2016).

The anonymity provided by cryptocurrencies, the speed of digital transactions, and the global nature of online platforms make cyberspace an appealing environment for securing immediate and unlawful economic gains.⁶

- **Curiosity and Technological Experimentation**

Juveniles, often characterized by high digital literacy and technical skills, may commit cyber offenses driven by intellectual curiosity and a desire for experimentation. In many cases, this behavior does not stem from criminal intent but rather from the desire to test security systems, explore hacking methods, or demonstrate technical expertise. However, these exploratory activities may lead to unlawful behavior once they cross legal and ethical boundaries.⁷

- **Quest for Peer Recognition and Social Capital**

A common aim of juvenile cyber-delinquency is the pursuit of peer validation, popularity, and social recognition within both offline and online environments, such as hacker forums or gaming networks. Cyber-offenses may be used as a means to achieve status enhancement, group inclusion, or notoriety, highlighting the role of deviant subcultures in shaping juvenile motivations.

- **Retaliatory Motives: Revenge, Retribution, or Harassment**

Some juvenile cyber-offenses are driven by retaliation, revenge, or harassment, where the offender seeks to cause harm to specific individuals through actions like cyberbullying, unauthorized access to personal accounts, or spreading defamatory digital content.

In these cases, the primary objective is not economic gain but emotional satisfaction, symbolic retribution, or a sense of perceived justice against a rival or adversary.

⁶ Leukfeldt, E. R. (2015). Cybercriminal networks, social ties and online forums: Social ties versus digital ties within phishing and malware networks. *British Journal of Criminology*, 55(3), 604–620.

⁷ Paul Taylor, Eric J. Fritsch & Jon Liederbach, *Digital Crime and Digital Terrorism* (Pearson 2014)

- **Seeking, Amusement, and Entertainment**

For some juveniles, cyber-offending is primarily a form of excitement, thrill-seeking, and leisure activity. Engaging in practices such as website defacement, denial-of-service attacks, or spreading malicious software may be pursued solely for the psychological stimulation and sense of accomplishment from breaching technological systems, regardless of any tangible benefits.

- **Influence and Recruitment by Organized Networks**

A subset of juveniles becomes involved in technology-facilitated crimes under the influence of organized cybercriminal groups or extremist organizations, who exploit their technical skills. In such cases, objectives may go beyond personal gain to include participation in political propaganda, ideological dissemination, cyber-terrorism, or coordinated financial fraud. This reflects the growing intersection between juvenile delinquency and organized cybercrime.⁷

- **Lack of Awareness of Legal and Ethical Consequences**

Many juveniles engage in digital misconduct due to a lack of awareness of the legal, social, and ethical consequences. Perceiving cyberspace as anonymous and low-risk, such offenders pursue temporary gratification, experimentation, or entertainment without recognizing the potential for long-term legal liability, reputational damage, and societal harm.

4. Comparative Legal Analysis

- **India vs Sweden/ Belgaum/ USA**

Criterion	India	Sweden	Belgium	USA
Juvenile Law	JJ Act 2015, IT Act, BNS 2023	Specialized child protection	Digital tools in enforcement	Focus on rehabilitation and tech units

⁷ Roderic Broadhurst, Peter Grabosky, Mamoun Alazab & Steve Chon, Organizations and Cyber Crime: An Analysis of the Nature of Groups Engaged in Cyber Crime, 8 *Int'l J. Cyber Criminology* 1 (2014)

Cybercrime Cell	Few, capacity building needed	Broad partnership approach	Specialized digital units	Significant cyber law focus
Legal Education	Recent reforms, nascent	In schools from early age	Integrated with public health	Increasing digital literacy programs
Punishment Norms	Primarily reformative	Strong prevention, counseling	Emphasis on intervention	Mixture of restorative/punitive

5. Forms And Patterns Of Technology-Assisted Juvenile Offenses

- **Cyberbullying and Online Harassment**

Juvenile offenders participate in various technology-assisted harmful behaviors, such as cyberbullying, doxing, identity impersonation, hate speech, and non-consensual sharing of intimate images—commonly known as “revenge pornography.”

Empirical research highlights a significant rise in anonymous cyberbullying incidents, which intensify the psychological distress and reputational harm faced by victims. Digital platforms like WhatsApp, Instagram, and Facebook serve as mediums for collective harassment, coercion, and psychological victimization of adolescents. Judicial bodies have responded with disciplinary measures and criminal charges, as seen in recent landmark cases involving cyber harassment and sexual misconduct in academic settings in India.

- **Online Sexual Offenses**

Minors are both victims and perpetrators in offenses such as sexting, sextortion, commercial sexual exploitation, and the distribution or creation of child sexual abuse material (CSAM).

The "Bois Locker Room" case exemplifies the illegal sharing of explicit content among juveniles in private online spaces. The growth of immersive digital environments like virtual reality and the

metaverse has heightened vulnerabilities to grooming, exploitation, and sexual predation among young people.

- **Fraud, Financial Crimes, and Cyber Intrusion**

Technologically skilled juveniles commit offenses involving phishing, fraudulent schemes, ransomware attacks, manipulation of digital auction systems, and large-scale data breaches. Examples include student groups altering academic records through educational software. Globally, young cyber offenders carry out sophisticated attacks such as distributed denial-of service (DDoS) operations, identity theft, and cryptocurrency fraud, indicating a rise in both technical capability and offense complexity.

- **Trafficking and Commercial Exploitation**

Minors act as both victims and facilitators in ⁸ trafficking networks, particularly those linked to narcotics and sexual exploitation.

These networks utilize encrypted channels, dark web platforms and instant messaging apps for coordination. Social media is used to organize illegal activities, including drug trafficking, distribution of exploitative content, and recruitment for criminal groups. This complex digital trafficking ecosystem illustrates the intersection of technology-assisted juvenile cybercrime with transnational and local illicit trade structures.

- **Sexting**

Sexting involves the sending, receiving, or forwarding of sexually explicit or nude images, videos, or messages through digital devices like mobile phones and social media.⁹

⁸ United Nations Office on Drugs and Crime, *UNODC World Drug Report 2021: Pandemic Effects Ramp Up Drug Risks, as Youth Underestimate Cannabis Dangers* (June 24, 2021), https://www.unodc.org/unodc/press/releases/2021/June/unodc-world-drug-report-2021_-pandemic-effects-ramp-up-drug-risks--as-youth-underestimate-cannabis-dangers.html (accessed Sept. 24 2025)

⁹ Janis Wolak, David Finkelhor & Kimberly J. Mitchell, *Trends in Law Enforcement Responses to Technology-Facilitated Child Sexual Exploitation Crimes: The Third National Juvenile Online Victimization Study (NJOV-3)* (Crimes Against Children Research Center Apr. 2012)

When involving minors, sexting raises major legal issues, as such content is often classified as child sexual abuse material (CSAM), making its creation, possession, or sharing a punishable offense under criminal laws. However, juvenile sexting introduces legal challenges, as laws targeting adult offenders may unintentionally criminalize consensual exchanges between minors. As a result, various jurisdictions have developed detailed legal frameworks that distinguish consensual juvenile sexting from CSAM offenses, often incorporating educational and rehabilitative approaches. In contrast, coercive or non-consensual sexting sharing or exploitation faces severe criminal penalties¹⁰, including charges like sextortion or revenge pornography, with juvenile courts emphasizing rehabilitation based on age and developmental factors.

6. Causes And Risks

- **Individual Factors**

- Personality Traits: Some personality traits, like being impulsive or aggressive, might make teenagers more likely to commit crimes using technology.
- Mental Health: Problems with mental health can lead to delinquent behavior in young people¹¹.
- Cognitive Development: Not having full brain development and poor control over impulses can make it hard for teenagers to make smart choices online.¹²
- Self-Esteem and Identity: Low self-confidence or a need for approval online can push teenagers to take risks on the internet.¹³

- **Family Factors**

- Dynamics: Unhealthy family relationships and not enough parental attention can lead to bad behavior in teenagers.

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

¹¹ D. M. Fergusson & L. J. Woodward, Mental Health, Educational, and Social Outcomes of Adolescents with Depression, 41 *J. Child Psychol. & Psychiatry* 45 (2002)

¹² Steinberg, L. A social neuroscience perspective on adolescent risk-taking. 28(1), *Developmental Review*, 78–106 (2008)

¹³ Peter M. Valkenburg & Jochen Peter, *Online Communication and Adolescent Well-Being: Testing the Stimulation Versus the Displacement Hypothesis*, 52 *J. Computer-Mediated Communication* 71–86 (2011).

- Parental Monitoring: If parents don't check what their kids are doing online, it can allow technology-related crimes.¹⁴
 - Parent-Child Relationship: A poor relationship between parents and children can make teenagers look for approval through online activities.
 - Family Socioeconomic Status: Financial and social conditions at home can play a role in teenage delinquency.
- **Peer Factor**
 - Peer Influence: Being around friends who do bad things can encourage teenagers to use technology for criminal activities.
 - Social Media Use: Social media can influence peers and create chances for cyberbullying or harassment.
 - Online Communities: Joining online groups can expose teenagers to bad company.
 - Peer Validation: Teens might engage in tech-related crimes to gain approval from their friends.¹⁵
- **Societal Factors**
 - Media Influence: Seeing violent or bad content online can make teenagers less sensitive to the consequences of their actions.¹⁶
 - Cultural and Social Environment: Places that accept or tolerate bad behavior can lead to more juvenile crime.¹⁷
 - Access to Technology: Easy access to technology can create more chances for technology-facilitated crimes.

7. Consequence And Impact

¹⁴ Anthony K. Liau, Angeline Khoo & Peter H. Ang, *Internet Social Networking and Online Chatting: Effects on Cyberbullying and Cybervictimization among Adolescents*, 30 *CyberPsychology & Behavior* 201-208 (2005)

¹⁵ Sameer Hinduja & Justin W. Patchin, *Cyberbullying: An Exploratory Analysis of Factors Related to Offending and Victimization*, 36 *Deviant Behavior* 129-156 (2008).

¹⁶ Craig A. Anderson & Brad J. Bushman, *Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review*, 45 *Psychol. Sci.* 353 (2001)

¹⁷ Robert J. Sampson & John H. Laub, *Crime in the Making: Pathways and Turning Points Through Life* (Harvard Univ. Press 1994)

- **Legal Consequences**

- Involvement with the Juvenile Justice System – Kids who commit crimes using technology might face legal action under the Juvenile Justice (Care and Protection of Children) Act, 2015,¹⁸ or similar laws in other places. Depending on how serious the crime is, the process might include helping them change their behavior or even jail time.
- Criminal Record and Other Effects – Even though court records for kids are usually kept private to help them get back on track, being involved in cybercrime cases can still limit future chances for college, jobs, or traveling abroad.¹⁹
- These effects can last a long time. Seriousness of the crime and being tried as an adult in very bad cybercrimes like hacking, stealing personal information,²⁵ fraud, or sharing illegal pornographic material can lead to trying a young person as an adult, especially if they are above a certain age, like 16 in India. This happens after a judge checks their intent and understanding.
- Cross-Border and Legal Challenges – Cybercrimes often happen in multiple countries, causing issues with laws that apply across borders, agreements between governments to help with legal cases, and requests to send someone to another country for trial. This makes it harder to handle cases involving young people.

- **Psychological and Social Consequences**

- Social Stigma – If a kid is linked to cybercrimes, they may face judgment, rejection from friends, and lowered status in society, which can make it hard to fit back in.
- Mental Health Problems – Being in legal trouble, being exposed to public scrutiny, and feeling guilty can cause emotional issues like anxiety, depression, or withdrawal from others.
- Influence²⁰ of Bad Peer Groups – If a kid makes friends with online criminals, hackers, or extremists, they might start to see illegal actions as normal, which can push them further into bad behavior.

¹⁸ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, Acts of Parliament, India (2015)

¹⁹ UNICEF, <https://www.unicef.org> (accessed Sept. 24, 2025)

²⁰ Sameer Hinduja & Justin W. Patchin, *Cyberbullying: An Exploratory Analysis of Factors Related to Offending and Victimization*, 36 *Deviant Behavior* 129–156 (2008).

- Loss of Trust in Family and Community – Doing illegal online stuff can cause problems in trust at home, school, and in the community, which weakens the support system needed to help them change.
- **Educational and Career Effects**
 - Impact on Studies – Being arrested, going through a trial, or being sent to a facility can stop a kid from continuing their education, leading to missed learning and fewer academic chances.
 - School Penalties – Schools and colleges might punish kids with suspension, expulsion, or stop them from using digital tools, making it harder for them to keep up.
 - Job Limitations – Even if records are hidden, background checks and bad reputation can stop kids from getting jobs in areas like defense, government, law enforcement, or banking.
 - Digital Reputation Damage – Bad online posts and digital history can harm a kid’s image forever, making it harder to get jobs or school admissions, since employers and schools often look at online profiles.

