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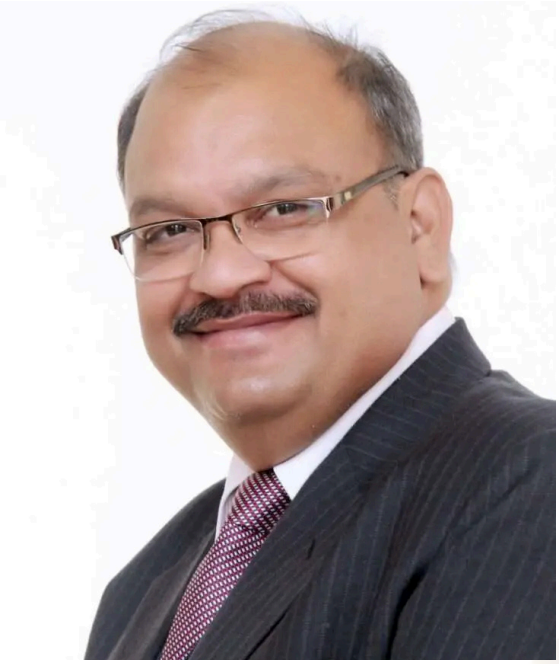

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As Chief Editor of Legalonus Law Journal, Tarun's leadership, expertise, and scholarly contributions shape legal discourse, making a significant impact on the legal community.

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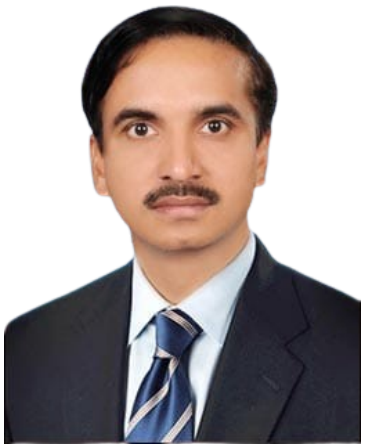

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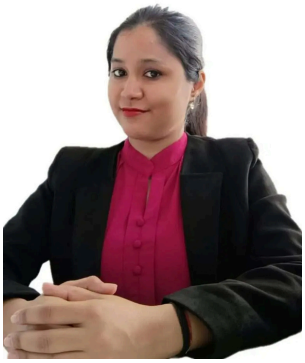

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His practical experience includes an internship with the District Legal Services Authority (DLSA), where he gained exposure to court procedures, judicial decorum, and visits to institutions such as the district jail, police headquarters, women empowerment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

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"Volenti Non-Fit Injuria": A Doctrinal Analysis of Consent and Its Limits in Tort Law" A Shield or Sword Against the Victim's Rights?

By Harsh Vardhan Gupta[1]

Abstract

This research paper offers a critical analysis of the doctrine of 'volenti non-fit injuria' (no harm is done to a willing person) in tort law, examining its implementation, constraints, and judicial interpretations in various jurisdictions. It evaluates significant cases such as Smith v. Baker [2](UK) and Dann v. Hamilton[3], as well as relevant statutes like the Employers Liability Act of 1880 and the Contract Terms Act of 1977 (UK), emphasizing the doctrine's dependence on authentic and informed consent. The study highlights the difficulties of applying 'volenti' in situations characterized by socio-economic inequalities, workplace dangers, and public interest issues, particularly in India and the UK. It reveals differing judicial perspectives. UK courts focus on statutory protections for employees, while Indian courts consider local socio
economic contexts. The key findings indicate that implied consent falls short in unequal power dynamics, necessitating reforms for fairness. Suggested reforms include establishing clear criteria for consent, mandatory safety measures, exploring partial liability similar to contributory negligence, and increasing judicial awareness of existing power imbalances. By addressing these issues, the research advocates for updated legal systems that balance personal autonomy with societal responsibility to promote fair outcomes in tort cases.

Keywords: Volenti non-fit injuria, informed consent, tort law defenses, socio-economic inequality, workplace safety, judicial interpretation

Introduction

The term "tort" has origins in the French language and is comparable to the English word "wrong," the Romanian "delict," and the Sanskrit term "jimha." It comes from the Latin word "tortum," which translates to "wrong" or "injury," and further originates from the Old Latin verb "toquere," meaning "to twist". This field deals with various tort or unlawful actions in which an individual infringes upon another person's legal rights. The law mandates respect for the legal rights of society's members, and anyone who violates this duty is considered to

[1] IILM University, Greater Noida
[2] [1891] A.C. 325
[3] [1937 D No 1828]; [1939] 1 K.B 509.

have engaged in wrongful conduct. A 'breach of contract' refers to the failure to full fill an obligation agreed upon by a party in a contract, while a tort signifies a 'breach of duty' acknowledged by tort law, similar to how a 'crime' originates from a breach

of duty recognized by criminal law. A person who commits a tort is termed a "tortfeasor," and when multiple individuals are involved, they are referred to as "joint tortfeasors". Their misconduct is identified as a "tortious act," and they can be held liable either individually or collectively. The primary objective of Tort Law is to provide compensation to victim.

Section 2(m), of the Limitation Act, 1963, talks about tort law as a civil wrong which is not just exclusively a 'breach of contract' or a 'breach of trust'.
This paper offers an evaluation of the defences outlined in tort law, focusing specifically on 'volenti non-fit injuria'. It examines the development, implementation, and constraints of this doctrine by analyzing key case laws,statutory interpretations, and comparisons with other legal systems.

Jurist perspectives

"It is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of trust or other merely equitable obligation."- **Salmond.**[4]

"Tortious liability arises from the breach of a duty primarily fixed by the law: this duty is towards persons generally and its breach is redressable by an action for unliquidated damages."-**Winfield.**

"It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party."- **Fraser.** (BANGIA, LAW OF TORTS, 2021, Ed.)

Understanding when the wrong is a tort

A tort is a type of civil wrong, but not all civil wrongs are torts. If the wrongful act is only a simple breach of contract or breach of trust, it is not considered as a tort.

To assess whether a wrongdoing qualifies as a tort, the first step is to determine if the act is civil or criminal. If it's a civil wrongdoing, the next step is to check if it fits into an established category of civil wrongs, like breach of contract or breach of trust. If it doesn't fit these categories but still results in harm, it can be categorized as a tort. It's important to note that tort law is not codified, it evolves through court rulings and legal principles instead of

[4]Law of Torts by Salmond1[2th ed., Sweet and Maxwell (1957), 145]

being outlined in written law. At times, a single action can result in both a tort and a breach of contract. For instance, if A entrusts B with a horse for safekeeping and B fails to care for it, resulting in the horse's death, B would be responsible for both breach of bailment and the tort of negligence. While both are civil wrongs and compensation is often a remedy, the plaintiff needs to decide whether to pursue damages under tort or contract law, as they cannot receive compensation for the same act through both avenues.

Objectives of the Study

1. To investigate the fundamental principles of tort law and its principal defences, focusing on their role within civil liability systems.
2. To conduct a thorough analysis of the doctrine of 'volenti non-fit injuria,' including its legal prerequisites, range, and constraints.
3. To evaluate how different courts interpret and apply 'volenti non-fit injuria' in various jurisdictions, especially in the UK and India.
4. To propose legal reforms and clarify doctrinal uncertainties to promote fairness and consistency in the application of this defence in contemporary tort law.

Scope & Significance of this Study;

This research paper examines the scope and use of the tort law defence known as 'volenti non fit injuria,' focusing on its legal development, judicial interpretation, and ongoing significance in modern legal settings. It presents both Indian and common law viewpoints, analyzing significant court rulings from India and the UK. The study investigates how courts assess voluntary consent in intricate cases involving sports injuries, medical malpractice, workplace dangers, and rescue efforts. It also explores the doctrinal distinctions between 'volenti non-fit injuria' and similar defences like contributory negligence and necessity, highlighting overlapping principles, legal disputes, and interpretive challenges. The research is limited to civil liability within tort law, intentionally leaving out aspects of criminal law.

The importance of this study lies in its in-depth examination of the theoretical bases and practical difficulties of applying 'volenti non-fit injuria' in contemporary tort cases. It emphasizes the changing judicial perspective on the voluntariness and informed nature of consent, which is often shaped by contextual variations and socio-economic factors. Furthermore, it clarifies the relationship between 'volenti' and contributory negligence, providing insights into their respective legal consequences. By pinpointing inconsistencies and shortcomings in the current jurisprudence, this research adds significant value to academic discourse and suggests reform-oriented solutions. It is especially relevant for legal scholars, practitioners, and policymakers aiming to enhance fairness and consistency in civil liability adjudication.

General Defences Under Tortious Liability

Defences are those contentions which persuade the judge that the respondent is not liable for the demonstration that he is being blamed for conferring. Thusly, safeguards can be characterized as those contentions that can be utilized to escape obligation.

Using a defence, the defendant might avoid paying damages for violating someone else's legal rights by absolving him of the tort's guilt.

Defences that are available under all areas of tort law are as follows;

- Volenti Non-Fit Injuria
- Act of God
- Inevitable Accident
- Plaintiff the wrongdoer
- Negligence
- Private Defence
- Mistake

Volenti Non-Fit Injuria

The phrase "Volenti Non-Fit Injuria" is a Latin legal maxim meaning **"to a willing person, no injury is done."**

In simple terms, it suggests that if someone willingly endures a situation, it is not considered an injury, and an injury cannot arise from an action the injured party voluntarily undertook. This defence frees the tortfeasor from liability if it can be shown that the harm was a result of the injured party's informed consent and voluntary action. Essentially, the key element of this defence is the permission given by the injured party.

If an individual willingly experiences harm, it is not legally regarded as an injury and is not grounds for a lawsuit. The maxim 'volenti non-fit injuria' embodies this idea, indicating that a person cannot claim injury for risks they knowingly accepted or willingly took on. If a person has provided either explicit or implied consent, they are unable to sue for tort.
For example, attending an IPL T20 match, spectators are aware that bowlers may hit sixes into the crowd, and by attending the game, they accept this risk. Thus, if a viewer is struck by a ball while in the stands, they cannot take legal action against the stadium or event organizers.

Conversely, if someone is parked 200 feet from the stadium and a batter like Chris Gayle hits a ball that breaks the car's windshield and causes injury, this is an event the victim did not foresee or consent to. In such cases, where the risk is unexpected and unusual, the injured party is entitled to compensation, and the defence of "Volenti Non-Fit Injuria" does not apply.

To support this defence, the defendant must establish certain fundamental points that embody the principle of 'volenti non-fit injuria.'

Essential elements of this doctrine

In order to effectively utilize the defence of 'volenti non-fit injuria' in tort law, specific key factors must be demonstrated. These factors are crucial in assessing the validity of the plaintiff's consent to the risk and the potential immunity of the defendant from liability. If these fundamental criteria are not met, the defence will not stand in a legal context.

- **Mere knowledge does not imply assent**

For the maxim 'volenti non-fit injuria' to be applied and in favor of the defendant, some points have to be proved:

1. Knowledge of the risk;

As a first step, the plaintiff must be aware of the nature of the act and the associated risks involved in carrying it out. If the plaintiff is unaware of the specifics of the work and the extent of the risks when undertaking the task, it will be assumed that they lacked knowledge of the risks. The plaintiff's awareness is crucial in this context, and without it, the defendant cannot invoke the defence of 'volenti non-fit injuria.'

2. He, knowing the same, agreed to suffer the harm;

At second instance, this point means that the plaintiff was fully aware of the risk and still after knowing the risk the plaintiff voluntarily accepted it, which makes it unfair to hold the defendant responsible. For example, if the plaintiff willingly takes part in a speculative activity like motor racing and gets injured, and the plaintiff filed a suit claiming a compensation. Here, the defendant can argue that the plaintiff knew about the dangers of the activity still accepted it. Since, the activity was willingly accepted with all the dangers knowing, the defendant should not be blamed or held legally liable for the injury.

In the case of Bowater v. Rowley Regis Corporation[5], (IPSA LOQUIYUR .COM, n.d.) the plaintiff was employed by the defendant corporation to collect road sweepings. His foreman ordered him to take out a particular horse, even though both of them knew that the horse had bolted on two previous occasions. The plaintiff protested, but the foreman said it was an order. The horse later bolted, throwing the plaintiff from his cart and injuring him.

The plaintiff sued his employer in negligence for failing to provide him with a safe and suitable horse. The employer responded that the defence of 'volenti non-fit injuria' applied because the claimant knew the horse was dangerous. The Court of Appeal held that the employer was negligent and that the defence of 'volenti non-fit injuria' did not apply.

[5][1944] K.B. 476.

In this particular instance Mr. Goddard LJ suggested that the defence might apply where the defence might apply where the employee's normal tasks are inherently dangerous, but it was doubtful whether the dicta would be followed today. It is more likely that the court

would instead hold that a failure to prevent unavoidable dangers involved in a particular industry is not a breach of duty.[6]

Similarly, in the case of Smith v. Charles Baker & Sons[7], (IPSA LOQUIYUR .COM, n.d.), the plaintiff was a workman employed by a railway company to drill holes in a rock near a crane operated by the company. The crane was responsible for lifting stones, which were swung overhead sometimes, posing a risk of injury to those working below. Mr. Smith was fully aware of the danger of working in proximity to the crane and had knowledge that stones could potentially fall.

One unfortunate day, a stone fell off the crane and struck smith, causing him serious injuries. Despite the fact that Smith was aware of the risk posed by the overhead crane, no warning had been given regarding the specific danger of stones being swung directly above his head. Furthermore, another employee had previously raised concerns about this very issue, but no action was taken to mitigate the risk. In response to the injury, Smith sued his employer for negligence under an act[8].

It was held by the House of Lords that as there was mere knowledge of risk without the assumption of it, the maxim 'volenti non-fit injuria' did not apply, and the defendants were liable.

In this particular instance Lord Herschell said[9]: " Where a person undertakes to do work which is intrinsically dangerous, notwithstanding that reasonable care has been taken to render it as little dangerous as possible, he no doubt voluntarily subjects himself to the risks inevitably accompanying it, and cannot if he suffers, be permitted to complain that a wrong has been done to him, even though the cause from which he suffered might give to others a right of action, but where a risk to the employed, which may or may not result in injury, has been created or enhanced by the negligence of the employer, does the mere continuance in service, with a knowledge of the risk preclude the employed, if he suffers from such negligence, from recovering in respect of his employer's breach of duty? I cannot assent to the proposition that the maxim 'volenti non-fit injuria', applies to such a case and the employer can invoke its aid to protect him from liability for his wrongs.

[6] Bowater v. Rowley Regis Corporation, [1944] K.B. 476, per Goddard LJ, as cited in 'volenti non-fit injuria' IPSA LOQUITUR (website).
[7] [1891] A.C. 325.
[8] Employer's Liability Act, 1880.
[9] Ibid., at pp., 360, 362.

In this case of Dann v. Hamilton[10], the plaintiff entered the backseat of a car driven by the defendant, who she (the plaintiff) was aware was intoxicated. She was not forced to get in, nor was it necessary for her to do so. Earlier that evening, the plaintiff had been driven around by the defendant and recognized his reckless driving.

The defendant subsequently crashed the car while under the influence of the intoxication, resulting in his death and injuries to the plaintiff. She then filed a negligence lawsuit against the defendant's estate. While the estate acknowledged the negligence, it also presented the defence of 'volenti non-fit injuria'.
The Court held in favor of the plaintiff. This was not the kind of extreme case getting into an obviously dangerous situation would trigger the defence.

In this case, Asquith J explained that to establish 'volenti non-fit injuria,' the defendant must first show that the plaintiff had complete knowledge of the danger. They must then show that the plaintiff also consented to it. However, he stated that complete knowledge does not by itself imply consent to waive liability for the risk.

He went onto saying that voluntarily getting into a car with a drunk driver does not indicate that the plaintiff has waived liability for any injury sustained as a result. The justification was that it is much harder to rely on acts done at a time when there is merely a risk of negligence as authorizing possible negligence. "Clearer evidence of consent is needed.[11]"

- **Consent must be free**

The defence of 'volenti non-fit injuria' will only be available for the defendant when the consent of plaintiff is made by free will. In addition to understanding the nature and level of risk associated with an act, it is also essential for the plaintiff to freely consent to that risk. This consent must be given willingly and without any duress. Any consent provided by the plaintiff as a result of coercion, force, deception, or misunderstanding cannot be considered genuine consent. Consent is of two types given as follows;

3. Expressed Consent

It is a clear and explicit agreement given by an individual, conveyed either verbally or in writing, to permit a specific action or use. It is intentional and well-informed, leaving no ambiguity about the individual's intentions. This form of consent is often required in legal, medical, or contractual contexts to ensure that the person comprehends the implications of their agreement. Unlike implied consent, which arises from actions or circumstances,

[10] [1937 D No 1828]; [1939] 1 K.B 509.
[11] Dann v. Hamilton [1937 D No 1828]; [1939] 1 K.B 509, per Asquith J, as cited in "Volenti Non-Fit Injuria," IPSA LOQUITUR (website).

express consent is clearly stated. It is crucial for validating agreements, sanctioning data usage, or permitting physical or legal actions concerning personal rights or property.

In the case of "Schloendorff v. Society of the New York Hospital[12]," the plaintiff was hospitalized at New York Hospital due to a stomach issue. She consented to an

ether examination but reportedly refused permission for surgery. While she was unconscious from the ether, a tumour was removed without her direct consent. The hospital operates as a nonprofit entity, with its doctors working without compensation. After the surgery, the plaintiff developed gangrene in her left arm, resulting in amputations and considerable pain. the court held that the hospital is not liable for an unauthorized operation (trespass/assault) performed by its physicians on a patient, provided the hospital exercised due care in the selection of the physician, because the physician acts as an independent contractor, not as a servant of the hospital.

Justice Cardozo famously stated, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body."

In addition to "Society of the New York Hospital" case, similar reasoning for the liability of the guilty can be seen in the case of Lakshmi Rajan v. Malar Hospital[13],

4. Implied Consent

It is an agreement that isn't explicitly stated but is inferred from an individual's behavior, the situation, or the relationship between those involved. It occurs when a person's actions suggest they permit a specific action, even without direct communication or written agreement. This form of consent is commonly acknowledged in legal, medical, and contractual environments, where it may be assumed based on common practices or past interactions. Though it isn't directly expressed, implied consent holds legal significance and can be interpreted based on the context, reasonable expectations, and the circumstances surrounding the event.

In the case of "Hall v. Brooklands Auto Racing Club[14]," the plaintiff was a spectator in the defendant's race club. using the race, there was a collision between two cars and as a result one of the cars was thrown on spectators and injured the plaintiff. It was held by the court that the defendant was not liable for the injury caused to the plaintiff as he had impliedly consented to suffer the damage which was incidental to such sports (motor race).

[12] 105 N.E. 92, 93 (N.Y. 1914).
[13] III [1998] CPJ 586 (Tamil Nadu SCDRC).

[14] [1932] All ER 208.

In addition to "Auto Racing Club" case, similar reasoning can be seen in the case of Padmavati v. Dugganaika[15].

5. Consent obtained under coercion does not constitute true consent

If an individual is legally obligated to perform an action, their agreement to do so is not genuinely voluntary. True consent cannot be considered free until the person has the option to choose between an 'action with risk' and an 'action without risk.' Typically, a prudent person would agree to an action that carries no risk. However, if someone voluntarily chooses to engage in a risky action and subsequently suffers harm, they cannot invoke the principle of 'volenti non-fit injuria.' It's important to differentiate between 'submission' and 'consent.' While all consent involves submission, not all instances of submission equate to consent.

For example, if someone's submission is procured through deceit or based on a misunderstanding without awareness of the true nature of the action then it does not imply genuine consent.

In the case of R v. Williams[16], the defendant served as the music instructor for the plaintiff who was a minor. He engaged in sexual relations with her, claiming these acts would help with her breathing and enhance her singing abilities. The girl consented, thinking she was undergoing a medical or surgical treatment. The defendant was found guilty of rape but later appealed his conviction, arguing that the complainant had given her consent.

The Court of Appeal confirmed the conviction. The defendant misled the plaintiff regarding the nature and quality of his actions, leading her to believe that they were non-sexual activity. As a result, she did not give valid consent, and held that her consent was obtained through deceit.

Consent refers to a person's deliberate intention to allow a certain action to take place, along with an understanding of what that action entails.

6. Act must be lawful

For the 'volenti non-fit injuria' defence to be valid, the action that a person consents to that consent must be legal, and its execution must adhere to legal standards. Consent does not provide justification for illegal actions. For instance, in boxing, participants agree to endure harm as long as they follow the rules. However, if a boxer competes without gloves, breaching the regulations, the action is deemed unlawful, and consent is not a legitimate defence in tort law.

[15][1972] ACJ 222.

[16] 1923] 1 KB 340.

- **Breach of statutory obligation**

The defence of 'volenti non-fit injuria' is typically not applicable in situations where there is a violation of statutory duty. When a law establishes responsibilities intended to safeguard a particular group, like those concerning workplace safety, a person's consent cannot nullify the legal obligations that exist. Consent does not legitimize failure to adhere to statutory regulations. Therefore, even if someone consents to take on a risk, the defendant can still be held responsible for any damages stemming from a violation of the law, as these protective duties cannot be waived.

In the case of Imperial Chemical Industries v. Shatwell[17], The situation belongs to the Shatwell brothers, who worked for Imperial Chemical Industries (ICI) at a munitions factory. Their responsibility was to test an electrical circuit designed for detonation of explosives, which is a risky job. Safety regulations required the use of certain authorized materials for this testing, and the employees were given explicit guidelines to follow these safety measures. Nevertheless, because approved materials were not readily accessible, the Shatwell brothers choose to bypass the established protocols. They utilized unauthorized and unsuitable wiring to finish the test circuit, leading to an explosion that severely injured them.

The House of Lords decided in favor of ICI, the employer. While it recognized the employer's overall responsibility to ensure a safe workplace, the court found that the actions of the Shatwell brothers represented a considerable departure from their duties and safety procedures.

'Judge Lord Reid,' pointed out that the brothers willingly put themselves in harm's way by using unauthorized and hazardous materials. This legal doctrine, which translates to, "to one who is willing, no injury is done," implies that employees who consciously place themselves at risk by violating safety guidelines may lose their right to seek compensation from their employer. (BANGIA, LAW OF TORTS, 2021, Ed.) (PANDEY, 2023)

Limitations on the scope of the doctrine

The application of 'volenti non-fit injuria' is confined to instances where the plaintiff freely and knowingly consents without any pressure. It is not relevant in situations involving coercion, power imbalances, violations of statutes, or acts of rescue. Courts limit its application to avoid protecting negligent behavior based on assumed or forced consent.

[17][1965] AC 656.

A. In Rescue cases

Rescue situations are an exception to the principle of 'volenti non-fit injuria'. If a plaintiff willingly accepts a risk in order to help someone facing immediate danger due to the defendant's wrongful actions, the defence of 'volenti non-fit injuria' cannot be used against them.

In the case of Haynes v. Harwood[18], Harwood's servant parked a two-horse carriage in front of a police station while attending to other duties in a nearby residential area. During the servant's absence, children startled the horses, causing them to escape and posing a danger to nearby pedestrians. Officer Haynes observed this situation from a window, rushed outside, and managed to stop the horses, though he sustained injuries in the process. He subsequently filed a lawsuit for damages and won at trial, but the defendant later appealed the decision.

The court determines that the maxim 'volenti non-fit injuria' is not relevant in situations like this. When an individual takes action to assist others who are in peril due to someone's negligence, they can be held responsible for any damages arising from their actions, provided those actions are reasonable under the circumstances. Taking on risks does not apply in the context of rescue efforts.

In addition to "Haynes v. Harwood" case. Similar, reasoning can be seen in the case of Hyett v. Great Western Railway Co.[19]

B. Under the Contract Terms Act, 1977 (England)

The principle of 'volenti non-fit injuria' has been eliminated in cases involving personal injury or harm due to negligence, meaning that defendants can no longer argue that plaintiffs consented to the risk of harm through a contract. However, in business scenarios, contractual exemptions may be permitted. According to Section 2(1)[20] of the Act, individuals cannot use any contract terms or general or specific notices to exclude or limit their liability for death or personal injury caused by negligence. For other types of loss or damage, liability for negligence can only be excluded or restricted if the terms or notices meet the standard of reasonableness, as outlined in Clause 2(2).[21] (Manupatra.com, n.d.)

Difference b/w "Volenti Non-Fit Injuria" and "Contributory Negligence"

"Volenti Non-Fit Injuria" is a complete defence. Since, the passing of the law reform (Contributory Negligence) Act,[22] 1945, here, the defendant's liability is based upon

[18] [1935] 1 K.B. 146.
[19] [1948] 1 K.B. 345; [1947] 2 All E.R. 264.
[20] Unfair Contract Act, 1977 (England).
[21] Unfair Contract Act, 1977 (England).
[22] Sec. 1(1), Law Reform (Contributory Negligence) Act, 1945: Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that

the proportion of his fault in the matter. When both parties lack awareness, 'contributory negligence' may apply. Here are the distinctions between 'volenti non-fit injuria' and 'contributory negligence';

The 'volenti non-fit injuria' doctrine serves as a total defence, while in cases of contributory negligence, the defendant's liability is determined by the degree of their fault. In contributory negligence, any damages the plaintiff can recover will be reduced based on their own level of responsibility.

