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LEGALONUS LAW JOURNAL
ISSN: 3048-8338

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ISSN: 3048-8338

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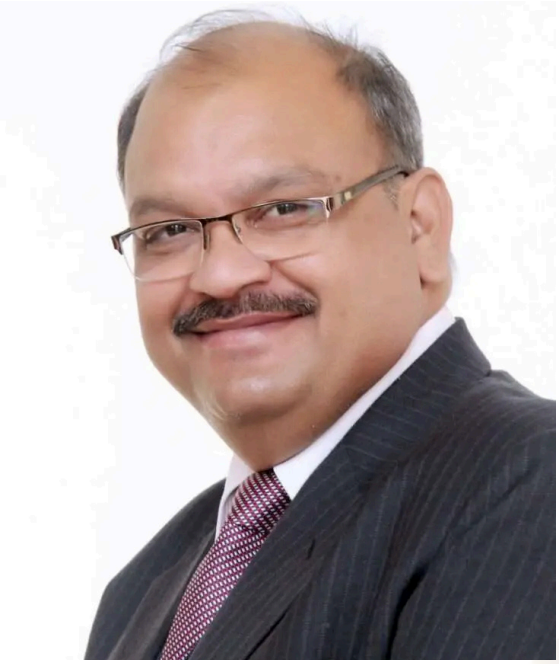

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As Chief Editor of Legalonus Law Journal, Tarun's leadership, expertise, and scholarly contributions shape legal discourse, making a significant impact on the legal community.

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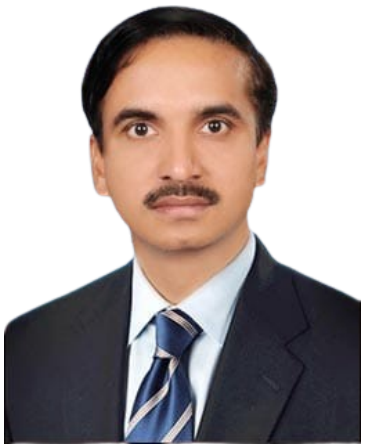

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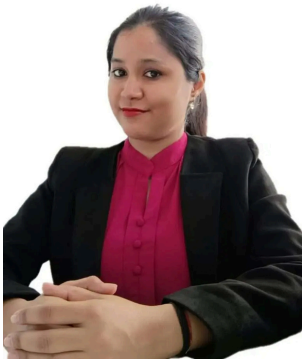

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His practical experience includes an internship with the District Legal Services Authority (DLSA), where he gained exposure to court procedures, judicial decorum, and visits to institutions such as the district jail, police headquarters, women empowerment department, and child welfare department.

In pursuit of continuous learning, Ayush has completed specialized courses on Drone Law and Pleading & Litigation. His hands-on experience expanded through internships at the Allahabad High Court and the Supreme Court of India, where he gained valuable insights into legal interpretation, case applications, and expert knowledge in drafting and pleading.

Ayush Chandra's strong academic background, practical legal training, and commitment to research make him a valuable contributor to the editorial board.

LEGALONUS **ISSN: 3048-8338**
Aequitas Sequitur Legem
LEGALONUS LAW JOURNAL(LLJ)
A Quality Initiative For Legal Development, Undertaken By the Legalonus

PROTECTING HUMAN RIGHTS IN THE DIGITAL AGE: THE ROLE OF THE CONSTITUTION

- By Rakesh[1]

Abstract

The advent of the digital age has catalysed a fundamental redefinition of human rights—reshaping their meaning, scope, enforcement mechanisms, and underlying philosophical foundations. Digitalisation, in its expansive influence across legal, political, economic, social, and cultural spheres, has blurred the boundaries between public and private domains, transforming the traditional vertical model of human rights enforcement into a complex, horizontal landscape involving powerful non-state actors such as multinational corporations and algorithm-driven platforms. As emerging technologies—particularly artificial intelligence, biometric surveillance, and data analytics—reshape governance and daily life, they simultaneously challenge the adequacy of existing human rights protections, prompting the articulation of new frameworks such as "digital rights" and "fourth-generation rights," including rights to bio-information and algorithmic transparency.

[1] PhD Scholar in Kurukshetra University.

This research delves into the intricate interplay between technological advancement and constitutional safeguards, focusing on the Indian context. It critically evaluates how the Indian Constitution, grounded in the principles of liberty, dignity, and justice, responds to digital-era threats such as mass data surveillance, algorithmic bias, and digital exclusion. Through a detailed analysis of constitutional provisions, evolving judicial doctrines (particularly under Articles 14, 19, and 21), and landmark judgments such as Puttaswamy v. Union of India, this paper investigates whether the existing legal architecture is robust enough to address the asymmetry of power between individuals and data-centric institutions. The paper also interrogates the role of constitutional interpretation in shaping a future-ready rights framework and explores comparative insights from international jurisdictions and instruments such as the GDPR, the EU Charter of Fundamental Rights, and the UN's digital rights initiatives.

Ultimately, this study argues that constitutionalism in the digital age must go beyond reactive legal reform. It must proactively anticipate rights-based implications of emerging technologies, rearticulate the boundaries of state and corporate accountability, and reimagine human rights in a manner that preserves autonomy, equality, and dignity in an increasingly digitized world.

Keywords: Human rights, Digital age, Constitutional rights, Freedom of expression

Literature Review

The intersection of human rights and digital technology has sparked a growing body of interdisciplinary literature, reflecting legal, philosophical, sociological, and technological perspectives. Scholars have increasingly acknowledged that while digitalisation promises empowerment and innovation, it simultaneously amplifies risks to autonomy, privacy, and equality. The literature surrounding this discourse broadly covers three interconnected domains: the evolution of digital rights, the constitutional response to technological disruptions, and the emergence of fourth-generation rights.

Digital Rights and the Reconfiguration of Human Rights

Digital rights, though not universally codified, are increasingly understood as an extension of traditional human rights into the online sphere. Scholars such as Luciano Floridi (2013) have conceptualized the "infosphere" as a new environment in which humans and digital entities coexist, necessitating new ethical and legal paradigms. Similarly, Julie Cohen (2012) highlights how

surveillance capitalism and algorithmic governance fundamentally alter the notion of autonomy, making data privacy a prerequisite for meaningful freedom. Works by Jack Balkin and Tim Wu further emphasize the "information fiduciary" role of private tech companies and call for regulatory frameworks that hold them accountable as quasi-governors of digital space.

The Constitutional Response in India and Beyond

In the Indian context, legal scholars have focused on the transformative role of constitutional interpretation in adapting to digital realities. The landmark case Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) marked a jurisprudential leap by recognizing the right to privacy as a fundamental right under Article 21 of the Indian Constitution. Scholars such as Gautam Bhatia and Justice B.N. Srikrishna argue that this decision laid the groundwork for a more robust digital rights framework, particularly concerning data protection and state surveillance. However, others critique the slow pace of legislative follow-up, pointing to gaps in the enforcement and accountability mechanisms, especially in the context of the Aadhaar project and the Digital Personal Data Protection Act (2023).

Globally, the European Union's General Data Protection Regulation (GDPR) has been hailed as a pioneering legal instrument that foregrounds consent, transparency, and user control—concepts that many constitutions are yet to integrate meaningfully. Comparative studies also highlight constitutional innovations in countries like Brazil, which enacted its "Internet Bill of Rights" (Marco Civil da Internet), and Germany, where the Constitutional Court has been proactive in safeguarding digital liberties.

Fourth-Generation Rights and Emerging Norms

Building on Karel Vasak's three-generational model of human rights, several recent works propose the existence of a "fourth generation" of rights, comprising rights related to digital identity, bio-information, and cognitive liberty. Scholars like Mireille Hildebrandt and Shoshana Zuboff argue that these emerging rights demand a rethinking of the anthropological basis of constitutional law—shifting from a liberal-humanist model toward one that accounts for hybrid human-machine interactions. These debates are particularly relevant in the context of algorithmic bias, predictive policing, and AI-based governance, where existing rights frameworks fall short in addressing non-human agency and systemic opacity.

Gaps and Research Imperatives

Despite the rich academic discourse, significant gaps remain in operationalizing digital rights within constitutional frameworks. Much of the existing literature is either normative or reactive, focusing on specific judicial interventions or legislative developments rather than offering holistic models of digital constitutionalism. There is also limited scholarship on the intersectionality of digital rights—how digital exclusion disproportionately affects marginalized communities in terms of access, representation, and redress.

This paper seeks to bridge these gaps by synthesizing constitutional theory, human rights law, and digital ethics. It contributes to the literature by offering an India-centric analysis with global resonance, advocating for a proactive, rights-based constitutional framework that is responsive to the evolving realities of the digital world.

Research Methodology

This study adopts a qualitative, doctrinal, and analytical research methodology to explore the evolving relationship between human rights and constitutional safeguards in the digital era. Given the legal-constitutional nature of the subject, the research is grounded in a normative framework and relies on the interpretive analysis of legal texts, judicial pronouncements, policy documents, and academic commentary.

1. Doctrinal Legal Research

The primary method used in this study is doctrinal research, involving an in-depth examination of constitutional provisions, statutory enactments, and landmark judgments relevant to digital rights in India. Core constitutional articles—particularly Articles 14, 19, and 21—are analyzed in the context of digital governance, privacy, surveillance, and freedom of expression. Seminal cases such as Justice K.S. Puttaswamy v. Union of India (2017), Shreya Singhal v. Union of India (2015), and Anuradha Bhasin v. Union of India (2020) are examined to evaluate how constitutional interpretation is evolving in response to technological disruption.

2. Comparative and Cross-Jurisdictional Analysis

To contextualize India's constitutional approach within global developments, a comparative

methodology is employed. This involves examining digital rights frameworks and constitutional jurisprudence from select jurisdictions, including the European Union (GDPR and the EU Charter of Fundamental Rights), Brazil (Marco Civil da Internet), and Germany (digital privacy under the Basic Law). These comparative insights help identify best practices, emerging norms, and potential directions for India's constitutional adaptation.

3. Interdisciplinary Approach

The research draws from interdisciplinary sources—particularly in the fields of digital ethics, technology policy, and human rights theory. Academic writings by legal scholars, philosophers, data ethicists, and policy think tanks are used to build a conceptual understanding of digital rights and fourth-generation rights. This holistic approach helps illuminate the social and technological dimensions often overlooked in legal analysis alone.

4. Secondary Sources and Literature Review

The methodology includes an extensive review of secondary sources such as scholarly books, peer-reviewed journals, law commission reports, government white papers (e.g., the Justice Srikrishna Committee Report on Data Protection), and international human rights declarations (e.g., UN Guiding Principles on Business and Human Rights). These sources are critically evaluated to synthesize existing knowledge and identify gaps that this paper seeks to address.

5. Analytical Framework

The research employs a critical-analytical lens, questioning not only how the Constitution currently responds to digital challenges but also how it ought to evolve to preserve its foundational values in a technology-driven society. The analysis is framed around the key constitutional principles of liberty, equality, and justice, applied to contemporary digital issues such as algorithmic discrimination, biometric surveillance, digital exclusion, and the privatization of public discourse.

Scope and Limitations

While the study focuses primarily on the Indian constitutional framework, its findings and arguments have broader implications due to the global nature of digital rights discourse. However, the research does not include empirical fieldwork or statistical analysis, as it is primarily theoretical and doctrinal in orientation.

Hypothesis

The core hypothesis of this research is that the existing constitutional framework in India, though fundamentally robust, requires dynamic reinterpretation and structural augmentation to effectively protect and promote human rights in the digital age.

The study rests on the assumption that digital technologies—especially artificial intelligence, data surveillance, algorithmic governance, and the privatization of public spaces—pose novel threats to civil liberties that were not envisioned by the framers of the Constitution. These developments challenge the traditional understanding of rights and demand a re-examination of constitutional principles such as privacy, equality, freedom of speech, and due process.

The research further hypothesizes that:

1. Traditional legal tools and interpretations are inadequate to fully address the complexities introduced by digital technologies, particularly in the absence of strong legislative safeguards and regulatory mechanisms.
2. Judicial activism and constitutional interpretation have played a significant role in filling this gap, especially through the expansion of Article 21, but remain inconsistent and reactive.
3. A fourth generation of human rights is emerging, focused on digital autonomy, informational privacy, algorithmic accountability, and the right to digital inclusion—requiring constitutional recognition, either explicitly or through evolved jurisprudence.
4. A rights-based, constitutional approach is essential for ensuring that technological development does not outpace the legal and ethical frameworks that safeguard human dignity, autonomy, and justice.