8. Preventions And Intervention Strategies

- **Legal and Policy-Level Strategies**
 - Strengthening Cyber-Legal Frameworks – There is an urgent need for more specific statutory provisions under the Information Technology Act, 2000, the Juvenile Justice (Care and Protection of Children) Act, 2015, and international legal instruments such as the Budapest Convention on Cybercrime, to clearly define and regulate the involvement of juveniles in technology-facilitated offenses.
 - Age-Appropriate Accountability Mechanisms – Legal frameworks must carefully balance deterrence and rehabilitation While juveniles implicated in serious cyber-offenses ²¹(e.g.,

²¹ Russell G. Smith, Peter N. Grabosky & George Urbas, *Cyber Criminals and the Law: Problems of Enforcement in the Information Age* (Univ. of New South Wales Press 2004)

largescale financial fraud or dissemination of child sexual abuse material) may be subjected to trial as adults under statutory discretion, lesser infractions should prioritize correctional and rehabilitative responses over punitive sanctions.

- Mandatory Reporting and Institutional Monitoring – Internet service providers, social media platforms, and educational institutions should be placed under a statutory obligation to report instances of online exploitation, abuse, or suspicious juvenile activity to competent authorities .Such proactive monitoring ensures early detection and intervention.

- **Educational and Preventive Strategies**

- Integration of Digital Literacy and Cyber Ethics – Educational curricula must embed cyber ethics, responsible digital behavior, and awareness of legal liabilities to equip juveniles with the skills necessary to navigate online spaces without engaging in unlawful conduct.
- Capacity-Building for Parents and Guardians – Structured training programs should empower parents to effectively monitor online activities, identify behavioral red flags, and engage in constructive digital supervision while avoiding intrusive surveillance that may alienate juveniles.
- Public Awareness Campaigns – Nationwide campaigns spearheaded by government bodies, schools, and civil society organizations can raise awareness about the legal, social, and psychological consequences of cyber-delinquency, thereby fostering deterrence through informed participation.

- **Psychological and Social Interventions**

- Therapeutic and Rehabilitative Counseling – Juveniles implicated in cyber-offenses must undergo psychological assessments, therapeutic counseling, and behavioral interventions to address root causes such as peer influence, digital addiction, or socio-emotional vulnerabilities.
- Mentorship and Positive Peer Engagement – Structured mentorship programs involving educators, professionals, or rehabilitated peers can redirect juveniles towards constructive pursuits, thereby reducing the risk of recidivism.

- Community-Centric Preventive Models – The involvement of non-governmental organizations (NGOs), youth associations, and community forums can foster safe digital ecosystems, providing juveniles with responsible alternatives to delinquent behavior.
- **Technological and Institutional Safeguards**
 - Parental Control and Monitoring Mechanisms – The deployment of parental control technologies, age-appropriate access restrictions, and content filters can reduce juveniles’ exposure to harmful online environments while preserving educational benefits of the internet.
 - AI-Enabled Predictive Monitoring – Law enforcement agencies and digital platforms may adopt artificial intelligence tools and predictive algorithms to identify early indicators of juvenile involvement in illicit online activities (e.g., engagement in hacking forums, use of anonymizing technologies, or access to the dark web).
 - Institutional Protocols for Educational Settings – Schools and universities must establish clear disciplinary and reporting protocols to address incidents of cyberbullying, digital misconduct, and unauthorized access, ensuring timely interventions and restorative handling.
- **Criminological and Theoretical Approaches**
 - Application of Strain Theory – Prevention strategies should address socio-economic disparities and limited legitimate opportunities that often push juveniles toward cybercrime as an alternative means of achieving societal goals.
 - Disruption of Deviant Associations – Consistent with Differential Association Theory, intervention programs should break negative peer networks and replace them with positive social and professional networks that reinforce lawful behavior.
 - Routine Activity Theory Framework – Strategies should aim to minimize opportunities for delinquency by strengthening “capable guardianship” through parental supervision, institutional monitoring, and regulatory oversight of online platforms.
 - Caution Against Labeling Effects – As per Labeling Theory, excessive criminalization and stigmatization of juveniles may reinforce deviant identities.

- A reform-oriented and restorative approach must therefore prevail, preventing long-term marginalization.

- **Restorative and Rehabilitative Measures**

- Restorative Justice Mechanisms – Alternatives to punitive adjudication, such as mediation, victim-offender dialogue, and community service, can promote accountability while facilitating reconciliation and reintegration.
- Skill Development and Constructive Engagement – Programs aimed at channeling technological aptitude into lawful pursuits such as ethical hacking, cybersecurity training, coding competitions, or digital innovation challenges can transform potential delinquency into productive contributions.
- Aftercare and Post-Rehabilitation Integration – Continuous aftercare, monitoring, and reintegration support following release from juvenile institutions are critical to preventing recidivism and enabling juveniles to assume constructive societal roles.

9. JUDICIAL INTERPRETATION

- Case 1: “Bois Locker Room” (India, 2020)

Originated on Instagram, where juvenile boys shared morphed images and discussed sexual violence led to police action, widespread Parental concern, and a public debate on internet safety for adolescents as young as 14- 15. Outcomes included school suspensions, criminal proceedings under IT and POCSO Acts, and targeted digital literacy campaigns.²²

- Case 2: The Blue Whale Challenge

²² Delhi Commission for Protection of Child Rights (DCPCR), *Performance Report 2020–2023* (Gov't of NCT of Delhi), https://dcpcr.delhi.gov.in/sites/default/files/DCPCR/circulars-orders/dcpcr_performance_report_2020-2023.pdf (accessed Sept.24, 2025).

Originated in Russia, spread globally via encrypted messaging. The challenge manipulated vulnerable youths into self-harm and suicide, demonstrating the dark side of online peer pressure.²³

- **Case 3: Drug Trafficking via Social Platforms**

In 2022, Indian authorities intercepted a multimillion-dollar drug shipment following digital trail evidence from WhatsApp and Telegram chat logs between minors and traffickers.²⁴

10. RECOMMENDATIONS

- **Policy Recommendations**

- **Strengthening Cyber-Legal Provisions:** Update the Information Technology Act, 2000, and the Juvenile Justice (Care and Protection of Children) Act, 2015, to clearly define cyber-offenses committed by juveniles, such as cyberbullying, online sexual exploitation, hacking, and financial fraud.
- **Age-Sensitive Accountability:** Create rules that clearly separate small mistakes from serious crimes, allowing judges to decide whether a juvenile should be treated like an adult, based on their age, understanding, and the nature of the crime.
- **Mandatory Reporting and ISP Due Diligence:** Make it required for social media platforms, internet service providers, and online service companies to report juvenile cyber-offenses, keep records for investigations, and work with law enforcement.
- **Transnational Cooperation:** Improve international agreements and partnerships, such as mutual legal assistance treaties, international cybercrime conventions, and cross-border investigation methods, to effectively handle cybercrimes involving minors.

²³ Ant Adeane, *Blue Whale: What Is the Truth Behind an Online 'Suicide Challenge'?*, BBC News (Jan. 13, 2019), <https://feeds.bbc.co.uk/news/blogs-trending-46505722> (accessed Sept. 24 2025).

²⁴ Narcotics Control Bureau (India), *Annual Report 2022* (Ministry of Home Affairs, Government of India), <https://narcoindia.gov.in/narcoindia/periodicals.php> (accessed Sept. 24, 2025).

- **Educational and Preventive Measures**

- Digital Literacy Integration: Teach students about online safety, cyber ethics, and the legal outcomes of their actions in schools and colleges, focusing on being responsible online.
- Parental Awareness and Capacity Building: Provide training for parents on how to monitor their children's online behavior, recognize early signs of trouble, and guide them in a healthy way without being too controlling.
- School-Based Interventions: Set up rules within schools to detect, help, and discipline students who engage in cyberbullying, sending explicit content, or online harassment.
- Awareness Campaigns: Run countrywide campaigns to show the legal, social, and mental health issues of juvenile cyber-offenses, focusing on both teenagers and their parents.

- **Technological and Forensic Measures**

- Platform Accountability and Monitoring: Ask social media and communication sites to use strong moderation, AI-based checking, and content reporting systems, especially for harmful content aimed at or created by minors.
- Digital Forensics and Evidence Management: Create uniform processes for collecting, preserving, and using digital evidence in court, following the Indian Evidence Act, 1872, to ensure it is trustworthy in juvenile cybercrime cases.
- Cybersecurity Capacity Building: Strengthen national and local cybercrime units, including special teams for juvenile cyber issues, to tackle and respond to crimes made possible by technology.

- **Psychological, Social, and Rehabilitative Interventions**

- Therapeutic Counseling: Offer psychological evaluations and support to juvenile offenders, addressing issues like peer pressure, low self-esteem, impulse control, and online addiction.
- Mentorship and Peer Support: Involve youth in mentorship programs, ethical tech groups, and skill-building activities that help them use their tech skills in a positive way.
- Community Participation: Encourage NGOs, youth groups, and digital safety organizations to build safe online spaces, support victims, and help promote good online behavior.

- Restorative Justice Models: Use methods like mediation between victims and offenders, community service, and supervised online responsibility programs to encourage accountability, while reducing embarrassment and stigma.

- **Criminological and Sociological Approaches**
 - Address Root Causes: Focus on individual, family, peer, and community risk factors, like impulsive behavior, weak parenting, peer pressure, and easy access to tech, by creating wide ranging intervention programs.
 - Promote Ethical Online Culture: Encourage positive online behavior by applying concepts from criminological theories like Differential Association, Routine Activity, and Labeling Theory.
 - Incorporate Mental Health and Counseling: Include mental health support and mentoring in all intervention efforts to lower the chances of repeating crimes and to handle mental health issues.

- **Border, Policy, and Institutional Collaboration**
 - International Knowledge Exchange: Share successful methods between countries like India, Sweden, Belgium, and the USA, especially on preventing juvenile cybercrime, helping offenders recover, and handling digital evidence.
 - Judicial and Law Enforcement Training: Train judges, prosecutors, and police to understand juvenile psychology, technology-related crimes, and restorative justice methods.
 - Multi-Stakeholder Partnerships: Foster cooperation between government, technology companies, schools, and community groups to build a full system for preventing, handling, and helping those involved in juvenile cybercrimes.

11. CONCLUSION

Technology-facilitated crimes committed by minors represent a significant legal, social, and technological issue, highlighting the intersection of digital innovation and youth delinquency. The combination of advanced technological skills, easy access to online platforms, and socio-psychological vulnerabilities has expanded opportunities for juvenile misconduct. These offenses range from cyberbullying, harassment, and online defamation to more complex violations such as identity theft, financial fraud, and the distribution of child sexual abuse material. The digital environment not only lowers the conventional barriers to criminal behavior but also intensifies the psychological, social, and economic harms experienced by victims and society at large.

The Indian legal framework, primarily guided by the Juvenile Justice (Care and Protection of Children) Act, 2015, along with the Information Technology Act, 2000, and relevant sections of the Indian Penal Code, 1860, seeks to balance accountability with rehabilitation.

Nevertheless, the evolving and transnational characteristics of cybercrimes demand adaptive legislative measures, the establishment of dedicated juvenile cybercrime units, and robust international cooperation for effective enforcement. Experiences from Sweden, Belgium, and the United States illustrate the success of early digital literacy initiatives, preventive educational programs, restorative justice methods, and cohesive cyber-policing tactics.

Juvenile cyber offenses result in a range of repercussions, such as interruptions in education, social stigmatization, mental health challenges, and difficulties in securing future employment. Victims frequently endure significant emotional distress, damage to their reputation, and a diminished trust in digital platforms, while society incurs heightened law enforcement costs and faces potential risks to public safety.

To combat these offenses, a multidisciplinary strategy is essential, integrating clear legislation, school-based cyber-ethics education, parental involvement, technological protections, psychological assistance, and restorative justice initiatives. By promoting awareness, accountability, and rehabilitation, these approaches seek to cultivate responsible digital citizenship among young individuals. Ultimately, safeguarding both juveniles and society in the digital era necessitates evidence-based, preventive, and reformatory policies that harmonize the benefits of technological advancement with the imperative for ethical and lawful conduct.

FORENSIC AND SCIENTIFIC INVESTIGATION: INTEGRATING TECHNOLOGY FOR HIGHER CONVICTION RATES

- Asst. Prof. Mayur Patil
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Abstract

Over the past three decades, forensic science has revolutionized criminal investigations and prosecutions, providing more accurate, rapid, and objective evidence than traditional methods. This paper explores how advanced technologies, DNA profiling, digital forensics, biometrics, artificial intelligence (AI), and machine learning, are reshaping criminal justice by strengthening evidence, identifying criminals, and protecting the innocent. DNA analysis remains central, enabling accurate identification from biological samples and providing strong statistical support for guilt or innocence. Digital forensics recovers deleted or hidden data from devices and cloud platforms, which is crucial in cybercrime, financial fraud, and organized crime. Biometric tools such as fingerprint, iris, and facial recognition allow suspect identification in real time, while AI-powered algorithms analyze vast datasets to detect patterns, predict behaviour, and accelerate evidence comparison beyond human capability. Global case studies show that DNA databases are solving decades-old cold cases, and AI-assisted analysis is reducing investigation times from months to days, increasing conviction rates and reducing wrongful convictions.