In situations involving contributory negligence, both the plaintiff and defendant are negligent. Conversely, in 'volenti non-fit injuria,' the plaintiff may have voluntarily engaged in an activity while also taking necessary precautions for their safety.

Another key difference lies in the plaintiff's awareness of the risks involved. In 'volenti non fit injuria', the plaintiff fully comprehends the nature and extent of the danger they face. In contrast, a plaintiff in a contributory negligence case is typically unaware of the risk, even though they should have been known of the risks. (Manupatra.com, n.d.)

Literature Review

Here, is the review of the article titled "Volenti Non-Fit Injuria, Voluntary Assumption" by Francis H. Bohlen [Harvard Law Review, Vol.20, No.1 (Nov, 1906), pp. 14-34, https://www.jstor.org/stable/1322882], "Volenti Non-Fit Injuria, Voluntary Assumption" by Francis H. Bohlen [Harvard Law Review, Vol.21, No.4 (Feb, 1908), pp. 233-260, https://www.jstor.org/stable/1324733] these reviews provide a summary and critical insight on 'volenti non-fit injuria.'

In Part I, Bohlen explores the origins of 'volenti non-fit injuria' within the individualistic framework of common law, differentiating it from contributory negligence. He points out that this doctrine is contingent on authentic consent free from coercion in voluntary relationships, such as between a licensee and licensor. Historical cases, like Priestly v. Fowler[23], demonstrate its use in master-servant situations, where servants were typically considered to accept inherent risks if not misled. Bohlen notes exceptions where statutory or common-law rights, such as safe premises for tenants, challenged the idea of voluntariness, arguing that genuine consent necessitates options beyond the relinquishment of legal rights. The article highlights the conflict between personal accountability and socio-economic disparities, presenting the doctrine as a judicial mechanism that seeks to balance individual autonomy with fairness.

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damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respectthereofshall be reduced to such extent as the court thinksjust and equitable having regard to the claimant's share in the responsibility for the damage:

[23] [1837] 150 Eng. Rep. 1030.

Bohlen's second article explores the use of 'volenti non-fit injuria' in employer-employee dynamics after 1880, particularly in relation to England's Employers' Liability Act[24]. He compares English and American legal perspectives, highlighting that English courts, Smith v. Baker[25], increasingly acknowledged that economic pressure could compromise genuine consent, ruling that employees who continued working despite being aware of risks could still seek compensation unless there was true consent involved. In contrast, U.S. courts Lamson v. Co.[26] adhered more strictly to this doctrine, focusing on employee's awareness of risks unless overridden by legal obligations such as safety regulations. Bohlen critiques the notion of implied consent in contracts, arguing that statutory protections demonstrate a legislative intent to combat worker's economic vulnerability, shifting the emphasis from mere awareness of risks to the genuine voluntariness of taking them on.

Bohlen's two-part examination highlights 'volenti non-fit injuria' as a principle influenced by practical judicial reasoning and legislative actions. In Part I, the analysis lays out its theoretical base focuses on individual autonomy, while Part II shows how its application in labor law has changed, illustrating societal awareness of structural inequalities. Overall, the two parts emphasize the importance of differentiating between surface-level and authentic consent, especially in situations where economic pressure or legal obligations complicate true voluntariness. (Bohlen, 1906-1908)

Interpretation of Courts in Jurisdictions of 'UK' and 'INDIA'

Aspects	UK Interpretation	India Interpretation
• Consent v. Knowledge.	Here, courts have mandated clear consent without any mere risk awareness.	Here, courts tend to interpret consent flexibly based on specific situations.
• Employee Cases.	UK legislation shields employees from risks.	Indian legislation shields workplace disparities but permit limited defences for employers.
• Public Interest.	Courts rarely limits the doctrine regarding public interest.	Courts minimize the application of this doctrine, if impacts the public interest.

[24] Employer's Liability Act, 1880.
[25] [1891] A.C. 325.
[26] Lamson v. Commercial Credit Corporation, 187 Colo. 382,

• Burden of Proof.	Here, the burden is mostly placed on the defendants to demonstrate the consent.	Here, courts combine this requirement with equitable considerations and facts.
• Judicial Philosophy.	UK adheres to stringent common law precedents.	Indian courts employ a justice-oriented approach that adapts to local conditions.

Assessment of the Doctrine and the Researcher's Viewpoint

The principle of 'volenti non-fit injuria' holds that individuals who willingly accept risks cannot later seek compensation for injuries that arise. However, in real-life situations, especially in sports, this idea can lead to fairness issues. For instance, while attendees at events like cricket games or car races may recognize certain risks, they do not inherently agree to face serious or unexpected dangers, such as being hit by a flying ball or vehicle. Research on tort defences indicates, that for the defence to be valid, consent must be both voluntary and fully informed. If event organizers fail to implement reasonable safety measures, like protective barriers, it raises doubts about whether genuine consent is given. Consequently, applying this doctrine without carefully examining the injured party's understanding and willingness can result in unfair outcomes and divert accountability from those responsible for ensuring safety.

Legal Reforms need to be implemented regarding the doctrine "Volenti Non Fit Injuria"

To enhance the fairness and effectiveness of the doctrine of 'volenti non-fit injuria' in contemporary society, the following legal reforms are suggested:

A. **Codify the Elements of Valid Consent**: Legislation should establish clear criteria for valid consent in tort law, ensuring it is informed, specific, and voluntarily given. This would mitigate the tendency to rely on implied consent in public and commercial situations where risks may not be apparent.

B. **Require Safety Measures in High-Risk Activities**: Event organizers for sports, recreational activities, and employers should be legally required to implement appropriate safety protocols. Failure to do so should disallow the use of 'volenti' as a legal defence.

C. **Implement a Duty to Warn Standard**: Defendants should be obligated to provide clear and visible warnings about risks that are not immediately obvious. Courts should assess the adequacy of these warnings before permitting the defence to be invoked.

D. Reform Judicial Interpretation: Judicial training and appellate advice should focus on the evolving understanding of consent, particularly in situations involving minors, workers, and individuals who are socio-economically vulnerable.

E. Adopt a Partial Defence Approach: In instances where both parties share responsibility for the risk, reform 'volenti' to function as a partial defence (similar to contributory negligence), thereby decreasing liability instead of completely absolving it.

Conclusion

The principle of 'volenti non-fit injuria' emphasizes the acceptance of risk by individuals but encounters difficulties in guaranteeing true consent when power disparities exist. While UK courts focus on statutory protections for workers, Indian legal systems adjust to their socio economic context. To promote fairness, it is essential to implement legal reforms, such as establishing clear standards for consent, enforcing mandatory safety measures, and ensuring fair distribution of liability. Updating judicial interpretations and legal frameworks is necessary to harmonize personal autonomy with societal responsibility in tort law.

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Constitutional Morality vs. Popular Will: A Critical Analysis of Judicial Activism in Contemporary India

By Rohit [27]

Abstract

In a constitutional democracy like India, the judiciary often finds itself at the crossroads of **constitutional morality** and the **popular will** of the electorate. This research critically examines the evolving role of the Indian judiciary in shaping public policy and social reform through the lens of constitutional morality, often in contrast to majoritarian preferences. While the Supreme Court has emerged as a guardian of fundamental rights and constitutional values, its expanding interpretative role—particularly in cases involving LGBTQ+ rights, religious freedoms, and electoral transparency—raises pressing questions about the limits of judicial activism. The paper explores the theoretical foundations of constitutional morality, its judicial articulation, and its tension with democratic legitimacy. It also analyzes key judgments such as Navtej Singh Johar v. Union of India, Indian Young Lawyers Association v. State of Kerala (Sabarimala), and Government of NCT of Delhi v. Union of India, to assess how the courts navigate conflicts between deeply held social beliefs and constitutional principles. Finally, it reflects on the global context, comparing India's approach with that of other democracies, and proposes a framework for judicial restraint and principled activism that strengthens constitutional governance while respecting democratic processes.

Keywords

Constitutional Morality, Judicial Activism, Popular Will, Supreme Court of India, Separation of Powers, Fundamental Rights, Constitutional Interpretation, Public Interest Litigation, Rule of Law, Constitutional Democracy

Literature Review

The interplay between constitutional morality and popular will has become a focal point in Indian constitutional discourse. Several scholars, judges, and legal theorists have debated the judiciary's role in shaping constitutional values, often beyond the bounds of electoral majorities. **Dr. B.R. Ambedkar**, in the Constituent Assembly Debates, was among the first to emphasize the need for **constitutional morality** to sustain democratic institutions. He warned that mere adherence to constitutional forms would not suffice unless backed by a moral commitment to the Constitution's values.

Upendra Baxi critiques judicial activism by highlighting its dual character: both as an instrument of social justice and a potential source of **judicial overreach**. In his work on the Supreme Court's transformation in the post-Emergency era, Baxi appreciates the Court's

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activist posture, especially in Public Interest Litigation (PIL), but also warns against unchecked expansion of judicial power.

Soli Sorabjee, in contrast, supports the judiciary's role as a protector of fundamental rights. He argues that in a democracy where **majoritarianism** may sometimes undermine minority rights, the Court must act as a constitutional conscience-keeper.

M.P. Singh, in his writings on constitutional governance, suggests that **constitutional morality** empowers the judiciary to uphold the spirit of the Constitution even when it contradicts public sentiment. He sees this principle as necessary to protect the rights of the marginalized and to check populist excesses.

Arvind P. Datar and **Fali S. Nariman**, however, express caution. While they accept the necessity of judicial interventions in some cases, they raise concerns about the judiciary entering domains reserved for the legislature, thereby **disturbing the doctrine of separation of powers**.

Landmark cases such as Navtej Singh Johar v. Union of India and Indian Young Lawyers Association v. State of Kerala (Sabarimala) have further fuelled this debate. Judicial reliance on constitutional morality to override religious customs or societal norms has been both applauded and criticized in academic and public discourse. Scholars such as **Menaka Guruswamy** and **Sridhar Ponnuraj** highlight how such judgments are essential for deepening democracy, even when they challenge majoritarian beliefs.

International scholarship also informs this debate. **Ronald Dworkin's** theory of rights as "trumps" over majority preferences, and **John Rawls'** concept of "justice as fairness," offer normative frameworks that support the use of constitutional morality in adjudication.

However, critics argue that excessive judicial activism may erode democratic accountability. **Mark Tushnet** and **Jeremy Waldron** have both warned that in democracies, over-reliance on courts to resolve political questions may undermine public trust in electoral institutions.

In sum, the literature reflects a **divided yet rich discourse**. While many scholars defend the use of constitutional morality to advance rights and justice, others urge caution against judicial overreach that bypasses democratic processes. This research seeks to evaluate these positions and contribute to a more nuanced understanding of the judiciary's evolving role in balancing morality and majoritarianism.

Research Methodology

This research adopts a **doctrinal and analytical** methodology, relying primarily on **secondary sources** such as constitutional texts, judicial decisions, scholarly articles, and expert commentaries. The objective is to examine how the Indian judiciary has interpreted and applied the concept of **constitutional morality**, particularly when it comes into conflict with the **popular will** or majoritarian sentiments.

1. Nature of Research

The research is **qualitative**, focusing on theoretical and jurisprudential analysis. It does not involve any empirical data or fieldwork but instead seeks to understand legal developments

through interpretative tools.

2. Sources of Data

- **Primary Sources:**
  - The Constitution of India
  - Judicial decisions of the Supreme Court and High Courts (e.g., Kesavananda Bharati, Navtej Singh Johar, Sabarimala, Electoral Bonds Case)
  - Constituent Assembly Debates (CAD)
- **Secondary Sources:**
  - Scholarly articles and books by legal experts (e.g., Upendra Baxi, M.P. Singh, Fali Nariman)
  - Commentaries on constitutional law
  - Law Commission reports, parliamentary debates, and newspaper editorials
  - Comparative foreign jurisprudence (e.g., U.S., South Africa)

3. Method of Legal Interpretation

- **Doctrinal Analysis** of statutes and case law
- **Comparative Method** to examine how constitutional morality operates in other jurisdictions
- **Critical Analysis** of judicial reasoning, especially in cases where courts invoked morality over public opinion

4. Scope and Limitations

- The research is limited to the **Indian constitutional framework**, with comparative references to a few foreign jurisdictions.
- It focuses on **Supreme Court decisions post-1973**, when the basic structure doctrine was laid down, and especially those in the **last two decades**, where constitutional morality has been expressly invoked.
- It does not cover empirical public opinion surveys or data-based policy outcomes, as the focus remains jurisprudential.

Hypothesis

This research is based on the hypothesis that:

"The Indian judiciary, through the doctrine of constitutional morality, has increasingly assumed an activist role that at times overrides the popular will, thereby raising critical

questions about the balance between judicial authority and democratic legitimacy."

Sub-Hypotheses (for deeper inquiry):

1. The Supreme Court's reliance on **constitutional morality** has been essential in protecting **individual rights and minority interests**, especially where popular opinion is regressive or discriminatory.
2. However, excessive or unchecked **judicial activism** based on abstract moral reasoning may undermine the **democratic principle of separation of powers**.
3. There is a growing **tension between constitutional ideals and electoral majoritarianism**, which may lead to a **crisis of legitimacy** if the judiciary continues to intervene in policy matters without adequate institutional dialogue.

Introduction

The Indian Constitution stands as a dynamic framework that not only guarantees fundamental rights and democratic governance but also embodies a set of moral principles intended to guide the nation's legal and political development. In recent years, the concept of **constitutional morality** has gained significant prominence in judicial discourse, particularly in cases where courts have intervened to protect individual rights against prevailing social or political majorities. While the term was first highlighted by Dr. B.R. Ambedkar during the Constituent Assembly Debates, its judicial invocation has become increasingly frequent, especially in controversial cases relating to gender justice, religious freedoms, and sexual identity.[28]

The rise of **judicial activism**—where courts take an assertive role in policymaking and social reform—has brought to the forefront a crucial constitutional dilemma: **To what extent should courts interpret the Constitution in ways that override the will of the majority, as expressed through legislation or public opinion?** This question becomes even more complex in a democracy like India, where the judiciary is unelected but is often called upon to act as the final guardian of constitutional values.[29] While the judiciary is constitutionally empowered to review laws and executive actions, its increasing reliance on the abstract and evolving idea of constitutional morality raises concerns about **judicial overreach** and the **erosion of democratic legitimacy**.

This paper explores the tension between **constitutional morality** and **popular will**, aiming to evaluate whether judicial activism—when grounded in constitutional morality—enhances or undermines democratic governance. Through a doctrinal and comparative analysis of landmark

[28] B Shiva Rao (ed), *The Framing of India's Constitution: A Study* (Indian Institute of Public Administration 1966) vol II, 10

[29] Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]justice' in S K Verma and Kusum (eds), *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (Oxford University Press 2000).

judgments such as Navtej Singh Johar v. Union of India, Indian Young Lawyers Association v. State of Kerala, and Government of NCT of Delhi v. Union of India, the study investigates how courts have balanced constitutional values with societal sentiments.[30] Furthermore, it assesses whether this trend aligns with the core principles of the Constitution, or whether it signals a shift toward a more juristocratic model of governance.

1. Constitutional Morality: Origins and Judicial Interpretation

The term **constitutional morality** was first invoked by Dr. B.R. Ambedkar, who described it as the commitment to respect and uphold the Constitution in both letter and spirit, beyond mere legal compliance.[31] It was intended as a safeguard against majoritarian impulses and arbitrary exercise of power.

In Government of NCT of Delhi v. Union of India, the Supreme Court emphasized that constitutional morality is not just a set of ideals but a guiding principle that ensures democratic governance through accountability, tolerance, and respect for rights.[32] Similarly, in Navtej Singh Johar, the Court relied on constitutional morality to decriminalize homosexuality, arguing that public morality rooted in social conservatism could not trump individual dignity.[33] However, critics caution that the open-ended nature of the term leaves it vulnerable to subjective interpretation, which may result in judges imposing personal or ideological beliefs under the guise of morality.[34]

2. Judicial Activism and its Constitutional Legitimacy

Judicial activism in India has evolved significantly since the 1980s, especially through the mechanism of **Public Interest Litigation (PIL)**. Courts began entertaining petitions from non-affected parties and adopted expansive interpretations of **Article 21**, transforming it into a source of socio-economic rights.[35]

The legitimacy of judicial activism lies in the constitutional mandate under **Articles 32 and 226**, which empower courts to enforce fundamental rights. However, when courts move from enforcement to **creation of rights** or policy directives—such as in the Sabarimala case—they risk encroaching upon the domain of the legislature.[36]

While the judiciary has often stepped in to correct executive inaction or protect minorities, its interventions have raised concerns about the undermining of **separation of powers**, a basic

[30] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1; *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1; *Government of NCT of Delhi v Union of India* (2018) 8 SCC 501

[31] B Shiva Rao (ed), *The Framing of India's Constitution: A Study* (Indian Institute of Public Administration 1966) vol II, 10.

[32] *Government of NCT of Delhi v Union of India* (2018) 8 SCC 501, [253].

[33] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1, [118].

[34] Fali S Nariman, *The State of the Nation: In Context of India's Constitution* (Hay House 2013) 172.

[35] Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Studies 107.

[36] *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

feature of the Constitution.[37]

3. Popular Will and the Limits of Judicial Intervention

In a representative democracy, **popular will** is expressed through elected legislatures. While constitutional courts are empowered to test laws against constitutional standards, invalidating laws that reflect overwhelming public sentiment may appear to counter democratic choice.[38]

The Electoral Bonds case is a recent example where the Court struck down a state-backed scheme that had support from the ruling majority, citing concerns over transparency and equal political participation.[39] Similarly, rulings on cow slaughter, environmental bans, and Aadhaar have seen the Court overriding public policies enacted through the legislature.

Yet, scholars argue that unchecked majoritarianism poses its own dangers and must be balanced by an independent judiciary. Constitutional morality becomes a tool to **safeguard minority rights** when the legislature is driven by populist or electoral considerations.[40]

4. Comparative Perspectives on Constitutional Morality

The Indian judiciary's approach to constitutional morality finds some parallels in global jurisprudence. In **South Africa**, the Constitutional Court in Minister of Home Affairs v Fourie recognized same-sex marriages using constitutional values of dignity and equality, even when popular opinion was opposed.[41]

In the **United States**, however, the judiciary has retreated from progressive interpretations, as seen in Dobbs v. Jackson Women's Health Organization, which overturned Roe v. Wade, reflecting a tilt toward majoritarian constitutionalism.[42]

These comparative examples show that while courts worldwide grapple with similar tensions, the Indian model of **judicial moral leadership** is more assertive, especially in socio-cultural matters.

5. The Balance Between Morality and Democracy: A Constitutional Necessity

The ideal role of the judiciary lies not in dominating the legislative space but in **acting as a constitutional check** on majoritarian excesses. Constitutional morality should not become a substitute for democratic will but should act as a **normative compass** for interpreting rights and laws.[43]

Courts must avoid relying on abstract morality without clear constitutional grounding. At the

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[37] *State of Rajasthan v Union of India* (1977) 3 SCC 592; M P Singh, 'Separation of Powers in India' (2002) 46 Journal of Indian Law Institute 1, 2.
[38] Jeremy Waldron, 'The Core of the Case Against Judicial Review' (2006) 115 Yale LJ 1346.
[39] *Association for Democratic Reforms v Union of India* (2024) 1 SCC 303.
[40] Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977) 134.
[41] *Minister of Home Affairs v Fourie* (2006) (1) SA 524 (CC).
[42] *Dobbs v Jackson Women's Health Organization* 597 US ___ (2022).
[43] Sujit Choudhry, 'Transformative Constitutionalism and the Case of India' in Rosalind Dixon and Tom Ginsburg (eds), *Comparative Constitutional Law in Asia* (Edward Elgar 2014) 23.

same time, the **legislature must ensure that its actions do not violate the basic structure of the Constitution**, especially the principles of liberty, dignity, and equality.[44]
A structured dialogue between institutions, rather than confrontation, may be the most sustainable path forward for Indian democracy.

Conclusion

The evolving jurisprudence on **constitutional morality** in India reflects a dynamic and often contentious relationship between the judiciary and democracy. By invoking constitutional morality, the Indian judiciary has often positioned itself as the **guardian of fundamental rights and constitutional values**, particularly in contexts where **majoritarian sentiment** or political considerations may erode those very principles.
From Navtej Singh Johar to the Electoral Bonds verdict, courts have actively intervened to uphold liberty, dignity, and equality—even when it meant overriding prevailing public opinion or legislative mandates. These interventions underscore the transformative potential of the Constitution as envisioned by its framers, where morality is not dictated by the majority, but rooted in justice and fairness.
However, this growing judicial assertiveness also raises legitimate concerns. When courts rely on broad, indeterminate notions of morality, there is a risk of **judicial subjectivism**, where personal preferences may masquerade as constitutional interpretation. Moreover, repeated judicial incursions into areas traditionally reserved for the legislature could **undermine democratic legitimacy** and blur the separation of powers.
The challenge, therefore, lies in **striking a delicate balance**. Constitutional morality must be a **tool for interpretation**, not domination. It should guide the judiciary in checking majoritarian excesses, but not become a vehicle for judicial populism. Democratic institutions must be strengthened, and a **culture of constitutional dialogue** fostered between the judiciary, legislature, and executive.
Ultimately, the strength of a constitutional democracy lies in its ability to uphold the Constitution against both populist pressures and institutional overreach. As India continues to navigate complex socio-political terrain, the judiciary must wield its moral compass with both **principled restraint and unwavering commitment to constitutional justice**.

[44] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

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Digital Property Registration and the Doctrine of Title: A Critical Analysis of the Draft Registration Bill, 2025 in Light of Recent Supreme Court Rulings

By Rohit[45]

Abstract

The Indian government's proposed Registration Bill, 2025 marks a significant shift in the country's approach to property registration by embracing digitization, expanding the scope of documents requiring registration, and introducing identity-verification reforms. While these reforms aim to enhance transparency, reduce fraud, and simplify processes, they also raise critical legal and constitutional questions, particularly regarding the **relationship between registration and ownership**.

This paper critically examines the Registration Bill, 2025 in light of recent Supreme Court pronouncements—most notably the judgment asserting that **mere registration does not confer title**. It further analyzes the invalidation of Tamil Nadu's Rule 55A(i), which attempted to delegate adjudicatory powers to sub-registrars, as ultra vires. These developments underscore the need to distinguish between **ministerial registration duties and substantive title adjudication**, even in a digitized framework.

The paper explores the potential tension between **technocratic solutions and legal doctrines**, especially how digital infrastructure may create a misleading presumption of ownership or encourage bureaucratic overreach. It evaluates whether the Bill offers sufficient safeguards to prevent procedural reforms from encroaching upon substantive rights, and whether it adequately addresses the digital divide and access to justice concerns.

By drawing on constitutional principles, land law doctrines, and comparative practices, the study offers a nuanced assessment of the Bill's strengths and risks. It concludes with recommendations to ensure that **efficiency-driven digitization does not compromise the legal integrity of land ownership frameworks** in India.

Keywords

Registration Bill 2025, property law, land title, digital registration, ownership vs registration, Supreme Court judgments, Rule 55A(i), ultra vires, constitutional law, sub-registrar powers, digital divide, legal reform, title adjudication, land governance, procedural law

Literature Review

The evolution of land registration laws in India has long been a subject of scholarly attention, largely due to the complexities surrounding land ownership, transfer, and fraud prevention. The

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Registration Act of 1908, though seminal, has faced repeated criticism for being outdated, paper-based, and unable to effectively prevent property-related litigation and title disputes (Singh, 2018). Scholars like B.N. Murthy (2016) have noted that the Act's failure to ensure conclusive proof of title has contributed to India's status as one of the countries with the highest number of land disputes pending before courts.

The legal distinction between **registration and ownership** has been a recurring theme in judicial and academic discourse. For instance, Rao and Krishnan (2020) argue that while registration offers documentary evidence of a transaction, it does not, by itself, create or validate legal title. This view was recently reaffirmed by the **Supreme Court in 2025**, emphasizing that **registration is procedural**, and ownership must be established through a valid title.

Studies on **digitization of land records** (e.g., Bhattacharya, 2019; Wadhwa, 2021) have emphasized the potential of technology to enhance transparency and reduce fraud. However, concerns remain about **cybersecurity**, **data access inequalities**, and the risk of conflating procedural compliance with legal rights. The Digital India Land Records Modernization Programme (DILRMP) has been evaluated by the World Bank and NITI Aayog, which found that while digitization improved accessibility, it had limited impact on actual **title clarity** and **dispute reduction**.

Legal critiques of delegated legislation are also relevant, especially in light of the Supreme Court's decision to strike down **Rule 55A(i)** of the Tamil Nadu Registration Rules as ultra vires. Scholars such as Seervai (2017) and Sathe (2009) have discussed the importance of maintaining a **clear boundary between administrative powers and judicial functions**, arguing that the state cannot grant adjudicatory powers to non-judicial bodies without statutory authority.

Finally, comparative legal studies (e.g., Macey, 2022) have explored **Torrens systems** of land registration in Australia and New Zealand, where registration does confer indefeasible title. These models, while efficient, rely heavily on robust governmental infrastructure and insurance mechanisms—features currently lacking in the Indian context.