Introduction

The 21st century has ushered in a digital revolution that has irrevocably altered the architecture of human interaction, governance, and individual autonomy[2]. From the widespread use of social media platforms and algorithmic decision-making to the deployment of facial recognition systems and biometric databases, the contours of personal freedom and civil liberties are increasingly shaped—and

[2]Daniel J Solove, *The Digital Person: Technology and Privacy in the Information Age* (NYU Press 2004)

sometimes constrained—by digital technologies.[3] While these innovations have undeniably enhanced efficiency and connectivity, they have also generated unprecedented risks to core human rights, including privacy, freedom of expression, equality, and informational self-determination.[4]

Against this backdrop, the question arises: can traditional constitutional frameworks adequately safeguard human dignity and autonomy in an environment governed by code, data, and artificial intelligence? In India, this challenge is particularly critical. As the world's largest democracy and a rapidly digitizing society, India stands at the intersection of opportunity and vulnerability. The Indian Constitution, drafted in an analog era, was envisioned as a dynamic document capable of adapting to evolving societal contexts. Its embedded values—liberty, equality, and justice—are now being tested in new terrains where algorithmic logic often supersedes legislative reasoning, and corporate terms of service rival constitutional guarantees in influence.[5]

This paper aims to explore the dynamic interaction between human rights and the digital age through the lens of constitutionalism. It investigates how the Indian constitutional framework has responded to, and must continue to evolve in response to, emerging digital threats and opportunities. Specifically, the study considers issues such as data privacy, surveillance, algorithmic discrimination, and the rights of digital citizenship. By analyzing key constitutional provisions, judicial pronouncements, and policy developments, the paper seeks to determine whether the Constitution's current interpretive and institutional apparatus is sufficient—or whether a paradigm shift in legal thinking is required.[6]

Furthermore, the introduction of concepts such as the "right to be forgotten," "informational privacy," and "algorithmic accountability" reflect the urgency of expanding our legal imagination to include new dimensions of rights. This paper also examines the normative debates around the fourth generation of rights—those rooted in bio-information, digital identity, and cyber autonomy—and how these can be embedded within constitutional jurisprudence. In doing so, the study situates the Indian experience within a broader global context, offering a comparative perspective on how nations and international bodies are addressing the human rights implications of rapid digitalisation.[7]

In essence, the digital age challenges us not only to protect rights in new domains but to rethink what

[3]Alessandro Mantelero, 'The Future of Data Protection: Effective Protection or Risk Management?' (2014) 10(1) *International Data Privacy Law* 1.
[4]UN General Assembly, 'The Right to Privacy in the Digital Age' UN Doc A/RES/68/167 (18 December 2013).
[5]Shreya Singhal v Union of India (2015) 5 SCC 1.
[6] The Digital Personal Data Protection Act 2023 (India).
[7]OECD, 'OECD Principles on Artificial Intelligence' (2019)

it means to be human, free, and equal in a world mediated by machines.[8] The Constitution, as the supreme legal and moral compass of the nation, must rise to this occasion—not merely as a safeguard, but as an active force in shaping a just and inclusive digital future.[9]

Constitutional Law in the Digital Age: Protecting Privacy Rights Online

The advent of the digital age has fundamentally reshaped human interaction, governance, and communication.[10] With the exponential rise of digital technologies, we have seen a profound transformation in how information is exchanged, privacy is perceived, and human rights are protected. However, these advancements bring with them a unique set of challenges, particularly in the realm of constitutional law and privacy rights. As technology continues to evolve, constitutional frameworks are required to adapt and safeguard individual liberties, which were not foreseen by the framers of most constitutions.[11] This section explores the implications of digital technologies on privacy rights and the role of constitutional law in balancing technological progress with fundamental human rights protections.

Privacy Rights and Constitutional Protections

In many modern constitutional frameworks, privacy rights are not always explicitly outlined but are instead inferred from a broader commitment to protecting individual freedoms.[12] In the case of the U.S. Constitution, for instance, privacy is often linked to the Fourth Amendment's protection against unreasonable searches and seizures, as well as the broader interpretations of rights derived from the Bill of Rights. Similarly, in India, while privacy was not initially recognized as an explicit fundamental right, the landmark Puttaswamy case (2017) recognized the right to privacy under Article 21, broadening the scope of protection in response to the digital age.

However, the expansion of digital technologies has created new challenges regarding what constitutes an "invasion of privacy." In an era dominated by smartphones, data mining, and ubiquitous surveillance, what was once a straightforward understanding of privacy now requires reevaluation. As

[8]Julie E Cohen, *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice* (Yale University Press 2012).
[9]Ibid.
[10]Julie E Cohen, *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice* (Yale University Press 2012) 3.
[11]Shoshana Zuboff, *The Age of Surveillance Capitalism* (PublicAffairs 2019).
[12]Samuel D Warren and Louis D Brandeis, 'The Right to Privacy' (1890) 4 *Harvard Law Review* 193.

personal data is increasingly collected and used by both state and private actors, questions arise about how constitutional principles can continue to safeguard individual freedoms in these new contexts.[13]

The Role of Constitutional Provisions in Addressing Digital Privacy Concerns

In India, the Puttaswamy case affirmed the constitutional right to privacy, emphasizing the need for a framework that addresses the complex digital realities individuals face today. Despite this, the legal framework for digital privacy remains in development, with significant gaps in regulation and enforcement, especially regarding private tech companies and their role in data collection and processing.[14] Digital technologies like biometric identification and social media platforms have brought new complexities, such as algorithmic discrimination, data exploitation, and surveillance, which were not foreseen when the Constitution was written.[15]

The constitutional response to these developments remains a work in progress. While the Indian legal system has addressed issues like surveillance and data protection through judicial interpretations, there is still a lack of robust legislative safeguards that comprehensively protect digital privacy. The recently introduced Personal Data Protection Bill (2023) is a step in the right direction but has faced criticism for not going far enough to protect citizens' data from state overreach and corporate misuse.[16]

Balancing Privacy with National Security

The digital age has complicated the balance between privacy rights and national security interests. Constitutional protections against unwarranted surveillance often clash with government powers to monitor and protect citizens in the face of security threats. This is particularly evident in post-9/11 surveillance laws, such as the USA PATRIOT Act in the U.S.[17], and India's various counter-terrorism measures, which grant expansive powers to state agencies for monitoring and data collection.[18]

However, the tension between privacy and national security is not confined to national borders. The revelations from whistleblower Edward Snowden in 2013 shed light on the extensive global surveillance programs of the U.S. National Security Agency (NSA). These disclosures triggered a

[13]UN General Assembly, 'The Right to Privacy in the Digital Age' UN Doc A/RES/68/167 (18 December 2013)
[14]B N Srikrishna Committee, *Report of the Committee of Experts on Data Protection Framework for India* (2018)
[15]Rikke Frank Jørgensen (ed), *Human Rights in the Age of Platforms* (MIT Press 2019).
[16]Digital Personal Data Protection Act 2023 (India).
[17]USA PATRIOT Act 2001, Pub L No 107–56, 115 Stat 272.
[18]Information Technology Act 2000 (India), s 69.

global conversation about the rights of individuals versus the security needs of the state, highlighting the need for clearer constitutional frameworks and legal standards to protect citizens' rights while maintaining national security.

In India, while the government has argued for expansive powers to monitor digital communications for national security reasons, critics have raised concerns about the lack of clear limits on state surveillance. The right to privacy must be safeguarded not only from state abuse but also from private corporations that may collect and sell personal data without adequate oversight.

The Role of Technology Companies in Protecting Digital Rights

An emerging challenge in the digital age is the growing power of technology companies, which play a central role in the collection, storage, and sharing of personal data. While governments regulate state surveillance, they often lack the power to directly oversee how private companies handle personal information. This has created a scenario where private actors control vast quantities of data, often without transparency or accountability.

The role of companies like Facebook, Google, and Amazon in data collection has raised significant concerns about consent and privacy. Users often “agree” to data collection practices through lengthy terms and conditions that they seldom read, which weakens their ability to exercise control over their own data. In recent years, courts have begun to address these issues, with landmark decisions such as Carpenter v. United States (2018), which ruled that data shared with third parties—such as location data—should still be subject to Fourth Amendment protections, requiring law enforcement to obtain a warrant before accessing this sensitive information.

Protecting Digital Privacy in the Future

As the digital landscape continues to evolve, there is an increasing need for robust constitutional protections to ensure privacy rights in the digital age. Legal scholars and privacy advocates argue for the establishment of comprehensive privacy laws that set clear standards for data collection, storage, and sharing. The European Union’s General Data Protection Regulation (GDPR) serves as a model for such legislation, demonstrating how privacy rights can be safeguarded through strong legal frameworks that limit data collection and give individuals greater control over their personal

information.[19]

Moreover, courts must continue to build a body of case law that addresses digital privacy concerns. By setting clear precedents, courts can provide guidance on how constitutional principles should be applied in the context of modern digital challenges. Public awareness campaigns are also crucial in educating citizens about their digital rights and the risks of online data sharing.[20]

Surveillance and its Threat to Human Rights

Surveillance has become one of the most significant threats to individual freedoms in the digital age. As technological advancements have allowed for more sophisticated and pervasive surveillance tools, such as facial recognition, biometric data collection, and algorithmic monitoring, the protection of human rights—particularly privacy—has become increasingly precarious. The evolution of surveillance technologies often outpaces the development of laws that protect citizens' rights, leaving gaps in legal protections and enabling government overreach without adequate checks and balances.

For instance, the case of Big Brother Watch and Others v. the UK[21] raised concerns about breaches of Articles 8 and 10 of the European Convention on Human Rights (ECHR), which protect the rights to privacy and freedom of expression. The case highlighted the tension between security measures and individual freedoms, and sparked debates on the need to reassess existing frameworks for determining whether mass surveillance constitutes a violation of human rights in light of modern technological advancements.

In response to these concerns, advocates for privacy rights call for stronger legal protections, transparency, and oversight mechanisms to ensure that surveillance operations are aligned with human rights norms. Moreover, preventing surveillance is not enough; educating the public on the consequences of digital surveillance and enabling individuals to assert their right to privacy are also crucial steps in protecting fundamental freedoms.[22]

Freedom of Expression and Censorship in the Digital Age

The digital age has revolutionized public discourse, enabling individuals to express their opinions and

[19]Schwartz, Paul M., & Solove, Daniel J. *"Reconciling Personal Information in the United States and European Union,"* 102 Calif. L. Rev. 877 (2014)
[20]Westin, Alan F. *Privacy and Freedom*, 1967
[21]*Big Brother Watch and Others v. The United Kingdom*, Applications nos. 58170/13, 62322/14 and 24960/15, European Court of Human Rights (2018).
[22]Lyon, David. *Surveillance Society: Monitoring Everyday Life*, Open University Press, 2001

participate in global conversations through social media, online forums, and digital news platforms. This democratization of information has empowered citizens to advocate for social change and hold institutions accountable in ways never before possible. However, the digital public sphere also presents significant challenges, including the spread of misinformation, online harassment, and manipulation of public opinion.[23]

A key challenge is finding a balance between regulating harmful content and safeguarding the right to freedom of expression. Certain content, such as hate speech and incitement to violence, clearly poses a threat to public order and safety, but blanket censorship may inadvertently stifle legitimate discourse. The global nature of the internet complicates content governance further, as differing legal and cultural standards across regions make it difficult to regulate content uniformly.[24]

In this complex landscape, it is essential to protect freedom of expression while simultaneously addressing issues like online abuse, misinformation, and disinformation. To strike this balance, countries need to develop clear and consistent frameworks that respect both free speech and the need to protect individuals from harmful content online.[25]

Privacy in the Digital Era

Privacy, once considered a cornerstone of human rights, is under significant threat in the digital era. The collection and storage of personal data by both technology companies and governments pose substantial risks to individual privacy. Data breaches, cyberattacks, and the improper handling of personal information have led to identity theft, financial loss, and psychological harm.

The 2013 revelations by Edward Snowden regarding the NSA's global surveillance programs brought global attention to the erosion of privacy rights in the digital era. Snowden's disclosures underscored the extent to which governments could compromise individual privacy in the name of national security, highlighting the urgent need for stronger privacy protections.

To protect privacy in the digital age, a multi-faceted approach is required. Governments must enact robust privacy laws that hold data collectors accountable for breaches and abuses. Furthermore, technological solutions such as encryption, anonymization, and secure data storage must be utilized to protect individuals from digital surveillance and data exploitation.

[23]A/HRC/29/32 (2015)
[24]Tushnet, Mark. *"Free Speech and Social Media"*, 50 Washburn L.J. 253 (2011)
[25]ARTICLE 19 (NGO). *Global Principles on Freedom of Expression and Privacy* (2017)

Steps Towards Right to Privacy in the Digital Age

In recent years, there have been significant steps taken at the international level to recognize and protect the right to privacy in the digital age. The United Nations has played a pivotal role in this process.[26] In March 2015, the UN Human Rights Council created a Special Rapporteur on the Right to Privacy, an essential step toward monitoring and advocating for digital privacy rights globally. The UN General Assembly's resolution on "The Right to Privacy in the Digital Age," passed in December 2013, further reinforced the importance of this issue, calling for greater legal frameworks and protection against mass surveillance.[27]

In addition, the development of a multi-stakeholder approach to internet governance is critical in addressing the global nature of digital rights. As the internet operates without regard to national borders, countries must collaborate and ensure that the free flow of information does not infringe upon individual rights[28]. However, some countries, like China, have pursued "internet sovereignty," asserting control over data, content, and governance within their borders, which resists the more open, decentralized model favored by international human rights organizations.

Furthermore, the issue of digital rights must be treated as a matter of national and global security. Mass surveillance programs, such as those exposed by Snowden, have raised alarms about the security risks associated with compromised privacy. States must prioritize digital security to protect both individual freedoms and national interests, ensuring that practices like hacking into networks or mandating back doors to encrypted services do not weaken global encryption standards or violate human rights.[29]

Digital Rights in India

India has taken significant steps toward protecting digital rights within its constitutional framework. The Supreme Court of India has recognized that digital rights, including the right to privacy, are integral to the Fundamental Rights guaranteed by the Constitution. Notably, the 2017 Puttaswamy ruling affirmed the right to privacy as a fundamental right under Article 21, marking a milestone in the legal recognition of digital privacy.