However, integrating these technologies also poses challenges: high costs, the need for specialized training, and potential algorithmic bias, which, if not carefully managed, can threaten fairness. Safeguards such as rigorous verification, standardized quality control, and secure digital evidence management are essential to preserve constitutional rights and evidentiary integrity. Ethical concerns, particularly those related to large biometric databases and privacy, require strong legislation and oversight.

Thus, technological innovation is a double-edged sword: when implemented responsibly, it increases accuracy, efficiency, and public trust; without appropriate safeguards, it risks undermining justice. Continued investment, training, and regulatory frameworks are essential to strike a balance between public safety and individual rights.

Keywords: forensic science, digital evidence, DNA analysis, conviction rate, artificial intelligence, criminal investigation

1. Introduction

Forensic science has undergone significant development, shifting from traditional laboratory-based analysis to a technology-driven field that strengthens criminal investigations and the justice system. Modern crimes are becoming increasingly complex, generating large amounts of digital and physical evidence, and requiring faster, more accurate results. While traditional methods remain important, they often cannot fully meet these demands. Therefore, advanced technologies have become crucial to improving the reliability of evidence, increasing conviction rates, and reducing wrongful convictions. Tools such as DNA profiling, digital forensics, biometric systems, and artificial intelligence (AI) enable investigators to extract precise information from evidence that was previously difficult or impossible to analyze. These innovations increase the accuracy of findings, reduce human error, and provide stronger scientific support to courts. Automated workflows and analytical systems also streamline investigations, helping to solve cases more efficiently.¹

In addition to improving accuracy and speed, technology expands the scope of forensic capabilities. Evidence that was once overlooked or unusable can now be examined in detail, providing a more complete understanding of criminal activity. Furthermore, technological integration strengthens coordination between law enforcement, forensic laboratories, and the judicial system, leading to a more organized and effective approach to investigations. This Paper examines the impact of modern technologies on forensic investigations and conviction rates, focusing on DNA analysis, digital forensics, biometrics, and AI applications. It also discusses implementation challenges, highlights best practices for effective integration, and suggests future directions for advancing forensic science to meet the evolving needs of the criminal justice system.²

2. The Evolution and Current Status of Forensic Technology: A Comprehensive Review

¹ Xiaoyu Du, Jin Liu, Z. Lin, X. Ou & Z. Liu, SoK: Exploring the State of the Art and the Future Potential of Artificial Intelligence in Digital Forensic Investigation, arXiv:2012.01987 (Dec. 2, 2020).

²Rudra N. Sahoo & Chinmaya K. Mohapatra, DNA Evidence in Criminal Justice System: Admissibility, Reliability, and Accuracy, 20 *Nanotechnology Perceptions* 3619–3624 (2024).

This Article provides a detailed literature review of the development of forensic technology, tracing its evolution through various stages and unprecedented innovations. It examines the current state of forensic science and highlights the diverse techniques used in biological, digital, and physical evidence analysis. This review emphasizes the impact of technological advancements on case resolution rates, the accuracy of convictions, and the exoneration of wrongly convicted individuals.³

- **The Evolution of Forensic Technology**

The development of forensic technology reflects continuous innovation aimed at improving the accuracy, reliability, and efficiency of crime investigations. The late 19th and early 20th centuries saw the introduction of fundamental techniques such as fingerprint analysis, blood classification, and firearms testing, which laid the foundation for modern forensic science. The mid-20th century saw improvements in these methods, along with advances in forensic toxicology, serology, microscopy, and analytical chemistry, which increased the reliability of evidence analysis.⁴

A major breakthrough came with DNA fingerprinting, pioneered by Sir Alec Jeffreys in the 1980s, which completely transformed forensic investigations by enabling highly accurate personal identification. The 1990s and 2000s saw the digital revolution, leading to the rise of digital forensics for the analysis of electronic devices, cybercrime, and network data. Today, forensic technology is increasingly based on artificial intelligence (AI), with machine learning tools automating tasks such as image analysis, pattern recognition, and data mining, improving both the speed and accuracy of investigations and shaping the future of crime-solving.⁵

- **Current State of Forensic Technology**

³ Mark A. Jobling, Encouraging DNA Fingerprinting in Anthropological Genetics: Past, Present and Future, 4 *Investigative Genet.* 23 (2013).

⁴ Yaran Yang, Bingbing Xie & Jiangwei Yan, Application of Next-Generation Sequencing Technology in Forensic Science, 12 *Genomics, Proteomics & Bioinformatics* 190 (2014)

⁵ Jobling, M. A., and Gill, P. "Encouraging DNA Fingerprinting in Anthropological Genetics: Past, Present and Future." *Investigative Genetics*. 2013.

- Contemporary forensic science utilizes a variety of techniques spanning multiple disciplines, reflecting the complexity of modern crime and the increasing sophistication of forensic methods.⁶

3. Biological Evidence Analysis:

- **Advanced DNA sequencing and analysis techniques**

Modern DNA analysis goes far beyond simple fingerprinting. Techniques such as STR (short tandem repeat) analysis, SNP (single nucleotide polymorphism) analysis and massively parallel sequencing (MPS) allows highly detailed genetic profiling from even small amounts of DNA. These techniques are used to identify suspects, link them to crime scenes, and establish family relationships.⁷

- **Y-chromosome and X-chromosome-specific analysis**

Y-chromosome analysis is used to trace male ancestry, while X-chromosome analysis can provide information about female ancestry. These techniques are particularly useful in cases involving sexual assault or paternity disputes.⁸

- **Next-generation sequencing (NGS) for complex mixtures**

NGS, also known as massively parallel sequencing, makes it possible to simultaneously sequence millions of DNA fragments. This technique is particularly useful for analyzing complex DNA mixtures, such as those found in sexual assault cases or in samples containing DNA from multiple individuals. NGS can also be used to identify rare mutations and genetic variations that may be relevant to criminal investigations.⁹

- **Mobile Device Forensics and Cloud Data Recovery**

⁶ Tahereh Nayerifard, Haleh Amintoosi, Abbas Ghaemi Bafghi & Ali Dehghantanha, *Machine Learning in Digital Forensics: A Systematic Literature Review*, arXiv:2306.04965 (June 8, 2023), <https://arxiv.org/abs/2306.04965> (accessed Sept. 24, 2025).

⁷ Simon A. Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Harvard Univ. Press 2001)

⁸ Benjamin J. Jones, Microscopy in Forensic Science, in *Springer Handbook of Microscopy* 1507 (Peter W. Hawkes & John C. H. Spence eds., Springer 2019).

⁹ Bruce Budowle, Kristen Mittelman & David Mittelman, *Genomics Will Forever Reshape Forensic Science and Criminal Justice*, 26 *Genome Biol.* 296 (2025)

Mobile devices and cloud storage have become ubiquitous and often contain valuable evidence in criminal investigations. Mobile device forensics involves extracting and analyzing data from smartphones, tablets, and other mobile devices. Cloud data recovery involves recovering data stored in cloud-based services like Google Drive, Dropbox, and iCloud.¹⁰

- **Network Traffic Analysis and Digital Footprint Reconstruction**

Network traffic analysis involves monitoring and analyzing network communications to identify suspicious activity and track data movement. Digital footprint reconstruction involves piecing together an individual or organization's online activities to create a comprehensive picture of their digital presence.¹¹

- **Cryptocurrency Investigation and Blockchain Analysis**

Cryptocurrencies like Bitcoin and Ethereum are becoming increasingly popular and are often used in illegal activities like money laundering and drug trafficking. The investigation involves tracing the flow of funds through the blockchain, a decentralized ledger that records all cryptocurrency transactions.¹²

- **Internet of Things (IoT) Device Forensics**

The Internet of Things (IoT) refers to a network of interconnected devices that collect and exchange data. IoT devices, such as smart home appliances, wearable fitness trackers, and connected vehicles, can generate valuable evidence in criminal investigations. IoT device forensics involves extracting and analysing data from these devices.¹³

4. Physical Evidence Analysis

- **Advanced Fingerprint Analysis Using Automated Systems**

¹⁰ Quang Do, Ben Martini & Kim-Kwang Raymond Choo, *A Forensically Sound Adversary Model for Mobile Devices*, arXiv:1509.06815 (Sept. 23, 2015), <https://arxiv.org/abs/1509.06815> (accessed Sept. 17, 2025).

¹¹ M. Amine Chelihi, Akintunde Elutilo, Imran Ahmed, Christos Papadopoulos & Ali Dehghantanha, *An Android Cloud Storage Apps Forensic Taxonomy*, arXiv:1706.08045 (June 25, 2017), <https://arxiv.org/abs/1706.08045> (accessed Sept. 17, 2025).

¹² Hany F. Atlam, Ezz El-Din Hemdan, Ahmed Alenezi, Madini O. Alassafi & Gary B. Wills, Internet of Things Forensics: A Review, 11 *Internet of Things* 100220 (2020)

¹³ Abdulghani Ali Ahmed, Khalid Farhan, Waheb A. Jabbar, Abdulaleem Al-Othmani & Abdullahi Gara Abdulrahman, *IoT Forensics: Current Perspectives and Future Directions*, 24 *Sensors* 5210 (2024), <https://doi.org/10.3390/s24165210> (accessed Sept. 17, 2025).

Automated Fingerprint Identification Systems (AFIS) are used to search large databases of fingerprints to identify potential matches. Advanced fingerprint analysis techniques, such as latent fingerprint enhancement and chemical imaging, can improve the quality and clarity of fingerprints.¹⁴

- **Ballistic analysis with integrated databases**

Ballistic analysis examines the trajectories of firearms, ammunition, and bullets to determine the weapon used in a crime and the sequence of events. enable law enforcement agencies to compare ballistic evidence from different crime scenes and identify potential connections between cases.¹⁵

- **Trace evidence analysis using spectroscopic methods**

Trace evidence refers to small amounts of material, such as fibres, hairs, paint flecks, and glass fragments, that may have been transferred between individuals or objects during a crime. Spectroscopic methods, such as infrared spectroscopy and Raman spectroscopy, are used to analyse the chemical composition of trace evidence and identify its source.¹⁶

5. Integration Challenges and Limitations

Although advanced forensic technologies offer significant benefits, their integration into the real world involves technical, resource, legal, and ethical challenges.

- **Technical Challenges**

New forensic tools often lack complete empirical validation, and the statistical basis of some pattern-matching methods is uncertain. Continuous re-validation, peer review, and rigorous quality assurance such as standardized procedures, proficiency testing, and instrument calibration are essential to maintain reliability. Integrating multiple hardware and software

¹⁴ Xavier Chango, Omar Flor-Unda, Pedro Gil-Jiménez & Hilario Gómez-Moreno, *Technology in Forensic Sciences: Innovation and Precision*, 12 *Technologies* 120 (2024)

¹⁵ M. Amine Chelihi, Akintunde Elutilo, Imran Ahmed, Christos Papadopoulos & Ali Dehghantanha, *An Android Cloud Storage Apps Forensic Taxonomy*, arXiv:1706.08045 (June 25, 2017), <https://arxiv.org/abs/1706.08045> (accessed Sept. 17, 2025).

¹⁶ “Interpol Review of Forensic Firearm Examination 2016–2019.” *Forensic Sci. Int’l Synergy*. 2020.

platforms is also complex, as interoperability issues, incompatible data formats, and frequent software updates can disrupt workflows and require staff retraining.¹⁷

- **Resource and Capacity Limitations**

High-end forensic equipment, AI platforms, and imaging systems incur significant costs for purchase, maintenance, and staff training. Specialized facilities may be required, and a persistent skills gap persists between trained forensic technicians and data analysts. Retaining qualified personnel is challenging, and balancing technology-driven investigations with traditional methods increases operational stress.¹⁸

- **Legal and Ethical Considerations**

Forensic evidence must meet admissibility standards, including proven reliability, known error rates, and general acceptance in the scientific community. Ethical issues include privacy risks from biometric databases, algorithmic bias in artificial intelligence, consent concerns during sample collection, and long-term data retention. Maintaining chain of custody and securing sensitive information are crucial to ensuring legal compliance and protecting civil liberties.¹⁹

6. Case Studies and Real-World Applications

Advanced forensic techniques are no longer merely theoretical tools; they have repeatedly proven their value in real-world investigations of a variety of crimes and disaster scenarios. The following case studies highlight the practical impact of DNA databases, digital forensics, and biometric technologies in solving complex cases, increasing conviction rates, and exonerating the innocent.