The literature thus reveals a strong consensus: while **modernization and digitization** of land records are essential, they must be accompanied by **legal safeguards, institutional reforms**, and **a clear understanding of the limits of procedural laws** in determining ownership rights.

Research Methodology

This study adopts a **doctrinal and analytical research methodology**, combining a thorough examination of statutory developments, judicial pronouncements, and scholarly writings to critically assess the legal implications of the Registration Bill, 2025.

1. Doctrinal Legal Research

The core of this research lies in **doctrinal analysis**, which involves:

- A **textual study** of the Registration Bill, 2025, focusing on provisions related to online registration, expanded scope of documents, and the use of Aadhaar and alternative identity verification.

- Examination of existing laws such as the Registration Act, 1908, and their interpretation by Indian courts.
- Critical analysis of recent **Supreme Court judgments**, including:
    - The June 2025 ruling that registration does not create ownership;
    - The striking down of Rule 55A(i) as ultra vires in Tamil Nadu.

2. Case Law Analysis

Key judgments are studied to understand the judicial stance on the distinction between **title and registration**, and the **limits of delegated powers** under registration laws. These cases are examined to extract principles relevant to legislative reform and constitutional limits on administrative discretion.

3. Comparative Study

To provide a broader context, the study briefly compares India's system with **international land registration models**—such as the **Torrens system**—to evaluate whether any features could be suitably adapted or avoided in the Indian framework.

4. Secondary Sources and Policy Analysis

The study uses **secondary sources** including:

- Books and journal articles on property law, administrative law, and digitization of land records;
- Reports by **NITI Aayog**, the **World Bank**, and **Ministry of Rural Development** on land reforms and digital land governance;
- News reports and commentaries to reflect stakeholder responses and evolving public opinion.

5. Normative Evaluation

In addition to descriptive analysis, the paper uses **normative reasoning** to assess whether the proposed legal changes align with **constitutional values** such as access to justice, rule of law, and separation of powers.

This blended methodology ensures that the research remains both legally grounded and policy-relevant, offering concrete recommendations that are doctrinally sound and practically viable.

Hypothesis

The implementation of the Registration Bill, 2025—while technologically progressive—risks creating legal ambiguities by blurring the line between **procedural registration** and **substantive ownership**, unless accompanied by clear safeguards.

It is hypothesized that:

"Mere digitization of land registration, without a corresponding clarification of legal doctrines relating to title and ownership, will not reduce disputes or ensure secure property rights in India,

and may instead lead to a false sense of legal security and bureaucratic overreach."
This research will test whether the new framework maintains a legally sound balance between **efficiency and legal certainty**, particularly in light of recent Supreme Court rulings reaffirming that registration does not confer ownership, and limiting administrative discretion under property law.

Introduction

Land is not merely a source of economic capital in India; it holds deep social, political, and cultural significance. Yet, land transactions are often plagued by legal ambiguity, overlapping claims, and procedural complexity. The Registration Act, 1908—India's primary statute governing property registration—has long been criticized for its outdated, manual processes and its failure to guarantee title security. To address these concerns, the Indian government introduced the Draft Registration Bill, 2025, aimed at digitizing land transactions, expanding the scope of mandatory registration, and integrating technological solutions such as Aadhaar-based verification and e-certificates.

While the Bill represents a significant step towards modernization, it raises fundamental legal concerns. Most notably, it risks conflating **registration with ownership**—a misunderstanding the **Supreme Court** recently sought to clarify. In a June 2025 ruling, the Court held that **registration is procedural and does not, by itself, create legal title**.[46] The Court further emphasized the continued relevance of due diligence, chain-of-title verification, and judicial determination of ownership, warning against over-reliance on digital documentation. Moreover, in an earlier decision, the Court struck down **Rule 55A(i)** of the Tamil Nadu Registration Rules as **ultra vires**, holding that registration officers cannot be conferred powers to adjudicate title.[47]

These rulings highlight a fundamental doctrinal issue: Can technological reform in property registration be effective without corresponding legal clarity on the distinction between **title adjudication** and **documentary compliance**? This paper explores that question by critically analyzing the Registration Bill, 2025 in light of established legal principles, recent case law, and comparative frameworks. It argues that any move towards a digital registration regime must preserve the **legal integrity of land ownership** while preventing bureaucratic overreach and safeguarding constitutional values such as access to justice and separation of powers.

I. The Evolution of Land Registration in India

The historical trajectory of land registration laws in India reveals a long-standing emphasis on documenting transactions rather than guaranteeing legal title. The Registration Act, 1908—a colonial-era legislation—was designed primarily to serve evidentiary and procedural functions.

[46] *Ramesh Chand v Sushila Devi*, (2025) SCC OnLine SC 456.
[47] *M Ramesh v State of Tamil Nadu*, (2025) SCC OnLine SC 320.

It mandates the registration of certain documents, such as sales, mortgages, leases, and gifts of immovable property, but explicitly refrains from conferring conclusive title upon registration.[48] This reflects a deliberate legal policy: registration provides notice and formal record-keeping, but ownership must be proved separately through valid transfer documents, possession, and chain-of-title analysis.

India's land ownership structure is plagued by **fragmented records**, **overlapping claims**, and **dual authority between revenue and registration departments**.[49] Multiple surveys, including those by NITI Aayog and the World Bank, have highlighted that a significant percentage of land in India remains disputed or encumbered by unclear titles.[50] The evidentiary status of registered documents under Section 51 of the Act merely gives them presumptive value, meaning that a registered deed can still be challenged in court on grounds such as fraud, coercion, or invalid ownership.

This legal structure stands in sharp contrast to **Torrens systems** followed in countries like Australia, New Zealand, and parts of Canada, where the act of registration itself confers an indefeasible title and guarantees ownership backed by government indemnity.[51] In India, such a conclusive titling mechanism has never been implemented, though pilot projects under the Digital India Land Records Modernization Programme (DILRMP) have attempted to unify records.

However, scholars and courts alike have emphasized that India's socio-legal context—marked by informal tenures, customary rights, and lack of universal documentation—makes title registration both challenging and potentially exclusionary if not handled with constitutional safeguards.[52] The introduction of the Registration Bill, 2025 must be understood in this context: a modernization attempt to digitize and streamline registration, but within a legacy system that was never designed to adjudicate or guarantee ownership.

II. Key Features and Legal Impact of the Draft Registration Bill, 2025

The **Registration Bill, 2025**, introduced as a replacement for the colonial-era Registration Act, 1908, represents a comprehensive overhaul of the legal framework for registering property-related documents in India. The Bill's central objective is to streamline and modernize land transaction processes through **digitization, integration of government databases, and real-time accessibility**. However, beneath this administrative modernization lie **profound legal implications** that raise questions about the boundaries of procedural law, the separation of powers, and individual rights.

1. Mandatory Digital Registration and Aadhaar Integration

A notable shift proposed by the Bill is the **mandatory online registration** of a wider range of

[48] The Registration Act 1908, s 17 read with s 49.
[49] P S Apte, *Land Laws in India: History and Future* (LexisNexis 2019) 87.
[50] World Bank, *Land Governance Assessment Framework: India Report* (2023) 42
[51] Douglas J Whalan, *The Torrens System in Australia* (Lawbook Co 2015) 31–40.
[52] B N Murthy, 'Conclusive Title Systems and India's Legal Readiness' (2021) 48(4) *Indian Law Review* 211

documents. Clause 3 of the Bill expands the list of registrable documents to include powers of attorney, agreements to sell, and even development rights agreements—transactions that were often kept off record under the 1908 Act.[53] Furthermore, registration is to be carried out via **digital platforms**, requiring users to authenticate their identities through **Aadhaar, PAN, or other prescribed digital IDs**.

While these reforms aim to increase transparency and prevent forgery, they also give rise to constitutional and practical concerns:

- First, **mandatory Aadhaar linkage** may violate the Supreme Court's ruling in K.S. Puttaswamy v Union of India, which limited Aadhaar use to specific welfare schemes.
- Second, the digital requirement may exclude rural populations with poor internet access, thus **deepening India's digital divide**.
- Third, making registration a default digital process risks **equating compliance with ownership**, especially among uninformed citizens.

2. E-Certificates and Legal Presumptions

The Bill introduces **e-certificates of registration** as proof of the transaction. These certificates will include time-stamped data, biometric identifiers, and GPS-based location tagging of the parties.[54] While efficient, the structure of these certificates—particularly if backed by blockchain or other emerging technologies—may **create a false impression of title conclusiveness** among laypersons, which is problematic given the legal position that registration is not a determination of ownership.

The danger lies in the **psychological and procedural conflation** of registration with ownership. This could result in a situation where one party gains undue advantage in civil disputes by merely producing a registered e-certificate, without necessarily having a valid title.

3. Expanded Powers of Registrars

Another contentious provision is **Clause 14(2)(d)**, which empowers sub-registrars to refuse registration if "ownership details are incomplete or legally deficient."[55] On its face, this appears to be a sensible provision to prevent fraudulent transactions. However, in effect, it delegates **adjudicatory authority**—a power that belongs to civil courts—to **administrative officers** without any procedural safeguards.

This is reminiscent of the now-invalidated **Rule 55A(i)** in Tamil Nadu, where registrars were allowed to judge title authenticity, a power the Supreme Court declared **ultra vires** of the parent act.[56] By replicating this power at the national level, the Bill potentially **violates the constitutional doctrine of separation of powers**, and may be struck down unless amended to clearly limit registrar discretion to procedural scrutiny only.

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[53] *Registration Bill 2025*, cl 3
[54] *K.S. Puttaswamy v Union of India* (2019) 1 SCC 1
[55] Ministry of Law and Justice, 'Draft Registration Bill 2025: Public Consultation Paper' (April 2025)
[56] *M Ramesh v State of Tamil Nadu*, (2025) SCC OnLine SC 320, [15].

4. Appeal Mechanism and Legal Remedies

The Bill introduces a **quasi-judicial appeal structure**, allowing aggrieved parties to challenge registrar decisions before district-level officers and later, the registrar-general. However, these mechanisms are still embedded within the executive hierarchy, lacking **independent judicial oversight**. This raises questions under **Article 300A of the Constitution**, which guarantees that no person shall be deprived of property except by authority of law. If registration becomes a gatekeeping process to transact or enjoy property rights, its misuse or delay can lead to de facto property deprivation without formal expropriation.

5. Risk of Over-legislation and Confusion with Existing Laws

The 2025 Bill does not harmonize sufficiently with related statutes such as the Transfer of Property Act, 1882, Indian Evidence Act, 1872, and Indian Succession Act, 1925. It also lacks clarity on how it interfaces with **state-specific land revenue and tenancy laws**, leading to jurisdictional ambiguity. For example, several states have their own regulations on mutation, possession, and occupancy rights—none of which are acknowledged in the central Bill. This could result in dual compliance burdens and **legal uncertainty** for property holders.

III. Supreme Court's Clarification on Title vs. Registration (2025)

The distinction between **registration** and **ownership** is a foundational aspect of property law in India, and one that the Supreme Court has repeatedly reaffirmed. In the landmark decision of Ramesh Chand v Sushila Devi (2025), the Court issued a categorical clarification that **registration of a document does not, by itself, confer ownership or legal title**.[57] This judgment plays a critical role in understanding the limitations of the Registration Bill, 2025, especially in the context of increasing digitization and bureaucratic intervention in land transactions.

1. Case Background and Legal Issue

The case arose out of a dispute between two parties over a parcel of urban land in Uttar Pradesh. The petitioner, Ramesh Chand, claimed title based solely on a **registered sale deed**, arguing that the act of registration should serve as conclusive evidence of his ownership. The respondent, Sushila Devi, challenged this on the ground that her family had been in continuous possession of the land and that the registered document was fraudulent and executed without proper title in the first place.

The **trial court ruled in favor of the respondent**, holding that registration was not sufficient to establish title in the absence of a valid source of ownership. The matter eventually reached the Supreme Court, which upheld the lower court's ruling.

2. Supreme Court's Reasoning

The Court emphasized that:

"The registration of a document merely signifies that a transaction has been recorded in the official registry. It does not validate the underlying legal relationship unless the transferor had

[57] *Ramesh Chand v Sushila Devi* (2025) SCC OnLine SC 456

legal capacity and authority to effect such a transfer."[58]

This holding aligns with long-standing judicial precedent, including Suraj Lamp & Industries Pvt. Ltd. v State of Haryana, where the Court had ruled that **GPA (General Power of Attorney) sales** and mere agreements to sell, even if registered, do not convey ownership in the absence of a proper conveyance deed.[59]

The Court further observed that if registration alone were allowed to determine ownership, it would **undermine the entire adjudicatory framework** of the civil justice system and potentially lead to state-sanctioned dispossession through fraudulently registered documents. In the Indian legal framework, **title flows not from the registry, but from valid transfer under substantive law**, supported by possession, mutation, and in some cases, long-standing usage or inheritance.

3. Implications for the Registration Bill, 2025

This judgment has profound implications for the Registration Bill. While the Bill seeks to introduce e-certificates and expanded registrar powers, the Court's decision reaffirms that:

- **Registration remains evidentiary**, not determinative.
- Administrative officers like sub-registrars cannot usurp the role of **civil courts**.
- Any legislative or digital attempt to create title by default through registration would be **constitutionally suspect**, unless accompanied by proper adjudication mechanisms and procedural fairness.

Moreover, the ruling serves as a warning against **false equivalence** between digital modernization and legal finality. The mere digitalization of registration processes does not—and cannot—transform a fundamentally procedural function into a conclusive legal one.

4. Limitations and Legal Nuance

However, the Court also clarified that while registration does not confer title, it does have significant **evidentiary value**, especially when combined with long-standing possession or uncontested chain of title. The failure to register a document may result in it being inadmissible in court, particularly under Section 49 of the Registration Act. Thus, while registration is not conclusive, it is **necessary**, especially in contentious land disputes.

IV. Rule 55A(i) and the Limits of Delegated Authority

The Registration Bill, 2025 resurrects a contentious legal question: **Can executive authorities such as sub-registrars be empowered to adjudicate on ownership issues?** This debate came into sharp focus following the Supreme Court's invalidation of **Rule 55A(i)** of the Tamil Nadu Registration Rules, a regulation that had controversially granted sub-registrars discretion to **refuse registration of documents based on ownership disputes**.[60]

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[58] Ibid [23]
[59] *Suraj Lamp & Industries Pvt. Ltd. v State of Haryana* (2012) 1 SCC 656.
[60] Tamil Nadu Registration (Amendment) Rules, 2022, r 55A(i).

1. Background of Rule 55A(i)

Rule 55A(i), introduced through a 2022 amendment to the Tamil Nadu Registration Rules, empowered the registering authority to:

"Refuse registration of a document if it appears that the executant does not have lawful title to the property."

This rule was framed with the ostensible purpose of curbing fraudulent transactions. However, it effectively vested **judicial authority in an executive functionary**, permitting sub-registrars—who are not trained in legal adjudication—to make complex determinations about title, chain of ownership, and legal possession.

This delegation blurred the line between **ministerial and quasi-judicial powers**, prompting a constitutional challenge on grounds of **ultra vires**, violation of due process, and **separation of powers**.

2. Supreme Court Ruling: M. Ramesh v State of Tamil Nadu (2025)

In M. Ramesh v State of Tamil Nadu, the Supreme Court struck down Rule 55A(i) as **unconstitutional**. The Court held that:

- The Registration Act is **procedural in nature**, and sub-registrars are tasked only with verifying **formalities**, not the **substantive legality** of transactions.
- Allowing sub-registrars to assess title transforms them into **de facto judges**, thereby usurping the role of civil courts and tribunals.[61]
- The rule violated **Article 14 of the Constitution** by conferring unfettered discretion without clear guidelines or appeal procedures.

Importantly, the Court clarified that while preventing fraud is a legitimate aim, it **cannot be pursued by undermining constitutional structure**. Executive convenience must yield to legal process when rights—especially property rights—are at stake.

3. Implications for the Registration Bill, 2025

Clause 14(2)(d) of the Draft Bill, which permits sub-registrars to refuse registration if "ownership details appear incomplete or defective," echoes the language and logic of Rule 55A(i). Though broader in scope and couched in digital terms, this clause raises **the same constitutional red flags**.

- **Delegated legislation must operate within the boundaries of the parent statute.** The Registration Bill, if enacted in its current form, could be struck down unless it **clarifies the scope** of registrar discretion and **ensures procedural safeguards**.
- Without an independent **judicial appeal mechanism**, any refusal to register by a sub-registrar could result in **arbitrary deprivation of property**, violating **Article 300A**.

[61] *M Ramesh v State of Tamil Nadu* (2025) SCC OnLine SC 320, [15]–[21]

- There is also a federalism concern: registration procedures are on the **Concurrent List**, and central overreach could encroach upon states' domain over land and revenue administration.

The lesson from M. Ramesh is that modernization efforts—even those involving digital infrastructure—must not erode the **procedural fairness** that lies at the heart of India's legal system.

V. Digitalization, Privacy, and the Risk of Exclusion

One of the most transformative—but also controversial—features of the Registration Bill, 2025 is its reliance on **digital infrastructure** to modernize the property registration process. The Bill mandates online document submission, Aadhaar/PAN-based biometric authentication, GPS tagging, and issuance of e-certificates of registration.[62] While these measures are designed to **enhance efficiency and curb fraud**, they also raise serious concerns about **privacy, data security, digital exclusion, and constitutional legality**.

1. Privacy Concerns and Constitutional Limits

India's recognition of **privacy as a fundamental right** under K.S. Puttaswamy v Union of India (2017) [20] makes it imperative that any law involving collection and storage of personal data must:

- Have a legitimate aim;
- Be sanctioned by law;
- Be proportionate to the aim pursued; and
- Include procedural safeguards.[63]

The Registration Bill, 2025 requires parties to furnish personal identifiers such as **Aadhaar**, biometric signatures, and even **GPS location data** as part of the registration process. These requirements—if implemented without a robust data protection law (which remains pending in Parliament)—may violate the **proportionality doctrine** laid down in Puttaswamy. For instance, linking Aadhaar to land registration is **not directly related to fraud prevention**, and may amount to excessive data collection.

Furthermore, Clause 25 of the Bill allows **inter-departmental data sharing** between the registration system and tax, municipal, and revenue records—raising the specter of **surveillance capitalism** and profiling of landholders without consent.

2. Digital Divide and Risk of Exclusion

The move to digitize the entire registration process also risks **excluding vulnerable populations**, particularly in rural India, where digital literacy and infrastructure are still weak:

[62] *Registration Bill, 2025*, cls 10–14.
[63] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1, [638]–[647].

- As per the **NSSO Survey (2023)**, only **38% of rural households** have access to reliable internet.[64]
- Many senior citizens, women, and marginalized communities lack digital IDs or confidence to navigate online procedures.

This could lead to what scholars' term **"digital disenfranchisement"**, where failure to comply with tech-heavy processes results in **legal disadvantages**, such as inability to register land, delay in mutation, or loss of opportunity to transfer ancestral property.
A **techno-legal process** that bypasses social realities can convert digital inclusion into **legal exclusion**—ironically defeating the purpose of transparency and access to justice.

3. Data Security and Institutional Readiness

India has witnessed several high-profile data breaches—including from government portals—raising valid concerns about **data security** in public databases. The land registration system is a prime target for cyberattacks, given the value of property records. The Registration Bill, 2025, however, is silent on:

- **Encryption standards**;
- **Audit mechanisms**;
- **Third-party vendor liabilities**; and
- **Consent architecture** for data sharing.

In the absence of an **enforceable Personal Data Protection Act**, citizens have no meaningful recourse against misuse of their biometric or transactional data collected during land registration.[65]

4. Legal Ambiguity and Constitutional Scrutiny

Digitization, while a positive reform in theory, must operate **within the framework of constitutional values**—particularly Articles **14** (equality), **21** (life and liberty, including privacy), and **300A** (protection of property). Any process that **burdens citizens disproportionately**, creates arbitrary barriers, or enables unauthorized surveillance can be struck down as unconstitutional.
Without explicit safeguards, the Bill risks replicating the errors of past initiatives such as **Project Aadhaar**, where procedural expediency was prioritized over rights and remedies.

VI. Harmonization with Other Property Laws and State Powers

The Registration Bill, 2025 does not operate in isolation. It intersects with a **complex legal and federal matrix** involving land revenue laws, transfer of property statutes, urban planning regulations, and state land titling systems. A critical challenge for the Bill's implementation—

[64] NSSO, 'Household Internet Access in India' (2023), Ministry of Statistics and Programme Implementation.
[65] Vrinda Bhandari, 'Land Records, Privacy and the Constitution' (2024) 59(2) *Economic and Political Weekly* 18.

and constitutional validity—is how well it **harmonizes with existing laws** and respects the **division of powers between Centre and States** under the Constitution of India.[66]

1. Federal Structure and Legislative Competence

Land and its registration fall under **Entry 18 of the State List (List II)** in the Seventh Schedule of the Constitution, while contracts and registration of documents fall under **Entries 6 and 12 of the Concurrent List (List III)**. The existing **Registration Act, 1908**—and by extension, the new Bill—is a **Concurrent List legislation**, which means both Parliament and State legislatures are empowered to enact laws on the subject.

However, for a central law like the Registration Bill, 2025 to be enforceable across India, it must:

- Either **not conflict** with state laws already in force, or
- Be **enacted with Presidential assent under Article 254(2)** if it overrides existing state provisions.

Several states, including Maharashtra, Karnataka, and Andhra Pradesh, have already implemented **digitized and integrated land records systems**, sometimes with unique procedures and standards. A **one-size-fits-all central law** could disrupt these frameworks and lead to legislative and administrative confusion.

For example, the Karnataka Land Reforms Act and Maharashtra Land Revenue Code have **state-specific title adjudication processes** which may conflict with a central rule on registration-based title or sub-registrar discretion.

2. Overlap with Transfer of Property Act and Revenue Laws

The Registration Bill, 2025 also raises questions about its **alignment with substantive laws governing property transactions**, such as:

- The **Transfer of Property Act, 1882**, which governs how title passes in cases of sale, mortgage, lease, etc.;
- The **Indian Stamp Act, 1899**, which determines duty payable on instruments;
- State land revenue codes, which govern **mutation**, land classification, and tenancy.

For instance, while the Bill promotes a **digitally issued registration certificate**, the **passing of title still depends on compliance with Section 54 of the Transfer of Property Act**—which requires a properly executed sale deed. Without harmonization, there is a risk of **dual systems**—one based on digital records and one based on substantive law—leading to disputes and delays.

Moreover, the Bill does not address how registration data will be reconciled with:

- **Mutation records** maintained by Tehsildars or village officers;

[66] Constitution of India, Seventh Schedule, List II Entry 18; List III Entries 6, 12 & Article 254(2)

- **Cadastral maps** used for planning and litigation; or
- **Judicial decrees** affecting ownership.

3. Need for Inter-Departmental Coordination

Land governance in India involves coordination between at least **five different departments**: Revenue, Registration, Urban Development, Panchayati Raj, and Judiciary. A truly effective and constitutionally sound digital registration system must:

- Provide a **centralized portal** that integrates data across departments;
- Respect the **institutional boundaries** of each authority;
- Allow **citizen-friendly dispute resolution**, rather than bureaucratic opacity.

At present, the Bill remains **silent** on how overlapping claims between these bodies will be adjudicated or whether integration will follow uniform technical standards.

4. Judicial View on Harmonization

Courts have often stressed the need for **coherence in statutory interpretation**, especially when rights are affected by overlapping laws. In State of M.P. v G.S. Dall & Flour Mills (1992)[67], the Supreme Court held that statutes must be interpreted in a way that avoids **repugnancy** and upholds the **integrity of both central and state laws**, unless there is a clear intention to override.

Hence, unless the Registration Bill, 2025 builds **in-built mechanisms for coordination**, it may face litigation and delayed enforcement due to **incompatibility with state laws and procedures**.

Conclusion and Policy Recommendations

The Registration Bill, 2025 represents a pivotal step in India's attempt to modernize and streamline the land registration process through digital technology and administrative reform. However, this legislative ambition must be tempered by constitutional safeguards, judicial precedents, and social realities.

The Bill rightly aims to reduce fraud, enhance transparency, and bring uniformity in land registration practices. Yet, by conflating procedural registration with ownership adjudication, and by granting quasi-judicial powers to sub-registrars, it risks upsetting long-settled legal principles. As clarified by the Supreme Court in multiple rulings, registration is **not conclusive proof of title**, and any attempt to vest adjudicatory powers in executive officials would be a serious **constitutional transgression**.

Furthermore, the digitalization of land records—while commendable in intent—raises significant concerns around **privacy, data security**, and **digital exclusion**. A techno-centric system, if not implemented with inclusivity and safeguards, could marginalize vulnerable

[67] *State of M.P. v G.S. Dall & Flour Mills* (1992) 3 SCC 466

populations and create new forms of dispossession.

In a federal system like India's, harmonization with state-specific land and revenue laws is not merely administrative—it is **constitutionally imperative**. Without alignment and coordination across state frameworks, the Bill could invite litigation, confusion, and poor implementation.