[26] *The Right to Privacy in the Digital Age*, A/RES/68/167 (Dec. 18, 2013).
[27] Joseph Cannataci, *Reports of the UN Special Rapporteur on the Right to Privacy* (2015–2022)
[28] DeNardis, Laura. *The Global War for Internet Governance*. Yale University Press, 2014.
[29] Kaye, David. *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, A/HRC/32/38 (2016)

In response to growing concerns over data privacy, India enacted the Digital Personal Data Protection (DPDP) Act in August 2023. This legislation defines the duties of Data Fiduciaries and the rights of Data Principals, ensuring that individuals have control over their personal data. The Act mandates financial penalties for violations, empowering citizens to hold corporations accountable for mishandling data.[30]

While the DPDP Act represents progress, India's regulatory framework for digital platforms, data privacy, and AI-related issues remains fragmented, with laws like the Information Technology Act (2000) and the Consumer Protection Act (2019) providing some protections but requiring further harmonization to address new challenges in the digital era.

Navigating New Frontiers: The Future of Digital Rights

As we continue to navigate the digital age, it is clear that the exercise and safeguarding of human rights require new frameworks and approaches. The rapid development of digital communication and technology demands that human rights policy evolve to address the new realities of the online world. This means integrating digital rights into national and international human rights agendas to ensure that the digital transformation remains human-centric and rights-oriented.[31]

Governments, international organizations, and civil society must work together to ensure that the internet remains a space where human rights are protected, and individuals are empowered to exercise their rights. This includes recognizing that online activities are as significant as offline actions and ensuring that legal frameworks reflect this interconnectedness.

The Protection of Human Rights in the Digital Age

In the 21st century, the rapid advancement of digital technology has transformed the way human rights are both exercised and violated. The Internet has become an indispensable tool for realizing a broad range of human rights and fostering economic development. However, as digital technologies evolve, they also present new challenges to the protection of fundamental freedoms. Surveillance, censorship, privacy breaches, and online harassment are among the many threats to human rights in the digital

[30]Sharma, Apar Gupta. "India's DPDP Act: A Missed Opportunity or a First Step?" *Internet Freedom Foundation*, 2023.

[31]Srivastava, Rishabh Dara. "Internet Freedom and Regulation in India: Between Rights and Control." *Indian Journal of Law and Technology*, 2022.

sphere.[32]

The digital age has introduced a dual-edged reality—while technology can empower individuals, it also has the potential to undermine rights. For instance, issues such as mass surveillance by governments, the regulation of online speech, and the manipulation of information online raise profound human rights concerns. These issues call for urgent action to ensure that human rights principles are applied effectively in the digital context.

To safeguard human rights in the digital age, three essential steps must be taken:

1. Establishing a Special Rapporteur Mandate on the Right to Privacy
   The United Nations must appoint a Special Rapporteur on the right to privacy, dedicated to addressing global concerns regarding mass surveillance and the erosion of privacy in the digital era. This mandate would be crucial in providing guidance on the implications of digital communications technology for human rights and privacy. Such a position would help ensure that privacy rights are respected, and that legal frameworks governing surveillance are in line with international human rights norms.
2. Advocating for Multi-Stakeholder Internet Governance
   The multi-stakeholder model for Internet governance, which includes technologists, governments, civil society organizations, and the private sector, must be reinforced. This collaborative approach ensures that the internet remains an open and interoperable space that respects human rights globally. Governments that pursue internet sovereignty, such as China's control over internet infrastructure and data, risk undermining the global, decentralized nature of the internet, which could jeopardize the free flow of information and individual freedoms.
3. Reconceptualizing Human Rights Protection as a National Security Priority
   There is a need to reframe the relationship between national security and human rights in the digital context. The post-Snowden era has shown that digital security is fundamental not only to the protection of individuals' privacy but also to national and global security. The weakening of encryption standards and the surveillance of digital communications, often justified by national security concerns, can undermine both security and human rights. Strengthening digital security for individuals and networks should be prioritized as a national security imperative, ensuring that human rights protections are not compromised in the name

[32]Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. Metropolitan Books, 2014.

of security.

These steps highlight the urgent need for an integrated approach that considers the evolving nature of human rights in the digital sphere. Governments, international organizations, civil society, and the private sector must work together to ensure that digital transformation remains human-centric and aligned with fundamental rights. Addressing the challenges of digital surveillance, censorship, and privacy breaches is crucial in maintaining the integrity of human rights in an increasingly connected world.

Safeguarding Digital Rights: Press Freedom, Participation, and Privacy in the Online Sphere

In the digital era, human rights face unprecedented threats alongside transformative opportunities. As UN High Commissioner Volker Türk emphasized on World Press Freedom Day, the digital age has accelerated both the flow of information and the spread of disinformation, online hate, and surveillance. Governments and corporations now wield immense power in shaping online spaces, often without sufficient transparency or regard for fundamental freedoms.[33]

Three core principles emerge as vital to preserving democratic values and human rights online:

1. Participation in Digital Governance: Civil society and independent media must be actively engaged in the development of digital policies. Ensuring secure access to online spaces—free from censorship and surveillance—is essential for a healthy democracy. Both states and digital platforms bear responsibility for maintaining an inclusive digital public sphere.[34]
2. Freedom of Expression and Regulation: While digital platforms offer unprecedented opportunities for communication, they have also become vehicles for disinformation and online harassment. Any government or corporate regulations must meet the international human rights standards of legality, necessity, and proportionality. Laws must not become tools of suppression; instead, they must be framed to protect speech and empower individuals.
3. Privacy and Surveillance: The misuse of surveillance technologies like Pegasus spyware has deeply eroded trust in digital communications. Such practices violate the right to privacy and pose direct threats to democratic participation. Türk calls for a moratorium on the sale and use of such intrusive technologies until robust human rights protections are established.

[33]Milanovic, Marko. "Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age." *Harvard International Law Journal*, Vol. 56, 2015

[34]Mozilla Foundation, *Privacy Not Included Reports*, annual evaluations of digital tools and platforms' privacy standards.

Encryption and data protection laws must be strengthened to uphold user rights in the digital domain.

The unchecked proliferation of censorship laws, internet shutdowns, and surveillance tools presents a significant risk of democratic backsliding. Ensuring that digital technologies are used in service of—not against—human rights will require sustained accountability, transparent regulation, and meaningful public participation.

Conclusion

The digital age has reshaped how we exercise, experience, and protect human rights, presenting both unprecedented opportunities and complex threats. As this research has explored, constitutional principles remain central in anchoring human rights in a rapidly evolving technological landscape. However, their application must adapt to new realities—where surveillance, data exploitation, disinformation, and censorship threaten the very freedoms constitutions were designed to uphold.

Key international perspectives, such as those from the United Nations and human rights advocates, stress the urgent need for transparent regulation, protection of privacy, multi-stakeholder governance, and the safeguarding of press freedom. The constitutional right to freedom of expression, privacy, and participation must not be weakened in the name of security or convenience. Instead, they must be reasserted as foundational elements of democracy and justice—online as much as offline.

Moving forward, it is not enough for legal frameworks to be reactive. There must be proactive measures to reinforce digital rights, hold both governments and corporations accountable, and ensure that the digital public sphere remains open, inclusive, and respectful of human dignity. Upholding human rights in the digital age is not merely a legal imperative—it is a democratic necessity.

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VIOLENCE AGAINST WOMEN IN INDIA: A CRITICAL LEGAL STUDY

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ABSTRACT

This research paper examines the pervasive issue of violence against women in India, analyzing its legal, social, and cultural dimensions. It explores various forms of gender-based violence, including sexual violence, domestic abuse, workplace harassment, human trafficking, and female genital mutilation, highlighting their deep roots in patriarchal structures. Despite constitutional protections and legislative measures like the Bharatiya Nyaya Sanhita 2023, enforcement gaps and societal attitudes continue to hinder justice for victims. Landmark cases, such as the Nirbhaya incident and the Vishaka judgment, underscore the urgency of systemic reform. The paper advocates for comprehensive socio-legal interventions, including specialized courts, victim support systems, and awareness campaigns, to dismantle oppressive norms and ensure women's safety and dignity. It emphasizes the need for collective action to foster gender equality and eradicate violence against women.

Keywords: Violence Against Women, Gender-Based Violence, Patriarchy, Bharatiya Nyaya Sanhita 2023, Nirbhaya Case, Vishaka Guidelines, Legal Reforms, Socio-Legal Interventions, Human Trafficking, Domestic Abuse, Workplace Harassment, Gender Equality

INTRODUCTION

Violence against women, as defined by international organizations, includes any form of gender-based violence that causes or is likely to cause physical, sexual, or psychological harm or suffering. This includes threats, coercion, or unjust restrictions on their freedom, whether in public or private spaces.

Despite advancements worldwide, crimes against women continue to be a major concern. Women still fall victim to severe atrocities across the globe. In India, violence against women is a direct violation of their fundamental rights as guaranteed by the Constitution. While several legal provisions exist to safeguard their dignity and well-being, women in a patriarchal society still face oppression and various forms of abuse—both within their homes and beyond.

It was the Nirbhaya Gang Rape case in 2012[36] which made the Indian citizens realize the actuality

[36] Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

of how women became victims of heinous crimes within our country. After this case, crimes against women became a significant political issue in India and brought into focus such crimes to the masses. The Justice Verma Committee was founded by the govt. to submit a report during a record time, giving recommendations on various aspects of crime against women. But the report said that the crimes recorded are mostly understated and that various cases don't seem to be even reported. In 2020 during the worldwide pandemic crisis, the reported crimes against women were over three seventy-one thousand, including violence and assault cases of over 85 thousand and Rape cases of over twenty-eight thousand.

It's crucial to recognize that violence against women is not just an isolated issue but rather a deeply rooted societal problem that impacts progress at every level. While legal frameworks exist to protect women, a fundamental shift in cultural perceptions and attitudes is needed to dismantle patriarchal structures that perpetuate oppression. Strengthening law enforcement, improving access to justice, and raising awareness are key elements in tackling this issue. Additionally, empowering women through education, economic independence, and leadership opportunities can help reshape societal norms. Initiatives that engage communities, schools, workplaces, and families are essential to fostering an environment where women can live free from fear and discrimination. Ultimately, the fight against gender-based violence requires continuous efforts, collective responsibility, and systemic change

SEXUAL VIOLENCE

Any sexual act, attempt to obtain a sexual act, unwanted sexual remarks or advances, acts, or other direct coercive behaviour against an individual's sexuality, regardless of one's relationship to the victim, in any context, including but not limited to the home and workplace, is considered sexual violence.

It is violence against basic human rights. It's the right of every individual to live with sexual dignity and without fear, violence can take many forms: eve-teasing, molestation, rape- within or out of wedlock, sexual harassment at the workplace and child sex crime. It's a profound impact on physical and mental state. Further, as causing physical injury, it's related to an increased risk of a variety of sexual and reproductive health problems, with both immediate

and long-term consequences. Its impact on the psychological state can be as serious as its physical impact and perhaps equally long-lasting.

One of the biggest issues facing women in India and around the world is sexual violence. The Indian system already makes it difficult for survivors to obtain justice because of social pressure, shame-related fears, and the fact that the nation's marginalized communities face additional significant obstacles that make it twice as difficult for them to obtain justice or even have their voices heard. Sexual violence may be a crime with roots in patriarchy, male entitlement, and authoritarian control. It is well observed that society frequently places the responsibility on survivors, shames them and their families, and further silences them. This can be very true among people who are already marginalized within Indian society, leaving them, particularly at risk of sexual violence. This culture of shame follows survivors into law enforcement, the court system, and hospitals, further silencing survivors' voices and a lot of cases don't reach justice.

Below mentioned chart gives the idea of gender-based violence visible at different stages throughout the lifecycle: -

Prenatal	•Pre-birth elimination of females Prenatal
	•Physical battery during pregnancy
Infancy	•Female infanticide •Differential access to care, nutrition, healthcare, education
Childhood	•Child Marriage •Child sexual abuse •Child Prostitution •Differential access to care, nutrition, healthcare, education

adolescence	•Molestation/ Eve teasing •rape •Incest •Sexual harassment at work place •Forced prostitution •Trafficking •Violence associated with pre- marital pregnancy, abortion •Differential access to care, nutrition, health care, education •Kidnapping and Abduction
Youth & Adulthood	•Domestic violence •Marital Rape •Dowry related abuse and murder •Coerced pregnancy •Homicide •Sexual harassment at work place •Molestation, sexual abuse, rape •Differential access to care, nutrition, health care, education

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SEXUAL HARRASMENT AT WORKPLACE

It is important to understand the concept of the unwelcoming sex- oriented behaviours as it involves a range of behaviours which can be difficult for a victim to explain to others about what they have experienced. And there has been no definition which could help define such prohibited behaviour. The international organizations define it as violence against women and discriminatory treatment which is a broad term, where as our national laws focus more on the illegal conduct.

There can be two types of workplace harassment:

- Non-sexual harassment - Discriminating against women, Bullying, Verbal abuse outraging the modesty of women, Phycological harassment, Cyber bullying, Power domination

harassment, Religious based harassment, Gender-based harassment, Hostility at the workplace, Intimidation by the opposite sex and Maternity harassment.

- Sexual harassment - Verbal/written, Physical, Visual.

indicative or typical comments or jokes, uninvited touching, making appeals for sex, sexually blunt pictures or text messages or emails, discrediting person due to sex. After POSH Act the term 'sexual harassment not only concerns itself where women are the victim but include wider term including men and also the LGBTQIA+ community.

THE VISHAKA JUDGEMENT

The Supreme Court for the first time recognized sexual harassment at workplace in its landmark judgment of "Vishaka and others v. State of Rajasthan[2] (Bhanwari Devi's Case),1973". Where a social worker belonging to a lower caste was employed with the village rural development programme of the govt. of Rajasthan as a Development Project Worker, she tried to prevent child marriage in her village because of which the angered five male members of the children's family gang-raped her. She couldn't get any help from either the police also not from the court due to the influential status of the accused, court acquitted the accused based on lack of medical evidence and also due to the reason that they were of a higher social caste and wouldn't be expected to touch or accompany her, who was of a lower social caste. When the case came into the public eye, a women's rights activists and lawyers teamed up and filed a PIL in the Supreme Court of India, against the State of Rajasthan.