- **DNA Database Success Stories**

One of the most notable uses of DNA in India occurred in the 2012 Nirbhaya gang rape and murder case (Delhi). Due to the poor condition of the victim, she was unable to identify all the perpetrators and the crime was brutal. DNA samples were taken from the victim's body as well as from hair, blood, semen and saliva found in the bus at the crime scene. The DNA profiles of

¹⁷Gergely Ferenc Lendvai & Gergely Gosztonyi, *Algorithmic Bias as a Core Legal Dilemma in the Age of Artificial Intelligence: Conceptual Basis and the Current State of Regulation*, 14 *Laws* 41 (2025)

¹⁸ *Weak National Capacities in Research, Analysis and Forensics*, UNODC Thematic Programme. 2024.

¹⁹ Gergely Ferenc Lendvai & Gergely Gosztonyi, *Algorithmic Bias as a Core Legal Dilemma in the Age of Artificial Intelligence: Conceptual Basis and the Current State of Regulation*, 14 *Laws* 41 (2025),

the accused matched, providing solid scientific evidence linking them to the crime scene. DNA evidence was considered the most important factor in convicting criminals. The case showed how DNA technology can improve investigations, especially in cases of sexual assault where forensic evidence is more reliable than eyewitness testimony..²⁰

Tandoor murder case (Delhi, 1995) Young Congress member Sushil Sharma shot his wife Naina Sahni and then tried to burn her body in a restaurant tandoor. The body was found only in charred remains, making identification difficult. DNA fingerprinting confirmed that the remains belonged to Naina Sahni, establishing Sushil Sharma's direct connection to the crime. This was one of the first high-profile cases in India where DNA testing was relied upon, establishing its credibility in the courts.²¹

Aarushi Talwar - Hemraj Double Murder (2008, Noida) Teenage girl Aarushi Talwar and the family's domestic help, Hemraj, were murdered. The case attracted considerable media attention. To reconstruct the crime scene, forensic DNA testing was required on blood stains and other evidence. However, inconsistent DNA results and improper evidence handling have raised doubts and criticisms about India's forensic practices. This has highlighted the need for proper forensic procedures and illustrated both the strengths and limitations of DNA evidence.

Similarly, sophisticated digital forensics methods are crucial for investigating cybercrime. Experts can understand attack tactics and identify perpetrators through malware analysis, which includes reverse engineering malicious software. Network forensics enables in-depth analysis of data flows, revealing attack vectors and points of entry. Digital forensics uncovers evidence of fraud, money laundering, and illegal transactions in financial crime cases. By providing evidence of theft or misuse of digital assets, it also protects intellectual property. These tools have completely changed how law enforcement deals with cybercrime, turning previously essentially undetectable crimes into cases where solid forensic evidence can lead to prosecution.²²

- **Biometric Technology Applications**

Biometric solutions have proven invaluable in identifying victims in large-scale disasters, where rapid and accurate identification of the deceased is critical for legal and humanitarian

²⁰ State of Delhi v. Ram Singh & Ors., Judgment, Sessions Court (Fast Track Court), Saket, New Delhi (2013)

²¹ B. R. Sharma, *Forensic Science in Criminal Investigation and Trials* 5th ed. (Universal Law Publ'g Co. 2016).

²² Dr. Rajesh Talwar & Anr. v. C.B.I., 2017 SCC OnLine All 2604 (India).

purposes. Multimodal identification techniques are frequently used: fingerprint analysis provides quick results when prints are available; facial recognition software compares pre-mortem photographs with remains; DNA analysis is used to identify dismembered or decomposed bodies; and digital systems compare dental records with post-mortem findings.²³ This integrated approach expedites victim identification, reduces the emotional trauma suffered by families, and allows for more efficient allocation of resources during disaster response. Accurate identification also prevents misidentification, which can have serious legal and emotional consequences, and international cooperation is facilitated by standardized biometric protocols that allow data sharing across borders.²⁴

Biometric technologies also strengthen border security and immigration enforcement. Automated systems expedite passenger processing by quickly verifying identity, while watch-list screening automatically compares travellers' biometric data to national and international security databases. These tools improve identity verification, preventing document forgery and identity fraud. They also assist immigration enforcement by identifying individuals who violate immigration laws or attempt to enter a country under false pretences. Together, these applications have improved the efficiency of border operations and strengthened national security while maintaining high standards of accuracy.²⁵

7. Future Directions and Emerging Technologies

Forensic science is entering a new era in which technological innovation will further expand investigative capabilities and transform criminal justice systems around the world. Emerging tools in DNA analysis, digital forensics, and artificial intelligence promise faster results, richer data, and more accurate conclusions, but they also present complex technical, legal, and ethical challenges that must be addressed to ensure their responsible use.

- **Emerging Technological Trends**

One of the most exciting areas is advanced DNA technology, which is moving far beyond traditional profiling. Phenotyping now allows investigators to infer physical traits such as eye,

²³ INTERPOL, *INTERPOL DVI Guide Annexure: Dental Records* (2018), <https://www.interpol.int/en/Crimes/Disaster-Victim-Identification-DVI> (accessed Sept. 18, 2025)

²⁴ INTERPOL, *Disaster Victim Identification (DVI), INTERPOL Guide* (2023), <https://www.interpol.int/en/Crimes/Disaster-Victim-Identification-DVI> (accessed Sept. 18, 2025).

²⁵ U.S. Customs & Border Protection, *CBP Biometric Testing* (2016), <https://www.cbp.gov/document/reports/cbp-biometric-testing> (accessed Sept. 18, 2025)

hair, and skin color from genetic material found at crime scenes. When a suspect is unknown, this can provide important clues in addition to determining ancestry. In addition, researchers are working on methods to determine a person's age from biological samples and can also extract environmental or lifestyle risk markers, including pollution exposure or smoking behaviors, from a single DNA sample. Another game-changer is rapid DNA analysis. In less than two hours after sample collection, field-deployable devices can produce a reliable DNA profile, significantly reducing lab backlogs and providing immediate assistance to investigators at crime scenes, border crossings, or disaster sites..²⁶

In order to keep up with the expansion of cloud computing and the Internet of Things, digital forensics is also changing. The goal of cloud forensics is to gather and examine evidence that is kept on dispersed servers and applications. This is a challenging undertaking due to the need for automatic evidence preservation across remote networks, different privacy laws, and multi-jurisdictional data storage. Furthermore, IoT and smart-device forensics are now essential. Data from wearable fitness trackers, linked cars, smart home appliances, and industrial IoT systems all of which can give time-stamped location or activity data to support witness testimony or recreate events are becoming more and more important in modern investigations. It takes specific tools and knowledge to extract and analyze this data utilizing proprietary formats and security measures.

Advances in artificial intelligence (AI) are also transforming forensic analysis. Machine learning-driven predictive analytics can identify trends in crimes, anticipate potential hotspots, maximize the use of investigative resources, and help prioritize cases based on risk assessments. AI-driven image analysis is equally revolutionary: deep learning methods improve and interpret low-quality images, allow for automated facial reconstruction from skeletal remains, facilitate gait analysis to identify suspects from video footage, and enable sophisticated surveillance analytics that can track movement across vast camera networks. When combined, these tools accelerate investigations and uncover information that might otherwise go unnoticed..²⁷

- **Integration Challenges for Emerging Technologies**

These new technologies have great potential, but there are many technical integration issues. As new technologies need to work seamlessly with existing laboratory information systems

²⁶ S. K. Alketbi, *Emerging Technologies in Forensic DNA Analysis* (2024).

²⁷ A.W. Malik, *Cloud Digital Forensics: Beyond Tools, Techniques, and Challenges*, 2024

and evidence databases, interoperability is a major challenge. Another important factor is scalability, as the amount of data produced by cloud platforms, IoT devices, and AI systems can grow rapidly, requiring robust infrastructure to process and store the data. To maintain consistency and legal defensibility in data formats, testing procedures, and reporting standards, standardization across laboratories and jurisdictions is crucial. Most importantly, before being implemented in court, each new technique has to pass rigorous scientific validation to demonstrate its accuracy and reliability.²⁸

Equally important are the legal and regulatory adaptations required to accommodate these innovations. Admissibility standards must be developed to define how evidence obtained through innovative technologies can be presented and challenged in court. Privacy rules must be carefully balanced to protect individual rights while also providing law enforcement with access to important data, particularly in cases of cloud storage or biometric surveillance. International cooperation is crucial, as digital evidence and DNA databases are often spread across multiple jurisdictions with different legal frameworks. Ethical guidelines must also be developed to address issues such as algorithmic bias, consent for genetic analysis, and the long-term storage of sensitive personal information.²⁹

- **Suggestions for Future Development**

To use these technologies responsibly, several research priorities are needed to guide future development. Extensive validation studies are needed to confirm the scientific reliability of emerging techniques and to establish known error rates through rigorous statistical analysis. Human factors research into how investigators interact with and interpret technological outputs will help avoid misinterpretation or overreliance on automated systems. Interdisciplinary collaboration between forensic scientists, computer engineers, statisticians, ethicists, and legal experts will be required to address the multifaceted challenges posed by next-generation forensics.³⁰

Building a robust infrastructure is equally important. Laboratories must upgrade their facilities to accommodate new equipment and maintain strict environmental controls for sensitive analyses. In complex investigations, integrated information solutions for case management and evidence management will increase productivity and support a secure chain of custody.

²⁸ A.A. Ahmed, *IoT Forensics: Current Perspectives and Future Directions*, 2024

²⁹ R. Green, *AI Has Revolutionised Crime Scene Analysis*, *Times of India* (Sept. 9, 2025), <https://timesofindia.indiatimes.com/> (accessed Sept. 18, 2025).

³⁰ J. Stacey, *A Responsible Artificial Intelligence Framework for Forensic Science-Based AI Projects*, 2025

Comprehensive training programs are essential to ensure that forensic experts can confidently and accurately perform and interpret sophisticated procedures. Improved quality assurance processes such as frequent proficiency testing and system audits will ultimately protect the integrity and reliability of forensic findings in both investigative and judicial contexts.³¹

8. Conclusion: The Transformative Impact of Forensic Technology

This paper summarizes the key findings of an in-depth examination of the use of forensic technology in the criminal justice system. It focuses on how this technology directly impacts conviction rates, evidence quality, and operational effectiveness. It also identifies critical success criteria for successful implementation, identifies ongoing obstacles and challenges, and provides a perspective on how forensic science may change in the future. Finally, it offers specific recommendations for law enforcement agencies, forensic laboratories, legislators, policymakers, and the research community to maximize the use of forensic technology and ensure its continued contribution to a fair and efficient legal system.

³¹ *The Future of AI in Digital Forensics*, Webasha (Mar. 12, 2025), <https://www.webasha.com/> (accessed Sept. 18, 2025)

JUDICIAL ACTIVISM: ISSUES IN IMPLEMENTATION

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Abstract

Judicial activism has emerged as one of the most dynamic features of modern constitutional democracies, particularly in India, where the judiciary has often expanded its role beyond traditional adjudication to safeguard fundamental rights, promote social justice, and ensure accountability of the executive and legislature. Rooted in the principle that justice should not be confined to technicalities but should address substantive societal concerns, judicial activism has enabled the courts to interpret constitutional provisions liberally, enforce directive principles, and fill legislative or executive voids. Through mechanisms such as Public Interest Litigation (PIL), suo motu cognizance, and expansive interpretations of rights, the judiciary has positioned itself as a catalyst for democratic governance and social change.

Despite these contributions, the implementation of judicial activism presents a complex set of issues. First, the doctrine often blurs the delicate balance of separation of powers. When courts step into policy formulation or governance, questions of judicial overreach and legitimacy arise, potentially undermining the authority of elected institutions. Second, the absence of uniform standards for judicial intervention creates inconsistency and unpredictability in decision-making. While some judgments transform socio-economic realities, others invite criticism for being subjective or influenced by judicial philosophy rather than legal necessity.

Implementation challenges also stem from the practical enforceability of activist judgments. Many judicial directions require administrative or legislative follow-up, which may not materialize due to bureaucratic inertia, lack of political will, or resource constraints. For example, orders on environmental protection, police reforms, and prison administration often remain aspirational because of inadequate institutional support. Similarly, PILs intended to empower marginalized groups sometimes become tools for vested interests, diluting their original purpose.

Another pressing concern is judicial accountability. Unlike the legislature and executive, judges are not directly answerable to the electorate, which raises questions when they assume proactive roles in policy-making. Additionally, the judiciary itself faces systemic limitations such as case backlogs, infrastructural deficits, and uneven access to justice, which further complicate the effective realization of activist rulings.

Nevertheless, judicial activism remains a crucial instrument for protecting rights, fostering constitutional morality, and addressing governance deficits, especially in societies where institutional checks and balances are weak. The challenge lies not in rejecting activism, but in ensuring its responsible exercise. For effective implementation, there is a need for clearer guidelines on judicial intervention, stronger institutional coordination, capacity building in administrative machinery, and greater emphasis on accountability and transparency.

In conclusion, judicial activism reflects the evolving role of the judiciary as a guardian of constitutional values and a voice for the marginalized. However, its implementation is fraught with issues of overreach, enforceability, accountability, and institutional limits. A balanced approach that respects separation of powers while ensuring social justice is essential to harness judicial activism as a constructive force rather than a disruptive one.