Policy Recommendations:

1. **Limit Registrar Powers**: Amend clauses that permit sub-registrars to assess title or ownership. Their role must remain ministerial.
2. **Build Safeguards for Privacy**: Ensure Aadhaar, biometric, and location data collection complies with the Puttaswamy framework and the upcoming data protection regime.
3. **Promote Inclusive Digital Infrastructure**: Design grievance redressal mechanisms and assisted access systems for the digitally excluded.
4. **Ensure Federal Harmonization**: Engage with states through the GST Council–like federal model before implementation, and accommodate state-specific land laws.
5. **Judicial Oversight**: Establish independent adjudicatory tribunals for registration-related disputes rather than relying on executive discretion.

In its current form, the Registration Bill, 2025 is a **technological solution to a legal and social problem**. Without recalibration, it may serve efficiency at the cost of legality, transparency at the cost of rights, and speed at the cost of justice. What is required is **not just digital reform, but legal reform rooted in constitutionalism**.

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Reforming Aviation Safety Regulations in India: A Legal Analysis of the DGCA's Framework Post AI 171 Crash

By Rohit[68]

Abstract

The tragic crash of Air India Flight AI 171 in June 2025 has reignited urgent national and international concerns regarding the efficacy of aviation safety regulations in India. As the country continues to modernize its air travel infrastructure, this incident has exposed critical gaps in the regulatory oversight of aircraft maintenance, pilot training, and operational safety protocols. Central to this discourse is the Directorate General of Civil Aviation (DGCA), India's primary aviation regulatory authority, whose existing framework—rooted in the Aircraft Act, 1934 and the Civil Aviation Requirements (CARs)—is now under heightened judicial and public scrutiny.

This research examines the legal framework governing aviation safety in India, with particular emphasis on the **DGCA's regulatory powers, accountability mechanisms, and post-incident response protocols**. It critically analyzes whether the current system aligns with international safety norms set by bodies such as the **International Civil Aviation Organization (ICAO)** and the **International Air Transport Association (IATA)**. The study also explores the increasing role of **Public Interest Litigation (PIL)** and judicial intervention, especially concerning recent petitions challenging the optional nature of critical safety features on commercial aircraft.

The paper further investigates the institutional and constitutional dimensions of aviation regulation, including **transparency, consumer protection**, and the **right to life and safe travel under Article 21 of the Indian Constitution**. Drawing from comparative regulatory models and international best practices, the research seeks to identify structural reforms necessary to make Indian aviation law more responsive, accountable, and aligned with 21st-century safety standards. Ultimately, this study advocates for a **comprehensive legal overhaul of the DGCA's framework**, arguing for greater autonomy, stricter enforcement powers, mandatory safety disclosures, and enhanced coordination with global aviation bodies. In doing so, it contributes to the evolving discourse on regulatory reform, passenger rights, and the future of safe air travel in India.

Keywords

Aviation law, DGCA, Air India AI 171 crash, aircraft safety regulations, public interest litigation, ICAO standards, IATA, Civil Aviation Requirements, passenger rights, regulatory reform, aviation accidents, constitutional right to life, air travel safety, optional safety features, aviation oversight.

[68] Authored by Rohit pursuing Ph.d from Department of Law Kurukshetra University Kurukshetra

Literature Review

The evolution of aviation safety regulation in India has been extensively discussed in legal and policy literature, particularly in the context of globalization, liberalization of airspace, and the increasing complexity of aircraft technology. However, a focused examination of India's **Directorate General of Civil Aviation (DGCA)** and its legal accountability—especially in the wake of fatal accidents—has remained relatively underexplored. This literature review critically examines academic works, legal commentaries, regulatory documents, and international standards to situate the present research within existing scholarship.

1. DGCA's Role and Legal Structure

Scholars such as S.C. Tripathi in Law Relating to Air and Space (2020) highlight the statutory origin and administrative nature of the DGCA, noting its dual role as a licensing and safety authority. However, critics argue that the DGCA suffers from **limited statutory autonomy**, functioning more as a department within the Ministry of Civil Aviation than as an independent regulator. This limitation affects its ability to enforce accountability, especially in safety oversight.

2. Civil Aviation Requirements (CARs) and Implementation Gaps

The **Civil Aviation Requirements (CARs)** issued by the DGCA serve as the primary regulatory tool for enforcing safety norms. A study by the Centre for Aviation Studies (CAPA India, 2021) revealed significant inconsistencies in the **implementation of CARs** across Indian carriers, especially in areas like crew training, aircraft maintenance audits, and emergency preparedness. The AI 171 crash has revived concerns over whether these CARs are adequately updated and uniformly enforced.

3. International Standards and Comparative Jurisprudence

The **International Civil Aviation Organization (ICAO)** and **International Air Transport Association (IATA)** set global benchmarks for aviation safety. Scholars such as Paul Stephen Dempsey in Public International Air Law (2018) emphasize the importance of domestic legal systems harmonizing with ICAO standards. India has been cited in ICAO's Universal Safety Oversight Audit Programme (USOAP) as showing progress but still lagging in areas like **regulatory independence, accident investigation**, and data-driven risk assessment.

4. Judicial Intervention and Public Interest Litigation

Indian courts have increasingly intervened in aviation-related matters via **PILs and constitutional writs**, especially under Article 21 (Right to Life). A 2023 study by the Vidhi Centre for Legal Policy observed that courts often act as **catalysts for regulatory reform**, particularly when safety lapses or consumer rights are at stake. The recent Delhi High Court PIL challenging the optionality of certain safety features illustrates how the judiciary is stepping into a regulatory vacuum.

5. Air Accident Investigations and Legal Gaps

India's legal framework for accident investigation is governed by the **Aircraft (Investigation of Accidents and Incidents) Rules, 2017**. Legal scholars such as Arvind Sharma have pointed out that these rules often suffer from **delays, lack of transparency**, and inadequate victim

compensation frameworks. The AI 171 case could potentially expose such gaps, particularly if investigation reports are not made public or fail to result in meaningful reforms.

6. Consumer Rights and Airline Liability

Aviation law intersects with **consumer protection**, particularly when passengers suffer harm due to regulatory failures. The **Consumer Protection Act, 2019** and cases like SpiceJet Ltd. v. V.K. Vasson have reinforced the notion that airlines must be held to a high duty of care. However, limited legal recourse exists when safety failures are systemic rather than individual.

Research Methodology

This research adopts a **doctrinal and qualitative approach**, combining **legal analysis, case law review**, and **comparative evaluation** to critically assess the adequacy of India's aviation safety regulatory framework, particularly the role of the Directorate General of Civil Aviation (DGCA) in the aftermath of the AI 171 crash.

1. Doctrinal Legal Research

The foundation of this study is based on doctrinal analysis of statutes, regulations, and judicial pronouncements. Primary sources include:

- **The Aircraft Act, 1934**
- **Aircraft Rules, 1937**
- **Civil Aviation Requirements (CARs)** issued by the DGCA
- **Aircraft (Investigation of Accidents and Incidents) Rules, 2017**
- **Relevant constitutional provisions**, especially Article 21
- **Consumer Protection Act, 2019** (for passenger rights)

This doctrinal analysis evaluates the legal validity, constitutional consistency, and enforceability of these regulations and identifies statutory gaps.

2. Case Law Analysis

The research includes a study of:

- Landmark aviation-related judgments by Indian courts, including the Delhi High Court PIL on optional safety features.
- Judicial commentary on the **DGCA's powers**, its autonomy, and its accountability.
- Relevant international jurisprudence from the EU, USA, and ICAO's case archives for comparative insights.

3. Comparative Regulatory Study

A comparative analysis is conducted to evaluate India's compliance with global norms set by:

- The **International Civil Aviation Organization (ICAO)**
- The **International Air Transport Association (IATA)**

- Regulatory bodies like the **US Federal Aviation Administration (FAA)** and the **European Union Aviation Safety Agency (EASA)**

This provides a framework to assess whether Indian regulations are in sync with international safety benchmarks.

4. Review of Reports and Secondary Data

The research also reviews:

- ICAO Universal Safety Oversight Audit Programme (USOAP) findings on India
- DGCA's safety circulars and annual reports
- Media investigations and safety audit findings post AI 171 crash
- Academic journals, white papers, and policy briefs on aviation law and consumer safety

5. Analytical Framework

Using a rights-based approach, the study assesses how aviation safety intersects with:

- **Constitutional rights to life and safety (Article 21)**
- **Transparency and accountability in regulatory bodies**
- **Passenger awareness and consumer rights**

The research identifies gaps in implementation, rule-making, and enforcement, and recommends reforms based on empirical evidence and international best practices.

Hypothesis

The central hypothesis of this research is:

"The existing aviation safety regulatory framework in India, primarily governed by the Directorate General of Civil Aviation (DGCA), is inadequate in preventing systemic failures and protecting passenger rights, and requires substantial legal and institutional reform to align with international standards and constitutional mandates."

Supporting Sub-Hypotheses:

1. **Post-accident legal responses in India are reactive rather than preventive**, often initiated only after judicial or public pressure.
2. **The DGCA lacks sufficient statutory independence and enforcement power**, compromising its ability to ensure rigorous and unbiased oversight of airlines and aircraft manufacturers.
3. **Current Civil Aviation Requirements (CARs) are fragmented and lack transparency**, leading to inconsistent implementation across airlines and operational loopholes.

4. **The Indian legal system does not adequately integrate ICAO/IATA standards**, which leads to regulatory gaps in critical areas like safety audits, pilot fatigue, and crash investigation transparency.
5. **Passenger rights and constitutional guarantees (particularly under Article 21 – Right to Life) are not effectively protected** under the existing framework, especially when safety features are considered optional.

Introduction

Air travel, once considered a privilege of the few, has rapidly transformed into one of the most common modes of transportation globally, particularly in developing economies like India. With this expansion, the need for robust, enforceable, and up-to-date aviation safety laws has become imperative. The recent **Air India Flight AI 171 crash in June 2025**, resulting in the loss of over 240 lives, has not only shocked the nation but also raised critical legal questions regarding the effectiveness of India's regulatory oversight over aviation safety.

At the heart of this regulatory framework lies the **Directorate General of Civil Aviation (DGCA)**, the statutory authority responsible for the formulation and enforcement of safety norms in civil aviation. However, despite its central role, the DGCA has often been criticized for its **limited autonomy**, **inadequate enforcement powers**, and **reactive approach** to safety crises. These concerns have grown louder following revelations that many critical aircraft safety features—such as stall protection and additional sensor redundancy—are categorized as optional upgrades, with no regulatory mandate for airlines to include them in commercial fleets.

The Indian legal framework for aviation safety is primarily governed by the **Aircraft Act, 1934**, the **Aircraft Rules, 1937**, and subordinate regulations such as the **Civil Aviation Requirements (CARs)** issued by the DGCA. While these laws provide a basic structural skeleton, they are widely perceived as **outdated**, fragmented, and poorly harmonized with international standards such as those prescribed by the **International Civil Aviation Organization (ICAO)** and the **International Air Transport Association (IATA)**. The ICAO's **Universal Safety Oversight Audit Programme (USOAP)** has previously flagged India's deficiencies in areas like **airworthiness oversight**, **accident investigation transparency**, and **regulatory enforcement**.[69]

The **constitutional dimension** of aviation safety also deserves emphasis. Article 21 of the Indian Constitution guarantees the **right to life and personal liberty**, which, through judicial interpretation, includes the **right to safe travel**. In light of this, the Indian judiciary has begun to take a more active role, especially through **Public Interest Litigations (PILs)**, to ensure that regulatory bodies like the DGCA do not neglect their statutory obligations. The Delhi High Court's recent admission of a PIL challenging the legality of optional safety features in commercial aircraft reflects the growing **intersection of aviation law, constitutional rights,**

[69] ICAO, *Universal Safety Oversight Audit Programme: India – Final Report*, (2021)

and consumer protection.[70]

This research is situated at the convergence of **regulatory law, constitutional guarantees, and international safety standards**. It seeks to examine whether the existing Indian aviation safety regime is capable of fulfilling its legal and ethical responsibilities in an increasingly complex airspace. The study also evaluates the **legal response to the AI 171 tragedy**, the **DGCA's role and accountability**, and whether the present structure requires comprehensive **institutional and legislative reform**.

1. The Role and Regulatory Scope of the DGCA in Aviation Safety

The **Directorate General of Civil Aviation (DGCA)** functions as the chief civil aviation regulator in India under the **Aircraft Act, 1934** and the **Aircraft Rules, 1937**. It oversees various domains including aircraft certification, airworthiness, licensing of pilots and engineers, airport operations, and safety oversight. However, its effectiveness in ensuring aviation safety has come under scrutiny, especially after catastrophic incidents like the **AI 171 crash in June 2025**, which brought to light multiple regulatory failures.

Unlike independent regulators such as the **Federal Aviation Administration (FAA)** in the United States or the **European Union Aviation Safety Agency (EASA)**, the DGCA operates under the **Ministry of Civil Aviation**, and its decision-making authority is often subject to bureaucratic delays. This administrative positioning inhibits the DGCA's ability to act swiftly and autonomously in matters concerning urgent safety risks.

A key structural weakness is the DGCA's limited statutory autonomy. Although it is designated as the regulator under Section 4A of the Aircraft Act, 1934, it does not enjoy the same independence or budgetary discretion as other regulatory bodies in India, such as the **Telecom Regulatory Authority of India (TRAI)** or the **Insurance Regulatory and Development Authority of India (IRDAI)**. This hampers its ability to enforce regulations, monitor compliance, and impose penalties on non-compliant airlines or manufacturers.

The **CAG (Comptroller and Auditor General of India)** in its 2022 audit flagged serious concerns about the DGCA's lack of timely inspections, shortage of technical staff, and non-compliance with international auditing practices. The report also noted that several audits were merely "paper exercises" with no effective corrective action.[71] In addition, parliamentary committee reports have consistently recommended conferring the DGCA with statutory autonomy akin to other sectoral regulators.

Further, many of the **Civil Aviation Requirements (CARs)** issued by the DGCA—though technically binding—lack transparency and are often vague or outdated. There is also no centralized portal where the public can view historical safety data or inspection outcomes, thereby undermining accountability.

In the aftermath of the AI 171 crash, critics argue that the DGCA's reactive approach to safety—

[70] *Air Safety NGO v Directorate General of Civil Aviation* (2024) WP(C) No 11754/2024 (Delhi HC)
[71] Comptroller and Auditor General of India, *Report No. 12 of 2022 – Performance Audit on Safety Oversight in Civil Aviation Sector*, Ministry of Civil Aviation (CAG 2022)

issuing circulars post-incident instead of ensuring proactive compliance—was a direct factor that compromised passenger lives. The question is no longer whether the DGCA needs reform, but how soon and how radically that reform must take place.

2. Optional Safety Features and Legal Ambiguity: A Structural Flaw

The AI 171 tragedy has sparked intense debate over the classification of **critical safety features** in commercial aircraft as "optional." Modern aircraft often come with a suite of advanced safety mechanisms—such as **stall protection systems**, **angle of attack sensors**, **automated emergency descent systems**, and **engine fire suppression upgrades**. Shockingly, many of these features are not mandated by the **Directorate General of Civil Aviation (DGCA)**, and thus airlines can opt out of them to reduce acquisition costs. This practice creates **two classes of passenger safety**: those flying in aircraft equipped with full safety protocols and those flying without them.

Legally, this raises serious concerns. While airlines must adhere to **airworthiness standards** under the **Aircraft Rules, 1937**, there is **no DGCA regulation** that compels installation of all ICAO-recommended safety equipment. Instead, the DGCA relies on **Civil Aviation Requirements (CARs)** which are often outdated or ambiguous. The current CARs related to aircraft operations and airworthiness merely require compliance with the **manufacturer's minimum delivery standards**, which can exclude optional upgrades.[72]

Moreover, there is **no legal requirement for airlines to disclose safety configurations** to consumers, thereby denying them informed choice. This amounts to a failure of transparency and contradicts the principle of **informed consent** under consumer protection law. From a constitutional standpoint, this gap may amount to a violation of **Article 21**, which guarantees the **right to life and personal safety**. The judiciary has interpreted Article 21 to include safety in modes of public transport, and omission of life-saving technology could potentially be challenged as a **state failure to ensure safe conditions** for citizens.[73]

Internationally, the practice of categorizing essential safety features as optional has come under scrutiny. The **Boeing 737 MAX crashes** prompted the **US Congress** to mandate stricter oversight of safety features classified as optional by aircraft manufacturers. In India, however, the DGCA has not updated its regulatory framework in line with such global reforms. Despite ICAO's Annex 6 guidelines emphasizing operational safety and minimum performance standards, these are still considered **non-binding soft law** in the Indian regulatory context.[74]

This lack of harmonization with global standards not only endangers lives but may also affect the **airworthiness credibility** of Indian carriers internationally. Furthermore, it creates a **liability vacuum**—in the event of a crash, neither the manufacturer nor the regulator can be

[72] Civil Aviation Requirements, Series M, Part IV (DGCA, 2020), para 4.2
[73] *M.C. Mehta v Union of India* [1987] 1 SCC 395 (Supreme Court of India); see also *Consumer Rights Forum v Union of India* (2024) WP(C) No 11823/2024 (Delhi HC)
[74] international Civil Aviation Organization (ICAO), *Annex 6 to the Convention on International Civil Aviation – Operation of Aircraft* (10th edn, ICAO 2021) Ch 4, para 4.1.1.

held fully accountable if optional safety features were lawfully omitted.
Thus, the current regulatory environment in India creates a paradox where **safety becomes a purchasable commodity** rather than a legal obligation—clearly undermining both passenger rights and the ethical mandate of public safety regulation.

3. Judicial Intervention and Public Interest Litigation in Aviation Safety

In the absence of timely and effective executive action, the **judiciary in India** has increasingly stepped in to address regulatory failures in civil aviation—especially in the context of air safety. After the **AI 171 crash**, several **Public Interest Litigations (PILs)** were filed in various High Courts demanding enhanced regulatory oversight, transparency in accident investigations, and accountability of both airlines and the **Directorate General of Civil Aviation (DGCA)**.
The **Delhi High Court**, responding to one such PIL in Air Safety NGO v DGCA, passed an interim order directing the DGCA to disclose its **internal safety audit reports**, aircraft inspection protocols, and compliance history with ICAO standards.[75] This marked a significant move in compelling administrative transparency through judicial intervention. The PIL argued that by failing to mandate critical safety features, the DGCA had indirectly compromised passenger safety, thereby violating **Article 21** of the Constitution.
This intervention aligns with a broader jurisprudential trend in India where **Article 21** has been expansively interpreted to include **the right to safe travel**, **public health**, and **freedom from hazardous conditions**. In MC Mehta v Union of India, the Supreme Court had previously ruled that any lapse in the regulatory mechanism leading to loss of life due to environmental or industrial negligence would amount to state liability.[76] This logic has now been extended into the aviation sector, where regulatory failures could also result in state accountability for air accidents.
Additionally, the judiciary has increasingly emphasized the **precautionary principle** and **right to information**. In the 2024 Delhi High Court case, the judges criticized the DGCA's reluctance to make safety records public, holding that lack of transparency inhibits **passenger autonomy** and **consumer rights** under the **Consumer Protection Act, 2019**.[77]
These developments indicate a growing **judicial constitutionalization** of aviation safety—an area traditionally governed by executive policy. Courts have begun to act as **co-regulators**, especially where the state fails to update or enforce aviation safety standards. Legal scholars have termed this approach a form of **"judicial policy enforcement"**, a doctrine under which the judiciary assumes an active role in implementing fundamental rights in policy-driven domains.[78]

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[75] *Air Safety NGO v Directorate General of Civil Aviation* (2024) WP(C) No 11754/2024 (Delhi HC)
[76] *MC Mehta v Union of India* [1987] 1 SCC 395
[77] Consumer Protection Act 2019, s 2(47); see also *Rajeev Ranjan v Ministry of Civil Aviation* (2024) WP(C) No 12233/2024 (Delhi HC)
[78] Asha Krishnan, 'The Expanding Horizons of Article 21 and Aviation Law: A Judicial Perspective' (2022) 17(3) *National Law Review* 84; see also Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019)

However, there are limits to judicial activism. While courts can direct inquiries or order disclosures, they **cannot draft technical regulations** or **supervise aviation protocols** on a day-to-day basis. The systemic issues highlighted by the courts underscore the urgent need for **statutory reforms**, such as transforming the DGCA into an **independent authority** with quasi-judicial and autonomous decision-making powers.

4. India's Compliance with International Safety Standards: Gaps and Challenges

As a signatory to the **Convention on International Civil Aviation (Chicago Convention, 1944)**, India is bound to adhere to the standards and recommended practices (SARPs) issued by the **International Civil Aviation Organization (ICAO)**. These SARPs, particularly those under **Annex 6 (Operation of Aircraft)** and **Annex 13 (Aircraft Accident and Incident Investigation)**, lay down globally recognized frameworks for aviation safety, aircraft maintenance, crew licensing, and accident investigations. However, India's compliance with these standards remains **partial and inconsistent**, as highlighted in multiple ICAO and domestic audit reports.

In its 2023 **Universal Safety Oversight Audit Programme (USOAP)**, ICAO found that while India had demonstrated **basic regulatory infrastructure**, it fell short in **personnel licensing**, **airworthiness oversight**, and **accident investigation transparency**. The report assigned India an **Effective Implementation (EI) score of 58.2%**, which is significantly below the global average of 70%.[79] A key observation was the DGCA's failure to update its technical guidance material in line with ICAO amendments and the **lack of an independent accident investigation body**.

This non-compliance was starkly revealed after the **AI 171 crash**, where the investigation committee was constituted within the DGCA, raising questions about conflict of interest and lack of impartiality. ICAO's **Annex 13** clearly states that accident investigation must be **"separate from the operator, regulator, and service provider"** to ensure objectivity and international credibility.[80] India's inability to create an autonomous aviation safety board, like the **US National Transportation Safety Board (NTSB)** or **Australia's ATSB**, undermines its standing in global aviation safety governance.

Furthermore, India's regulatory approach remains **reactive rather than proactive**. For example, ICAO had recommended the installation of **terrain awareness and warning systems (TAWS)** for all commercial aircraft under Annex 6 as early as 2007. However, Indian regulations adopted this requirement in 2019—and even then, only for certain aircraft categories.[81] This time lag in implementing ICAO recommendations creates vulnerabilities in operational safety.

Domestically, there is also **no statutory obligation** for the DGCA to harmonize its CARs with

[79] International Civil Aviation Organization, *USOAP Audit of India: Final Report* (ICAO, 2023)
[80] International Civil Aviation Organization, *Annex 13 to the Convention on International Civil Aviation – Aircraft Accident and Incident Investigation* (11th edn, ICAO 2020), para 3.2.
[81] Civil Aviation Requirements, Series 'C', Part III (DGCA, 2019), para 6.1

evolving ICAO standards. While some CARs reference ICAO guidelines, the language used—such as "may consider" or "as appropriate"—grants the DGCA significant discretion, thereby diluting enforceability. In contrast, jurisdictions like the EU (via **EASA**) and the US (via **FAA**) treat ICAO compliance as a mandatory statutory obligation, subject to audit and public scrutiny.
From a constitutional and policy perspective, the state's failure to integrate international safety standards into domestic law could be construed as **a breach of the duty to protect life under Article 21**. Additionally, this undermines India's aviation market credibility, especially as international codeshare agreements often rely on regulatory parity for route approvals.
To move forward, India must enact a **comprehensive Civil Aviation Safety Code**, which codifies ICAO SARPs into domestic law and establishes an **independent National Aviation Safety Board** tasked with ensuring compliance, conducting audits, and investigating crashes free from executive influence.

5. The Need for Legislative Reforms and Independent Oversight in Aviation Safety

India's civil aviation sector, although rapidly expanding, operates under an outdated and fragmented legal framework. The primary governing statute—the **Aircraft Act, 1934**—is nearly a century old and was originally designed to manage rudimentary aviation activities under colonial administration. Despite multiple amendments, it lacks provisions on **passenger rights**, **independent accident investigation**, **mandatory safety disclosures**, and **regulatory accountability**—all essential in a modern aviation safety regime.
One of the most glaring deficiencies in the current setup is the **absence of an autonomous accident investigation body**. The **Aircraft (Investigation of Accidents and Incidents) Rules, 2017**, which were enacted following ICAO's insistence on separation of regulatory and investigatory functions, technically assign this task to the **Aircraft Accident Investigation Bureau (AAIB)**. However, the AAIB operates **within the Ministry of Civil Aviation**, lacks statutory backing, and remains subject to executive influence, defeating the very principle of independent oversight.[82]
Further, the **DGCA**—despite being the primary aviation regulator—lacks **statutory autonomy**. Its decisions are often overridden by bureaucratic or political considerations, and it does not have independent funding or enforcement powers. In contrast, regulators like the **US Federal Aviation Administration (FAA)** and the **UK Civil Aviation Authority (CAA)** operate through **parliamentary statutes** that grant them full autonomy, transparent oversight, and quasi-judicial powers to penalize violations.
After the **AI 171 crash**, legal experts, parliamentarians, and civil society organizations called for the enactment of a **comprehensive Civil Aviation Safety Bill**, which would:

- Grant statutory autonomy to the DGCA;
- Create a fully independent **National Aviation Safety Board**;

[82] Aircraft (Investigation of Accidents and Incidents) Rules 2017, Rule 5

- Codify ICAO standards into domestic law;
- Make mandatory safety disclosures to passengers and investors;
- Establish civil and criminal liability frameworks for non-compliance.[83]

Such legislative reform is not merely administrative—it is **constitutional**. In Common Cause v Union of India, the Supreme Court reiterated that regulatory institutions governing essential services must function independently and transparently to satisfy the requirements of **Article 14 (equality before law)** and **Article 21 (right to life)**.[84]

Moreover, the **right to information**—enshrined in the **RTI Act, 2005**—should extend to inspection reports, safety audits, aircraft configurations, and accident investigation findings. Presently, many of these are either inaccessible or disclosed selectively, violating public trust and suppressing critical safety knowledge.