The Supreme Court in this case while giving judgement defined the definition of sexual harassment, as any physical touch or conduct, showing of pornography, making sexually coloured remarks, any unpleasant taunt or misbehaviour, or any sexual desire towards women, spreading false rumours against a woman's sexual relationship, sexual favours will come under the ambit of sexual harassment.

Further, the apex court also emphasised that sexual harassment is a violation of the fundamental right of women to gender equality which is codified under Article 14 of the Indian Constitution, further prohibition of discrimination on grounds of religion, race, caste, sex, place of birth mentioned under Article 15 of the Constitution , the fundamental right to practice any

profession or to carry out any occupation, trade or business under Art. 19(1) (g) and also the fundamental right to life and live a dignified life under Art. 216 of the Constitution. The court also further laid out guidelines that, every public or private institution or organization must have an individual in charge of the workplace that will be accountable for taking effective steps to avert sexual harassment amongst the working people.

RAPE: RAPE CULTURE

Historically, a person could only be charged with rape if force was used to subdue the victim. The use of force is still included in most countries' definitions of rape, or at the very least, the Sexual Harassment is also called eve-teasing in India, it may also include acts like a passing most serious kind of rape. When a person rapes someone they know, it's referred to as acquaintance rape or date rape. They could be friends, ex-lovers, or be currently dating.

According to studies, a woman is more likely to be raped by a friend than a stranger or a relative. Forcible rape could be committed by a friend. When sexual intercourse is nonconsensual but does not involve the physical compulsion commonly associated with forcible rape, such as assault or threats of violence, the phrase acquaintance rape is used. In Indian society, worried parents make veiled references the threat of rape and make their daughters and children, never to talk with strangers.

Rape committed by a spouse is known as marital rape or spousal rape. Statutory rape is defined as sexual activity with a person who has not achieved the age of consent. The age of consent for sexual intercourse was changed to 18 years under POCSO law in 2012.

Rape has been defined as "not an act of sex but an act of violence with sex as the principal weapon," with a wide range of physical and psychological consequences. A rapist says, "Why do I want to rape women? Because I am, as a male, a predator and all women look to men like prey. I fantasize about the expression on a woman's face when I 'capture' her and she realizes she cannot escape. It's like I won, I own her.

"Rape is not an accident of war or an incidental adjunct to armed conflict," said the United Nations. Its widespread use in times of conflict shows the horror it inspires in women, the power it provides the rapist over his victim, and the contempt it has for those who are raped. Rape in times of conflict reflects the injustices that women confront in their daily lives. 14

Rape victims range in age from a few months to their 90s. A woman's susceptibility is unaffected

by her religious views or education. Because they are viewed as defenceless, the elderly, mentally and physically impaired are frequently targeted. Because they are viewed as defenceless, the elderly, mentally and physically impaired are frequently targeted. Because they are perceived as powerless, rape is an act of power, wrath, and dominance over another. Rape is an act of authority, anger, and control over another person. Sex is a tool for gaining power. Rapists are unconcerned about the victim's safety or feelings. The rapist does not think rationally during the attack, even if the victim is unwell or pregnant. He does not regard the victim as a human being, but rather as a tool to be used.

Rape is defined as unlawful sexual activity, most commonly involving sexual intercourse, carried out against the victim's will, by force or threat of force, or with a person who is unable to give legal consent due to minor status, mental illness, mental deficiency, intoxication, unconsciousness, or deception. Section 63 of the Bharatiya Nyaya Sanhita describes rape and the conduct for which a man can be held accountable if he commits rape.

Rape culture, on the other hand, is the social environment in which sexual aggression is acceptable and condoned. It has patriarchal roots and is exacerbated by continuing gender inequality and gender and sexuality biases.

If a penis was placed into female vagina, anus, or mouth, it was deemed rape under previous statutory law. However, with the 2013 amendment, it is still considered rape if kind of the object is placed into the vagina or other areas of the body.

PORNOGRAPHY AND OBSCENITY

Comprehensive sex education is fundamental to the holistic development of an individual's personality, enabling them to grow into informed and responsible members of society. It equips individuals with the knowledge to make thoughtful, reasoned decisions rather than acting on impulse. In India, one of the most pressing yet overlooked issues is the lack of adequate sex education and the absence of open, constructive dialogue on matters related to sexuality. These subjects have long been treated as cultural taboos, preventing meaningful engagement and perpetuating ignorance and stigma across generations.

In the world of science and technology, when the internet is pervasive and penetrated in our daily lives, where everything is available with a click of the mouse, making filtering content online nearly impossible, curious individuals search the internet for their answers; some may find informative

material for studying, while others may learn it through illegal porn websites, which are available on the internet; not only that, but a lot of illegal obscene content may have been created with consent, while others may have been uploaded without the consent of the person shown in those contents, which is a violation of that person's rights.. The Availability of the aforesaid material in the market, online or offline, has posed a serious challenge around the world. Not only it is available for the adult individuals but underage, people can also access to such sites.

Many countries worldwide impose legal penalties on the publication and distribution of obscene, offensive, and pornographic content, including indecent portrayals of women and minors. These restrictions on freedom of speech and expression stem from the view that such material lacks real literary, artistic, political, or scientific value. It is often considered harmful to society as it depicts women in a degrading manner and exploits them for financial gain. Consequently, laws aim to prevent such exploitation and maintain ethical standards in public discourse.

People whose fundamental rights to speech and expression are at risk under Article 19(1) of the Indian Constitution, as well as their right to privacy, which is an intrinsic aspect of their right to life under Article 21 of the Indian Constitution. Also, it is the State's duty to protect minors from exposure to such objectionable and obscene content which has the tendency to debase and corrupt their developing minds. The terms pornography and obscenity aren't synonymous. The representation of sexual behaviours in order to elicit sexual desire is known as pornography. Obscenity, on the other hand, refers to the use of sexual language or actions that shock and offend people.

British laws were the first to implement obscenity regulations, such as the Hicklin test for determining the scope of obscenity. The earliest attempt to define obscenity was made in "Regina v. Hicklin 1868"[3]. In this case, the Queen's Bench found that the objectionable content had the potential to deprive and corrupt individuals whose minds are not receptive to two such immoral influences. And if a publication of this nature falls into their hands, the content can be considered indecent. This test can be used to determine whether or not a publication is obscene based on isolated sentences taken out of context. The apparent influence of works on the most vulnerable readers, such as children or weak-minded adults, can be appraised.

We do not have a definition of pornography under Indian law. Because of the internet's multicultural and multinational environment. Morality varies from individual to individual, culture to culture, and country to country. It can never be continuous and uniform, thus what

was once considered an indecent conduct may no longer be such in today's environment, as people's tolerance levels have increased. Obscenity is a crime under Section 294 of the Bharatiya Nyaya Sanhita 2023 and Section 67 of the Information Technology Amendment Act, 2008.

DOMESTIC VIOLENCE

The use of violence by men against women in the past cannot be dismissed as a consequence of modern civilization. In contrast to the idea of courtly affection and chivalrous behaviour, severe brutality in the treatment of women was frequent.

Domestic violence has become a topic of public and professional concern in recent years, as campaigns and research have highlighted the scope of the problem, its consequences for women and children, and the long-term social and economic costs to society. It is a significant barrier to women's empowerment since it forces women into a disadvantageous position in society. On April 15, 2022, a 46-year-old bank employee in Mumbai murdered his wife in a rage because the food that his wife made was too salty. Angered because of the salty food, he stormed into his bedroom after breakfast and began hitting her eventually strangling her with a long piece of cloth, causing her death.[37]

Domestic violence against women occurs frequently in society, yet few people discuss it. Because of the centrality of the family, such behaviour is tolerated in silence. The sanctity of marriage has ensured that it has come to be seen as almost acceptable behaviour. The general preoccupation with "more important" issues has ensured for that spousal abuse is largely overlooked.

Although women have been granted legal equality with men in social, economic, and political spheres—along with improved rights, privileges, and opportunities—the struggle for genuine equality is far from over. Domestic violence against women continues to persist in various forms, such as dowry harassment, cruelty, sexual assault, adultery, and even heinous practices like the sale of a wife. Inequities also manifest through limited access to education, preference for sons over daughters, and the denial of inheritance rights, which often leaves women economically dependent on their husbands. The extent of the abuse is so severe that, in many cases, women suffer within the confines of their homes without external interference—they are oppressed by the very environment

meant to protect them.

HUMAN TRAFFICKING IN INDIA

Human trafficking is a serious crime that violates fundamental human rights. Thousands of innocent Indian citizens are transported to other countries every day and forced into labour. They are forced to live in brothels, industries, guesthouses, dance bars, farms, and even the homes of wealthy Indians, with little control over their bodies and lives.

Generally, women and children are trafficked for begging, organ trade, drug smuggling, bonded labour, domestic work, agricultural labour, construction work, carpet industry, forced prostitution, sex tourism, pornography, and entertainment and sports, such as beer bars and camel jockeys.

Human trafficking is expressly prohibited under the Indian Constitution. Article 23 of the Indian Constitution forbids "human trafficking and other types of forced labour. Though there is no precise definition of trafficking in Indian Laws, it may be said that it entails the movement/transportation of a person under duress or deception, and further subsequently leads to exploitation and commercialization. The United Nations defines human trafficking as the recruitment, transportation, transfer, harbouring, or receipt of people for the purpose of exploitation through the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability, or the giving or receiving of payments or benefits to gain the consent of a person in charge of another person. The exploitation of the prostitutes also includes other forms of sexual exploitation, forced labour or services, slavery or practices comparable to slavery, servitude, or the removal of organs are all examples of exploitation. [6]

The Abusers, including traffickers, recruiters, transporters, sellers, buyers, and end-users, take advantage of the vulnerable person. Human trafficking is on the rise as a result of globalization. Increased profit with hardly any risk, well-organized operations, low law enforcement priority, and other reasons aggravate the issue.

Human Trafficking takes place for the purpose of exploitation which in general could be categorized as:

- Sex-based
- Non-Sex based

HUMAN TRAFFICKING AND PROSTITUTION

Women are increasingly being trafficked for the purpose of prostitution. Prostitution is one of the world's oldest female professions. Since prostitution affects almost every state in India, trafficking rates are at an all-time high. The country's northeastern states, without citing names, are regarded to be the core of human trafficking. Human trafficking is still inextricably linked to prostitution, as it has been in the past, and it is true that more than half of those trafficked are forced into the prostitute business each year.

In many countries, different approaches for luring women into prostitution have been adopted, and then there are methods that are unique to each country. The three most typical strategies are fake employment promises, false marriages, and kidnapping. Women and young girls, on the other hand, are vulnerable due to economic distress, husband abandonment, sexually exploitative societal customs, and family trade

.

FEMALE GENITAL MUTILATION

Every year on February 6, the International Day of Zero Tolerance for Female Genital Mutilation is a significant day for gender activists and one that deserves everyone's attention. Female genital cutting or mutilation (FGC/M) is still very common at this time. To 'moderate' female sexual experiences or desires is a widely claimed reason for the obsolete and harmful social norm.

> The tradition is not exclusive to African countries, as is sometimes assumed, but also exists in India and other Asian communities. Still today, most people around the world, including those in our own country, will give a double-take when they hear the phrases "female genital cutting or mutilation" combined. It is still not well known that this occurs in India.[38]
>
> The myth behind Female Genital Mutilation is that Muslim men of the Bohra community are mostly merchants who must travel a lot. As a result of this absurd notion that these men's wives must not feel sexual urges while they are away, the females of this community were subjected to the practice of khatna to keep their wives chaste.
>
> The khatna or khafz practice is also mindlessly followed, despite the fact that it is not mentioned in the Quran. This is still a prevalent practice among the Dawoodi Bohra community in India, and an overwhelming majority of members of the group still feel it is done for a "worthy

[38] By Harinder Baweja, India's Dark Secret: Female genital mutilation is being practiced not just in Africa but in the heart of Mumbai. HT speaks to several 'victims' who are becoming the face of a brave fight back. https://www.hindustantimes.com/static/fgm-indias-dark-secret/

reason." It is an unchallenged social norm passed down from generation to generation. They think it is a minor nick, cut, or 'just a pinch of the skin' that must be removed in order to maintain cleanliness, spiritual purity, and sexual control. In short, people in Female Genital Mutilation communities believe it is a "no big deal" and is a cultural marker.

Although Female Genital Mutilation is not a religious practice as many people believe, discussions about it frequently evolve into a critique of culture and religion. It leads the community to believe that the discussion surrounding the problem is a ruse to bring the community down.

According to those that engage in Female Genital Mutilation, there is an underlying belief that female sexual experience is bad and should be dreaded and curtailed. Some of the community believes that if a girl isn't circumcised, "she will turn into a prostitute," or that the clitoris is the "haram ki boti" responsible for all of society's evils.[39]

Female Genital Mutilation was recently brought to the Ministry of Women and Child Development's attention and set the system in motion. Though Female Genital Mutilation has been practised in India since time immemorial, the matter was brought to light when a human rights lawyer filed a PIL in the Supreme Court seeking a writ of Mandamus or any other order prohibiting the practice of Female Genital Mutilation in India.

Sunita Tiwari v Union of India[40]

A PIL was filed in Supreme Court by Advocate Sunita Tiwari in 2017 against the practice of female genital mutilation.