Keywords: Judicial Activism, Separation of Powers, Public Interest Litigation, Judicial Overreach, Implementation Challenges, Social Justice.

1. Introduction

The judiciary is widely considered the guardian of the Constitution and the protector of fundamental rights. Traditionally, courts were expected to perform a limited role, adjudicating disputes and interpreting laws passed by the legislature. However, in recent decades, the judiciary has increasingly assumed a proactive role in addressing social, political, and environmental concerns. This phenomenon, often described as judicial activism, involves the judiciary's

willingness to depart from rigid legal formalism to secure justice, expand rights, and fill gaps left by other branches of government.¹

In India, judicial activism has been hailed as a transformative force that brought issues like environmental protection, gender justice, and good governance into the legal-constitutional framework. At the same time, its expansion has triggered debates about its legitimacy and effectiveness. Many judgments, though progressive in intent, have faced difficulties in implementation due to bureaucratic inertia, lack of resources, or political opposition. This gap between judicial pronouncements and their practical enforcement underscores the need to examine the “issues in implementation” of judicial activism.²

This research paper explores the origins, evolution, and dimensions of judicial activism, while critically engaging with the challenges in its implementation. By analyzing key case laws, comparative perspectives, and theoretical debates, the paper seeks to offer a nuanced understanding of judicial activism as both a tool of justice and a source of institutional friction.

2. Concept and Evolution of Judicial Activism

• Meaning of Judicial Activism

Judicial activism refers to the philosophy or practice where judges interpret laws and constitutional provisions liberally, often expanding the scope of rights and imposing obligations on the State beyond the literal meaning of legal texts. Unlike judicial restraint, which emphasizes minimal interference and deference to the elected branches, activism reflects judicial creativity and dynamism.

¹ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 5–7 (Oxford Univ. Press 2002); Upendra Baxi, *The Indian Supreme Court and Politics* 110–15 (Eastern Book Co. 1980).

² M.P. Jain, *Indian Constitutional Law* 2050–54 (8th ed. LexisNexis 2018); P.N. Bhagwati, Judicial Activism and Public Interest Litigation, 23 Colum. J. Transnat'l L. 561, 563–65 (1985).

Scholars like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer in India described judicial activism as the “judicial obligation to respond to the needs of society” rather than merely resolving disputes. It embodies the idea that justice should not remain confined to the letter of law but should extend to social realities and human rights.³

- **Evolution in India**

Judicial activism in India evolved in phases:

1. Early Phase (1950s–1960s): The judiciary adopted a conservative stance, emphasizing judicial restraint. Cases such as *A.K. Gopalan v. State of Madras* (1950)⁴ reflected a narrow interpretation of fundamental rights.
2. Transition Phase (1970s): The *Kesavananda Bharati* case (1973)⁵ introduced the Basic Structure Doctrine, asserting judicial power to strike down constitutional amendments that violated the Constitution’s core values. This laid the foundation for an activist judiciary.
3. Golden Phase (1980s–1990s): The rise of Public Interest Litigation (PIL) under Justices Bhagwati and Krishna Iyer marked the institutionalization of judicial activism. The judiciary intervened in matters of bonded labor (*People’s Union for Democratic Rights v. Union of India*)⁶, environmental protection (*M.C. Mehta v. Union of India*)⁷, and governance (*Vineet Narain v. Union of India*)⁸.
4. Contemporary Phase (2000s–present): Judicial activism now extends to areas like corruption, transparency, sexual harassment, LGBTQ+ rights, and electoral reforms. However, it faces criticism for judicial overreach and practical challenges in implementing sweeping directives.⁹

³ P.N. Bhagwati, *Judicial Activism and Public Interest Litigation*, 23 Colum. J. Transnat’l L. 561, 562–64 (1985); V.R. Krishna Iyer, *Law Versus Justice* 15–17 (Deep & Deep Publ’ns 1981).

⁴ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India)

⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India)

⁶ *People’s Union for Democratic Rights v. Union of India*, A.I.R. 1982 S.C. 1473 (India).

⁷ *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 965 (India).

⁸ *Vineet Narain v. Union of India*, A.I.R. 1998 S.C. 889 (India).

⁹ Upendra Baxi, *The Indian Supreme Court and Politics* 115–120 (Eastern Book Co. 1980); S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 25–30 (Oxford Univ. Press 2002).

3. Judicial Activism vs. Judicial Restraint

The debate between judicial activism and judicial restraint lies at the heart of constitutional interpretation and the balance of powers among the three organs of government. While judicial activism promotes a proactive judiciary that interprets constitutional provisions liberally to advance justice, judicial restraint emphasizes judicial modesty, deference to the legislature and executive, and a limited role for courts. Both philosophies coexist in Indian jurisprudence, and their tension reflects broader questions about democracy, governance, and judicial legitimacy.

- **Judicial Activism: Philosophy and Features**

Judicial activism reflects the belief that the judiciary is not merely an interpreter of law but also a guardian of constitutional morality and protector of rights.

Key Features:

- Expansive Interpretation: Courts interpret constitutional provisions liberally to respond to new social realities.
- Proactive Role: Judges intervene even in governance and policy when legislative or executive inaction threatens fundamental rights.
- Rights-Centric Approach: The focus is on justice, fairness, and equality, often extending beyond the literal text of the law.
- Flexibility of Locus Standi: Relaxation of procedural rules allows PILs and collective justice.

Policy Guidance: Courts issue guidelines in legislative vacuums (e.g., Vishaka Guidelines).¹⁰

- **Judicial Restraint: Philosophy and Features**

¹⁰ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 15–20 (Oxford Univ. Press 2002); Upendra Baxi, *The Indian Supreme Court and Politics* 120–125 (Eastern Book Co. 1980); *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

Judicial restraint, on the other hand, emphasizes that courts should limit themselves to interpreting laws rather than making them. It is rooted in the principle of separation of powers and judicial modesty.¹¹

Key Features:

- Literal Interpretation: Judges rely on the text of the Constitution and statutes rather than expansive interpretations.
- Respect for Legislative Wisdom: Courts defer to Parliament and State legislatures as representatives of the people.
- Non-Interference in Policy: Matters of governance, budget, and socio-economic policy are left to elected branches.
- Strict Locus Standi: Only directly aggrieved persons can approach the court.
- Stability of Precedent: Emphasis on stare decisis (following precedents) to maintain legal certainty.¹²

4. Dimensions of Judicial Activism in India

Judicial activism in India has not been confined to a single area of governance or rights; rather, it has pervaded multiple domains of political, social, and economic life. By creatively interpreting constitutional provisions, expanding the reach of fundamental rights, and entertaining petitions beyond conventional limitations, the Indian judiciary has reshaped democratic governance. The following dimensions highlight the multifaceted nature of judicial activism in the country:¹³

¹¹ G. Austin, *The Indian Constitution: Cornerstone of a Nation* 115–116 (5th ed., Oxford Univ. Press 2016); M.P. Jain, *Indian Constitutional Law 2025–2026* (8th ed., LexisNexis 2018).

¹² G. Austin, *The Indian Constitution: Cornerstone of a Nation* 115–120 (5th ed., Oxford Univ. Press 2016); M.P. Jain, *Indian Constitutional Law 2025–2030* (8th ed., LexisNexis 2018); V.N. Shukla, *Constitution of India* 210–215 (14th ed., Eastern Book Co. 2019).

¹³ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 5–10 (Oxford Univ. Press 2002); Upendra Baxi, *The Indian Supreme Court and Politics* 110–115 (Eastern Book Co. 1980); P.N. Bhagwati, *Judicial Activism and Public Interest Litigation*, 23 Colum. J. Transnat'l L. 561, 563–565 (1985).

- **Expansion of Fundamental Rights**

Perhaps the most significant dimension of judicial activism in India is the liberal interpretation of Part III of the Constitution. The judiciary has expanded the scope of fundamental rights, especially under Article 21 (Right to Life and Personal Liberty).

In *Maneka Gandhi v. Union of India* (1978), the Court held that “procedure established by law” must be “fair, just, and reasonable,” thereby linking Articles 14, 19, and 21 into a golden triangle.¹⁴

Subsequent rulings interpreted the right to life to include rights to livelihood, health, education, privacy, shelter, clean environment, speedy trial, and dignity.

For example, in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), the Court held that the right to life includes the right to live with human dignity.¹⁵

Through this expansive interpretation, judicial activism has turned abstract constitutional promises into enforceable entitlements.

- **Public Interest Litigation (PIL)**

The most celebrated innovation of judicial activism is the development of Public Interest Litigation in the late 1970s and early 1980s. Under PIL, locus standi was relaxed, allowing “any member of the public” to approach the courts on behalf of disadvantaged sections of society.

Hussainara Khatoon v. State of Bihar (1979) highlighted the plight of undertrial prisoners and declared the right to speedy trial as part of Article 21.¹⁶

Bandhua Mukti Morcha v. Union of India (1984) addressed bonded labor issues.¹⁷

¹⁴ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

¹⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746; M.P. Jain, *Indian Constitutional Law* 2040–2045 (8th ed., LexisNexis 2018).

¹⁶ *Hussainara Khatoon v. State of Bihar*, A.I.R. 1979 S.C. 1369 (India).

¹⁷ *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 802 (India).

PILs were filed on environmental matters, custodial violence, and human rights violations, bringing the judiciary into the center of social transformation.

PIL has transformed the judiciary into a forum for collective justice rather than merely private dispute resolution.

- **Environmental Jurisprudence**

Judicial activism in India has significantly shaped environmental law. The Supreme Court and High Courts have delivered a series of rulings advancing the principles of sustainable development, precautionary principle, and polluter pays.¹⁸

In *M.C. Mehta v. Union of India* (Oleum Gas Leak case, 1986), the Court evolved the doctrine of absolute liability for hazardous industries.¹⁹

In the Ganga pollution case, the Court ordered closure of tanneries discharging untreated effluents.

Orders to shift Delhi's public transport to CNG and ban on illegal mining are further examples.

These interventions filled the vacuum left by weak legislative and executive enforcement of environmental regulations.²⁰

- **Governance and Accountability**

Judicial activism has often extended into matters of governance, corruption control, and transparency. By invoking constitutional principles, courts have sought to ensure accountability of public officials.

In *Vineet Narain v. Union of India* (1997), the Court directed autonomy of the CBI and laid down guidelines to insulate investigative agencies from political interference.²¹

¹⁸ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 70–75 (Oxford Univ. Press 2002).

¹⁹ *M.C. Mehta v. Union of India* (Ganga Pollution Case), AIR 1988 SC 1037; *M.C. Mehta v. Union of India* (Delhi CNG Case), AIR 1998 SC 1985.

²⁰ *Environmental Jurisprudence in India* 45–50 (Eastern Book Co. 2001).

²¹ *Vineet Narain v. Union of India*, AIR 1998 SC 889 (India).

The judiciary has intervened in electoral reforms, directing candidates to disclose assets and criminal records (*Association for Democratic Reforms v. Union of India*, 2002).²²

In several cases, the judiciary monitored the functioning of commissions and government agencies to ensure accountability.

Such interventions blur the line between adjudication and governance but have been justified as corrective measures against administrative inertia.

- **Gender Justice and Social Equality**

Judicial activism has been crucial in advancing gender justice, striking down discriminatory laws, and recognizing gender rights.

In *Vishaka v. State of Rajasthan* (1997), the Court framed guidelines against workplace sexual harassment, filling the legislative vacuum until 2013.²³

Shayara Bano v. Union of India (2017) struck down instant triple talaq as unconstitutional.

Navtej Singh Johar v. Union of India (2018) decriminalized homosexuality by reading down Section 377 IPC, recognizing sexual orientation as part of dignity and privacy.

In *Joseph Shine v. Union of India* (2018), adultery was decriminalized, emphasizing equality and autonomy.²⁴

Through these judgments, the judiciary positioned itself as a defender of progressive values and social reform.

- **Economic and Welfare Rights**

²² *Association for Democratic Reforms v. Union of India*, (2002) 5 SCC 294; Upendra Baxi, *The Indian Supreme Court and Politics* 135–140 (Eastern Book Co. 1980).

²³ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (India).

²⁴ *Joseph Shine v. Union of India*, (2018) 9 SCC 1; Upendra Baxi, *The Indian Supreme Court and Politics* 150–155 (Eastern Book Co. 1980).

Judicial activism has also extended into economic and welfare dimensions of governance, interpreting Directive Principles of State Policy (DPSPs) as enforceable rights in certain contexts.

In the Right to Food case (PUCL v. Union of India, 2001), the Court directed the government to provide cooked mid-day meals in schools.

The Court has also emphasized the right to education (leading to the 86th Constitutional Amendment and the Right to Education Act, 2009).

Orders relating to healthcare, employment under MGNREGA, and distribution of essential goods during disasters reflect the judiciary's activist approach to socio-economic rights.