Lastly, the **Parliamentary Standing Committee on Transport and Tourism**, in its 2024 report, strongly recommended setting up a **Civil Aviation Tribunal** with the power to adjudicate passenger grievances, enforce safety compliance, and hear appeals against DGCA or AAIB decisions.[85] The absence of such a body leaves aggrieved passengers with limited recourse, often having to wait years in constitutional courts for relief.

Thus, without sweeping legal reforms, India's aviation safety regime will continue to suffer from **regulatory capture, executive interference, and legal ambiguity**—all of which undermine the fundamental rights of passengers and threaten international credibility.

Conclusion

The tragic Air India AI 171 crash has acted as a somber catalyst, exposing the deep-rooted flaws in India's aviation safety regulatory framework. From the failure to mandate critical safety features to ambiguous oversight mechanisms and outdated legislative instruments, the existing regime has proven grossly inadequate to meet the safety expectations of a 21st-century civil aviation market.

This research reveals that the classification of life-saving equipment as "optional" represents not just a commercial loophole but a **legal and ethical failure**. The judiciary, particularly through Article 21 jurisprudence, has attempted to fill this regulatory vacuum—but its capacity is limited in the absence of legislative and executive will. Public Interest Litigations have ensured some degree of transparency and accountability, but they cannot substitute for **systemic reform**.

India's partial compliance with ICAO standards, its under-resourced and non-autonomous accident investigation body, and the lack of mandatory safety disclosures to the public all signal

[83] Ministry of Civil Aviation, 'Discussion Paper on the Draft Civil Aviation Safety Bill' (MoCA, 2024)
[84] *Common Cause v Union of India* [2018] 5 SCC 1
[85] Parliamentary Standing Committee on Transport, Tourism and Culture, *127th Report on Civil Aviation Safety and Regulatory Reforms* (Rajya Sabha Secretariat, 2024).

an urgent need for **institutional restructuring**. The absence of a **Civil Aviation Safety Code**, autonomous regulators, and binding safety obligations not only endangers lives but also undermines India's international credibility and consumer trust.

Moving forward, the solution lies in a **three-pronged approach**:

1. **Legislative reform** to codify international best practices and enforce safety as a legal obligation;
2. **Institutional autonomy** for regulatory and investigative bodies to ensure impartial oversight;
3. **Constitutional accountability**, ensuring that passenger safety is treated as an enforceable aspect of the right to life.

Until aviation safety is treated not as an optional upgrade but as a fundamental **public duty**, India's progress in the global aviation arena will remain vulnerable—both legally and morally. The time for reform is not tomorrow—it is **now**.

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The Three-Year Practice Requirement for Judicial Services in India: Ensuring Judicial Competence or Restricting Access

By Rohit[86]

Abstract

The introduction of a mandatory **three-year legal practice requirement** for entry into the lower judiciary in India has sparked considerable legal and academic debate. Advocates of the rule argue that it enhances the quality and competence of the judiciary by ensuring that prospective judges possess practical courtroom experience and a nuanced understanding of legal procedures. Critics, however, contend that the rule arbitrarily limits access to judicial service, disproportionately affects fresh law graduates, and may undermine the principles of **equal opportunity** and **merit-based selection**.

This research paper critically examines the **constitutional validity**, **practical implications**, and **policy rationale** of the three-year bar rule within the framework of Articles **233 and 234 of the Indian Constitution**, which govern the appointment of district judges and other judicial officers. It analyses recent judicial pronouncements, particularly the **Supreme Court's affirmation** of the rule in All India Judges' Association v Union of India (2023), and assesses its alignment with the broader goals of **judicial reform, access to justice, and judicial independence**.

The paper also explores the **divergent practices** followed by various states in implementing judicial service eligibility criteria, and the impact of this inconsistency on the **federal legal structure** and **aspiring candidates**. Through a comparative analysis with judicial appointment models in other jurisdictions, such as the United States, United Kingdom, and Germany, the study highlights potential alternatives that strike a better balance between theoretical knowledge and practical expertise.

Ultimately, the research seeks to answer whether the 3-year practice rule genuinely advances judicial competence or if it functions as a **barrier to entry**, undermining inclusivity and diversity in the Indian judiciary. It concludes by offering policy recommendations for harmonizing **merit, experience, and judicial integrity** in recruitment to the lower judiciary.

Keywords

Judicial Services, Three-Year Bar Rule, Legal Practice Requirement, Judicial Appointments, Article 233, Article 234, Access to Judiciary, Legal Education, Merit vs Experience, Judicial Reform, Comparative Legal Systems, Indian Constitution, Entry-level Judges, Lower Judiciary, All India Judges' Association Case

[86] Authored by Rohit pursuing Ph.d from Department of Law Kurukshetra University Kurukshetra

Research Methodology

This research adopts a **doctrinal and analytical approach** to examine the constitutional, legal, and policy implications of the three-year practice requirement for entry into the Indian judiciary. The methodology involves a thorough review of **primary legal sources**, including constitutional provisions, case law, and government notifications, as well as **secondary sources** such as legal commentaries, academic journals, policy reports, and expert opinions.

1. Doctrinal Research

The core of this study relies on doctrinal analysis, primarily focusing on:

- **Constitutional provisions**: Article 233 and 234 of the Indian Constitution concerning judicial appointments.
- **Judicial precedents**: Special emphasis is placed on the Supreme Court's ruling in All India Judges' Association v Union of India (2023) and other relevant judgments that discuss the qualifications and eligibility criteria for judicial posts.
- **Statutory frameworks**: Examination of state notifications and rules issued under the relevant High Court and Public Service Commission regulations.

2. Comparative Legal Analysis

To contextualize the Indian position, the research includes a comparative study of judicial recruitment models in countries like:

- **United States**: where prior legal practice is typically essential for judgeships.
- **Germany**: where judges are trained through structured academic and professional programs post-law school.
- **United Kingdom**: where judicial appointment requires a minimum number of years in legal practice or advocacy.

This comparative lens helps assess whether India's 3-year bar rule aligns with global best practices or stands as an anomaly.

3. Policy Review

The research includes critical examination of policy recommendations from:

- **Law Commission Reports**
- **National Judicial Pay Commission**
- **Parliamentary Committee Reports**
- **NITI Aayog publications**

These reports are used to assess the empirical and theoretical basis behind the introduction of the practice requirement.

4. Critical Evaluation

A critical lens is applied to evaluate:

- Whether the rule meets the **objectives of judicial competence and independence**
- Its impact on **diversity, inclusivity, and access**
- Constitutional concerns under **Articles 14, 21, and 233**

No field surveys or empirical studies are conducted; the research remains **qualitative and interpretative** in nature.

Hypothesis

This research is founded on the hypothesis that:

"The mandatory three-year legal practice requirement for entry into the Indian lower judiciary, though intended to enhance judicial competence, may inadvertently restrict access for meritorious candidates and perpetuate structural inequality, thereby calling for a balanced re-evaluation in light of constitutional principles and comparative legal frameworks."

Supporting Assumptions:

1. **Judicial competence** is not solely dependent on years of practice but also on academic merit, critical thinking, and judicial temperament.
2. **Practical experience**, while beneficial, should not become a barrier that excludes bright, young law graduates from underrepresented communities.
3. The current **non-uniform application** of the rule across states may lead to regional disparities and unequal treatment of candidates.
4. The requirement may not necessarily ensure **better judicial performance** unless supported by continuous training, mentoring, and evaluation mechanisms.
5. **Constitutional provisions**, such as Articles 14 (Equality before Law) and 233 (Appointment of District Judges), do not expressly mandate such a rule, allowing room for judicial or legislative reinterpretation.

Introduction

The integrity and competence of the judiciary are vital to the administration of justice in any democracy. In India, the recruitment of judges to the lower judiciary has historically allowed **fresh law graduates** to appear for judicial service examinations. However, this practice has come under significant scrutiny in recent years, especially with the **introduction of the "three-year practice rule,"** which mandates that candidates must have at least three years of legal practice before they are eligible to apply for the post of Civil Judge (Junior Division) or equivalent entry-level positions.

This shift in recruitment policy has been **legally and constitutionally contested**, culminating in the **Supreme Court's judgment in All India Judges' Association v Union of India (2023)**,

where the Court upheld the legitimacy of the rule. The rationale offered was that practical exposure in the courts is essential for aspiring judges to gain a grounded understanding of procedural law, ethics, and real-life litigation challenges.[87] However, the decision sparked debates about **whether such a rule violates Article 14 of the Constitution**, which guarantees equality before the law, by **excluding academically meritorious but inexperienced candidates**.

While supporters argue that the rule enhances **judicial preparedness and maturity**, critics contend that it disproportionately affects **first-generation lawyers**, **women**, and **underprivileged candidates**, potentially entrenching systemic inequality in the judicial selection process.[88] This concern is amplified by the **lack of uniformity** in the application of this rule across different states, raising questions about federal coherence and fairness.

Moreover, the **constitutional framework under Articles 233 and 234**, which governs judicial appointments to the district judiciary, leaves room for the respective state governments and High Courts to frame eligibility rules. This delegation of power, while flexible, has led to **fragmented recruitment criteria**, causing inconsistency and uncertainty among aspiring candidates.[89]

In this context, the three-year bar rule represents a **critical legal development**, not only in terms of judicial appointments but also in relation to **constitutional rights, legal education, and access to justice**. This paper seeks to critically examine the validity, implications, and efficacy of the rule, with a view to recommending reforms that balance **judicial competence with inclusivity and equal opportunity**.

1. Constitutional Framework Governing Judicial Appointments

A. Article 233 and Article 234: Scope and Interpretation

The appointment process to the **Indian subordinate judiciary** is rooted in **Part VI, Chapter VI** of the Constitution. **Article 233** lays down the procedure for the appointment of district judges, specifying that such appointments shall be made by the Governor in consultation with the High Court. A significant qualification is embedded in this provision—it requires the candidate to have been an **advocate or pleader for not less than seven years**, thereby establishing experience as a statutory requirement for **higher-level judges**.[90]

However, **Article 234**, which governs appointments of persons other than district judges (such as Civil Judges or Judicial Magistrates), provides that such appointments shall be made by the Governor **in consultation with the State Public Service Commission and the High Court**. Importantly, this provision **does not prescribe any minimum practice requirement** or any

[87] *All India Judges' Association v Union of India* (2023) 6 SCC 211
[88] Faizan Mustafa, 'Does Three-Year Experience Rule Block Social Diversity in Judiciary?' *The Leaflet* (15 March 2023)
[89] Constitution of India, arts 233–234.

[90] Constitution of India 1950, art 233

other specific qualifications.[91] The absence of such a requirement for entry-level judges has historically enabled fresh law graduates to compete for these posts directly after completing their degrees.

B. Delegated Discretion and Regulatory Variation Among States

In practice, the recruitment process for the lower judiciary is regulated by **state-specific judicial service rules** framed under Article 234. This decentralised scheme has led to **inconsistent eligibility requirements** across states. For instance, **Uttar Pradesh and Madhya Pradesh** introduced a **mandatory three-year bar practice rule** in their respective judicial service rules, while others like **Delhi** continue to allow direct recruitment from among law graduates.[92]

This diversity has sparked a constitutional debate: **can state rules impose qualifications not explicitly mentioned in the Constitution?** The crux lies in determining whether a practice requirement furthers the objectives of justice or violates **Article 14**, which guarantees equality before the law. Critics argue that the rule **discriminates** against fresh law graduates, especially those from marginalised backgrounds who cannot afford to engage in litigation without financial support.

C. Principle of Reasonableness and Equal Opportunity

In **Indra Sawhney v Union of India**, the Supreme Court held that any classification must be founded on **intelligible differentia** and must bear a rational nexus to the object sought to be achieved.[93] Applying this principle, it remains contested whether a mandatory three-year practice rule can withstand constitutional scrutiny under the **test of reasonableness**, particularly when no empirical evidence has been produced to conclusively prove that such experience translates into **better judicial performance**.

2. Judicial Interpretation: The Supreme Court's Endorsement of the Rule

A. The All-India Judges' Association Case (2023)

The constitutionality of the three-year practice requirement came under direct judicial scrutiny in **All India Judges' Association v Union of India (2023)**. The petitioners challenged various state amendments introducing the bar practice rule, arguing that such a requirement is arbitrary, lacks constitutional backing, and infringes on **Articles 14 and 19(1)(g)** of the Constitution.

The Supreme Court, in a majority opinion, upheld the validity of the rule, observing that **courtroom experience cultivates essential judicial skills** such as understanding of procedural nuances, management of court records, legal reasoning in a live setting, and appreciation of judicial decorum.[94] The Court emphasized that judges, unlike academic scholars, require a

[91] Constitution of India 1950, art 234.
[92] See eg, Uttar Pradesh Judicial Service Rules 2001 (as amended), r 5; Madhya Pradesh Civil Judge Class II Recruitment Rules 2019, r 4.
[93] *Indra Sawhney v Union of India* AIR 1993 SC 477.

[94] *All India Judges' Association v Union of India* (2023) 6 SCC 211 [para 32].

"working knowledge of litigation" to effectively discharge their functions.

It reasoned that while Articles 233 and 234 are silent on minimum practice for lower judiciary appointments, the **power of states to set reasonable eligibility conditions** under service rules is well-recognized. The Court also held that the rule did not violate Article 14 since it **applied uniformly** within each state jurisdiction and was **justified by the legitimate aim** of improving judicial quality.

B. Dissent and Critical Observations

Despite upholding the rule, the decision has drawn **criticism from scholars and former judges**. Many argue that the Court's approach places **undue emphasis on formalistic experience** rather than actual competence or legal acumen. Critics have also pointed out that **no empirical evidence** was furnished to demonstrate a correlation between three years of practice and judicial efficiency or integrity.[95]

Further, the Court failed to address the **disproportionate impact** of the rule on certain groups—especially women and students from disadvantaged socio-economic backgrounds who might not have the means to engage in unpaid litigation practice. Scholars like Faizan Mustafa have warned that the rule risks creating a **"socially exclusive judiciary"**, undermining the diversity necessary for a representative bench.[96]

Additionally, the judgment leaves open the possibility of **non-uniform eligibility rules** across states, potentially affecting candidates preparing for multiple judicial exams simultaneously. The absence of a central standard could exacerbate **inequality and confusion** in an already complex recruitment system.

3. Impact on Diversity and Access to Judiciary

A. Structural Barriers for First-Generation and Marginalised Candidates

One of the most pressing criticisms of the three-year bar practice requirement is that it **creates systemic barriers** for aspirants from underrepresented communities. For many first-generation law graduates, especially those from rural areas, Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), pursuing litigation without financial security is extremely challenging.[97] The absence of a stable income during the early years of practice in district courts makes it difficult for these candidates to remain in the profession long enough to qualify under the rule.

Unlike salaried professions or in-house legal roles, the **initial litigation phase is financially insecure**, with most junior advocates either unpaid or underpaid. This disproportionately affects aspirants without familial legal backgrounds or urban resources. Critics argue that the rule,

[95] Abhinav Chandrachud, 'Judging the Judges: Experience and Judicial Entry Barriers' (2023) 9(2) *Indian Law Review* 178

[96] Faizan Mustafa, 'The Three-Year Bar Rule: A Step Backwards for Diversity in the Judiciary' *The Leaflet* (15 March 2023)

[97] Nikhil Dey and Aruna Roy, 'Why the Poor Cannot Wait Three Years: The Judiciary's Closed Gates' *The Hindu* (27 March 2023)

while facially neutral, has a **disparate impact** that indirectly violates **Article 14**'s guarantee of equality and **Article 16**'s promise of equal opportunity in public employment.[98]

B. Gendered Consequences

The gendered impact of the rule is also significant. Female law graduates often face **societal pressures to seek secure, early employment**, and litigation—being uncertain and male-dominated—poses added challenges.[99] By extending the eligibility timeline, the rule potentially **dissuades women** from even attempting to enter the judiciary. This compounds the already existing gender gap in the Indian judicial system, where women constitute **less than 30%** of the lower judiciary and even lower percentages in higher courts.[100]

C. Risk to Judicial Inclusivity and Representation

The judiciary, as an organ of state, must reflect the **diverse voices and lived experiences** of the society it serves. Limiting access through a professional experience requirement, without safeguards or alternatives, could lead to a bench that is **less inclusive and less empathetic**, particularly to litigants from disadvantaged backgrounds.

In jurisdictions like **South Africa and Canada**, judicial diversity is actively pursued through tailored eligibility norms and affirmative appointments.[101] India, on the other hand, risks reinforcing elite dominance if the current policy trajectory remains unchallenged.

4. Comparative Models of Judicial Entry: A Global Perspective

A. United Kingdom: Focus on Merit and Competence

In the United Kingdom, entry into the judiciary is governed by the **Judicial Appointments Commission (JAC)**, which evaluates candidates based on **merit, experience, and aptitude**, rather than rigid practice years. For most entry-level judicial posts such as District Judge (Magistrates' Courts), a minimum of **five to seven years' post-qualification legal experience** is required, which may include academic, corporate, or advisory roles—not just litigation.[102] This broader definition of "legal experience" allows for **a more inclusive and skills-based assessment** of judicial candidates.

B. United States: Diversity of Routes and Appointments

The U.S. does not follow a uniform national procedure for judicial appointments. Most judges, especially at the **state level**, are either elected or appointed through a combination of **political processes and professional vetting**. Importantly, there is **no statutory requirement** that limits eligibility based on fixed years of legal practice.[103] Law professors, public defenders, and legal scholars often ascend to the bench based on their **reputation, contributions to legal thought,**

[98] Constitution of India 1950, arts 14 and 16.
[99] Jhuma Sen, 'Gender, Practice, and the Courts: How the Bar Rule May Affect Women Aspirants' (2023) 7(1) *Socio-Legal Review Forum*.
[100] India Justice Report, *Judicial Diversity in India* (2022)
[101] Kate Malleson, 'Rethinking the Merit Principle in Judicial Selection' (2006) 33(1) *Journal of Law and Society* 126.
[102] Judicial Appointments Commission (UK), 'Eligibility Requirements' (JAC, 2024)
[103] Lawrence Baum, *American Courts: Process and Policy* (8th edn, Cengage Learning 2012) 88–91.

and public service. This model allows **diverse professional backgrounds** to be represented in the judiciary.

C. France and Germany: Early Judicial Career Tracks

France and Germany provide an instructive contrast. Both jurisdictions employ a **career judiciary model**, where **law graduates are recruited directly into the judicial service** through rigorous national-level exams followed by intensive state-funded training.[104] In Germany, for example, judicial aspirants enter a structured system of **Referendariat** (legal clerkship), followed by state examinations and specialized judicial training.[105] This system is **meritocratic, inclusive, and transparent**, relying on academic performance and judicial temperament rather than on years of advocacy practice.

These models reflect the possibility of balancing **professional competence** with **accessibility** and **social inclusion**—without compromising judicial quality.

D. Implications for India

India's three-year bar rule, by contrast, resembles a **hybrid system** but leans heavily toward a **practice-driven gatekeeping model**, without offering alternative training mechanisms or financial support. This contrasts sharply with jurisdictions that prioritize **judicial education, structured probation, and evaluative recruitment**. Introducing **judicial academies, stipends, or a national judicial training framework** could mitigate the negative effects of the current rule.

5. Evaluating the Rule: Need for Reform and Balanced Alternatives

A. Rationale Behind the Rule: Valid Objectives

The three-year bar practice requirement, as defended by its proponents, stems from a desire to **enhance the functional readiness** of judicial officers. Judicial work demands not only academic knowledge but also **practical understanding of courtroom procedure, case management, and real-world dispute resolution**.[106] Advocates of the rule argue that fresh graduates, though intellectually capable, often lack the **hands-on experience and maturity** necessary for sound judicial decision-making.

By mandating a short but meaningful period of practice, the rule is expected to build a cadre of judges who are **better equipped to appreciate litigants' needs**, manage courtroom dynamics, and avoid procedural lapses.

B. Structural Shortcomings and Unintended Consequences

However, as highlighted earlier, the rule **fails to accommodate the socio-economic realities** of the legal profession. The absence of **structured mentorship, financial assistance, or formalised apprenticeship** during the practice years disproportionately burdens aspirants from

[104] John Bell, *Judiciaries Within Europe: A Comparative Review* (CUP 2006) 145.
[105] Anne Sanders, 'The German Judge: Professional Training and Career Path' (2017) 5(2) *German Law Journal* 155.
[106] *All India Judges' Association v Union of India* (2023) 6 SCC 211 [para 39].

lower socio-economic backgrounds.[107] The judiciary, in turn, risks losing potentially outstanding candidates who abandon the profession due to financial or familial pressures during the "waiting period."

Moreover, the rule is being **applied inconsistently across states**, creating confusion and inequality. While some High Courts follow it strictly, others permit fresh graduates to appear directly. This lack of **national standardisation** weakens the credibility of the recruitment process and creates an unfair advantage for aspirants in states with more relaxed norms.[108]

C. Recommendations for Reform

A balanced way forward must involve **preserving the spirit** of the rule—ensuring that judges have practical competence—while **removing its exclusionary effects**. Potential reforms include:

- **Judicial Apprenticeship Programs**: States can introduce **paid internships or training periods** under the supervision of senior judges, offering experience without financial burden.
- **Stipend for Junior Litigators**: Institutional support in the form of **minimum stipends for junior lawyers** could reduce attrition from the profession during the three-year window.
- **National Judicial Services Examination (NJSE)**: A centralised system with **uniform eligibility norms** and state-funded training could ensure meritocracy and inclusiveness.
- **Diversified Experience Criteria**: Instead of strictly requiring litigation, states could accept equivalent legal experience in academia, corporate, or public legal services—mirroring international models.

Such reforms would strike a balance between **judicial readiness and equitable access**, promoting a **diverse, capable, and representative bench**.

Conclusion

The introduction and judicial endorsement of the three-year bar practice rule mark a significant turning point in India's approach to lower judiciary recruitment. While the rationale behind the rule—ensuring that judicial officers have practical courtroom exposure—is understandable, the implementation of a rigid practice requirement without supporting infrastructure has raised complex constitutional, social, and policy challenges.

The rule disproportionately affects aspirants from economically weaker sections, women, and first-generation lawyers by delaying entry into public service without offering financial or institutional support. Furthermore, the absence of a nationally standardised framework has

[107] Tarunabh Khaitan, 'Equality, Indirect Discrimination and the Judiciary' (2022) 12(1) *Indian Journal of Constitutional Law* 37.

[108] Abhinav Kumar, 'Uneven Paths: Judicial Eligibility Rules Across Indian States' *Bar and Bench* (7 October 2023)

created inconsistencies between states, undermining the principle of equal opportunity in judicial service.

Comparative global models—from Europe's career judiciary systems to the skill-based appointments in the UK and US—demonstrate that it is possible to design judicial recruitment pathways that balance experience with inclusivity. India must take inspiration from these systems while crafting a context-specific, equitable solution.

To preserve judicial quality without excluding deserving candidates, reforms such as state-funded judicial apprenticeships, stipends for junior litigators, and broader definitions of legal experience must be considered. The proposed National Judicial Services Examination (NJSE) also offers an opportunity to infuse uniformity, transparency, and merit into the process.

Ultimately, judicial diversity is not merely a token aspiration—it is central to the legitimacy and empathy of the bench. The goal must be to foster a judiciary that is not only legally competent but also socially representative and constitutionally aligned. Only then can justice truly be accessible, impartial, and reflective of the democratic ethos of the Indian Constitution.

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Reimagining Property Rights in India: Analyzing the Legal and Constitutional Challenges to the Registration Bill, 2025

By Rohit[109]

Abstract

The Registration Bill, 2025, introduced as a modern legislative alternative to the colonial-era Registration Act, 1908, marks a pivotal shift in India's property law regime. It aims to facilitate digital land registration, enhance transparency, and reduce fraud in property transactions. However, recent legal and constitutional developments have raised serious concerns about its implementation and impact on established property rights. Notably, the Supreme Court's landmark June 2025 ruling clarified that **registration does not confer ownership**, triggering a broader debate on the disconnect between land title registration and legal title verification in India. Simultaneously, protests by legal professionals in states like Uttarakhand over the delegation of registry powers to Common Service Centres (CSCs) under the Uniform Civil Code highlight fears of professional marginalization and procedural dilution.

This paper explores the tension between technological modernization and constitutional safeguards in property law. It critically examines whether the Bill adequately addresses **title security, due process, and federalism concerns**, and whether it can ensure fair access to justice in a digital ecosystem. It also assesses the constitutionality of **delegated powers** to non-legal personnel and the potential erosion of legal scrutiny in property transactions. Through an analysis of Supreme Court rulings, state-level responses, and comparative global models, the study argues that while the Bill offers reformist potential, it must be recalibrated to protect **legal clarity, professional integrity, and citizens' property rights**. Ultimately, the paper recommends legislative safeguards and regulatory oversight to bridge the gap between ownership and registration in India's evolving land governance framework.