The subject of Female Genital Mutilation/ khafz's constitutionality was referred to a larger bench on September 24, 2018. In maintaining the fundamental right to privacy, the Supreme Court recognised the right to bodily integrity as a right emerging from Article 21 of the Indian Constitution. Also, the Protection of Children from Sexual Offenses Act of 2012 (POCSO) makes touching the genitalia of a girl under the age of eighteen for non-medical reasons a crime punishable by jail, and

[39] By Priya Goswami, Breaking the silence on female genital mutilation in today's India, Feb 2021 https://www.downtoearth.org.in/blog/health/breaking-the-silence-on-female-genital-mutilation-intoday-s-india-75414

[40] Sunita Tiwari v. Union of India, (2019) 18 SCC 719

there are provisions for penalising sexual assault committed with dangerous weapons.[41]

Furthermore, according to the section 118 of Bharatiya Nyaya Sanhita, 2023, causing serious bodily harm to another person using hazardous weapons is punished by up to ten years in prison Also, the National Policy for Children, 2013, expressly forbids the exploitation of customs and religious practices to deny children their rights. [42]

The POSCO Act Regarding penetrative and non-penetrative sexual assault, it establishes a category of serious offences. The aggravated offences[43] are defined by who commits them and how they are committed. As a result, those who have the additional responsibility of protecting the child have an increased strain. Individuals in this group include governmental workers, blood or marriage relatives, hospital administration staff, and activities such as sexual assault with lethal weapons, among others. Despite the absence of the term "female genital mutilation" in the POCSO Act[44], it does address the particular conditions of Female Genital Mutilation by classifying sexual assault performed with deadly weapons and sexual assault committed by a child's related or family member as "aggravated sexual assault."

Given the gravity of the situation, the SC granted the petition and issued an order in favour of Muslim women, prohibiting the practice of khatna and directing the government to enact legislation to specifically address the issue and deem khatna a serious criminal offence.

While it has been shown that Indian law contains provisions for criminal action against any sort of harm, there is no specific mention of Female Genital Mutilation in our legislation, and the practice is mostly overlooked and goes unnoticed. Laws are extremely important in bringing about societal change. Gender reform is slow and difficult, especially when it involves historic, archaic, and cultural practices of a closed and secretive community like the Dawoodi Bohras.

Therefore a specific law dealing with this specific problem is required, one that addresses not just prosecution but also prevention, education, awareness-raising, alleviation, and rehabilitation. As a

[41] The Protection of Children from Sexual Offences Act, 2012, Clauses 5(h) and 9(h).
[42]The National Policy for Children, 2013,
https://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf.
[43] The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013, No. 14, Act of Parliament, 2013 (India), Section 9.
[44] The Protection of Children from Sexual Offences (POCSO) Act, 2012. No. 32, Act of Parliament, 2012 (India)

result of the reasoning presented here, it is clear that a separate law on Female Genital Mutilation is required for similar reasons, especially, to highlight the problem and confront it as a harmful criminal behaviour rather than an acceptable religious practice.

RECOMMENDATIONS AND PREVENTIVE MEASURES

These recommendations are meant to suggest policy, procedure, and practise reforms across the broad socio-legal system. The fundamental purpose of this paper is to provide necessary services to victims of domestic or sexual abuse. If necessary, adjustments in the socio-legal support systems are made, it will boost locally active social welfare systems and other networks.

- Sexual assault victims should have access to legal representation. The victim's advocate should not only aid her in making the complaint, but also in obtaining other types of help, such as psychological, medical, and financial assistance.
- In light of the victim's troubled state of mind, legal help should be provided at the police station; police officials should be required to inform the victim of her right to counsel before asking her questions, and the police record should state that she was so informed before questioning.
- A list of advocates willing to take on these issues should be compiled. The court should designate such advocates, but to reduce delays, advocates could be authorised to act in police stations before seeking permission from the court.
- The lack of collaboration between investigating police and public prosecutors is to blame for the poor conviction rate in rape cases. As a result, adequate training programmes for public prosecutors and police officers investigating rape cases should be implemented, so that effective cooperation between them aids in achieving justice for the victim well in time; In crime investigation, modern investigation techniques should be used, as they will be very useful in detecting situations of sexual violence against women.
- To eliminate gender bias attitudes toward sexual assault victims, training programmes for members of the judiciary and bar should be developed to raise knowledge of women's situation in sexual assault cases. It will aid in the building of attitudes that promote successful legal interpretation and application.

- It is strongly urged that special courts be established to hear cases of sexual assault. Women judges should preside over these special tribunals so that the victim feels comfortable recalling

the specifics of the sexual attack.

- Special investigation units made up primarily of female police officers may be formed. Investigating police must be trained and made aware of the needs and concerns of victims. Police officers and doctors should be trained in interview tactics, which should be conducted in the victim's home as much as feasible. Doctors simply go by the rule book. According to which they are looking for physical proof that has been listed. They just declare the girl not to have been assaulted if there is no physical injury. A fresh humanitarian perspective must be substituted for this restricted juridical interpretation.

- Rape Crisis Centres have been established in nations such as Australia, Canada, the United States, and the United Kingdom. These centres also offer assistance through their toll-free helplines. These centres give medical assistance, counselling, and financial assistance to rape victims through job opportunities and other means. In India, such centres should be established to provide medical assistance and counselling to rape victims.

- Another crucial aspect is to provide counselling to the victim's family members. Family members of the victim can be provided with the best support in times of sorrow and emotional trauma.

- The establishment of state-sponsored victim compensation funds, especially for heinous crimes such as rape this award should be based on the needs of the victim and should be completely independent of whether the prosecution results in a conviction or acquittal, and it should be implemented as soon as an FIR is filed or a complaint is taken into consideration.
- The media must be empathetic to the rape victim's suffering and refrain from highlighting the victim's identity or any inference that leads to his or her identification since this will be counterproductive. The media should not focus on cases in which the criminal has been acquitted, but rather on cases in which the culprit has been convicted since this will create a sense of deterrence among the public.

CONCLUSION

Violence affects millions of women globally, from various socio - economic and educational backgrounds. It reaches across cultural and religious boundaries, preventing women from fully participating in society. Domestic abuse, rape, teenage marriages, and female circumcision are just a few forms of female violence. All of these are violations of the most fundamental human rights. The problem of criminality against women is not new in India. Women in Indian society have been victims of ill-treatment, humiliation, torture, and exploitation, according to documented records of social structure and family life. These records detail abductions, rapes,
murders, and torture of women. Female victims of violence, on the other hand, have received little attention in the literature on social problems or criminal violence, which is sad. There has also been no attempt to explain why the general public and academicians have mostly ignored the fact that women have long been ruthlessly exploited in our culture.

It is possibly the most terrible punishment that can be inflicted on the victims and their families in terms of the pains that it causes them. The victim woman is tormented for the rest of her life by a single monstrosity perpetrated against her, which causes her discomfort at practically every turn; be it among friends, in marriage, if at all feasible, or for the rest of her life in whatever shape. She has effectively become an outcast. It signals a significant shift in her life, and it's no surprise that the majority of the victims of this crime commit suicide.

The most atrocious feature of this crime is that the victim is made to suffer for something that she has no control over. The victim's body is not only physically violated, but her mental, psychological, and emotional sensibilities are also violated. It's a quake-like shock to her future ambitions, aspirations, and fantasies of a happily married life, it destroying her sense of pride, security, and purity. In respect of the Indian context, rising evidence of the problem has caught the attention of several concerned feminists, human rights organisations, social scientists, and social work practitioners in recent years. The dimensions and challenges of violence against women in a large and complex country like India do not lend themselves to simple remedies. While setting norms is an important and required first step, it is not sufficient. At the national, regional, and international levels, effective execution is required. The rule of law must be followed, as well as resort to legal remedies for violations of rights and entitlements.

The Indian constitution, which provides us with fundamental rights, contains numerous measures that benefit and protect its citizen including women. The Indian constitution recognizes the importance of equality and non-discrimination. It also allows the government to

implement affirmative action policies in favour of women. Aside from fundamental rights, the Directive Principles of State Policy include several special provisions to protect women's rights. Nonetheless, despite constitutional protections and a slew of laws, gender discrimination and unfairness persist. This is mostly due to the fact that individuals who enforce or interpret the laws do not always share the gender equality mindset.

In general, Indian women are disadvantaged in terms of all the requirements for access to justice. Most women who have problems have stayed away from the law and courts due to pervasive illiteracy, cultural obstacles and subordination, and an unpleasant legal process. Victimized women have had a variety of encounters with the criminal justice systems around the country. They can't always rely on the criminal justice system to protect them. There are frequently gaps and ambiguities in the legislation criminalizing violence against women when it comes to combatting violence against women.

Apart from various Articles of the Indian Constitution and criminal law provisions such as the The Bharatiya Nyaya Sanhita 2023, The Bharatiya Nagarik Suraksha Sanhita 2023, The Bharatiya Sakshya Adhiniyam 2023 and many other legislative enactments about crimes against women have been passed by the Indian Parliament from time to time to prevent such crimes in the Indian society, such as The Immoral Traffic Act, 1956, The Dowry Prohibition Act, 1961, The Medical Termination of Pregnancy Act, 1971, The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (Prevention) Act, 1987, The National Commission for Women Act, 1990, The Pre-conception and Pre-Natal Diagnostic Techniques. (Prohibition of Sex Selection) Act, 1994 And The Protection of Women from Domestic Violence Act, 2005.

Furthermore, the Law Commission of India has made several amendments in the BNS, BNSS, and BSA as a result of its recommendations, attempting to overcome many challenges faced by rape victims, although these suggestions are insufficient even at present

The educated level of society should come forward to support the victims and report the crime to the authorities as soon as possible. The law cannot fix all social issues on its own. Governmental agencies, social organizations, women's organizations, volunteer groups, non-governmental organizations, and others should come forward to help the abused victims. The attitude of police authorities toward rape cases needs to alter immediately. The police and the judiciary, as well as other law enforcement organizations, can play an essential role in reducing

crime against women, including rape. From the time a crime is reported until the perpetrator is prosecuted and punished, law enforcement is a continuous process. This is a lengthy procedure that includes stages including investigation, prosecution, trial, and judicial ruling. At each of these stages, the victim must be assisted. Never-ending trials have also resulted in a situation where the complainant is driven to make a secret deal with the victim outside of court owing to social pressure, thus defeating the purpose of the law.

Responses to violence against women must be undertaken at the community, municipal, national, and worldwide levels to create a change in both consciousness and behaviour, so that a "community-based response" includes not just local, but also regional and international populations. Changing people's attitudes and mentalities toward women will take a long time, many say, at least a generation, if not longer. Raising awareness about violence against women and teaching boys and men to see women as valuable participants in life, in the development of society, and in the pursuit of peace are just as important as taking legislative efforts to defend women's human rights.

LEGALONUS **ISSN: 3048-8338**
Aequitas Sequitur Legem
LEGALONUS LAW JOURNAL(LLJ)
A Quality Initiative For Legal Development, Undertaken By the Legalonus

Mythos of the Lex Mercatoria

By Gaurav Kumar[45] and Madhav Chaturvedi[46]

Abstract:

This essay delves into the concept of Lex Mercatoria, tracing its origins, evolution, and its enduring influence on the framework of modern Commercial Law. Initially conceived as a body of transnational merchant customs, Lex Mercatoria served as a flexible and efficient alternative to localized legal systems in facilitating international trade. The study begins by defining the term and examining its historical creation, highlighting how it emerged independently of state-based legal orders. The essay then critically evaluates its development over time and its relevance in shaping the foundational principles of commercial transactions across jurisdictions. A significant portion is dedicated to assessing whether a modern form of Lex Mercatoria exists today, particularly in the context of private international law and uniform commercial practices. The analysis further extends to its intricate connection with Global Arbitration, where Lex Mercatoria is often invoked as a neutral, harmonizing legal standard in cross-border disputes. The essay ultimately argues that Lex Mercatoria, both historical and contemporary, continues to play a pivotal role in bridging legal gaps in global commerce. Through this exploration, the work offers a nuanced understanding of how non-state legal norms can coexist and function within the formal structures of international dispute resolution.

Keywords: Lex Mercatoria, Commercial Law, International Trade, Transnational Law, Global Arbitration, Merchant Law, Private International Law, Legal Evolution.

Introduction

This essay aims to provide a comprehensive understanding of Lex Mercatoria by defining and elucidating its concept. The creation of Lex Mercatoria will be explored, followed by a discussion on its evolution and a critical examination of its significance in the development of Commercial Law. Furthermore, an in-depth look into the existence of a contemporary version of Lex Mercatoria will be conducted. Lastly, the relationship between this term and Global Arbitration

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will be scrutinised, culminating in a summary.

Definition and Explanation

"Lex mercatoria, often referred to as the body of rules governing international commerce, has been shaped by customs in the field of commerce and validated by national courts. This concept was cited in the deliberations of the International Court of Arbitration in Paris during the resolution of case number 9246 on March 8, 1996. The term lex mercatoria originates from Latin and translates to "merchant law." It was utilised by European merchants during mediaeval times to denote the set of laws governing commercial activities[47]."

History and Evolution

"The origins of lex mercatoria can be traced back to ancient times, particularly in regions such as Greece, Egypt, Phoenicia, and notably Rome, where a distinct legal system known as ius gentium was established. This legal framework was developed due to the expansion of the Roman Empire, which necessitated new regulations to address the evolving complexities of trade relationships. Initially applied to interactions between foreigners and Roman citizens, ius gentium eventually extended to encompass legal matters among Roman citizens before gradually fading into obscurity as Rome underwent significant societal changes.