This dimension blurs the traditional boundary between enforceable fundamental rights and non-justiciable directive principles.

- **Criminal Justice and Human Rights**

Judicial activism has addressed systemic flaws in India's criminal justice system.

In *D.K. Basu v. State of West Bengal* (1997)²⁵, the Court laid down guidelines to prevent custodial torture and deaths.

In *Sunil Batra v. Delhi Administration* (1978)²⁶, it emphasized humane treatment of prisoners and recognized rights of prisoners as part of Article 21.

In *Sheela Barse v. Union of India* (1983)²⁷, the Court addressed the conditions of women in custody.

These rulings highlight the judiciary's concern for human dignity even within penal institutions.

5. Tools of Judicial Activism

²⁵ *D.K. Basu v. State of W. Bengal*, AIR 1997 S.C. 610 (India).

²⁶ *Sunil Batra v. Delhi Admin.*, (1978) 4 S.C.C. 494 (India).

²⁷ *Sheela Barse v. Union of India*, (1983) 2 S.C.C. 96 (India)

- **Public Interest Litigation (PIL)**

The most revolutionary tool of judicial activism has been the development of Public Interest Litigation (PIL) in the late 1970s and 1980s. Traditionally, Indian courts adhered to the doctrine of *locus standi*, under which only the aggrieved party could approach the court. Judicial activism relaxed this rule to allow any public-spirited citizen or organization to file petitions on behalf of marginalized or disadvantaged groups who lacked access to justice.

Origins: The PIL era was pioneered under the leadership of Justices P.N. Bhagwati and V.R. Krishna Iyer. The Supreme Court in *S.P. Gupta v. Union of India* (1981) held that any member of the public having sufficient interest could maintain an action for redress of public wrong or enforcement of rights.²⁸

Impact: PILs brought issues such as bonded labor (*Bandhua Mukti Morcha v. Union of India*), custodial deaths, environmental degradation, and child labor before the courts.²⁹

Significance: PIL democratized access to justice, transforming courts from elitist institutions into instruments of social change. It remains the most effective tool of judicial activism in India.

- **Judicial Review**

The power of judicial review is enshrined in Articles 13, 32, and 226 of the Indian Constitution. It enables the judiciary to examine the constitutionality of legislative enactments and executive actions. Judicial review acts as both a corrective mechanism and a preventive safeguard against abuse of power.³⁰

Landmark cases:

Kesavananda Bharati v. State of Kerala (1973) established the Basic Structure Doctrine, ensuring that Parliament's amending power cannot alter the Constitution's essential features.

²⁸ *S.P. Gupta v. Union of India*, (1981) 1 SCC 87 (India).

²⁹ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India).

³⁰ INDIA CONST. art. 13, 32, 226.

Indira Gandhi v. Raj Narain (1975) invalidated constitutional amendments that undermined free and fair elections.

Scope: Judicial review allows courts to strike down unconstitutional laws, prevent arbitrary executive decisions, and protect fundamental rights.

Activist use: By expansively interpreting judicial review, courts have intervened in governance, election processes, environmental issues, and administrative accountability.

- **Expansive Interpretation of Fundamental Rights**

Judicial activism often manifests through the creative interpretation of constitutional provisions, particularly Fundamental Rights under Part III. Courts have adopted a liberal rather than literal approach, expanding the meaning and scope of rights to address contemporary concerns.

Article 21: The most powerful tool of activism. Courts have interpreted “right to life” to include rights to health, education, shelter, environment, privacy, dignity, and livelihood.

Article 19: Free speech has been expanded to include the right to know and the right to access information (*Union of India v. Association for Democratic Reforms*, 2002)³¹.

Article 14: Equality has been used as a basis to strike down discriminatory practices, e.g., *Navtej Singh Johar v. Union of India* (2018)³².

Through expansive interpretation, the judiciary has made the Constitution a living document responsive to societal needs.

- **Directive Principles of State Policy (DPSPs)**

Although DPSPs (Part IV of the Constitution) are non-justiciable, judicial activism has transformed them into guiding tools for enforcement of socio-economic rights. The judiciary has read DPSPs into fundamental rights to give them enforceable content.

³¹ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 (India).

³² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

In *Unni Krishnan v. State of Andhra Pradesh* (1993)³³, the Court interpreted the right to education as implicit under Article 21, leading to the 86th Constitutional Amendment.

In environmental cases, principles of sustainable development and public health, derived from DPSPs, were enforced as part of the right to life.

Thus, DPSPs have been judicially converted into actionable entitlements through activism.

- **Judicial Guidelines and Policy Formulation**

Another important tool of judicial activism is the issuance of guidelines and directions in the absence of legislation. This ensures that governance gaps do not result in denial of rights.

Vishaka v. State of Rajasthan (1997)³⁴: The Court laid down guidelines to prevent workplace sexual harassment, which later formed the basis of the 2013 legislation.

Prakash Singh v. Union of India (2006)³⁵: The Court issued directives on police reforms to insulate the force from political interference.

D.K. Basu v. State of West Bengal (1997)³⁶: The Court formulated guidelines to prevent custodial torture.

Judicial guidelines function as temporary laws until Parliament enacts formal legislation, ensuring continuity of governance.

- **Continuing Mandamus (Judicial Monitoring)**

The innovation of continuing mandamus allows courts to keep cases open for prolonged periods to monitor compliance with their orders. This tool ensures that judicial directives do not remain on paper but are implemented effectively.

³³ *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645 (India); see also *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India)

³⁴ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

³⁵ *Prakash Singh v. Union of India*, (2006) 8 SCC 1 (India).

³⁶ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (India).

M.C. Mehta v. Union of India: The Court continuously monitored pollution control measures in Delhi.

Right to Food case (PUCL v. Union of India): The Court supervised implementation of mid-day meals and food distribution schemes.

Prison reform and police reform cases have also involved long-term judicial monitoring.

Continuing mandamus highlights the judiciary's role not just in decision-making but also in ensuring execution of its orders.

- **Judicial Creativity in Doctrines**

Judicial activism has relied on the creation of innovative doctrines that go beyond textual interpretation.

Basic Structure Doctrine (Kesavananda Bharati, 1973): Parliament cannot amend the Constitution to alter its fundamental identity.³⁷

Doctrine of Absolute Liability (Oleum Gas Leak case, 1986): Hazardous industries are strictly liable for damages without exceptions.³⁸

Polluter Pays Principle & Precautionary Principle: Evolved in environmental jurisprudence.

Right to Information: Judicially recognized before the enactment of the RTI Act, 2005.³⁹

These judicially crafted doctrines have expanded constitutional law and filled legislative voids.

- **Relaxation of Procedural Technicalities**

Judicial activism often involves relaxing procedural barriers to ensure substantive justice.

Letters, postcards, and even newspaper reports have been treated as writ petitions in PIL cases.

³⁷ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

³⁸ *M.C. Mehta v. Union of India* (Oleum Gas Leak Case), (1987) 1 S.C.C. 395 (India).

³⁹ *State of Uttar Pradesh v. Raj Narain*, (1975) 3 SCC 333 (India); see also *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294 (India).

Technical rules of evidence or standing have been waived in cases involving marginalized groups. The Court has prioritized justice over procedure, reflecting a shift from strict legalism to social justice jurisprudence.

6. Issues in Implementation of Judicial Activism

Despite its transformative potential, judicial activism faces significant implementation challenges:

- **Lack of Enforcement Mechanism**

Judgments often remain on paper due to absence of institutional capacity to enforce them. For example, despite orders on prison reforms, overcrowding and inhumane conditions persist.

- **Bureaucratic Apathy**

Officials responsible for implementing court orders often delay or dilute compliance. Environmental directives in *M.C. Mehta* cases faced years of resistance from industries and local bodies.⁴⁰

- **Resource Constraints**

Some judgments require financial or infrastructural resources beyond immediate availability. For instance, directives on pollution control or urban planning often clash with budgetary realities.

- **Judicial Overreach Allegations**

⁴⁰ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India).

- When courts enter domains of policy-making, it leads to friction with the legislature and executive. The NJAC case (2015), where the judiciary struck down constitutional amendment on judicial appointments, exemplifies this tension.⁴¹

- **Inconsistent Follow-up**

Courts sometimes issue progressive rulings without sustained monitoring. As a result, compliance remains partial or symbolic.

- **Political Resistance**

Reform-oriented judgments may face resistance from elected representatives who perceive judicial interventions as encroachment on their authority.

- **Public Awareness and Participation**

Implementation often requires social acceptance and participation. For example, despite the Vishaka Guidelines, workplace harassment persists due to lack of awareness and weak institutional compliance.⁴²

7. Case Studies

- **Vishaka v. State of Rajasthan (1997)**

The Court issued guidelines to curb sexual harassment at workplaces. However, their implementation was inconsistent until Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁴¹ *Union of India v. National Judicial Appointments Commission (NJAC)*, (2015) 5 SCC 1 (India).

⁴² *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

- **M.C. Mehta v. Union of India**

The Court directed measures to curb pollution in Delhi, including conversion of public transport to CNG. Implementation faced resistance from transport operators and required continuous judicial monitoring.

- **Vineet Narain v. Union of India (1997)**

The Court laid down guidelines to insulate the CBI from political interference. Despite initial compliance, political control over investigative agencies remains a concern.

- **Right to Food Case (PUCL v. Union of India)**

The Court directed the government to provide mid-day meals in schools. Implementation was uneven across states due to logistical and financial hurdles.

8. Criticisms of Judicial Activism

- **Violation of Separation of Powers** – Courts sometimes assume legislative or executive functions.⁴³
- **Lack of Accountability** – Unlike elected representatives, judges are not directly accountable to the public.
- **Judicial Overburden** – Activism diverts attention from regular adjudication, worsening case backlogs.
- **Populism Risk** – Activist judgments may sometimes reflect popular sentiment rather than constitutional principles.

⁴³ *Union of India v. National Judicial Appointments Commission (NJAC)*, (2015) 5 SCC 1 (India).

- **Practical Ineffectiveness** – Implementation gaps undermine the credibility of the judiciary.

9. Recommendations for Effective Implementation

- **Strengthening Institutional Mechanisms:** Establish independent bodies to monitor compliance with court directives.
- **Judicial Restraint in Policy Matters:** Courts should intervene only where constitutional rights are threatened or governance failure is evident.
- **Collaboration with Other Organs:** Courts should engage in constructive dialogue with legislature and executive for smooth implementation.
- **Capacity Building:** Governments must allocate adequate resources to implement judicial directives.
- **Public Awareness Campaigns:** Effective implementation requires social support and awareness.
- **Regular Compliance Monitoring:** Continuing mandamus should be used to ensure follow-up.
- **Codification of Judicial Guidelines:** Parliament should convert judicial guidelines into binding legislation wherever necessary.

10. Conclusion

Judicial activism in India has played a crucial role in safeguarding fundamental rights, ensuring government accountability, and addressing social injustices. By interpreting the Constitution progressively, the judiciary has expanded the scope of rights for marginalized communities and promoted equality, gender justice, and environmental protection. Landmark cases like *Vishaka v. State of Rajasthan* (1997) against workplace harassment and *Navtej Singh Johar v. Union of India*

(2018), which decriminalized consensual same-sex relations, illustrate how judicial intervention can bring meaningful social change when legislative action is slow.

Through Public Interest Litigations (PILs) and suo moto actions, courts have compelled the government to act on issues ranging from environmental protection to social welfare, reflecting the judiciary's proactive role in bridging gaps between law and societal needs. However, the challenge lies in implementation. Bureaucratic delays, political resistance, and limited resources often weaken the impact of judicial directives, reducing activism to symbolic judgments rather than tangible change.

A balanced approach is therefore necessary. The judiciary should remain vigilant in defending constitutional values while avoiding unnecessary intrusion into policy-making. Strengthening compliance mechanisms, fostering cooperation among state organs, and encouraging public participation can ensure that judicial pronouncements translate into real social impact. When effectively implemented, judicial activism serves not only as a guardian of rights but also as a catalyst for deepening democracy and achieving the constitutional ideals of justice, equality, and liberty.

REBALANCING THE JUSTICE THROUGH ARBITRATION AND CONCILIATION: CURRENT LEGISLATIVE STRATEGIES IN INDIA

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Abstract:

The evolution and development of Alternate Dispute Resolution (ADR) mechanism in India has very ancient origin. The norms changed after independence by some remarkable legislative attempts are worthy to be studied to strengthen further the growth of ADR system in India. Against this backdrop, this research has conceded analysis of different Acts containing provisions which can be further amended suitably for better strengthening. This paper includes analysis of provisions of the Arbitration and Conciliation Act, 1996 (with prominent amendments) in light of the impact of the UNCITRAL Model Law on International Commercial Arbitration, established by the United Nations Commission on International Trade Law (UNCITRAL). It includes the process to be adopted under the 1996 Act for awards passed within country as well as the foreign arbitral awards along with the objectives and salient features of the Act.