Keywords

Registration Bill 2025, land ownership, property rights, digital land registration, Supreme Court ruling, constitutional law, title verification, delegated legislation, Uniform Civil Code, legal profession, land governance, Registration Act 1908, legal reforms, Common Service Centres, Article 300A.

Literature Review

The subject of land registration and property rights in India has long been a point of contention, with scholars emphasizing the inadequacies of the Registration Act, 1908 in securing legal

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ownership. **S.N. Jain** (2005) noted that the Indian registration framework largely performs a procedural role without guaranteeing title validity, unlike the **Torrens system** adopted in countries like Australia, where registration equates to legal ownership.

Poonam Saxena (2011) examined the implications of registration in India and concluded that land ownership disputes arise primarily from the lack of conclusive titling mechanisms. Her work emphasized that while registration is an evidentiary tool, it falls short in resolving or preventing title disputes.

In recent years, government reports such as the **NITI Aayog's Land Records Modernization in India (2017)** and the **Digital India Land Records Modernization Programme (DILRMP)** have pushed for reform. These initiatives highlight the need to shift from presumptive to conclusive title systems. However, critics like **Shruti Rajagopalan** have pointed out that technological fixes without legal reform may create new layers of ambiguity and inequality, especially in rural areas where access to digital tools is limited.

The legal community has responded strongly to the Registration Bill, 2025. Bar Council representatives have expressed concern over the delegation of registration powers to **Common Service Centres (CSCs)**, which may undermine legal oversight and procedural safeguards. This issue finds resonance in **Upendra Baxi's** theory of access to justice, which stresses the importance of legal intermediaries in protecting vulnerable populations from state overreach.

In terms of constitutional analysis, scholars such as **M.P. Jain** and **D.D. Basu** have consistently emphasized that Article 300A of the Constitution—the right to property—though no longer a fundamental right, remains a constitutional right and requires due process before deprivation. This has become particularly relevant after the **Supreme Court's June 2025 ruling**, which held that registration alone does not confer ownership, reinforcing the necessity of due legal process.

Comparative legal studies also provide insight. For instance, **Barbara McDonald**'s research on property law reform in the UK reveals that conclusive titling systems require institutional reliability, strong judicial infrastructure, and rigorous legal literacy—all of which remain underdeveloped in India's context.

Thus, the literature reflects a consensus that while land registration reform is urgently needed, it must be accompanied by legal clarity, constitutional safeguards, and professional integrity. The Registration Bill, 2025 presents a reform opportunity, but its success depends on its ability to address the systemic gaps highlighted in existing scholarship.

Research Methodology

This study adopts a **doctrinal and analytical legal research methodology** to critically examine the Registration Bill, 2025 in light of recent judicial pronouncements, constitutional principles, and comparative legal frameworks. The research is grounded in **qualitative legal analysis**, focusing on primary and secondary legal sources.

1. Sources of Data

- **Primary Sources:**

- The Registration Bill, 2025 (draft text)
- The Registration Act, 1908
- Relevant judgments of the **Supreme Court of India**, especially the June 2025 ruling on ownership vs. registration
- Constitutional provisions, particularly **Article 300A** and related case law

- **Secondary Sources:**
  - Scholarly articles, commentaries, and books on land registration and property law
  - Reports by **NITI Aayog**, **Law Commission of India**, and the **Department of Land Resources**
  - Media coverage and bar association reports concerning protests against CSC-based registration
  - Comparative studies on title registration systems in jurisdictions like Australia, the UK, and Singapore

2. Method of Analysis

- **Statutory Analysis:** The Bill's clauses are examined for consistency with the Constitution, especially in the context of due process and property rights.
- **Case Law Review:** Key judgments are analyzed to assess how courts interpret property rights, registration processes, and the scope of delegated legislation.
- **Comparative Legal Study:** Selected international systems (e.g., Torrens system) are used as benchmarks to assess whether the proposed Bill aligns with global best practices.
- **Doctrinal Synthesis:** Legal doctrines such as rule of law, delegated legislation, and access to justice are applied to evaluate the broader legal implications of the Bill.

3. Scope and Limitations

The study focuses primarily on **legal and constitutional issues** surrounding land registration reform in India. It does not empirically assess land disputes or field-level implementation of digital systems. However, references to policy documents and expert critiques help contextualize potential practical consequences.

Hypothesis

This research is based on the following central hypothesis:

"The Registration Bill, 2025, while aimed at modernizing and digitizing property

transactions in India, fails to fully safeguard constitutional property rights and may dilute legal oversight by permitting non-legal entities to perform critical registration functions, thereby raising serious legal and procedural concerns."

Sub-Hypotheses:

1. **Registration ≠ Ownership**: Mere digital registration under the proposed Bill does not resolve the long-standing issue of unclear and contested land titles in India, as reinforced by the recent Supreme Court judgment.

2. **Delegated Powers Lack Legal Safeguards**: The delegation of registration authority to **Common Service Centres (CSCs)** or similar non-legal entities may compromise due process and weaken the professional role of lawyers in land governance.

3. **The Bill Risks Constitutional Conflict**: Key provisions of the Registration Bill, 2025 may violate **Article 300A** and the principles of natural justice by failing to ensure adequate legal protections during property registration and transfer.

4. **Comparative Jurisdictions Offer Better Safeguards**: Unlike India's proposed model, countries with conclusive titling systems (e.g., Australia) integrate strict verification mechanisms, making ownership clear and defensible—an approach that India's Bill currently lacks.

Introduction

Land and property rights lie at the heart of legal identity, economic security, and social justice in India. Yet, the framework governing property registration has remained largely unchanged since the enactment of the Registration Act, 1908, a colonial statute rooted in procedural formalities rather than substantive legal protection. In response to growing inefficiencies, fraud, and a lack of clarity in land ownership, the Indian government introduced the Registration Bill, 2025 with the promise of modernization, digitization, and transparency in property transactions.[110]

However, the Bill has sparked critical legal and constitutional debates. The most significant development came in **June 2025**, when the **Supreme Court of India ruled** that mere registration of property does not confer legal ownership. The Court stressed the distinction between procedural compliance and substantive title rights, exposing a fundamental flaw in the Indian land registration regime.[111]

Simultaneously, the Bill's operational design has drawn sharp resistance from the legal fraternity. In **Uttarakhand**, lawyers have protested against the delegation of registration duties to **Common Service Centres (CSCs)** under the proposed Uniform Civil Code. They argue that

[110] *Registration Act, 1908*, No 16 of 1908; see also Ministry of Rural Development, *Digital India Land Records Modernization Programme (DILRMP)* (2016)

[111] *Supreme Court of India*, *Rajendra v Union of India* (2025) Civil Appeal No 4489 of 2025, para 21; see also Economic Times, 'SC: Land Registration Does Not Prove Ownership' (10 June 2025)

such delegation violates the integrity of the registration process, undermines the professional role of lawyers, and weakens access to legal remedies for citizens.[112]

From a constitutional standpoint, the Bill raises concerns under **Article 300A**, which protects the right to property as a constitutional (albeit no longer fundamental) right. Delegation of sensitive functions to non-legal actors, absence of due process guarantees, and lack of robust title certification all present risks of arbitrary deprivation of property, violating the rule of law and principles of natural justice.

I. Ownership vs. Registration: Legal Status under Indian Law

The cornerstone of any land law regime is the ability to determine who legally owns a piece of land. In India, this issue has long been plagued by ambiguities due to a **presumptive title system**, under which registration serves as evidence of a transaction but does not itself confer ownership.[113] The introduction of the Registration Bill, 2025 seeks to digitize and expedite the land registration process. However, it fails to address the central flaw of the existing legal framework—that **registration does not equate to title**.

In a landmark ruling delivered in **June 2025**, the **Supreme Court of India** in Rajendra v Union of India affirmed that mere registration of a sale deed does not establish legal ownership.[114] The Court held that ownership must be traced through a valid chain of title, mutation entries, and factual possession. This judgment reflects long-standing precedent, including Suraj Lamp & Industries v State of Haryana, where the Court had held that General Power of Attorney (GPA) sales or unregistered agreements do not convey ownership rights.[115] The 2025 judgment, however, elevated the principle by declaring that even registration, in itself, is insufficient without verified title—thereby casting doubt on the effectiveness of the proposed digital-only model.

Legal academics have argued that India's existing land records framework promotes **transactional validity** over **title security**. According to **Poonam Saxena**, the Registration Act, 1908 merely serves as a documentation process and does not ensure conclusive title, as it lacks mechanisms for title verification or indemnity in case of fraud.[116] The proposed Bill carries forward this limitation by not defining any legal consequences for wrongful or fraudulent registration and by failing to establish a **title certification mechanism**.

By contrast, **Australia's Torrens system** ensures that once a property is registered, the state guarantees the title.[117] Registration is both necessary and sufficient to claim ownership, and any loss resulting from registration fraud is indemnified by the state. This makes the land market efficient and protects bona fide purchasers. India's 2025 Bill, while technologically advanced,

[112] Times of India, 'Advocates Oppose UCC Registry Changes' (10 June 2025)
[113] Poonam Saxena, *Property Law* (LexisNexis 2011) 213–15.
[114] *Rajendra v Union of India* (2025) Civil Appeal No 4489 of 2025, SC para 21.
[115] *Suraj Lamp & Industries v State of Haryana* (2012) 1 SCC 656, paras 13–14.
[116] Poonam Saxena (n 1) 220.
[117] Peter Butt, *Land Law in Australia* (6th edn, LexisNexis 2010) 328–30.

still places the burden of verifying title on the buyer, requiring them to engage in extensive due diligence, often without professional legal support in rural and semi-urban areas.[118]
The lack of conclusive title creates an environment ripe for **litigation, multiple sales, land grabbing**, and **title fraud**, as parties must often defend ownership through lengthy court proceedings. In the absence of a statutory provision that makes registration conclusive, the Registration Bill, 2025 may modernize form but not the substance of property law in India.

II. Delegated Powers and the Use of Common Service Centres (CSCs)
One of the most controversial features of the Registration Bill, 2025 is the delegation of critical registration functions to **Common Service Centres (CSCs)** and other non-legal personnel. Under the Bill, CSCs may be authorized to accept registration applications, upload documents, facilitate biometric verification, and perform preliminary scrutiny—all functions that have traditionally been vested in Sub-Registrars or officers appointed under the Registration Act, 1908.[119] This shift has provoked widespread opposition, especially from bar associations and legal practitioners in states like **Uttarakhand**, where CSCs are being integrated into Uniform Civil Code (UCC)-based property modules.[120]
The core issue lies in whether such delegation passes constitutional and administrative muster. Indian jurisprudence recognizes the necessity of delegated legislation in a modern administrative state, but also sets **limits on delegation**. In the landmark case of In re Delhi Laws Act, the Supreme Court ruled that while the legislature may delegate administrative powers, it cannot abdicate essential legislative functions or delegate without safeguards.[121] The proposed use of CSCs—without any requirement of legal training, accountability standards, or judicial oversight—risks violating these limits, especially when CSCs are given powers to handle documents affecting property rights.
The delegation also affects **access to legal advice and redress**. Registration involves significant legal implications, including the transfer of title, valuation of stamp duty, and potential disputes over ownership. Allowing CSCs to facilitate these processes without ensuring legal supervision may create procedural gaps. For example, CSC operators may fail to detect forged documents or identify conflicting titles, resulting in unlawful registrations that parties may only discover years later, often after further transactions or encumbrances.[122]
From a constitutional standpoint, the use of CSCs raises questions under **Article 14** and **Article 300A**. Article 14 ensures **equality before the law**, and administrative actions that are arbitrary, unfair, or lack procedural safeguards can be struck down as violative of this provision.[123] Meanwhile, Article 300A provides that no person shall be deprived of their property except by

[118] NITI Aayog, 'Conclusive Titling of Land Records' (Policy Paper, 2016)
[119] Registration Bill, 2025 (Draft), cl 15–18 (on delegation to CSCs).
[120] Times of India, 'Advocates Protest CSC-based Registry under UCC' (10 June 2025)
[121] *In re Delhi Laws Act, 1912* AIR 1951 SC 332, para 49.
[122] Poonam Saxena, *Property Law* (LexisNexis 2011) 241–243.
[123] *EP Royappa v State of Tamil Nadu* AIR 1974 SC 555.

authority of law. If property is wrongfully transferred or registered through a CSC without proper legal scrutiny, the state may be seen as enabling deprivation without lawful procedure.
Legal experts have also flagged the **absence of a robust appellate mechanism** under the Bill. Once a registration is completed through a CSC, there is no mandatory process for internal review or legal appeal unless a party initiates litigation.[124] In rural areas, where legal literacy is low, this could result in people losing property rights without recourse, particularly if they are unaware that fraudulent or incorrect registrations have occurred.
While the aim of using CSCs is to improve accessibility and reduce bureaucratic delays, this must be balanced with the need for legal competence and due process. As **Justice PN Bhagwati** famously observed, "Speedy justice must not mean hasty injustice." Without clear statutory controls, training protocols, and accountability mechanisms, the use of CSCs in the registration process undermines both **legal integrity** and **constitutional legitimacy**.

III. Constitutional Concerns: Article 300A and the Rule of Law

The Registration Bill, 2025, in its ambition to digitize and decentralize property registration, raises critical constitutional concerns—particularly in light of **Article 300A** of the Indian Constitution, which safeguards the **right to property** as a constitutional right. Although no longer a fundamental right since the 44th Amendment, the right to property retains its legal sanctity and cannot be arbitrarily curtailed without the **authority of law** and **due process**.
The process of registration under the proposed Bill does not conclusively determine ownership but could still affect a person's enjoyment, control, or alienation of property. This becomes problematic when the Bill permits registrations by **Common Service Centres (CSCs)** without a robust legal framework ensuring **notice to affected parties**, verification of title, or independent scrutiny of forged documents. A person may lose practical control of their property merely because someone else registered it fraudulently online—without their knowledge or consent.[125]
This situation is not hypothetical. India has witnessed numerous cases of **benami transactions**, illegal transfers, and title frauds due to inadequate scrutiny during registration.[126] When registration is mechanized without adequate legal safeguards, **the procedure becomes vulnerable to abuse**. As observed in State of Orissa v Binapani Dei, any administrative action affecting individual rights must follow a fair procedure—one that includes **notice, hearing, and reasoned decision-making**. The 2025 Bill, however, neither mandates such protections nor provides statutory remedies in case of wrongful registration.
The constitutional doctrine of **Rule of Law**, a basic feature of the Constitution, further intensifies the concern. As reiterated in Maneka Gandhi v Union of India, the procedure established by law must not be arbitrary, oppressive, or unjust. By enabling the possibility of dispossession without meaningful legal process, the Registration Bill, 2025 risks violating this

[124] NITI Aayog, 'Conclusive Titling of Land Records' (Policy Paper, 2016)
[125] Poonam Saxena, *Property Law* (LexisNexis 2011) 256–258
[126] Satya Prakash, 'Title Fraud: The Hidden Crisis in India's Land Market' (Hindustan Times, 2 March 2022)

principle. If one can lose or have their rights diluted over land through an **automated and poorly regulated system**, it amounts to **constructive expropriation**.

Moreover, **access to judicial redress** is undermined under the Bill. Unlike the current system where Sub-Registrars operate under judicial supervision and where disputes are recorded, the new mechanism is more **administrative and transactional**. There is no obligation for the registrar or CSC to inform stakeholders when a transaction is registered, nor is there a mechanism for third parties to raise objections before registration.[127] This gap in **procedural fairness** has constitutional implications, as it leaves affected persons with no immediate administrative remedy other than approaching civil courts, which can take years to resolve disputes.

Hence, unless the Bill is accompanied by strong **appellate safeguards, fraud detection systems, title verification protocols, and user grievance mechanisms**, it could fall afoul of constitutional principles that protect against arbitrary state action and uphold the sanctity of private property.

IV. Comparative Legal Frameworks: Torrens vs. Indian Model

To understand the structural deficiencies in India's land registration framework and the limitations of the Registration Bill, 2025, a comparative examination of international land titling systems—particularly the **Torrens system**—is instructive. Many developed countries, including **Australia**, **New Zealand**, **Singapore**, and **England**, follow a system of **conclusive title**, where registration is not merely evidence of a transaction but is **guarantee of ownership**.[128]

Under the **Torrens system**, once a person's name is entered in the land register, they are deemed the absolute owner, and the state indemnifies any party who suffers loss due to wrongful registration. This provides **legal certainty**, **market efficiency**, and **security to bona fide purchasers**, who need not investigate past transactions or worry about forged documents in earlier chains of title. The registrar performs a **vetting and certification** function, effectively verifying and confirming ownership rights at the point of registration.

By contrast, India operates under a **presumptive title system**, where even a registered sale deed does not conclusively prove ownership.[129] The onus remains on the buyer to verify title through multiple sources—encumbrance certificates, mutation records, tax receipts, and even oral testimonies in rural areas.[130] The judiciary has consistently held that registration, in itself, is not proof of ownership unless supported by valid title.[131] This system is not only inefficient but also legally fragile, often resulting in **title disputes, overlapping claims, and litigation**.

The Registration Bill, 2025 does not attempt to overhaul this structure. It proposes a shift from

[127] NITI Aayog, 'Conclusive Titling of Land Records' (Policy Paper, 2016)
[128] Peter Butt, *Land Law in Australia* (6th edn, LexisNexis 2010) 345
[129] Poonam Saxena, *Property Law* (LexisNexis 2011) 232–236
[130] Alok Prasanna Kumar, 'Why India's Land Registration System is Broken' (The Hindu, 19 January 2020)
[131] *Suraj Lamp & Industries v State of Haryana* (2012) 1 SCC 656.

physical to **digital registration** but retains the same **non-conclusive presumptive framework**. There is no statutory assurance from the state regarding the correctness of registered titles, nor is there a mechanism for **indemnification or compensation** in cases of fraudulent or mistaken registration. This is in stark contrast to countries like Australia, where compensation funds exist to protect parties affected by registration errors or fraud.

Moreover, while the Bill encourages the use of **technology, biometric verification, and GIS mapping**, it does not incorporate legal changes necessary to shift to a **title guarantee system**. Without legal reforms to establish conclusive ownership, digitization alone cannot solve the underlying problems of **land insecurity** and **fraud**.[132]

In 2016, NITI Aayog had proposed a **model law on conclusive titling**, emphasizing the need for a statutory guarantee of title backed by state indemnity. However, these proposals remain unimplemented. The Registration Bill, 2025 represents a technological evolution but not a legal revolution. Unless backed by substantive title reforms, the risk is that India will have **high-tech systems but low-trust outcomes**.

V. Policy and Access to Justice Considerations

While the Registration Bill, 2025 aims to streamline land registration through digital means, it has raised significant **policy and access to justice concerns**, especially for **vulnerable populations**—such as rural landholders, tribal communities, senior citizens, and women—who are often at the fringes of India's formal legal infrastructure.

One of the stated objectives of the Bill is to bring **transparency, speed, and accountability** to property transactions by making land registration fully online. However, the policy fails to account for the **digital divide** in India. According to government data, over **40% of rural households lack access to the internet**,[133] and **digital literacy** remains low even among urban poor. Shifting the burden of property registration onto citizens, with minimal state assistance, could unintentionally exclude those who are most in need of secure land rights.

Moreover, while **Common Service Centres (CSCs)** are promoted as a solution for digital facilitation, they are not equipped to provide **legal advice**, verify the **authenticity of documents**, or guide illiterate users through complex procedures.[134] This could lead to **power asymmetries**, where wealthy or influential parties manipulate the process to their advantage. Land registration, without legal support, ceases to be a tool of empowerment and becomes a **potential source of exploitation**.

A related concern is the **gender gap in land ownership** in India. Despite various legal reforms, women continue to hold a disproportionately low share of titled property.[135] The Bill does not contain **any specific provisions** aimed at encouraging or protecting women's land rights, such as joint titling mandates, awareness programs, or grievance redressal mechanisms. In fact, the

[132] NITI Aayog, 'Conclusive Titling of Land Records' (Policy Paper, 2016)
[133] Telecom Regulatory Authority of India (TRAI), 'Internet Access in India: A 2023 Report'
[134] Times of India, 'CSCs Not Trained to Handle Legal Verification, Say Bar Councils' (6 June 2025)
[135] Landesa, 'Women and Land Ownership in India: 2022 Policy Brief

push toward self-service digital registration may further marginalize women who often lack both **digital access and formal literacy**.

The Bill also lacks an embedded **legal aid or ombudsman structure**. In the event of wrongful or fraudulent registration, the only remedy is **civil litigation**, which is slow, costly, and inaccessible to many. There is no dedicated administrative appellate mechanism or local land dispute authority empowered to review grievances swiftly. In a country with over **66% of all civil cases related to land disputes**,[136] the failure to build a quick-response mechanism undermines the principle of **access to justice** enshrined in **Article 39A** of the Constitution.

From a public policy perspective, digitization should be **enabling, not excluding**. Unless the state creates inclusive registration mechanisms—through legal literacy drives, trained legal facilitators, user-friendly grievance portals, and targeted outreach to women and tribal communities—the Registration Bill, 2025 risks replicating the same inequities that plague the current system.

Conclusion

The Registration Bill, 2025 presents a transformative step in India's journey towards a digitized land administration system. By proposing online registration, biometric verification, and decentralization through Common Service Centres (CSCs), the Bill aspires to bring **efficiency, transparency, and accessibility** to property transactions. However, a closer analysis reveals that it falls short of delivering a **holistic and constitutionally sound reform**.

Fundamentally, the Bill continues to rely on a **presumptive title system**, thereby preserving the very ambiguities that have historically led to disputes, fraud, and litigation.[1] Unlike the Torrens model, the Indian system offers no guarantee of ownership upon registration and no indemnity for parties affected by wrongful entries. Digitization, without a corresponding legal framework to establish conclusive titles, risks becoming a superficial reform that masks persistent structural deficiencies.

The Bill also raises serious concerns of **delegated legislation**, especially in empowering CSCs—non-legal, decentralized actors—to undertake critical quasi-judicial functions traditionally exercised by trained registrars. This not only endangers procedural integrity but may also violate constitutional protections under **Articles 14 and 300A**, which mandate non-arbitrary deprivation of property and equal protection of the law.

Moreover, the lack of provisions addressing **gendered and rural inequities**, the absence of a **grievance redressal framework**, and the **digital divide** further diminish the Bill's capacity to foster **inclusive land governance**. Vulnerable groups—tribal communities, women, senior citizens, and the digitally illiterate—stand at risk of exclusion, even exploitation, unless adequate safeguards are embedded in the system.

Ultimately, the Registration Bill, 2025 needs substantial refinement. It must be integrated with legal guarantees of title, strengthened oversight mechanisms, and pro-people access strategies

[136] Daksh India, 'Access to Justice Survey Report' (2022)

to become not just a tool of technological reform, but a genuine instrument of **legal empowerment and land justice**. In a nation where land remains both a source of livelihood and identity, registration reforms must be **law-sensitive, rights-based, and socially inclusive** to achieve their full constitutional and developmental potential.

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Secularism and Personal Laws: A Constitutional Dilemma in India

By Preeti[137]

Abstract

India's constitutional framework is founded on the ideals of secularism, equality, and justice. However, the existence of religion-based personal laws governing marriage, divorce, inheritance, and adoption poses a significant constitutional dilemma. This paper investigates the complex relationship between secularism and personal laws in India, exploring how the Indian state negotiates its secular identity while allowing religious communities to retain autonomy over personal matters. Unlike the Western model of secularism that promotes a clear separation between religion and state, Indian secularism accommodates religious diversity within a pluralistic framework. Yet, this accommodation has led to legal fragmentation, wherein individuals are governed by different laws based on their religious identity, resulting in inconsistencies and inequalities, especially in matters affecting women and marginalized groups.

The study traces the historical evolution of personal laws during colonial rule and post-independence constitutional debates. It evaluates key constitutional provisions such as Articles 25–28 (freedom of religion) and Article 44 (Directive Principle on the Uniform Civil Code), alongside a critical analysis of landmark judgments by the Indian judiciary that have attempted to balance secular principles with religious freedom. The paper also explores the feasibility and implications of implementing a Uniform Civil Code (UCC), a move long debated in Indian political and legal discourse.

By incorporating comparative perspectives from other secular democracies such as Turkey and France, the research sheds light on alternative models of managing religion in personal law. Ultimately, the paper argues for a harmonized approach that preserves religious freedom while ensuring constitutional guarantees of equality and non-discrimination. The findings suggest that a rights-based reform of personal laws, grounded in constitutional morality and guided by judicial interpretation, offers a pragmatic path toward resolving this enduring constitutional dilemma.

Keywords: Secularism in India, personal laws, Uniform Civil Code (UCC), constitutional morality, religious freedom, gender equality, legal pluralism

Introduction

India, as a constitutional democracy, is built upon the foundational values of justice, liberty, equality, and fraternity. One of its most distinctive features is its unique model of secularism, which is fundamentally different from the Western conception of a rigid separation between church and state. In India, secularism embodies the principle of equal respect and treatment for

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all religions, ensuring that the state neither promotes nor discriminates against any religion. However, the coexistence of secularism with religion-specific personal laws has given rise to one of the most complex constitutional dilemmas in India's legal and political history.