Despite its decline in practice, ius gentium continued to be recognized as part of the legal structure alongside ius civile.[48]"

"Ius gentium was characterised by its adaptable nature, accommodating various business customs and regulations. Following the collapse of the Roman Empire, individual states began formulating their legal systems based on the principle of territoriality, asserting their sovereignty over matters within their borders. This shift led to the proliferation of diverse legal frameworks, with each state enforcing its own set of laws. The legal principles of the Roman Empire, combined with commercial practices, were later adopted by the Byzantine Empire and certain Arabic nations.[49]"

"During the mediaeval period, lex mercatoria underwent significant transformations influenced

[47] Martiskova M, 'Home' (*Purity III*, 21 February 2018) <https://www.lawyr.it/index.php/articles/reflections/1193-lex-mercatoria>
[48] ibid
[49] Martiskova M, 'Home' (*Purity III*, 21 February 2018) <https://www.lawyr.it/index.php/articles/reflections/1193-lex-mercatoria>

by various factors, including the waning influence of the Arabic Empire in the Mediterranean, the rise of port cities, the impact of crusades, the resurgence of trade in Europe, and the migration of merchants who brought their trade practices and rights. Additionally, the emergence of a new social class, the middle class, played a crucial role in shaping the development of commercial law. The feudal legal system of the mediaeval era was ill-equipped to address the complexities of international trade, leading to the need for a more specialised legal framework to govern commercial transactions.[50]"

"During the 12th and 13th centuries, specialised courts were established in regions where markets were held in France, Italy, and England to address trade disputes and enforce lex mercatoria. These courts were presided over by esteemed individuals within the trading community to ensure that cases were adjudicated based on established customs and traditions, thereby applying lex mercatoria within a defined jurisdiction. The involvement of respected figures from the aforementioned countries underscored the legitimacy of the arbitration process.[51]"

"In instances where breaches of law were identified, monetary penalties were imposed as a form of redress. Merchants typically opted to pay fines to safeguard their reputation, which held significant value during that era.

Failure to comply could cause the loss of business partners or, more severely, expulsion from the protective community. This emphasis on reputation management highlights the importance of upholding ethical standards in commercial dealings. Lex mercatoria represented a distinct legal framework that governed specific aspects of law, particularly trade relationships. Its scope differed from feudal or canonical law, which encompassed broader legal domains.[52]"

> "Recent studies conducted by legal historians cast doubt on the alleged existence of a distinct and independent legal system known as the mediaeval lex mercatoria, separate from the authority of the state. These studies challenge the notion that the merchants participating in the fairs of St. Ives, who are often credited with creating the law merchant, operated under a uniform set of rules. Instead, they were primarily governed by local official laws. Similarly, Dutch and Belgian merchants during the Middle Ages and early modern times

[50] ibid
[51] Martiskova M, 'Home' (*Purity III*, 21 February 2018) <https://www.lawyr.it/index.php/articles/reflections/1193-lex-mercatoria>
[52] ibid

relied on a combination of private and public legal institutions, rather than exclusively resorting to arbitration or quasi-private tribunals.[53]"

"Multiple analyses have made it highly unlikely to argue for the historical existence of an autonomous non-state lex mercatoria. Even the historical sources that mention the lex mercatoria present ambiguity regarding its relationship with the state. For example, the Little Red Book of Bristol, one of the earliest texts on the lex mercatoria (circa 1280), suggests that merchant law originates from the market but also recognizes the common law as the foundation of mercantile law. Similarly, Gerard Malynes, the author of a renowned English book on lex mercatoria, presents conflicting views. While he emphasises that the lex mercatoria is not established by any sovereign, he also states that it is a customary law approved by the authority of all kingdoms and commonwealths.[54] [55]"

"Furthermore, Stracca's De Mercatura, often regarded as an exposition of the lex mercatoria, primarily focuses on ius commune (common law) and applies a combination of official laws and the received ratio scripta of Roman law to commerce.

The authors of these texts did not perceive a contradiction in combining market law and state law. The lex mercatoria, similar to the ius gentium (law of nations) and general principles of law, was considered the law applicable to all states and, therefore, not tied to any specific state.[56]"

"Nevertheless, the absence of a separate and independent lex mercatoria should not be misconstrued. Although the term and concept were widely recognized, it remained intertwined with official legal systems. Lex mercatoria comprised a fusion of official legislations, established commercial practices and institutions, and a combination of official courts and quasi-private local tribunals. It encompassed both public privileges and private practices, incorporating public statutes and private customs that pertained to a specific form of supra-local trade and the merchants involved in it. Essentially, lex mercatoria represented

[53] (*The true Lex Mercatoria: Law beyond the State*) <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1359&context=ijgls>
[54] Ibid 7
[55] GERARD MALYNES, CONSUETUDO VEL LEX MERCATORIA, OR THE ANCIENT LAW-MERCHANT, at Foreword (London 1622).
[56] (*The true Lex Mercatoria: Law beyond the State*) <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1359&context=ijgls>

a confluence of state and non-state regulations and procedures, unified by its emphasis on merchants as the central actors.[57]"

The 'New' Lex Mercatoria

"The New Lex Mercatoria is a transnational body of legal principles and rules that has emerged from the activities of the international business community and international formulating agencies in the field of international trade and finance. Berthold Goldman and Clive Schmitthoff had differing views on the concept, with Goldman seeing it as a third, autonomous legal system alongside domestic laws and public international law, while Schmitthoff believed it existed within the principle of party autonomy as a principle of domestic law.[58]"

"Despite their differing perspectives, both Goldman and Schmitthoff acknowledged the gradual emergence of a transnational body of legal principles and rules from the activities of the international business community and harmonisation efforts.

Goldman's view influenced his academic pupils in various areas of international business law, while Schmitthoff played a crucial role in the conceptualization of the United Nations Commission on International Trade Law (UNCITRAL).[59]"

"Some authors see the New Lex Mercatoria as a collection of rules and principles derived from party autonomy in contract law, while others view it as the sum of refined trade usages. Proponents of the more radical view, in line with Goldman's perspective, consider it as an independent, supranational legal system that supersedes even mandatory provisions of domestic law.[60]"

"Despite the disagreements on its legal nature, proponents of the New Lex Mercatoria agree

[57] (*The true Lex Mercatoria: Law beyond the State*) <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1359&context=ijgls>
[58] Berger KP, 'History & Modern Evolution of Transnational Commercial Law' (*translex*, 22 June 2023) <https://www.trans-lex.org/the-lex-mercatoria-and-the-translex-principles_ID8#I.2>
[59] Ibid 16
[60] Berger KP, 'History & Modern Evolution of Transnational Commercial Law' (*translex*, 22 June 2023) <https://www.trans-lex.org/the-lex-mercatoria-and-the-translex-principles_ID8#I.2>

that it is a "living law" or "law in action" that evolves rapidly. They acknowledge the challenges in codifying it due to its dynamic nature, influenced by business logic, market forces, practical needs, established practices, and international dealings.[61]"

"The New Lex Mercatoria, or transnational commercial law, is closely intertwined with the phenomenon of globalisation. This connection underscores the various challenges brought about by globalisation, including heightened economic interdependence and the inclination of international actors to evade domestic legal frameworks. Consequently, there has been a discernible shift towards the establishment of transnational legal principles and regulations. Over time, the conventional demarcations between national and international law, public and private law, and politics and law have gradually eroded.[62]"

"The role played by international arbitral tribunals in shaping transnational commercial law is pivotal. These tribunals are often regarded as "private courts," and their decisions carry substantial weight in the realm of international commerce. They frequently adopt a comparative approach and refer to transnational rules or general principles of law[63]".

"Moreover, the concept of legal pluralism may be a theoretical framework that supports the development of transnational commercial law. Legal pluralism recognizes that law is not solely determined by governments or states; it acknowledges the significance of private rulemaking within the international business community.

Additionally, there exist industry-specific subsystems within transnational law, such as maritime trade, construction, oil and gas, cyberspace, and international banking and finance. These subsystems are purported to possess their own distinct set of transnational legal rules.[64]"

[61] Ibid 21
[62] Berger KP, 'History & Modern Evolution of Transnational Commercial Law' (*translex*, 22 June 2023) <https://www.trans-lex.org/the-lex-mercatoria-and-the-translex-principles_ID8#I.2>
[63] Ibid 25
[64] Berger KP, 'History & Modern Evolution of Transnational Commercial Law' (*translex*, 22 June 2023) <https://www.trans-lex.org/the-lex-mercatoria-and-the-translex-principles_ID8#I.2>

Lex Mercatoria and Arbitration

"The use of lex mercatoria in international trade disputes is a topic of debate. Proponents argue that lex mercatoria can provide a set of internationally accepted principles to govern such transactions, while opponents claim that it is not a true body of law. The absence of an international legislature and commercial court contributes to the scepticism surrounding lex mercatoria.[65]"

"One of the main advantages of applying lex mercatoria is that it avoids the complications of selecting laws through conflict of laws rules. It allows for the application of a body of law specifically developed for international transactions, eliminating the need to rely solely on domestic laws. Additionally, lex mercatoria can provide a more neutral ground for dispute resolution, as neither party has an inherent advantage based on their national law. The principle of good faith is a guiding rule in lex mercatoria, ensuring fairness and preventing arbitrary outcomes.[66]"

"Arbitration is often the preferred method for resolving international trade disputes, and the parties have the autonomy to choose the applicable law. They can explicitly select lex mercatoria or refer to general principles of law or international trade usages, effectively authorising the application of lex mercatoria by the arbitral tribunal. In cases where no choice of law is indicated, the tribunal may apply lex mercatoria as a subsidiary law if it deems it appropriate[67]."

"However, opponents argue that lex mercatoria should only be applied when explicitly chosen by the parties. They suggest that the absence of an explicit choice does not imply an implicit selection of lex mercatoria. They propose that in cases where no law is chosen, the tribunal should determine an applicable national law consistent with conflict of laws rules.

[65] Ltd AA, 'Theory of the Lex Mercatoria' (*Law Teacher*, 6 November 2023) <https://www.lawteacher.net/free-law-essays/commercial-law/the-theory-of-the-lex-mercatoria-commercial-law-essay.php>
[66] ibid
[67] Ltd AA, 'Theory of the Lex Mercatoria' (*Law Teacher*, 6 November 2023) <https://www.lawteacher.net/free-law-essays/commercial-law/the-theory-of-the-lex-mercatoria-commercial-law-essay.php>

Critics also emphasise the importance of party autonomy and argue against imposing lex mercatoria when the parties have explicitly chosen a national law[68].”

“An important benefit of employing lex mercatoria is its ability to circumvent the complexities associated with selecting laws through conflict of laws rules. It enables the application of a legal framework specifically tailored for international transactions, eliminating the sole reliance on domestic laws. Furthermore, lex mercatoria can establish a more impartial platform for resolving disputes, as neither party holds an inherent advantage based on their national legislation. The principle of good faith serves as a guiding principle in lex mercatoria, ensuring equity and preventing arbitrary outcomes.”[69]

“The distinction between lex mercatoria and amiable compositeur is significant. Lex mercatoria operates within mandatory rules, while amiable compositeur allows arbitrators to base decisions on equitable principles without being restricted by specific laws. Some arbitral awards have broadly interpreted amiable compositeur clauses to include lex mercatoria, giving arbitrators the authority to apply it effectively[70].”

“The influence of lex mercatoria can reach cases involving the application of national laws. Arbitrators may consider international trade usages and general legal principles to interpret contracts and find solutions. National courts may also apply lex mercatoria based on their conflict of law rules, although the extent of its application varies across countries. While national courts typically respect parties' choice of lex mercatoria, they may also draw inspiration from it in cases where it was not explicitly chosen to fill gaps in national law or avoid provisions unsuitable for international trade.[71]”

[68] ibid
[69] Ltd AA, ‘Theory of the Lex Mercatoria’ (*Law Teacher*, 6 November 2023) <https://www.lawteacher.net/free-law-essays/commercial-law/the-theory-of-the-lex-mercatoria-commercial-law-essay.php>
[70] ibid
[71]Ltd AA, ‘Theory of the Lex Mercatoria’ (*Law Teacher*, 6 November 2023) <https://www.lawteacher.net/free-law-essays/commercial-law/the-theory-of-the-lex-mercatoria-commercial-law-essay.php>

Summary

In conclusion, the use of lex mercatoria in disputes remains a contentious issue. Ideally, it should be applied when parties explicitly choose it, and its application by national courts may differ. While lex mercatoria can offer advantages such as a neutral and globally accepted framework for dispute resolution, its status as a true body of law is still a matter of debate.

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LEGALONUS **ISSN: 3048-8338**
Aequitas Sequitur Legem
LEGALONUS LAW JOURNAL(LLJ)
A Quality Initiative For Legal Development, Undertaken By the Legalonus

Legal Protections for Women Against Domestic Violence: A Comparative Review of India, the UK, and the USA

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Abstract

Domestic violence against women remains a pervasive global issue, deeply rooted in patriarchal structures and power imbalances. While legal frameworks have evolved to address this human rights violation, the effectiveness and comprehensiveness of these protections vary significantly across jurisdictions. This paper presents a comparative legal analysis of domestic violence laws in India, the United Kingdom, and the United States, examining their statutory provisions, implementation mechanisms, and victim support systems.India's legal response centers on the Protection of Women from Domestic Violence Act, 2005, which adopts a civil law approach focused on protection orders, residence rights, and monetary relief. However, challenges such as patriarchal enforcement, judicial delay, and limited awareness persist. The United Kingdom, through the Domestic Abuse Act, 2021, provides a more holistic definition of abuse, encompassing physical, emotional, and economic harm, while also emphasizing victim services and

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special protections for vulnerable populations. In contrast, the United States operates under a dual federal-state system, with the Violence Against Women Act (VAWA) offering funding and federal safeguards, supplemented by state-level statutes with varying levels of support and criminalization.Through doctrinal and socio-legal analysis, the paper highlights the strengths and limitations of each country's framework, focusing on access to justice, victim empowerment, and accountability. It also reflects on the role of international human rights instruments, such as CEDAW, in shaping domestic laws. The study concludes with policy recommendations to harmonize and strengthen legal protections, emphasizing survivor-centric approaches and cross-sector collaboration.
Keywords: Domestic violence, comparative law, India, United Kingdom, United States, women's rights, legal reform.