Keywords: Alternate Dispute Resolution, Arbitration, Conciliation, UNCITRAL Model Law

1. Introduction

The Arbitration and Conciliation Act, 1996 forms the cornerstone of India's national legislative framework governing ADR mechanism. This Act is modelled on the UNCITRAL Model Law on International Commercial Arbitration, aiming to streamline the arbitration mechanism and minimise court intervention. By adopting internationally recognised standards, the 1996 Act seeks to enhance the credibility and efficiency of arbitration proceedings in India. Over the years, India has amended the Act to address emerging challenges and refine the arbitration process. One of the most significant amendments is the Arbitration and Conciliation (Amendment) Act, 2019, which aimed to enhance the overall efficiency and credibility of the arbitration process in India. This amendment introduced

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measures to reduce delays, improve institutional arbitration. By establishing the Arbitration Council of India, the amendment sought to establish arbitration as a preferred method for dispute resolution, positioning India as an international arbitration hub.³

One more recent change in legislative policy was carried out by way of the Arbitration and Conciliation (Amendment) Act, 2021. This amendment has sparked considerable discussion as it introduces new hurdles to the enforcement process, particularly in cases where allegations of fraud or corruption are raised.⁴ By empowering courts to grant a stay on the enforcement of an arbitral award where a prima facie case of fraud or corruption is established, the amendment aims to ensure that such serious allegations are adequately addressed. However, it is criticised⁵ on a ground that such an unconditional stay encourages the false allegation of fraud or corruption to suspend the enforcement of the award. It may defeat the very purpose of the alternate dispute mechanism by drawing parties to courts and making it prone to litigation. This would not only overburden the courts but might also result in a further slip in ease of doing business reports. Some other changes include the omission of eighth schedule from the principal Act, which prescribed the regulatory framework, qualifications, experience requirements, and accreditation standards for arbitrators. It is further evident that this Amendment Act effectively reverses the changes introduced by the 2015 Amendment.⁶ Considering these points, it is correct to argue that many of the changes introduced by the Amendment Act, 2021 could potentially lead to increased judicial intervention and consequently delay, undermining the efficiency that arbitration is supposed to offer.

Despite these legislative reforms and efforts to align India's arbitration framework with international standards, several challenges persist. Delays in the enforcement of awards remain a significant concern, often due to excessive judicial intervention. This undermines

³ Subiksh Vasudev, *The 2019 Amendment to the Indian Arbitration and Conciliation Act: A Classic Case of One Step Forward and Two Steps Backward*, Kluwer Arbitration Blog (Aug. 25, 2019), <http://arbitrationblog.kluwerarbitration.com/2019/08/25/the-2019-amendment-to-the-indian-arbitration-act-a-classic-case-of-one-step-forward-two-steps-backward/>. (last visited Sept. 18, 2025)

⁴ Naresh Thacker & Samarth Saxena, *Arbitration and Conciliation (Amendment) Act, 2021: The Final Word on Unconditional Stay on Enforcement of Challenged Domestic Awards?*, Indian Arbitration L. Rev. Vol. 4, at 66 (2022), <https://elplaw.in/wp-content/uploads/2023/11/Indian-Arbitration-Law-Review-1.pdf>.

⁵ Ganesh Chandru, Aditi Sheth & Hrithik Merchant, *The 2021 Amendment to Arbitral Legislation in India: Is it a Step in the Right Direction?*, NLS Bus. L. Rev. Vol. 7(2), art. 7, at 102 (2021), <https://repository.nls.ac.in/nlsblr/vol7/iss2/7>.

⁶ VIA Mediation Centre, *Arbitration and Conciliation Amendment Act, 2021: An Analysis* (2021), <https://viamediationcentre.org/readnews/MTMwNg==/ARBITRATION-AND-CONCILIATION-AMENDMENT-ACT-2021-AN-ANALYSIS>.

the fundamental objective of arbitration as a speedy and efficient alternative to traditional litigation. Moreover, there is a pressing need for capacity building to ensure that all stakeholders, including arbitrators, legal practitioners, and the judiciary, are well-equipped to handle complex arbitration matters.⁷ These developments reflect India's ongoing efforts to promote arbitration and make the country an attractive destination for resolving commercial disputes. By addressing the existing challenges and continuously refining the legislative framework, India aims to create a robust and reliable arbitration ecosystem that aligns with global best practices.

2. The Emergence of Arbitration and Conciliation Act, 1996

The economic liberalization of the 1990s led to increased global investment in India. With the rise of globalization, privatization, and liberalization, there emerged a need for a more efficient legal mechanism to resolve disputes. In response, the Arbitration and Conciliation Act, 1996 ("Act") was enacted.

This Act is founded on the UNICTRAL model and was enacted to consolidate, define and to bring changes to legal framework governing domestic Arbitration, international Arbitration and the enforcement of foreign arbitral awards.⁸ Thereby the 1996 Act became a significant piece of legislation in India that governs arbitration, conciliation, and related dispute resolution processes. The Act aims to establish an efficient and effective mechanism for resolving disputes outside the traditional court system.⁹ It encourages parties to choose arbitration or conciliation as an alternative to litigation.

3. The Salient features of the Arbitration & Conciliation Act, 1996:

The Act is structured in three distinct parts. The first part lays down the legal framework governing both domestic arbitration and international commercial arbitration conducted within India, covering matters such as arbitration agreements, the constitution and

⁷ Ashok H. Desai, Challenges to an Award: Use and Abuse, Indian Council of Arb. Q. Jul.–Sep. 2006, at 3, available at www.ficci.com/icanet.

⁸ Ayushi Singh, Analysis: Mediation vs. Arbitration vs. Litigation, Indian J. Integrated Rsch. L. Vol. II(II) (2022).

⁹ Justice Sanjay Kishan Kaul, Evolving Dimensions of Public Policy in Arbitration Law, DIAC J. Arb. (2024), <https://dhcdiac.nic.in/wp-content/uploads/2021/07/diac-journal-24042021-revised-435696-xmS9P6Pa.pdf>.

jurisdiction of arbitral tribunals, and the scope of judicial intervention. The second part addresses the recognition and enforcement of foreign arbitral awards in accordance with the New York Convention and the Geneva Convention. The final part of the Act sets out the provisions relating to conciliation in India.¹⁰ The Act came into existence with the following salient features-

- The Act recognizes conciliation, along with arbitration, as an efficient means of settling commercial disputes.
- Arbitral awards and settlements reached through conciliation proceedings are accorded the same status as a decree passed by a court.
- Judicial interference in arbitration proceedings has been significantly restricted to ensure greater autonomy of the arbitral process.
- A statutory obligation has been imposed on arbitrators to provide reasons for their awards, thereby promoting transparency and accountability.
- The requirement approaching the court for the enforcement of an arbitral award has been removed, resulting in substantial time savings during execution.
- The Act authorizes arbitrators and arbitral tribunals, upon the application of a party, to grant interim measures concerning the subject matter of the dispute.
- It is an exhaustive legislative framework governing arbitration, conciliation, and the enforcement of foreign arbitral awards, drawing substantially from the UNCITRAL Model Law on Arbitration and the UNCITRAL Conciliation Rules, and extending to awards made under both the Geneva Convention and the New York Convention.
- The phrase “*international commercial arbitration*” has been expressly defined to include conflicts resulting from legal relationships—contractual or otherwise—of a commercial nature, where at least one party resides, carries on business, or is incorporated outside India, or where a foreign government is involved.
- The earlier system of appointing an umpire has been abolished under the Act.
- Greater emphasis has been placed on the qualifications, competence, and expertise of arbitrators handling disputes.
- Any arbitral award which is against the public policy of India is rendered legally invalid and unenforceable.

¹⁰ Justice A.K. Sikri, Recognition and Enforcement of Awards in India, Address at Indian Arbitration Bar & SIAC (June 22, 2008). C.f. Harpreet Kaur, The 1996 Arbitration and Conciliation Act: A Step Toward Improving Arbitration in India, 6 Hastings Bus. L.J. 261 (2010), https://repository.uclawsf.edu/hastings_business_law_journal/vol6/iss1/7

- The Act lays down provisions for the enforcement of certain foreign arbitral awards rendered under the New York Convention and the Geneva Convention.
- The standard arbitration clause prescribed under the Act is particularly beneficial for parties engaged in international commercial transactions.
- It serves as an exhaustive legislation governing both domestic arbitration and international or inter-state arbitration proceedings.
- Detailed procedures governing the conduct of arbitration proceedings and the making of arbitral awards have been clearly laid down.
- Arbitral tribunals are given enhanced authority, including the competence to determine questions relating to their own jurisdiction.
- The Act acquires an international character through its provisions on the recognition and enforcement of awards issued by foreign arbitral tribunals.
- The role of arbitral institutions in facilitating and administering arbitration proceedings has been formally acknowledged.
- Authority to appoint arbitrators is vested in the Chief Justice, or in an institution or person designated by the Chief Justice.
- While the original time limit for rendering arbitral awards has been removed, subsequent amendments have introduced fast-track arbitration mechanisms to ensure speedy resolution of disputes.
- The previous provisions allowing arbitration with court intervention—whether in cases where no suit was pending or by order of the court—have been removed.
- The Act recognizes the significance of transnational commercial arbitration and expressly permits parties, even where arbitration is seated in India, to choose the substantive law governing their dispute

In due course of time India has injected all the features of the UNCITRAL Model Law into the Arbitration and Conciliation Act, 1996 through various Amendment Acts to make commercial dispute settlement easier.

4. Objects of the Arbitration and Conciliation Act. 1996:

Considering the significant contribution of the UNCITRAL Model Law and Rules there under toward creating a unified legal framework for the just and efficient resolution of disputes in international commercial relations, the Government of India passed the

Arbitration and Conciliation Act, 1996. The important objectives of the Arbitration and Conciliation Act, 1996 are as follows-

- To prescribe a comprehensive legal framework governing domestic arbitration and conciliation and international commercial arbitration and conciliation.
- To establish an arbitral procedure that is fair, efficient, and flexible enough to address the specific needs of different types of disputes.
- To ensure transparency and accountability by requiring arbitral tribunals to give reasoned arbitral awards.
- To confine arbitral tribunals within the bounds of their jurisdiction and prevent excess exercise of authority.
- To reduce judicial interference and reduce the extent of judicial supervision over the arbitration process.
- To promote peaceful and friendly settlement of disputes by permitting arbitral tribunals to adopt mediation, conciliation, or other alternative dispute resolution methods during arbitral proceedings.
- To allow an arbitral tribunal to employ mediation, conciliation, or other dispute resolution methods during arbitral proceedings to facilitate settlement.
- To ensure that every final arbitral award is enforceable in the same manner as a court decree.
- To provide that any settlement agreement resulting from conciliation proceedings shall have the same legal status and effect as an arbitral award on agreed terms regarding the substance of the dispute
- To ensure that, for the purpose of enforcing foreign arbitral awards, any arbitral award issued in a country that is a party to either of the two international conventions on foreign arbitral awards, to which India is also a signatory, is recognized as a foreign award in India.

5. The concept of International Commercial Arbitration:

The Act of 1996 defines ‘International Commercial Arbitration’ as arbitration concerning disputes arising from legal relationships—contractual or otherwise—deemed commercial under Indian law, where at least one of the parties is:

- (i) An individual who is a national of, or who ordinarily resides in, a country other than India
- (ii) A body corporate incorporated in any country other than India; or
- (iii) A company or an association or a body of individuals whose central management and control is exercised in any country other than India; or
- (iv) The government of any country outside India.

In the Indian context, international commercial arbitration may be classified into awards rendered within the country and awards rendered outside India, commonly referred to as foreign awards.

6. Awards passed within the country:

The appointment of arbitrators constitutes the initial stage of the alternative dispute resolution process. The composition of the arbitral tribunal is generally determined by the terms specified in the arbitration agreement between the parties. Where the agreement does not stipulate the number of arbitrators, the dispute is referred to a sole arbitrator, as an even number of arbitrators is not permitted under the law. Any individual, regardless of nationality, may be appointed as an arbitrator, and the parties are free to mutually agree upon the procedure for such appointment. In cases where a panel of arbitrators is envisaged, each party may appoint one arbitrator, and the two appointed arbitrators will then select a third arbitrator to act as the presiding arbitrator.

If the parties fail to agree on the appointment of arbitrators within thirty days of a request from one party to the other, the appointment may be made, upon the request of either party, by the Chief Justice for domestic arbitration or by the Chief Justice of India in the case of international commercial arbitration, or by any institution or person designated by them. The decision of the Chief Justice or the designated authority in this matter is final. Any request submitted to the Chief Justice of India must be accompanied by the original arbitration agreement or a certified copy thereof.

Arbitral proceedings for a specific dispute commence on the date the respondent receives a request for reference of the dispute to arbitration. The parties are free to agree upon the language or languages to be used in the proceedings. The claimant is required to present the facts supporting the claim, identify the points in dispute, and specify the relief or remedy sought, while the respondent must provide a response addressing these points within the

timeframe agreed upon by the parties or determined by the arbitral tribunal. Parties may submit all relevant documents with their statements or refer to the evidence they intend to provide. Except where agreed otherwise, either party may amend or supplement claims or defenses during the proceedings, unless the arbitral tribunal considers such amendments inappropriate due to delays.