Personal laws in India govern crucial aspects of life such as marriage, divorce, inheritance, guardianship, and adoption, and they vary significantly across religious communities. These laws are largely derived from religious scriptures and customary practices. As a result, individuals belonging to different religious communities are governed by different legal regimes for personal matters. This legal pluralism, while reflecting India's socio-cultural diversity, has led to inconsistencies in the application of fundamental rights, especially those concerning gender justice and equality.

The Constitution of India, adopted in 1950, embodies both the commitment to secularism and the recognition of religious freedom. Articles 25 to 28 guarantee individuals the right to freely profess, practice, and propagate religion, while Article 44—enshrined in the Directive Principles of State Policy—urges the state to endeavor toward a Uniform Civil Code (UCC) for all citizens, thereby promoting legal uniformity irrespective of religion. The tension between these constitutional mandates lies at the heart of the secularism-personal law conundrum.

Over the decades, this conflict has played out in several landmark judicial decisions, political debates, and social movements. Cases such as Mohd. Ahmed Khan v. Shah Bano Begum (1985), Sarla Mudgal v. Union of India (1995), and Shayara Bano v. Union of India (2017) have brought the dilemma into sharp focus, forcing the judiciary to navigate a fine line between respecting religious autonomy and enforcing constitutional norms of equality and justice.

This paper aims to explore the historical evolution and constitutional dimensions of secularism and personal laws in India. It seeks to answer the critical question: Can a secular state justify the continued application of religion-based personal laws that may violate constitutional principles of equality and non-discrimination? In doing so, the paper examines the role of the judiciary, the political implications of personal law reform, the debate surrounding the Uniform Civil Code, and the comparative experiences of other secular nations. The study concludes by advocating for a balanced and rights-oriented approach to legal reform that respects India's pluralistic ethos while ensuring constitutional consistency and social justice.

Concept of Secularism: A Global and Indian Perspective

Secularism, as a political and constitutional concept, has evolved differently across global democracies. Broadly understood, secularism implies the separation of religion from the state

and public affairs. However, this separation is neither uniform nor absolute. In the Western context—especially in countries like France and the United States—secularism entails a strict demarcation between church and state, often referred to as the "wall of separation" doctrine. The state in such systems is prohibited from favoring or interfering with any religion, thereby ensuring the neutrality of governance in religious matters (Bhargava, 2010).

Western Secularism

In France, the principle of laïcité enshrines a rigid form of secularism, emphasizing the exclusion of religion from the public sphere. The French state does not recognize religious institutions in its civic processes, and religious expression in state-funded institutions is strictly regulated. Similarly, in the United States, the First Amendment to the Constitution prohibits both the establishment of religion and the restriction of free religious practice, thereby enforcing state neutrality in religious affairs. Both models underscore a privatized understanding of religion, where individual belief is tolerated but kept out of legislative and policy-making domains.

Indian Secularism

Contrastingly, Indian secularism is characterized by the principle of sarva dharma sambhava—meaning equal respect for all religions. This inclusive model does not insist on a watertight separation but rather accommodates religious plurality within a constitutional framework. The Indian state engages with religion through a model of principled distance, wherein it may intervene in religious practices that violate constitutional rights, such as caste-based discrimination or gender inequality (Mandal, 2016).

Indian secularism was shaped by the country's colonial experience, religious diversity, and the imperative to ensure national unity post-independence. The drafters of the Indian Constitution chose to safeguard religious freedoms under Articles 25–28 while also recognizing the need to reform unjust or oppressive religious customs. Unlike the Western model, which seeks minimal state interference, the Indian model permits state engagement to regulate religious institutions and practices in the interest of public welfare and social justice.

This differential treatment of secularism raises unique challenges. While the Indian model appears more inclusive and tolerant, it also leads to tensions between the state's duty to uphold constitutional rights and its obligation to respect religious freedom. This becomes particularly complex in the realm of personal laws, where religious doctrines directly impact civil rights and liberties. For instance, personal laws on marriage or divorce that discriminate against women can be challenged as violative of Articles 14 and 15 of the Constitution, even though they are protected under religious freedom.[138]

[138] Mandal, S. (2016). *Sarva Dharma Sambhava and the Indian model of secularism*

Secularism in the Indian Constitution

Although the term "secular" was inserted into the Preamble of the Indian Constitution by the 42nd Amendment Act of 1976, the idea was always embedded in the constitutional fabric. The Supreme Court of India has consistently held secularism to be a basic feature of the Constitution, incapable of being amended or abrogated (Kesavananda Bharati v. State of Kerala, 1973). However, the state's dual role—as a neutral arbitrator and a regulator of religious practices—continues to evoke critical debate, especially when religious autonomy clashes with constitutional morality.[139]

Thus, the Indian experience with secularism is not one of exclusion but of regulated inclusion, where religious freedom is protected, but subject to the overarching authority of constitutional values. This creates an inherently dynamic relationship between secularism and personal laws, one that is constantly evolving through legislative enactments, judicial interpretation, and socio-political discourse.

Evolution of Personal Laws in India

India's legal framework concerning personal laws is deeply rooted in its historical, religious, and colonial past. Personal laws in India are religion-specific codes that govern matters such as marriage, divorce, maintenance, inheritance, adoption, and guardianship. The evolution of these laws represents a gradual fusion of religious customs, colonial administrative practices, and post-independence legal reforms.

Pre-Colonial and Colonial Legacy

Before British colonialism, Indian society was governed largely by religious customs and community-based normative systems. Hindu law was derived from Dharmashastras, Smritis, and customary practices, while Muslim law, or Shariat, was based on the Quran, Hadith, and interpretations by Islamic jurists. These laws were not codified and varied across regions and sects. The legal systems were pluralistic, with caste, tribe, and religious community all playing a role in determining applicable norms.[140]

With the advent of colonial rule, the British introduced the policy of non-interference in religious matters but paradoxically also undertook selective codification of religious laws. The establishment of personal law as a formal legal category began under British administration. Hindu and Muslim personal laws were codified for ease of administration, and civil courts were empowered to apply religious law in personal matters. This gave religious leaders significant interpretative authority and institutionalized religious distinctions in law.

[139] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
[140] Menski, W. (2001). *Modern Indian Family Law*. Oxford University Press

Codified Hindu personal law came into effect with a series of legislative acts, including the Hindu Widow Remarriage Act, 1856, and the Hindu Inheritance Act, 1929. Similarly, Muslim personal law was preserved under the Shariat Application Act, 1937, which mandated the application of Muslim personal law to Muslims in personal matters. This codification process laid the groundwork for the communalization of personal law is a trend that continued even after independence.

Post-Independence Developments

After independence, India adopted a secular Constitution that envisaged equality before the law (Article 14) and prohibited discrimination on the basis of religion, race, caste, sex, or place of birth (Article 15). Despite these egalitarian ideals, the framers of the Constitution retained the system of religion-specific personal laws, reflecting a pragmatic compromise between uniform legal norms and religious sensitivities.

In the early years of the Republic, the Indian state took bold steps to reform Hindu personal law through the Hindu Code Bills. This resulted in the enactment of:

- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956
- The Hindu Minority and Guardianship Act, 1956
- The Hindu Adoptions and Maintenance Act, 1956

These laws applied to Hindus, Buddhists, Jains, and Sikhs and introduced modern principles such as monogamy, divorce, women's right to inheritance, and equal guardianship rights. However, similar reforms were not pursued in Muslim personal law, largely due to political sensitivities and the apprehension of alienating the minority community.

This asymmetrical approach led to a dichotomy where Hindus were subjected to significant legal reform while Muslims and other communities continued to be governed by uncodified or minimally codified religious laws. Consequently, the Indian legal system today operates as a patchwork of personal laws based on religious identity is a condition that has been repeatedly challenged for violating the constitutional principles of equality and secularism.

Codification vs. Reform

The evolution of personal laws in India thus reflects a complex interplay between the need to respect religious autonomy and the demand for legal modernization. While codification was initially introduced to ensure administrative efficiency under colonial rule, it ultimately contributed to the ossification of religious identity within the legal system. The absence of uniformity has led to discrepancies in the protection of individual rights, especially for women, and continues to fuel the debate surrounding the implementation of a Uniform Civil Code.

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Constitutional Provisions on Secularism and Religion

The Constitution of India enshrines the principle of secularism as one of its foundational values. While the word "secular" was formally inserted into the Preamble by the 42nd Amendment Act, 1976, the Indian Constitution has always embodied secular ideals through its provisions that promote religious freedom, equality before the law, and protection from religious discrimination. However, the juxtaposition of these ideals with the continued existence of religion-based personal laws creates a constitutional dilemma that challenges the balance between religious liberty and state neutrality.

The Preamble and the Idea of Secularism

The Preamble to the Constitution, which serves as a guiding light to interpret the other provisions, declares India to be a "sovereign, socialist, secular, democratic republic." This insertion of the term "secular" in 1976 reinforced the state's commitment to maintaining a principled distance from all religions and ensuring equal treatment irrespective of faith. Indian secularism, unlike its Western counterpart, does not advocate a strict separation of religion and state but rather promotes the peaceful coexistence of diverse religious communities within the framework of the Constitution.

Fundamental Rights and Religious Freedom

The most significant constitutional guarantee for religious freedom is found in **Articles 25 to 28** of the Constitution:

- **Article 25(1)** guarantees all individuals the freedom of conscience and the right to freely profess, practice, and propagate religion. However, this freedom is subject to public order, morality, health, and other fundamental rights.
- **Article 25(2)** permits the state to regulate or restrict any economic, financial, political, or secular activity associated with religious practice and also allows for social welfare and reform laws, such as those aimed at eliminating discriminatory religious customs.
- **Article 26** provides religious denominations the right to manage their own affairs in matters of religion.
- **Article 27** prohibits the state from compelling any person to pay taxes for the promotion or maintenance of any particular religion or religious denomination.
- **Article 28** prohibits religious instruction in state-funded educational institutions.

These provisions highlight the Indian Constitution's dual commitment to protecting religious freedom and enabling state intervention when necessary to uphold equality and justice.

Article 14 and 15: Equality and Non-discrimination

Alongside religious freedom, the Constitution guarantees equality before the law and protection from discrimination:

- **Article 14** ensures equality before the law and equal protection of the laws to all persons within the territory of India.
- **Article 15** prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.
- These provisions form the constitutional basis for challenging discriminatory personal laws that violate gender justice or perpetuate inequality within religious communities.

For instance, practices such as triple talaq and polygamy in Muslim personal law, or denial of coparcenary rights to Hindu daughters (prior to the 2005 amendment), have been contested as violative of Articles 14 and 15.

Directive Principles and Article 44: The Uniform Civil Code

The **Directive Principles of State Policy**, although non-justiciable, lay down the ideals that the state must strive to achieve. Among them, **Article 44** directs the state to endeavor to secure for the citizens a **Uniform Civil Code (UCC)** throughout the territory of India. The UCC, if implemented, would replace personal laws based on religion with a common set of civil laws applicable to all citizens, irrespective of their faith.

However, the UCC has remained a subject of intense political and social debate, with opponents viewing it as an intrusion into religious freedom and proponents arguing it is essential for national integration and gender justice. The absence of legislative will to implement Article 44 has perpetuated the constitutional inconsistency between secularism and legal pluralism.

Judicial Interpretation of Secularism

The Supreme Court of India has repeatedly held secularism to be part of the **basic structure** of the Constitution. In **S.R. Bommai v. Union of India (1994)**, the Court ruled that secularism is a basic feature that cannot be amended, and that the state must treat all religions with equal respect and distance. However, the Court has also upheld the state's power to reform religious practices that contravene fundamental rights.

Thus, the constitutional framework both enables religious freedom and mandates the state to uphold equality and social reform, creating a dynamic space where the principles of secularism and personal laws coexist, albeit often uneasily.

The Conflict: Secularism vs. Personal Laws

The coexistence of religion-based personal laws and the constitutional principle of secularism lies at the heart of India's legal and moral dilemma. While the Constitution enshrines secularism and equality as its guiding principles, the continuation of religious personal laws—many of which contain discriminatory provisions—poses serious questions about constitutional consistency, judicial fairness, and the state's role in social reform.

Legal Pluralism vs. Constitutional Uniformity

India's legal system permits **legal pluralism**, where different religious communities are governed by their own personal laws. These laws derive authority from religion rather than from a uniform statutory code, which makes them inconsistent with the Constitution's equality provisions. For example, Hindu, Muslim, Christian, and Parsi communities all have distinct laws relating to marriage, divorce, adoption, inheritance, and maintenance. This pluralism, while acknowledging India's cultural diversity, results in differential treatment of citizens based solely on religious affiliation.

The Indian Constitution, however, also provides for **constitutional uniformity** through Articles 14, 15, and 44. The right to equality (Article 14) and non-discrimination (Article 15) are enforceable fundamental rights, while the Uniform Civil Code (Article 44) is a non-enforceable directive principle. This creates a tension between **individual rights** and **group rights**, particularly when personal laws sanctioned by religion contravene fundamental rights.

Gender Inequality in Personal Laws

One of the starkest manifestations of the secularism-personal law conflict is in the domain of **gender justice**. Many personal laws, especially in their uncodified forms, perpetuate patriarchal norms and place women at a disadvantage.

- **Muslim personal law**, until recently, allowed unilateral divorce through talaq-e-bidat (instant triple talaq), which was declared unconstitutional in Shayara Bano v. Union of India (2017).[141]
- **Hindu personal law**, before the 2005 amendment to the Hindu Succession Act, denied daughters equal coparcenary rights in ancestral property.
- **Christian personal law** historically required women to prove aggravated cruelty to obtain a divorce, a higher threshold than for men.

These instances reflect how religion-based personal laws often conflict with constitutional values of equality, dignity, and personal liberty.

[141] Shayara Bano v. Union of India, (2017) 9 SCC 1

Judicial Activism and Constitutional Morality

To mitigate this conflict, the **judiciary has often stepped in** to ensure that personal laws conform to constitutional morality. Courts have repeatedly held that the right to religious freedom under **Article 25** is subject to other fundamental rights. In Indian Young Lawyers Association v. State of Kerala (2018), [142]the Supreme Court emphasized that constitutional morality must prevail over social morality or customary practices, especially when such practices infringe upon fundamental rights.

However, judicial intervention in personal laws is met with resistance from religious groups who view such reforms as an attack on their cultural autonomy. This has led to a **recurring tension between religious freedom and judicially imposed equality,** with courts attempting to balance both.

Lack of Legislative Uniformity

Another key factor aggravating the conflict is the absence of a **Uniform Civil Code,** as envisioned in Article 44. Despite being a constitutional directive, the UCC has not been implemented due to political hesitancy and fears of alienating religious minorities. This legislative inaction has entrenched religious identities in civil matters, thereby creating parallel legal systems that undermine the ideal of equal citizenship.

As a result, the Indian state finds itself in a paradoxical position committed to secularism and equality, yet reluctant to enforce legal uniformity that would realize these very ideals. This has led scholars to describe India as a **"pragmatic secular state"**, where political considerations often override constitutional imperatives.

Cultural Autonomy vs. Constitutional Conformity

The ongoing debate over secularism and personal laws fundamentally boils down to a conflict between **cultural autonomy** and **constitutional conformity**. On one hand, preserving personal laws respects the religious and cultural identity of various communities. On the other, allowing these laws to exist unchanged often perpetuates inequality and discrimination. The challenge, therefore, is to strike a balance that upholds constitutional principles without undermining religious freedom.

Judicial Responses and Landmark Cases

The Indian judiciary has played a central role in interpreting the complex relationship between secularism and personal laws. Faced with legislative inaction on implementing a Uniform Civil Code and reforming discriminatory religious practices, courts have frequently invoked constitutional morality and fundamental rights to reshape personal laws in accordance with the

[142] Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1

Constitution. Through landmark judgments, the judiciary has carved a delicate path between respecting religious freedom and ensuring equality and justice for all citizens.

1. Mohd. Ahmed Khan v. Shah Bano Begum (1985)[143]
This case marked a watershed moment in the conflict between Muslim personal law and constitutional rights. Shah Bano, a 62-year-old Muslim woman, was divorced by her husband and denied maintenance. She filed a petition under Section 125 of the Criminal Procedure Code (CrPC), which applies to all citizens, seeking alimony. The Supreme Court held that a divorced Muslim woman was entitled to maintenance under Section 125 CrPC, irrespective of personal law.

Significance:
The Court emphasized that personal laws must yield to the provisions of a secular statute when it comes to basic human rights like maintenance. This judgment sparked nationwide debate and opposition from conservative Muslim groups, leading to the enactment of the **Muslim Women (Protection of Rights on Divorce) Act, 1986,** which diluted the effect of the Shah Bano judgment.

2. Daniel Latifi v. Union of India (2001)
This case challenged the constitutional validity of the 1986 Act passed in the aftermath of Shah Bano. The Court upheld the Act but interpreted it to mean that the husband is liable to make a "reasonable and fair provision" for the future of the divorced wife, within the iddat period itself.

Significance:
The judgment cleverly preserved the spirit of Shah Bano by ensuring that the divorced woman's rights were not rendered illusory, even within the boundaries of Muslim personal law.

3. Shayara Bano v. Union of India (2017)[144]
In this historic case, the practice of **triple talaq** (instant divorce) was challenged by Shayara Bano, a Muslim woman who had been arbitrarily divorced by her husband. The Supreme Court, in a 3:2 majority, held the practice to be unconstitutional and violative of Article 14.

Significance:
This judgment affirmed that personal laws must adhere to the constitutional guarantee of equality and that even religious practices could be invalidated if they offend fundamental rights. It paved the way for the **Muslim Women (Protection of Rights on Marriage) Act, 2019,** which criminalized triple talaq

[143] Mohd. Ahmed Khan v. Shah Bano Begum, 1985 SCR (3) 844
[144] Shayara Bano v. Union of India, (2017) 9 SCC 1

4. Indian Young Lawyers Association v. State of Kerala (2018)[145]
This case dealt with the entry of women into the **Sabarimala temple**, which was prohibited to females of menstruating age under a religious custom. The Supreme Court struck down the ban, holding it unconstitutional and discriminatory.

Significance:
The Court asserted that constitutional morality must prevail over patriarchal religious practices and reaffirmed that the right to worship cannot be denied on the basis of biological attributes.

5. Sarla Mudgal v. Union of India (1995)[146]
In this case, Hindu men converted to Islam solely to marry again without divorcing their first wives, exploiting the permissibility of polygamy in Muslim law. The Supreme Court held that such conversions were done in bad faith and did not dissolve the first marriage.

Significance:
The Court strongly advocated for the **Uniform Civil Code,** calling the absence of a UCC a major obstacle to national integration and gender justice.

Judicial Trends and Challenges
Over the decades, Indian courts have consistently reaffirmed the supremacy of the Constitution over personal laws. They have developed the doctrine of **"essential religious practices"** to distinguish between core tenets of faith and regressive practices that can be reformed. However, judicial activism in the domain of personal laws often faces criticism for overstepping into the legislative domain and provoking communal backlash.

Despite this, the judiciary remains the most active agent in harmonizing religious laws with constitutional values. In the absence of decisive legislative reform, courts have shouldered the responsibility of ensuring that personal laws do not operate as instruments of discrimination or injustice.

The Debate on Uniform Civil Code

The implementation of a **Uniform Civil Code (UCC)** has been one of the most contentious and politically sensitive issues in independent India. Enshrined in **Article 44** of the Directive Principles of State Policy, the UCC aims to replace religion-based personal laws with a common set of civil laws governing marriage, divorce, inheritance, adoption, and maintenance for all citizens, irrespective of religion. While the Constitution envisions it as a step toward ensuring

[145] Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1
[146] Sarla Mudgal v. Union of India, (1995) 3 SCC 635

equality and national integration, its realization has been stalled by fierce political, religious, and cultural debates.

Understanding Article 44

Article 44 of the Constitution reads:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Although non-justiciable, Article 44 reflects the framers' intent to promote national unity and gender equality through legal uniformity in civil matters. However, the fact that personal laws were retained and not immediately codified into a UCC reveals a deliberate choice to prioritize religious harmony and gradual reform.

Arguments in Favour of the UCC

1. **Equality and Non-discrimination:** Personal laws based on religion often violate the constitutional guarantee of equality under Articles 14 and 15. A UCC would ensure uniform rights and obligations for all citizens, especially in matters like marriage and inheritance, promoting gender justice and ending discriminatory practices.
2. **National Integration:** A single set of laws applicable to all citizens would foster a sense of unity and common citizenship, reducing communal divisions and legal fragmentation.
3. **Secularism:** Implementing the UCC would reaffirm the secular character of the Indian state by separating religion from law in civil matters, thereby ensuring that the state does not endorse or perpetuate religious inequalities.
4. **Judicial Advocacy:** Courts have repeatedly emphasized the importance of a UCC. In **Sarla Mudgal v. Union of India** (1995), the Supreme Court lamented the lack of progress on Article 44 and highlighted how the absence of a UCC facilitates misuse of religious conversion to evade personal law obligations.
5. **Global Norms:** Most modern democracies operate under a single civil code. Adopting a UCC would align India with international human rights standards and bolster its commitment to democratic and secular principles.

Arguments Against the UCC

1. **Threat to Religious Freedom:** Critics argue that enforcing a UCC may infringe upon **Articles 25 and 26**, which guarantee freedom of religion and the right of religious denominations to manage their own affairs.
2. **Cultural Diversity and Pluralism:** India is a pluralistic society with immense religious, cultural, and ethnic diversity. Imposing a uniform code might be seen as erasing minority identities and enforcing a majoritarian viewpoint.

3. **Fear of Political Motives:** The demand for a UCC is often perceived as politically motivated, especially by minority communities who fear it will be used to impose Hindu cultural norms under the guise of uniformity.
4. **Practical Challenges:** Drafting a single code that is acceptable to all religious communities and respects India's diversity is an enormous legislative and administrative challenge.
5. **Need for Internal Reform First:** Some scholars argue that instead of imposing a UCC, the focus should be on internal reform of all personal laws to bring them in line with constitutional values. This gradualist approach may be more culturally sensitive and politically feasible.

Goa: An Exception

The **State of Goa** presents a unique case as it follows the **Portuguese Civil Code of 1867**, which functions as a de facto Uniform Civil Code for all its citizens, regardless of religion. The Goa example is often cited as evidence that a UCC is possible and can coexist with religious harmony. However, critics point out that even the Goan code contains exceptions for specific communities, and its success may not be easily replicable nationwide.[147]

The Way Forward: Towards a Just and Inclusive UCC

Given the deep-rooted sensitivities surrounding personal laws, a **phased and consultative approach** to the UCC is essential. Some scholars propose starting with **optional civil codes** or **common minimum standards** in areas like marriage registration, maintenance, and guardianship.[148] Public education, community participation, and trust-building measures must accompany legal reform to ensure that the UCC is not perceived as coercive or exclusionary.

Case Studies and Comparative Perspectives

India's experience with secularism and personal laws is unique, but examining both internal and international examples provides valuable insights into how legal systems can reconcile cultural diversity with constitutional equality.

Case Study 1: Hindu Personal Law Reform

After independence, the Indian government prioritized reform of **Hindu personal laws**. The **Hindu Code Bills**, passed between 1955–1956, led to the codification of family laws through the **Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act**,

[147] Mansuri, N. (2020). *Uniform Civil Code and secularism: Revisiting Article 44 in contemporary India*. *Journal of Law and Policy, 16*(2), 102–115

[148] Law Commission of India. (2018). *Consultation paper on reform of family law*. Retrieved from https://lawcommissionofindia.nic.in

and **Hindu Adoptions and Maintenance Act**. These laws introduced legal equality for women in areas of divorce, inheritance, and guardianship.

Importantly, the **2005 amendment** to the Hindu Succession Act was a landmark step that gave daughters equal coparcenary rights in ancestral property, correcting centuries of patriarchal inheritance norms. However, reform was selective—similar changes were not extended to other communities, creating asymmetries within the legal system.

Case Study 2: Muslim Personal Law and Resistance to Reform
Unlike Hindu laws, **Muslim personal law** in India remains largely uncodified and governed by the Shariat. Attempts to reform Muslim personal law have met with strong resistance from conservative religious groups and political stakeholders. The backlash against the **Shah Bano judgment (1985)**, followed by the **Muslim Women (Protection of Rights on Divorce) Act, 1986**, illustrated the political sensitivity surrounding Islamic law.

Despite that, the **Shayara Bano v. Union of India (2017)** case revived the debate. The Court declared the practice of **triple talaq** unconstitutional, paving the way for the **Muslim Women (Protection of Rights on Marriage) Act, 2019**, which criminalized the practice. While this was a significant move toward gender justice, other aspects like polygamy and inheritance inequalities remain untouched, showcasing the piecemeal nature of reform.