Introduction

Domestic violence against women constitutes one of the most pervasive violations of human rights worldwide. It transcends boundaries of geography, culture, and socio-economic status, affecting millions of women across the globe. The United Nations defines domestic violence as "a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner." This includes physical, sexual, emotional, economic, or psychological actions or threats that influence another person. According to the World Health Organization (2021), nearly 1 in 3 women globally have experienced physical or sexual intimate partner violence at some point in their lives.Given the magnitude and severity of this issue, legal frameworks play a crucial role in both preventing domestic violence and ensuring justice for survivors. [74]Laws not only provide mechanisms for protection, redress, and punishment but also signal a society's commitment to gender equality and human dignity. However, the mere existence of legal provisions is not sufficient-implementation, accessibility, and cultural attitudes significantly influence their

[74]World Health Organization, *Violence Against Women Prevalence Estimates, 2018*, 2021, https://www.who.int/publications/i/item/9789240022256.

effectiveness.

This paper aims to conduct a comparative review of domestic violence laws in India, the United Kingdom, and the United States. These three democracies offer distinct legal traditions and policy approaches that provide valuable insights into the global fight against domestic abuse. The objectives of this study are twofold:

- To examine and compare the legal protections available to domestic violence survivors in these countries.
- To critically analyze the strengths, implementation gaps, and ongoing challenges in these systems.

Methodologically, the paper relies on statutory analysis, secondary legal literature, government reports, and human rights evaluations. The structure proceeds by exploring each country's legal framework individually, followed by a comparative analysis, a discussion of key gaps, and policy recommendations aimed at strengthening global legal responses to domestic violence.Domestic violence remains one of the most persistent forms of gender-based violence in India, cutting across caste, class, religion, and regional boundaries. In response to its widespread occurrence, India has developed a legal framework that incorporates both civil and criminal remedies to safeguard women. Despite notable progress, implementation remains a critical challenge.

Legal Framework

Protection of Women from Domestic Violence Act, 2005 (PWDVA)

The PWDVA, 2005, is a landmark civil legislation enacted to address domestic violence comprehensively. It recognizes not only physical violence but also emotional, verbal, sexual, and economic abuse. One of the Act's unique features is that it protects women in domestic relationships, whether or not they are married, thus covering live-in relationships and familial abuse.

PWDVA allows the aggrieved woman to seek various civil remedies including:

- Protection orders restraining the abuser from committing or aiding violence
- Residence orders allowing her to remain in the shared household
- Monetary relief, custody orders, and compensation orders
- Access to free legal aid, medical facilities, and shelters

However, PWDVA is not punitive; it must be complemented by criminal provisions under other laws for penal consequences.

Indian Penal Code (IPC)

Key IPC sections addressing domestic violence include:

- Section 498A: Penalizes cruelty by a husband or his relatives, especially linked to dowry or coercive demands. It is a cognizable and non-bailable offense.
- Section 304B: Pertains to dowry death, with stringent punishment if a woman dies under unnatural circumstances within seven years of marriage.[75]
- Section 406: Deals with criminal breach of trust, commonly invoked when a woman's stridhan (personal property) is withheld by her in-laws or husband.

Code of Criminal Procedure (CrPC)

- Section 198A: States that courts can take cognizance of offenses under Section 498A IPC only upon a complaint by the aggrieved woman or her family, ensuring that the process is not misused or externally triggered.

Indian Evidence Act

- Section 113A: Allows courts to presume abetment of suicide by a husband or his relatives if the woman committed suicide within seven years of marriage and faced cruelty.
- Section 113B: Enables the presumption of dowry death in cases where a woman dies under unnatural circumstances within seven years of marriage, and evidence of dowry harassment exists.

Together, these provisions form a multi-layered legal response, enabling both preventive and punitive measures.

Implementation and Institutional Mechanisms

Role of Protection Officers and NGOs

Under PWDVA, Protection Officers (POs) are appointed by state governments to assist survivors. They help file Domestic Incident Reports (DIRs), ensure access to shelter, legal aid, medical services, and represent victims in court. However, in many districts, POs are overburdened, poorly trained, and lack dedicated infrastructure.Non-governmental organizations (NGOs) play a critical role in supplementing government efforts. They

[75] Indian Penal Code, Section 304B, https://indiacode.nic.in/handle/123456789/2263

provide shelter, legal counseling, and psycho-social support. Many also act as Service Providers under the Act, officially recognized by courts.[76]

Role of Judiciary and Police

The judiciary issues civil orders under PWDVA and adjudicates criminal offenses. However, lower courts often display delay or reluctance due to workload or lack of gender sensitivity.

The police are typically the first point of contact. Though empowered to register cases under IPC sections and refer victims to POs, their effectiveness is compromised by patriarchal attitudes, inadequate training, and pressure to mediate rather than prosecute.

Fast-track Courts and Helplines

Fast-track courts have been established in many states to expedite trials in gender-based violence cases. Additionally, national and state-level women's helplines such as 181 and 1091 provide immediate assistance and referral services. However, operational efficiency and awareness among women remain inconsistent.

Challenges

Underreporting and Societal Stigma

Despite legal provisions, underreporting is a major issue. Social stigma, fear of retaliation, lack of family support, and financial dependency discourage women from seeking help. The National Family Health Survey-5 (2019-21) reported that a significant percentage of abused women never sought formal assistance.

Misuse Debates and Judicial Bias

There has been growing concern about the alleged misuse of Section 498A IPC, leading to calls for safeguards. The judiciary, in some instances, has responded with caution, recommending pre-litigation mediation and limited arrests, which can dilute protection for genuine victims. Such trends risk delegitimizing women's experiences and shifting the focus from systemic abuse.

Delays in Implementation

[76] Ministry of Women and Child Development, Government of India. (2005). *Protection of Women from Domestic Violence Act*. https://wcd.nic.in/acts/protection-women-domestic-violence-act-2005

Systemic bottlenecks, from police apathy to overburdened courts, result in delayed justice. Protection Officers often lack offices, vehicles, and dedicated funds. The gap between law on paper and its enforcement on the ground remains wide, especially in rural and marginalized communities.India has developed a robust legal framework to combat domestic violence against women, blending civil relief with criminal enforcement. However, real-world effectiveness is undermined by gaps in implementation, societal norms, and institutional limitations. To ensure these laws fulfill their intended purpose, there must be greater investment in institutional capacity, awareness campaigns, and a gender-sensitive approach to justice delivery.[77]

Domestic Violence Laws in the United Kingdom

Domestic violence remains a critical social and legal issue in the United Kingdom, with ongoing legislative reforms aimed at enhancing protection for survivors, particularly women. The UK's legal framework spans across its constituent countries—England, Wales, Scotland, and Northern Ireland—with distinct laws and support mechanisms tailored to local needs. This section explores the primary statutes, institutional roles, and implementation challenges.

A. Legal Framework

Domestic Abuse Act 2021

The Domestic Abuse Act 2021 is the most comprehensive and recent legislation addressing domestic violence in England and Wales. It introduces a statutory definition of domestic abuse, recognizing not only physical violence but also emotional, coercive or controlling behavior, and economic abuse. This statutory clarity helps standardize law enforcement and judicial responses.

Key provisions include:

- A broader definition of domestic abuse encompassing a wide range of abusive behaviors.
- Recognition of children as victims if they witness domestic abuse.
- New legal orders such as Domestic Abuse Protection Notices (DAPNs) and Domestic

[77] National Judicial Academy. (2018). *Domestic violence: A resource manual for judges and magistrates*. https://nja.gov.in/

Abuse Protection Orders (DAPOs), designed to provide swift protection for victims.

- Enhanced powers for the police and courts to remove perpetrators from homes.
- Improved legal provisions for survivors in family law proceedings and housing.

Family Law Act 1996

The Family Law Act 1996 remains a fundamental statute, especially in relation to non-molestation orders and occupation orders. Non-molestation orders prevent an abuser from harassing or threatening the victim, while occupation orders regulate who can live in the family home, ensuring survivors can remain safely housed.[78]

Serious Crime Act 2015

This Act introduced controlling or coercive behavior as a criminal offense under Section 76, addressing psychological and emotional abuse within relationships. It recognizes that domestic violence often includes non-physical forms of control that have severe impacts on victims' autonomy and well-being. This legislation allows for prosecution of patterns of behavior that previously went unpunished.

Domestic Abuse (Scotland) Act 2018

Scotland has a distinct legal regime. The Domestic Abuse (Scotland) Act 2018 creates a specific criminal offense of domestic abuse, encompassing physical, emotional, and psychological abuse, including coercive control. It emphasizes a victim-centered approach and includes provisions for enhanced sentencing and protection orders.

B. Implementation and Support Systems

Role of Independent Domestic Violence Advocates (IDVAs)

IDVAs are specialist support workers embedded within police and community settings. They provide immediate safety planning, emotional support, and assistance navigating the criminal justice system. IDVAs also facilitate multi-agency risk assessment conferences (MARACs), which coordinate responses among police, social services, health providers, and housing authorities to protect high-risk victims.[79]

Legal Aid and Housing Support

[78] Family Law Act 1996, c. 27. (1996). United Kingdom. https://www.legislation.gov.uk/ukpga/1996/27/contents

[79] SafeLives. (2023). *Independent domestic violence advocates (IDVAs)*. https://safelives.org.uk/practice-support/resources-identification-and-referral/independent-domestic-violence-advocates-idvas

Legal aid is crucial in enabling victims to access justice, especially in family law cases involving protective orders and child custody. Victims may also be eligible for priority access to social housing or housing support services under the Housing Act 1996 and subsequent amendments. This support is vital in ensuring women can safely leave abusive homes without facing homelessness.

Police and Crown Prosecution Service (CPS) Protocols

The police in the UK follow detailed domestic abuse protocols, including mandatory arrest policies in certain circumstances and risk assessment tools such as DASH (Domestic Abuse, Stalking and Harassment, and Honour-Based Violence). The CPS has dedicated units specializing in domestic abuse cases to ensure victims are supported through prosecution. The CPS's Domestic Abuse Guidelines emphasize victim safety, evidence gathering, and informed charging decisions.

C. Challenges

Immigration Barriers for Victims

Many survivors, particularly migrant women, face significant barriers due to immigration status. Restrictions tied to spousal visas or fear of deportation may prevent victims from reporting abuse or seeking legal protection. The "No Recourse to Public Funds" (NRPF) policy restricts access to welfare benefits, including housing and financial support, leaving many vulnerable and trapped in abusive situations.

Cuts to Legal Aid

Since the introduction of austerity measures, there have been significant cuts to legal aid funding, limiting access to free legal representation for many victims. These cuts disproportionately affect women seeking protection orders and custody arrangements, especially in civil courts. Reduced legal aid availability risks undermining survivors' ability to obtain timely and effective justice.[80]

Regional Disparities in Service Access

Access to domestic violence services varies considerably across the UK, with rural areas, smaller towns, and some deprived urban neighborhoods experiencing limited availability of

[80] Trinder, L., & Hester, M. (2018). *Legal aid cuts and access to justice for victims of domestic violence*. Journal of Social Welfare and Family Law, 40(2), 149–168. https://doi.org/10.1080/09649069.2018.1474345

shelters, counseling, and advocacy services. These disparities exacerbate inequalities, as victims in underserved areas face greater difficulties in securing safety and support.

The UK's legal framework for domestic violence offers a strong statutory basis that recognizes the multifaceted nature of abuse and provides innovative protective measures. The introduction of the Domestic Abuse Act 2021 and Scotland's specific legislation represent important advances in law. However, effective implementation depends on well-funded support systems, accessible legal aid, and coordinated multi-agency responses. Persistent challenges, particularly related to immigration, funding cuts, and uneven service provision, require ongoing policy attention to ensure all survivors, especially women, receive the protection and justice they deserve.

Comparative Analysis of Domestic Violence Laws: India, the UK, and the USA

Commonalities

India, the UK, and the USA all emphasize legal protection for women through protection orders and a combination of civil and criminal remedies. Protection orders—such as India's residence and protection orders under the PWDVA, the UK's non-molestation and domestic abuse protection orders, and the USA's civil protection/restraining orders—serve as immediate legal tools to prevent further abuse. Each country also provides institutional support through specialized roles: India's Protection Officers, the UK's Independent Domestic Violence Advocates (IDVAs), and the USA's victim advocacy programs all help survivors navigate the legal system and access support services.[81]

All three countries recognize non-physical forms of abuse, including coercive control and emotional abuse, reflecting a modern understanding of domestic violence beyond physical harm. Criminalization of controlling behavior (UK's Serious Crime Act 2015) or related provisions (USA's Violence Against Women Act) parallels India's broad definition under PWDVA.

Key Differences

A major difference lies in the structure and focus of their legal systems. India's framework

[81] U.S. Department of Justice. (2022). *Victim advocacy programs*. https://www.justice.gov/ovw/victim-advocacy-programs

is a hybrid of civil and criminal law, where PWDVA provides civil relief and the IPC supplies criminal sanctions. The legal system is highly centralized under national statutes but suffers from inconsistent enforcement due to local socio-cultural barriers and institutional weaknesses.