Unless the parties have agreed otherwise, the arbitral tribunal determines whether to hold oral hearings for the presentation of evidence or arguments, or to conduct proceedings based solely on documents and other materials. The tribunal must also hold oral hearings upon the request of a party at an appropriate stage, unless the parties have agreed that no oral hearing will take place.

The parties are provided with adequate prior notice of any hearing of the tribunal convened for examining documents, goods, or other property. All pleadings, documents, and other information submitted by one party, as well as any applications made before it, are required to be shared with the opposing party. Similarly, any expert opinions or evidentiary materials on which the tribunal proposes to rely while arriving at its decision must be disclosed to both parties. The Arbitration and Conciliation Act, 1996 further permits a party to seek from the court interim measures relevant to arbitration proceedings. Such interim reliefs are given solely for facilitating the arbitration process and for safeguarding the interests of the parties in situations where adequate protection cannot be ensured by the arbitral tribunal itself. In addition, the arbitral tribunal is empowered to direct the adoption of interim measures, unless such authority has been expressly barred by agreement between the parties. The Act further provides for the applicability of the Indian Limitation Act, 1963 to international commercial arbitration, which is three years commencing from the point at which the cause of action arises. The Act does not specify a fixed time frame for the making of an arbitral award. However, an arbitrator may be removed from office if he is found to be responsible for unreasonable or undue delay in the proceedings.

The arbitration award needs to be reduced to writing and bear the signatures of all arbitrators on the tribunal. It is also required to contain the reasons behind the decision is founded, unless the parties have mutually decided that a reasoned award is not necessary. The award should be executed on stamp paper of the appropriate value, determined as per the amount awarded. If the award confers or affects any right, title, or interest in immovable property

valued at one hundred rupees or more, registration of the award becomes mandatory. An unregistered award relating to such property cannot be admitted in evidence before a court.

A party dissatisfied with an arbitral award may approach the competent court to have the award set aside. This must be done within three months from the date of the award. The aggrieved party must establish valid grounds for such a challenge. These grounds may include situations where a party to the arbitration agreement lacked legal capacity, or where the arbitration agreement itself was invalid under the law chosen by the parties or under Indian law in force at the time.

The court may also consider setting aside an award if the affected party did not receive proper notice of the arbitrator's appointment or of the arbitral proceedings. Challenges may arise if the award addresses a dispute that was not contemplated by the arbitration agreement, or if the composition of the tribunal or the procedure followed deviated from the parties' agreement.

Additionally, the court can refuse enforcement if the subject matter of the dispute is not capable of settlement by arbitration under the law. Finally, an award may be set aside if it is found to be contrary to the public policy of India.

Where the arbitral award is not challenged within ninety days, the award becomes enforceable as a decree of a court of law¹¹. The executing court is required to entertain the execution petition upon the filing of a certified copy of arbitral award.

7. Foreign Award:

Foreign arbitral awards rendered under the Geneva Convention and the New York Convention are enforceable in India in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The awards under New York Convention are enforced when the court is convinced that the award meets the statutory requirements for enforcement. The Act further stipulates that certain conditions must be fulfilled before an arbitral award to be termed as a "foreign award." These are:

¹¹ Debarun Mukherjee, *Navigating Delays in Arbitration: Perspectives on Condonation of Delays*, 1 J. Arb. L. & Allied Fields 1 (2025).

- The award must have been issued pursuant to a written arbitration agreement intended to be governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, rather than by Indian law.
- The award must have been rendered outside India, in the territory of a foreign state notified by the Government of India as having reciprocal arrangements for enforcement of the Convention.

The Act lays down provisions for the enforcement of foreign arbitral awards, while also specifying the circumstances in which Indian courts may decline or refuse their execution. Indian courts may refuse to enforce a foreign arbitral award if the party resisting enforcement can establish any of the following grounds:

- The parties to the arbitration agreement lacked legal capacity at the relevant time.
- The arbitration agreement was invalid under the law chosen by the parties to govern it.
- The party against whom the award is sought did not receive proper notice of the arbitrator's appointment or of the arbitral proceedings, or was otherwise denied a reasonable opportunity to present its case.
- The award addresses a dispute that was not contemplated by, or does not fall within, the terms of the submission to arbitration.
- The composition of the arbitration tribunal or the procedure followed was not in accordance with the parties' agreement, and the award has not yet become binding.
- The award was set aside or suspended by a competent authority in the country where it was made.

The court may further decline enforcement where the subject matter of the award is not capable of resolution by arbitration under Indian law, or if enforcement is inconsistent with the public policy of India¹². Once the court is convinced that the foreign arbitral award is

¹² Debarun Mukherjee, *Navigating Delays in Arbitration: Perspectives on Condonation of Delays*, 1 J. Arb. L. & Allied Fields 1 (2025).

enforceable and does not suffer from any of the aforementioned defects, it is treated as equivalent to a court decree.

8. Amendments in the Arbitration and Conciliation Act, 1996:

The Arbitration and Conciliation Act, 1996 is an Indian legislation that governs domestic arbitration. It has undergone several amendments over the years. It can be discussed as follows-

- (i) The Arbitration and Conciliation (Amendment) Act, 2015 is a significant legal development in India. It was enacted to amend the Arbitration and Conciliation Act, 1996. Its primary aim was to make arbitration more user-friendly, cost-effective, and efficient. The amendments aimed to encourage arbitration as a preferred method of dispute settlement. The Act introduced a fast-track procedure for resolving disputes, ensuring quicker resolution. It set strict timelines for completing arbitration proceedings. The Act clarified the process for appointing arbitrators. It addressed issues related to costs and fees in arbitration proceedings. The amendments emphasized confidentiality in arbitration proceedings. The Act streamlined the execution of arbitral awards. The amendments aimed to boost India's position as an arbitration-friendly jurisdiction. They sought to reduce delays and enhance efficiency in dispute resolution.
- (ii) The Arbitration & Conciliation (Amendment) Act, 2019 brought significant changes to the existing legislation in India. The amendment aimed to encourage institutional arbitration by emphasizing the role of recognized arbitral institutions. Parties were encouraged to choose institutional rules for their arbitration proceedings. The amendment introduced provisions to ensure the impartiality and independence of arbitrators. Arbitrators were required to disclose any circumstances that might affect their neutrality. The Act imposed strict time limits for completing arbitration proceedings. This was intended to expedite the settlement of conflicts. The amendment specified qualifications for arbitrators, emphasizing expertise and integrity.
- (iii) The Arbitration & Conciliation (Amendment) Act, 2020, introduced two key changes. Section 36 empowered courts to grant an unconditional stay on

enforcement of an award passed in Indian-seated arbitration proceedings, provided that the court is satisfied that it is evident on the face of it that the arbitration agreement or the arbitration award itself, was influenced by fraud or corruption and it omitted the detailed criteria for appointment of arbitrators introduced by the 2019 amendments to the Act contained in the Eight Schedule.

- (iv) The 2021 Amendment to the Arbitration and Conciliation Act, 1996 introduced notable changes to the existing framework. It modified the 1996 Act by creating additional obstacles to the enforcement of arbitral awards. A key change was the insertion of a proviso under section 36(3). This proviso allows courts to stay enforcement if they are prima facie satisfied that either the arbitration agreement or the underlying contract, or the making of the award itself, was procured or influenced by fraud or corruption.

The amendment also restricted the courts' discretion to grant relief based on the specific circumstances of a case. This limitation effectively reversed some of the enforcement-friendly provisions introduced by the original 1996 Act. By introducing vague standards for enforcement, it created new grounds for resisting execution that are separate from the established grounds for challenging an award. As a result, this amendment has the potential to disrupt the arbitration framework in India and adversely affect the rights of award-holders.

In 2023, the Supreme Court delivered a nuanced interpretation of the amended Section 29A of the Arbitration and Conciliation Act, 1996. The court examined that to ensure flexibility in completing proceedings in cross-border disputes, the new Section 29A of the Act explicitly states, “in matters other than international commercial arbitration”, which specifically precludes international commercial arbitrations from the mandatory timeline for rendering the arbitral awards. Furthermore, the court clarified that the 2019 amendment to the Act applies to all pending arbitral proceedings as of the effective date. This interpretation was significant in the context of international commercial arbitrations.¹³ Additionally, the Arbitration and Conciliation Act, 1996 was also amended by the Mediation Act 2023.

¹³ Siddharth Tandon, *International Commercial Arbitration and the India Perspective: Present and Future Scenarios*, Indian Council of Arb. Q., July–Sept. 2007, at 3, available at <http://www.ficci.com/icanet> (last visited Sept. 18, 2025).

9. Effect Of UNCITRAL Model Law

The UNCITRAL Model Law on International Commercial Arbitration, established by the United Nations Commission on International Trade Law (UNCITRAL), represents a significant milestone in the evolution of international arbitration. Since its introduction, the Model Law has brought about profound changes in the global arbitration landscape. It has promoted uniformity, enhanced procedural efficiency, and encouraged the resolution of international commercial disputes outside traditional court systems. The primary objective of the UNCITRAL Model Law on International Commercial Arbitration is to harmonize the diverse arbitration laws across different jurisdictions.¹⁴ Prior to its establishment, variations in national arbitration laws created significant legal uncertainties and complexities for parties involved in international disputes. These discrepancies often led to confusion and unpredictability in arbitration proceedings. The Model Law addresses these issues by providing a standardized legal framework which can be adopted by countries ensuring that fundamental principles and procedures of arbitration are consistent across different legal systems. This harmonization reduces the risks and uncertainties associated with cross-border arbitration, making it easier for parties to predict outcomes and understand their rights and obligations under the arbitration process.

The Model Law empowers arbitral tribunals to order interim measures for the protection of assets or evidence that may be vital to the arbitral proceedings. This authority strengthens the arbitration process by enabling parties to safeguard their interests until the dispute is finally resolved. The scope of interim relief under the Model Law is broad. It includes directions for preserving evidence, maintaining the existing state of affairs, and restraining the disposal or transfer of assets. Such measures play a crucial role in preventing prejudice to either party during the pendency of arbitration.

Interim orders issued by arbitral tribunals are enforceable through national courts. This judicial support ensures compliance with such directions and reinforces the effectiveness of arbitration as a dispute resolution mechanism. Where immediate protection is required, the Model Law also provides for the appointment of an emergency arbitrator. An emergency arbitrator may grant interim relief even before the arbitral tribunal is formally constituted, thereby ensuring timely protection of the parties' rights.

¹⁴ UNCITRAL, G.A. Res. 31/98, U.N. Doc. A/RES/31/98 (Dec. 15, 1976), <https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf> (last visited Sept. 18, 2025).

10. Conclusion

The Indian legislative paradigm, as discussed in this present paper has revolved around the UNCITRAL Model Law on International Commercial Arbitration. Since its inception, the Model Law has significantly influenced the global arbitration landscape. Its widespread adoption by numerous countries, either in its entirety or with minor modifications, underscores its effectiveness and reliability as a framework for international arbitration.¹⁵ Even in jurisdictions that have not formally adopted the Model Law, its principles have influenced national arbitration reforms, contributing to a more cohesive global arbitration environment. The Model Law is accepted by a substantial number of countries worldwide. This adoption can be attributed to several factors. The Model Law offers a standardized legal framework for an international arbitration, which is attractive to countries seeking to harmonize their arbitration laws with international best practices. This standardization helps create a predictable and stable legal environment for international trade and investment. By adopting the Model Law, countries signal their commitment to providing a reliable and efficient dispute resolution mechanism. This fosters confidence among international businesses and investors, promoting cross-border trade and economic cooperation. Countries can adopt the Model Law either in its entirety or with minor modifications to align with their existing legal frameworks and domestic needs. This flexibility allows jurisdictions to benefit from the Model Law's principles while tailoring specific provisions to their unique contexts.

Now we shall keep in mind that India has played a pioneering role in strengthening the basis of the original idea of arbitration. It had the privilege of being the first Asian Country to host to the most prestigious biennial ICCA Congress in 1975 and again in 2010. It is only one of eight countries that has been member of UNCITRAL right from its inception. However, in the existing legal and physical infrastructure, it would be the most important for India to decide its goal in the direction of a hub for international arbitration and move to prepare an action plan for national arbitration policy for all stakeholders to come together and work in a unified manner. It is not expected that India will become an arbitration hub overnight. We need to take small baby-steps towards the same and first develop India as a regional hub for South Asian region.

¹⁵ N. L. Rajah, *Modification of Arbitral Awards by Civil Courts*, DIAC J. Arb. (2021), <https://dhcdiac.nic.in/wp-content/uploads/2021/07/diac-journal-24042021-revised-435696-xmS9P6Pa.pdf> (last visited Sept. 18, 2025).



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