The UK's system is more centralized, particularly in England and Wales, with recent legislative consolidation through the Domestic Abuse Act 2021. Scotland's separate legislation highlights some decentralization within the UK, but overall enforcement protocols, police training, and support services are systematically integrated.

The USA features a decentralized system, with laws varying significantly across states. While the Violence Against Women Act (VAWA) sets federal standards, implementation depends heavily on state statutes, leading to diverse protections and enforcement levels.

Strengths and Weaknesses

India's strength lies in the comprehensive legal definitions and combined civil-criminal remedies. However, weak enforcement, police insensitivity, and social stigma limit effectiveness. The UK benefits from clear, modernized legislation and coordinated multi-agency responses, but faces challenges with legal aid cuts and immigration-related barriers. The USA's federal and state framework offers flexibility and extensive victim services, but patchy state laws and uneven resource allocation create disparities.[82]

Influence of Socio-Cultural Norms

In all three countries, socio-cultural attitudes significantly shape enforcement and access to justice. In India, entrenched patriarchy, family honor, and community pressures contribute to underreporting and reluctance to engage with the law. Similarly, in parts of the UK and the USA, cultural stigma and distrust of authorities—especially among migrant and minority communities—hinder reporting and effective intervention. These cultural factors underscore the need for gender-sensitive training, awareness programs, and community engagement to complement legal reforms.

Recommendations

- Strengthen Implementation and Institutional Capacity

[82] National Crime Records Bureau. (2021). *Crime in India 2021*. Ministry of Home Affairs, Government of India. https://ncrb.gov.in/en/crime-india

Across all three countries, robust legal frameworks exist but are often undermined by weak enforcement. Governments must invest in training law enforcement officers, judges, and Protection Officers/advocates to ensure sensitivity and responsiveness to domestic violence cases. Strengthening institutional capacity through adequate funding, dedicated infrastructure, and technology-enabled case management can reduce delays and improve survivor outcomes.

- Enhance Access to Legal Aid and Support Services
  Legal aid remains critical for survivors to navigate complex judicial systems. India and the UK, in particular, should expand legal aid coverage and restore funding cuts to ensure vulnerable women, including migrants, have access to representation and protection orders. Simultaneously, expanding shelter availability, counseling, and housing support is essential to help women safely exit abusive environments.
- Address Socio-Cultural Barriers Through Community Engagement
  Legal reforms must be complemented by community awareness and gender-sensitivity programs targeting social stigma, patriarchal norms, and misinformation about domestic violence. Collaborations with NGOs, faith groups, and local leaders can promote behavioral change and encourage survivors to seek help without fear of ostracization.[83]
- Improve Coordination Between Agencies
  Multi-agency cooperation between police, courts, social services, healthcare providers, and NGOs should be formalized and regularly evaluated. Models such as the UK's Multi-Agency Risk Assessment Conferences (MARACs) provide a useful template to ensure comprehensive, survivor-centered approaches. India and the USA can benefit from institutionalizing such coordinated mechanisms to improve risk assessment and protection.
- Focus on Vulnerable Groups and Immigration-Related Barriers
  Specialized interventions are needed to protect migrant women, refugees, and minorities, who often face additional obstacles due to immigration laws or discrimination. The UK

[83] Crawley, H., et al. (2018). *Migrant women's experiences of domestic violence*. Joseph Rowntree Foundation. https://www.jrf.org.uk/report/migrant-womens-experiences-domestic-violence

and USA should review policies like "No Recourse to Public Funds" that leave survivors financially and legally vulnerable. India should ensure marginalized groups, including tribal women and those in rural areas, have equitable access to justice.

- Regular Monitoring, Research, and Data Collection
  Effective policy depends on reliable data. All three countries should enhance data collection on domestic violence incidence, reporting, prosecution, and conviction rates. Research into the effectiveness of legal provisions and survivor experiences can guide targeted reforms. Transparency and public reporting will improve accountability.[84]

Conclusion

Legal protections for women against domestic violence in India, the UK, and the USA have made significant strides over the past two decades, reflecting growing global recognition of the problem's complexity and severity. These countries share a commitment to comprehensive legal definitions, protective orders, and institutional support, yet vary in their approaches due to different legal traditions, governance structures, and socio-cultural contexts.

India's blend of civil and criminal remedies under the Protection of Women from Domestic Violence Act and the Indian Penal Code offers wide-ranging protections but faces implementation gaps rooted in social stigma, limited institutional capacity, and judicial delays. The UK's recent legislative advancements, especially the Domestic Abuse Act 2021, demonstrate progressive integration of legal protections with victim-centered services, though challenges such as funding cuts and immigration barriers persist. The USA's decentralized model provides flexibility and innovation through state laws and federal support, but disparities across jurisdictions affect consistent access to justice.

Across all three, socio-cultural norms play a critical role in shaping survivors' willingness and ability to seek protection. Legal reforms must therefore be supported by social interventions that dismantle stigma and empower women. Additionally, sustained investment in legal aid, institutional coordination, and data-driven policy-making is essential

[84] National Crime Records Bureau. (2021). *Crime in India 2021*. Ministry of Home Affairs, Government of India. https://ncrb.gov.in/en/crime-india

for meaningful change.

Ultimately, combating domestic violence requires a multi-faceted approach that balances strong laws with effective enforcement, survivor support, and community transformation. By learning from each other's strengths and addressing shared weaknesses, India, the UK, and the USA can work towards a future where women live free from fear and violence, and where justice is accessible and responsive to their needs.

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The Illegal Trade of Wild Plants: International Law and Judicial Decisions

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ABSTRACT

The illegal trade in wild plants is a pervasive yet often overlooked threat to biodiversity, environmental security, and sustainable development. While international and national legal frameworks have been developed to address environmental crimes, enforcement of regulations regarding flora lags behind. This paper delves into the scope and impacts of the illicit trade in wild plants, explores the effectiveness of international legal instruments such as CITES and the Convention on Biological Diversity, and examines judicial decisions that illustrate how courts are beginning to grapple with these issues. It argues for stronger legal enforcement, judicial engagement, and community participation to protect wild flora globally.

Keywords: Illegal Trade of Wild Plants, Biodiversity Conservation, Environmental Law, CITES, Convention on Biological Diversity (CBD), Judicial Decisions, Plant Trafficking, Environmental Crime, International Environmental Law, Public Interest Litigation, Indigenous Knowledge and Biodiversity, Access and Benefit Sharing (ABS), Forest and Wildlife Protection.

INTRODUCTION

Illegal trafficking in wild plants is a significant dimension of environmental crime that has garnered relatively limited attention compared to wildlife poaching and trafficking of fauna. The global demand for ornamental plants, rare succulents, timber, and medicinal herbs has resulted in the overexploitation and unsustainable harvesting of countless species, pushing many toward extinction. Despite its ecological, economic, and cultural ramifications, the legal and judicial responses to this form of biopiracy remain fragmented and insufficient. This research explores how international legal instruments and judicial pronouncements have addressed the illegal trade of wild plants, while also identifying existing challenges and recommending pathways for more effective regulation and enforcement.

UNDERSTANDING THE SCOPE AND IMPACT OF ILLEGAL WILD PLANT TRADE

The illegal trade in wild flora encompasses the unauthorized collection, transportation, and

commercialization of plant species protected under national or international law. High-value timber species such as Dalbergia (rosewood), aromatic plants like agarwood (Aquilaria spp.), and rare orchids are among the most frequently trafficked plants. These species are often harvested from biodiversity-rich but poorly monitored regions, including tropical forests in Southeast Asia, Africa, and Latin America.

The consequences of such trade are far-reaching. Ecologically, it contributes to habitat degradation, disrupts local ecosystems, and leads to the genetic erosion of species. Economically, it results in significant losses to legal markets and deprives states of revenues from regulated harvesting and trade. Moreover, it adversely affects indigenous communities who depend on these plants for their traditional livelihoods and cultural practices. The trade often operates through complex international networks, involving false documentation, smuggling routes, and sometimes collusion with corrupt officials, making enforcement exceedingly difficult.

INTERNATIONAL LEGAL FRAMEWORKS ADDRESSING ILLEGAL WILD PLANT TRADE

The most significant international legal instrument governing the trade in endangered plants is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), adopted in 1973. CITES regulates trade in species listed in three Appendices based on the degree of threat they face. Appendix I prohibits commercial trade in species threatened with extinction; Appendix II allows controlled trade under permit systems; and Appendix III involves species protected in at least one country. Notably, numerous plant species such as Panax quinquefolius (American ginseng), Hoodia spp., and various orchids and cacti are listed under CITES.

Another important instrument is the Convention on Biological Diversity (CBD), which was adopted in 1992. Unlike CITES, the CBD does not directly regulate trade but emphasizes the conservation and sustainable use of biodiversity. Article 8(j) of the CBD is particularly relevant, as it underscores the importance of respecting traditional knowledge and practices of indigenous communities regarding biological resources. The Nagoya Protocol (2010)

under the CBD further introduces binding rules on access and benefit-sharing (ABS) mechanisms for genetic resources, which include wild plants used for medicinal or commercial purposes.

Additionally, the United Nations Convention Against Transnational Organized Crime (UNTOC) provides a broader framework to address organized criminal networks involved in environmental crimes, including plant trafficking. Although it is not specifically tailored to biodiversity issues, it allows states to prosecute trafficking when linked to corruption, money laundering, or document fraud.

JUDICIAL DECISIONS AND THE ROLE OF COURTS

While international treaties form the backbone of the legal framework, enforcement and interpretation depend largely on domestic courts. Judicial institutions across jurisdictions have gradually begun to confront the legal implications of illegal plant trade through environmental litigation.

One of the most significant judicial interventions comes from the Supreme Court of India in the case of T.N. Godavarman Thirumulpad v. Union of India[7]. Though primarily concerned with forest conservation, the Court's expansive interpretation of the Forest (Conservation) Act, 1980 led to a nationwide ban on tree felling in non-forest areas without government approval. This case laid the groundwork for judicial recognition of ecological balance as a constitutional right, indirectly protecting plant biodiversity.

In the United States, the Lacey Act (amended 2008) prohibits the import, export, transport, or sale of plants and plant products taken in violation of domestic or foreign laws. The landmark case United States v. Bengis. While dealing with illegal fish exports from South Africa, affirmed the applicability of U.S. laws to environmental crimes committed abroad. This principle has since been extended to cases involving illegally sourced timber and medicinal plants, reinforcing the reach of domestic courts in prosecuting transnational plant crimes.

The European Court of Justice (ECJ) has similarly underscored member states' obligations to implement CITES provisions. In Commission v. Luxembourg (Case C-154/02). The Court found Luxembourg in breach of EU obligations for failing to adequately incorporate

CITES into national law, including measures for protecting endangered plant species. This judgment reinforced the legal mandate for strict implementation of international conservation norms within the EU.

In China, environmental courts have recently begun prosecuting cases involving endangered medicinal plants such as Dendrobium and Panax ginseng. Following the integration of environmental protection principles into China's Civil Code in 2021, local courts have imposed fines and imprisonment in notable plant trafficking cases, reflecting a more assertive legal posture.

CHALLENGES IN ENFORCEMENT AND JUDICIAL OVERSIGHT

Despite these positive developments, multiple challenges continue to obstruct the effective enforcement of legal instruments addressing wild plant trafficking. First, identifying plant species—especially in processed form—requires specialized botanical expertise, which is often lacking at border posts and among enforcement personnel. Second, the penalties for illegal plant trade remain low in many jurisdictions, failing to serve as a sufficient deterrent, particularly for high-value species.

A further issue is the insufficient awareness among legal professionals, law enforcement agencies, and the judiciary about the scale and seriousness of illegal plant trade. Unlike charismatic megafauna, plants do not evoke public sympathy or media attention, resulting in weaker political will and resource allocation for enforcement. Additionally, corruption and lack of inter-agency coordination often enable traffickers to operate with impunity.

Judicial reluctance to impose severe punishments in environmental cases involving flora, as compared to those involving fauna, also hinders deterrence. Many courts prioritize property rights and economic interests over ecological considerations, which reflects a need for greater judicial education and capacity building in biodiversity law.

RECOMMENDATIONS

To strengthen the legal and judicial response to illegal wild plant trade, several reforms are essential. Firstly, countries must ensure full compliance with CITES and CBD obligations through comprehensive national legislation. Protected species lists should be regularly updated based on international assessments, and permit issuance must be transparent and traceable.

Secondly, capacity building for enforcement authorities, customs officials, and the judiciary is critical. Workshops, legal training modules, and partnerships with botanical institutions can aid in species identification and legal interpretation. The use of modern technologies such as DNA barcoding, forensic botany, and satellite monitoring should be institutionalized to improve detection and evidence collection.

Thirdly, judicial academies should include environmental law and biodiversity conservation in their curricula to sensitize judges and magistrates to the ecological and legal importance of wild plant conservation. Strategic public interest litigation can also be encouraged to push for policy reform and judicial intervention.

Lastly, the role of indigenous and local communities must be recognized. Granting legal rights to communities over traditional knowledge and plant use, along with ensuring equitable benefit-sharing, can transform them into partners in conservation rather than adversaries of the law.

CONCLUSION

Illegal trade in wild plants is an emerging frontier of environmental crime that demands urgent legal and judicial attention. While international frameworks like CITES and CBD provide the necessary legal infrastructure, enforcement remains weak and inconsistent across jurisdictions. Courts are increasingly called upon to uphold biodiversity protections, and their role in interpreting and enforcing environmental laws is vital. To preserve the planet's botanical heritage, it is imperative that legal systems—international and domestic—work in tandem with science, community participation, and judicial commitment. The survival of thousands of plant species and the ecosystems they sustain may depend on such a holistic approach.

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