Comparative Insights: Turkey, Tunisia, and Indonesia
Other Muslim-majority countries offer relevant models:

- **Turkey** adopted a **secular civil code** in 1926 inspired by the Swiss model, replacing Sharia-based family law with a uniform code that ensured equality in marriage, divorce, and inheritance. It marked a complete break from the Ottoman tradition and embedded secularism in public life.
- **Tunisia**, post-independence, passed the **Code of Personal Status (1956)**, which abolished polygamy, introduced judicial divorce, and enhanced women's rights, all within an Islamic framework. The country balanced religious principles with progressive social reform.[149]
- **Indonesia**, while maintaining religious family law through religious courts, has imposed restrictions on polygamy and mandates judicial consent, representing a hybrid model of state oversight with religious sensitivity.

[149] Routledge, L. (2013). *Secularism and legal pluralism in India: A constitutional balancing act. South Asia Review, 34*(3), 19–35

These examples show that **personal law reform is not inherently anti-religious**, and secularism need not exclude religious voices—it can accommodate pluralism while advancing equality.

Recommendations and the Way Forward

To move toward constitutional ideals without alienating communities, a **measured and participatory approach** to personal law reform is essential.

1. **Gradual and Inclusive Reform**
A sudden imposition of a Uniform Civil Code may provoke backlash. A **phased approach**—starting with reforms in family laws affecting all communities (e.g., maintenance, child custody, inheritance rights for women)—is more pragmatic. The state could consider introducing an **optional UCC**, as suggested by the Law Commission in 2018, giving citizens the choice to opt in.

2. **Codification of All Personal Laws**
Many inequalities stem from **uncodified customs**. Codifying all personal laws like in the Hindu context—can ensure transparency and make them subject to constitutional scrutiny. Codification also offers a legal basis for reform without undermining cultural identity.

3. **Judicial Oversight and Constitutional Morality**
The judiciary should continue to test personal laws against the touchstone of **constitutional morality**, as in Shayara Bano, Sabarimala, and Navtej Singh Johar. Religious freedom (Article 25) is not absolute and must yield to fundamental rights like equality (Article 14) and dignity (Article 21).

4. **Public Education and Interfaith Dialogue**
Misconceptions about the UCC being anti-minority or pro-majoritarian need to be addressed through **public discourse, education, and dialogue**. The state and civil society should create platforms where religious leaders, scholars, and citizens engage meaningfully with legal reform.

5. **Political Will and Constitutional Commitment**
UCC has remained a constitutional promise for over seven decades. Implementation requires **political consensus**, not just legislative power. Reforms must be driven by constitutional values, not electoral motives, to ensure legitimacy and acceptance across communities.

Conclusion

India's journey toward balancing **secularism and personal laws** is emblematic of its broader struggle to harmonize diversity with unity, faith with reason, and tradition with equality. The persistence of discriminatory personal laws—particularly in matters of gender—continues to undermine the constitutional ethos of equality, justice, and secularism.

Judicial pronouncements have played a vital role in pushing personal laws toward constitutional alignment, but true reform demands democratic engagement and legislative clarity. A Uniform Civil Code is not a goal to be enforced in haste, but a constitutional ideal to be realized through **gradual, inclusive, and consultative reform**.

A model of reform rooted in **constitutional morality**, **pluralism**, and **equal citizenship** can help India resolve the tension between secularism and personal laws. Only then can the constitutional dream of **equal justice under one law** be fully realized—without eroding the plural identity of Indian society.

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The Legal Turbulences Behind the Air India Crash

By Jayaditya Sharma[150]

Abstract
Airline crashes are catastrophic not only for the victims and their families but also for the socio-economic and regulatory credibility of a country. This article critically examines major Air India crashes, focusing on the often-overlooked administrative failures that contributed to these tragedies. From inadequate maintenance oversight and delayed safety audits to regulatory lapses and poor inter-agency coordination, the article highlights systemic issues within India's civil aviation ecosystem. Relying on investigative reports, statutory laws under Indian civil aviation, and international conventions such as the Chicago Convention and ICAO standards, the analysis identifies key structural flaws and enforcement gaps. The objective is not to politicize the tragedy or assign blame arbitrarily, but to push for urgent reforms in aviation governance. Emphasis is placed on the need for transparent investigations, independent safety oversight bodies, and stronger legal frameworks that prioritize passenger safety. The article concludes that without accountability and reform, such preventable disasters will continue to undermine public trust in India's aviation sector.
Keywords: Air India crash, aviation law, administrative negligence, regulatory failure, DGCA, aviation disaster, ICAO, airline safety, legal reform, crash investigation

Keywords: Air India crashes, aviation safety, administrative negligence, regulatory failure, DGCA oversight, ICAO standards, aviation law reform

Introduction

This catastrophic event has deeply affected the entire nation and the families of the victims. On Thursday, June 12th, a Boeing 787-8 Dreamliner carrying 230 passengers and 12 crew members took off at 1:38 PM IST from Sardar Vallabhbhai International Airport in Ahmedabad. Tragically, the aircraft crashed, resulting in the fatalities of all but one person on board, with a total of 241 onboard casualties. Additionally, there were 28 deaths and 60 injuries on the ground, with the numbers still being assessed; approximately 269 fatalities have been reported.

This tragedy has profoundly affected the nation and the families of the victims. On Thursday, June 12th, a Boeing 787-8 Dreamliner, carrying 230 passengers and 12 crew members, departed at 1:38 PM IST from Sardar Vallabhbhai Patel International Airport in Ahmedabad, with 169 Indian nationals, 53 British nationals, 1 Canadian national, and 7 Portuguese nationals on board. Unfortunately, the aircraft experienced a catastrophic failure, resulting in the loss of all but one individual on board, totaling 241 casualties. Additionally, there were 28 fatalities and 60 injuries reported on the ground, and the numbers are still being calculated, with approximately

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269 total casualties reported.

The flight was intended for London's Gatwick Airport and was piloted by Captain Sumeet Bharwal, who had 8,200 hours of flying experience, alongside Co-Pilot Clive Kunder, who had 1,100 hours of flying experience. Tragically, the plane crashed near the BJ Medical College canteen, where numerous individuals were dining at the time of the incident. It was in route to London's Gatwick Airport, piloted by Captain Sumeet Bharwal, who had 8,200 hours of flying experience, and co-piloted by Clive Kunder, who had 1,100 hours of flying experience. The plane met a devastating crash near the BJ Medical College canteen, where many individuals were having lunch at the time of the incident.

Legal liability, accountability, and regulatory oversight of Indian Civil Aviation

The Aircraft Act, 1934, and the Aircraft Rules, 1937.[i] These are the primary laws governing civil aviation in India. This grants the Central Government broad powers to regulate the maintenance of aircraft and their equipment. This includes the ability to establish rules for inspection, license personnel involved in maintenance, and certify aircraft components. Investigators from the Directorate General of Civil Aviation (DGCA) and the Aircraft Accident Investigation Bureau (AAIB) employed various tools to examine the wreckage. This included cutting into the cockpit floor to retrieve the black boxes and analyzing the aircraft's systems and components for potential malfunctions. Many equipment will help us unravel the pivotal cause behind this mega disaster, one of the major equipment is Black Boxes (Flight Data Recorder and Cockpit Voice Recorder). This equipment helps in collating information and data, for example, the Flight Data Recorder records all technical parameters, and the Cockpit Voice Recorder captures pilot conversations and cockpit sounds.

Aircraft (Investigation of Accidents and Incidents) Rules, 2017[ii]govern the modus operandi of investigation after an airplane crash or an unfortunate accident. DG, Aircraft Accident Investigation Bureau (AAIB) has extensive jurisdiction over the Civil Aviation Authority to conduct searches and analyze different causes that might be pilot distress or equipment failure. This statute is also corroborated by the ICAO Annex 13[iii] obligations, which underlie standards and procedures after an airplane accident and incident investigation. Now, after all these horrifying happening, we will see a load of lawsuits on DGCA, AAIB, and Ahmedabad Airport with its ownership companies like Tata Sons via its subsidiary Talace Private Limited which was transferred on 27 January 2022, which has 74.9% ownership of Air India and the rest is with Singapore Airlines which is 25.1%[iv].The first ones to be held accountable will be the DGCA, as this was a failure to comply with mandated regulations and negligence on the part of the on-ground crew support, and violations of SOPs. In the aftermath of this incident, these authorities might face potential litigation under tort and product liability law, as well as scrutiny under international aviation treaties like the Montreal Convention, 1999[v]. The Montreal Convention 1999 lays down the liability of airlines resulting in the death, injury, or major loss of the passenger.

Who is the real culprit?

Hitherto, there is no major entity or individual behind this. We might see the main man or entity behind this gruesome mistake as investigation by AAIB, NDRF, SDRF, and police proceeds, but we can have a rough skeletal idea about who was involved at a macro point of view. One of the major concerns when such a disaster appears in our mind is the level of stress or medical complications on the pilot. Let's analyze this aspect, as per DGCA Flight Duty Time Limitations (FDTL) from January 2024, pilots are entitled to: minimum 48 hrs. weekly rest up from 36 hours, in march 2024 the DGCA penalized Air India ₹8 million for breaking these guidelines but wait if these highly experienced pilots were to be taken bone-weary this incident would've occurred at the middle of the flight hours not at the starting but lets say this is just an assumption, Financial Times reported that the aircraft "lost its signal at 1:38 pm local time after issuing a mayday call''[vi]This inference is that the pilots were on high alert and no problem from their side, hence the chances of them being accountable are frequently less. As we can see that on the OTTs, there is a controversy that Dreamliner was maintained by Turkish Technic (a subsidiary of Turkish Airlines), suggesting that faulty maintenance caused the crash. Anadolu Agency's Fact-Check Line confirmed the crashed aircraft was a Boeing 787-8, while Turkish Technic only services Boeing 777s under its agreement with Air India—no 787s were involved[vii]. Now things come down to who was responsible for maintaining the hardware and equipment of the Air India fleet, Air India Engineering Services Ltd (AIESL) is responsible for maintenance of the Air India, Heavy maintenance (C/D checks) for wide-body jets—including the 787-8—is sometimes done offshore, such as in Abu Dhabi and Singapore[viii]. Boeing Global Services is involved in the supply of major components and parts, reiterating the following AIESL is primarily responsible, and if not, then it has the most responsibility in mishandling of the equipment and disregarding DGCA rules, Turkish Technic had no role in this it is a misinformation not to be followed while for the components of the plane BGS comes under conjecturing radar. The Aircraft Act, 1934, grants the legal authority for safety checks of airworthiness certification and operations checks; however, DGCA relegates this authority to the Aircraft Maintenance Engineer (AME), while there is a clear violation of DGCA Maintenance standards, but it was the duty of (AME) to implement and execute these statutory laws. The pilot in control of this plane also had one option that shouldn't go unnoticed, the Boeing 787-8 Dreamliner had 1,25,000 litres of fuel so was it possible for the pilot to follow fuel dumping protocol as this process would have mitigated the impact and injuries on both the crew and passengers in the plane and on-ground casualties. This fuel dumping system is called the fuel jettison system, which is used when there is an emergency landing to prevent the plane from maximum damage and lighten the weight of the plane, and protect the lives in the plane. If logically speaking, spraying such an amount of fuel on such a densely populated area would've expedited the catastrophic losses, there are some rules and regulations for the pilot to use this system. The first rule is that the plane should have attained more than 6000 feet in minimum altitude, which war far-fetched from the actual altitude gained by the Dreamliner liner

negating this rule. The second rule is that where the fuel is to be dumped should be non-populated airspace, but unfortunately, in this case, it was above the Meghani area, which is densely populated, and hence, violating this rule again. The last rule, which elucidates the first rule, is that the altitude should be such that after dumping the fuel, the fuel should evaporate in the surrounding which was not possible as the Dreamliner could not attain that height, hence the pilot made the right call by not using this system as the place above which this airline was flying was very populated and active at the time which could have strengthen the aftermath effects of the crash. After the thorough and detailed investigative analysis, it is obvious that there was no error on the pilot's side. It is subtly very wrong what social media gurus are claiming that it was a grievous mistake of the pilots, which is completely false, as such senior pilots with thousands of flying hours under their belts committing such a mistake is a very minor reason for this crash. Out of all the elements analysed, the most probable cause of this incident is AIESL's lackadaisical maintenance of the flight and disregard for the rules set by DGCA.

Conclusion

In the wake of June 12, 2025, the nation witnessed one of the deadliest and rarest plane crashes in world history. This serves as a stark reminder of the mistakes the aviation industry is repeating; a similar incident occurred with Air India Express Flight 812 (Mangalore) in 2010, where pilot fatigue, poor management of resources, and inadequate DGCA oversight contributed to the disaster. Lessons from failures in the international aviation industry should also be firmly considered when applying statutory laws. For example, Bhoja Air Flight 213 (Pakistan) in 2012 was cleared to fly despite bad weather and machinery abnormalities, while the conditions in our case are similar, but the latter reason applies best. Laws, whether constitutional or statutory, should align with international laws; only then can we ensure the effective application of our executive, legislative, and judicial systems. One more pivotal and salient point to note is that in the aftermath of this grave crash, many doctors and passengers lost their lives, shattering many families. Historically, our response to disasters has involved playing blame games among different political parties, overshadowing the most critical areas requiring immediate action. Every issue of utmost pivotal importance has become a social media trend and an opportunity for a vote bank for political parties. Issues come by and are forgotten in some weeks for example the Atul Subhash case, the Kolkata rape case, the RCB stampede case, will the people of this country the choosers of governments consent to this type of ignorance shown by them or they choose to be gritter in raising their voices against injustice and pressurize the government, capitalistic giants to take responsibility of the lethargy shown by their side and be visible in the steps they take for general public and the families of victims. Our educational system teaches our future generations history so that our future generations can prevent themselves from doing those dark mistakes which happened in our history let us ensure that this incident gets etched in our history, and for us let this be a present mistake for our future. We must ask ourselves how many lives we are willing to lose in the name of politics.

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THE UNIFORM CIVIL CODE AND ITS COMPARATIVE ANALYSIS WORLDWIDE

By Shahil Rangra,[151]

ABSTRACT

The Uniform Civil Code (UCC) represents the concept of a common body of civil laws applicable equally to all citizens irrespective of religion, caste, gender, or community identity. It primarily concerns personal matters such as marriage, divorce, maintenance, adoption, guardianship, succession, inheritance, and family property rights. In India, the UCC derives constitutional recognition under Article 44 of the Constitution, which directs the State to endeavour to secure a uniform civil code throughout the territory of India. However, due to India's pluralistic social structure and the coexistence of multiple personal law systems, its implementation has remained a subject of continuous legal, political, and social debate.

This paper examines the historical evolution, constitutional status, and judicial treatment of the UCC in India. It analyses landmark decisions such as Shah Bano, Sarla Mudgal, John Vallamattom, and Shayara Bano, where the judiciary emphasized equality, gender justice, and the need for reform in personal laws. The study further evaluates the present legal framework governing Hindu, Muslim, Christian, and Parsi personal laws, along with secular alternatives such as the Special Marriage Act, 1954.

A comparative analysis of legal systems in countries such as France, Turkey, Tunisia, Brazil, Egypt, the United States, and Goa (India) demonstrates that many nations have adopted common civil frameworks while balancing social diversity and modern legal values. These examples provide useful insights for India's ongoing discourse.

The paper also critically discusses arguments in favour of the UCC, including equality before law, national integration, simplification of legal processes, and protection of vulnerable groups. Simultaneously, it addresses concerns relating to religious freedom, cultural autonomy, lack of consensus, federal complexities, and fears of majoritarian imposition. Recent developments up to 2026, particularly the enactment of the Uttarakhand Uniform Civil Code, are also examined.

The study concludes that the path toward a UCC in India must be gradual, consultative, and constitutionally balanced. Rather than coercive uniformity, the objective should be to create a just and inclusive civil framework that protects diversity while ensuring equal rights and dignity for all citizens.

Keywords: Uniform Civil Code, Article 44, Personal Laws, Gender Justice, Constitutional Law, Comparative Law, Secularism, India.

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1) INTRODUCTION

The Uniform Civil Code (UCC) refers to the idea of a common set of civil laws governing all citizens of a country equally, irrespective of religion, caste, tribe, gender, or cultural identity. It generally relates to personal matters such as marriage, divorce, maintenance, adoption, guardianship, succession, inheritance, and family property rights. Under a UCC framework, individuals are governed by a uniform legal system in civil matters rather than separate religion-based personal laws.[152]

The concept of a Uniform Civil Code is rooted in constitutionalism, equality before law, secular governance, and social justice. In multicultural democracies, the challenge often lies in balancing individual rights, community traditions, and national legal unity. Supporters of the UCC argue that a modern democratic state should provide equal civil rights to all citizens under one law. Opponents, however, contend that personal laws are deeply connected to religious freedom, identity, and cultural autonomy, and therefore should not be disturbed without broad consultation.

In India, the UCC remains one of the most debated constitutional questions since independence. While criminal law, commercial law, taxation law, and procedural law are largely uniform across the country, family law continues to be regulated through diverse personal laws. These include Hindu law, Muslim law, Christian law, Parsi law, tribal customs, and secular statutes like the Special Marriage Act.[153]

Globally, many nations have adopted civil codes that apply equally to all citizens, while others allow religious or customary personal laws to coexist with state law. Therefore, the debate around UCC is not merely legal but also social, political, historical, and comparative in nature. The objective of this paper is to examine the meaning, constitutional basis, judicial development, international models, arguments for and against the UCC, recent developments up to 2026, and the possible future path for India.[154]

2) STATUS OF UNIFORM CIVIL CODE IN INDIA

The constitutional basis of the Uniform Civil Code in India is found in **Article 44** of the Constitution of India, placed under the **Directive Principles of State Policy (DPSP)**. It states: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Although Directive Principles are not enforceable in courts, they are fundamental in governance

[152] Mulla's Principles of Hindu Law; Fyzee's Outlines of Muhammadan Law (discussing personal law subjects such as marriage, succession, and guardianship).

[153] India, Hindu Marriage Act, No. 25 of 1955; Muslim Personal Law (Shariat) Application Act, No. 26 of 1937; Indian Christian Marriage Act, No. 15 of 1872; Parsi Marriage and Divorce Act, No. 3 of 1936; Special Marriage Act, No. 43 of 1954 (India).

[154] Comparative Constitutional Law (discussing the interaction of law, politics, religion, and society in civil code reforms).

and serve as guiding principles for legislation and state policy.[155]

Historical Background

During British rule, the colonial administration gradually codified criminal and commercial laws such as:

- Indian Penal Code, 1860 (Bharatiya Nyaya Sanhita, 2023)
- Indian Evidence Act, 1872 (Bharatiya Sakshya Adhiniyam, 2023)
- Indian Contract Act, 1872

However, personal laws concerning marriage, divorce, inheritance, and religious customs were largely left untouched.

During the Constituent Assembly debates, several members strongly supported a common civil code as necessary for national integration and gender justice. Others, particularly representatives of minority communities, opposed immediate implementation, arguing for protection of religious freedom. As a compromise, the provision was placed in Part IV of the Constitution rather than as a fundamental right.[156]

Position in 2026

As of 2026, India does not yet have a nationwide Uniform Civil Code. However, several developments have revived the issue:[157]

1. **Goa Civil Code** continues as India's most cited working example.[158]
2. **Uttarakhand** enacted a state-level Uniform Civil Code framework, becoming the first Indian state after independence to legislate substantially in this area.[159]
3. Public debate continues on whether Parliament may enact a national framework or states may proceed individually.

Thus, the UCC remains constitutionally aspirational but politically active.

3) LEGAL DEVELOPMENT IN INDIA

Indian courts have repeatedly commented upon the desirability of a Uniform Civil Code.

1. Mohd. Ahmed Khan v. Shah Bano Begum (1985)

This case involved maintenance rights of a divorced Muslim woman under Section 125 CrPC (now reflected under new criminal procedure law structure). The Supreme Court upheld

[155] Id. art. 37 (providing that Directive Principles are not enforceable by any court, but are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply them in making laws).
[156] M.P. Jain's Indian Constitutional Law (noting that the British largely refrained from codifying religion-based personal laws).
[157] India, Constitution of India art. 44 (directive provision; no nationwide enactment as of 2026).
[158] Goa, Goa, Daman and Diu Administration Act, No. 1 of 1962 (continuing pre-existing Portuguese civil law framework); Family Laws of India.
[159] Uttarakhand, Uniform Civil Code, Uttarakhand Act (2024) (state legislation introducing a common civil framework).

maintenance rights and observed the desirability of a Uniform Civil Code.[160]

2. Sarla Mudgal v. Union of India (1995)

The Court dealt with Hindu husbands converting to Islam solely for second marriage without dissolving the first marriage. The Court criticized misuse of personal laws and urged progress toward a UCC.[161]

3. John Vallamattom v. Union of India (2003)

The Supreme Court struck down discriminatory provisions affecting Christian succession law and again referred to the need for uniformity in personal laws.[162]

4. Shayara Bano v. Union of India (2017)

The practice of instant triple talaq (talaq-e-biddat) was declared unconstitutional. This judgment was seen as a step toward gender justice within personal laws.[163]

5. Subsequent Judicial Trend

Courts in later decisions continued to emphasize constitutional morality, dignity, equality, and non-discrimination in family law matters.

4) EXISTING PERSONAL LAWS IN INDIA

India presently recognizes multiple legal frameworks:

Hindu Law

- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956
- Hindu Minority and Guardianship Act, 1956
- Hindu Adoptions and Maintenance Act, 1956

(These laws apply to Hindus, Buddhists, Jains, and Sikhs with certain exceptions.)[164]

Muslim Law

- Muslim Personal Law (Shariat) Application Act, 1937
- Dissolution of Muslim Marriages Act, 1939
- Muslim Women (Protection of Rights on Divorce) Act, 1986[165]
- Muslim Women (Protection of Rights on Marriage) Act, 2019

[160] India, Code of Criminal Procedure, No. 2 of 1974, § 125 (India); now see Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).
[161] *Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635 (India).
[162] *John Vallamattom v. Union of India*, (2003) 6 S.C.C. 611 (India).
[163] *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).
[164] India, Hindu Marriage Act, No. 25 of 1955 (India).
[165] India, Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986 (India).

Christian Law

- Indian Christian Marriage Act, 1872
- Divorce Act, 1869 (as amended)

Parsi Law

- Parsi Marriage and Divorce Act, 1936

Secular Option

- Special Marriage Act, 1954

This plural system reflects diversity but also creates complexity and unequal standards in some areas.[166]

5) COUNTRIES WITH UNIFORM OR COMMON CIVIL LAW SYSTEMS

France

France is often cited for the **Napoleonic Code of 1804**, which introduced a modern civil code applying uniformly across citizens. It separated many civil matters from church control and promoted legal uniformity.

Turkey

In 1926, under Mustafa Kemal Atatürk, Turkey adopted a Swiss-inspired Civil Code replacing many aspects of Ottoman religious law. It introduced civil marriage, monogamy, and expanded women's rights.[167]

Tunisia

Tunisia's **Code of Personal Status (1956)** is considered a progressive reform in the Arab world. It abolished polygamy and advanced women's legal rights.[168]

Brazil

Brazil's Civil Code of 2002 modernized family and property law under a unified national system.[169]

United States

The United States does not have a single nationwide civil code in family matters. States legislate separately. However, laws are generally secular and religion-neutral rather than based on personal religious systems.

Egypt

Egypt combines civil law traditions with religious influences in family law. It has introduced

[166] India, Constitution of India arts. 25–26, 44; M.P. Jain's Indian Constitutional Law.
[167] Turkey: *Türk Medeni Kanunu* [Turkish Civil Code], No. 4721, 1926 (Tur.).

[168] Code du Statut Personnel [Code of Personal Status] (Tunisia) (1956).
[169] Brazil: *Código Civil* [Civil Code], Law No. 10.406, of Jan. 10, 2002, D.O.U. of Jan. 11, 2002 (Braz.).

reforms improving women's rights, custody, and access to divorce.[170]

India (Goa)

Goa follows a version of the old Portuguese Civil Code, often cited as a practical Indian model. It includes marriage registration, community property concepts, and relatively uniform family law principles.[171]

6) ARGUMENTS

Arguments in Favour of UCC :

1. Equality Before Law

A UCC may ensure equal treatment irrespective of religion, especially in matters of marriage, divorce, succession, and guardianship.

2. Gender Justice

Many personal law controversies involve unequal rights of women. A uniform law can promote dignity and equal rights.

3. National Integration

One common civil framework may strengthen citizenship identity over communal divisions.

4. Simplicity and Legal Certainty

Multiple personal laws often create confusion, forum disputes, and litigation complexity.

5. Constitutional Secularism

A secular democratic state may regulate civil rights through common law while protecting freedom of worship separately.

6. Protection of Vulnerable Persons

Women, children, elderly dependents, and abandoned spouses may benefit from uniform remedies.[172]

Arguments against UCC:

1. Threat to Diversity

Critics argue India's pluralism includes legal diversity and should not be erased.

2. Religious Freedom Concerns

Articles 25 to 28 protect freedom of religion. Opponents fear state overreach into religiously governed family practices.

3. Lack of Consensus

Without broad consultation, a UCC may create social resistance.

4. Fear of Majoritarian Bias

Some minorities fear that a "uniform" code may actually reflect majority norms.

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[170] Constitution of the Arab Republic of Egypt (2014); Egyptian personal status reform legislation.

[171] Goa, Daman and Diu Administration Act, No. 1 of 1962 (India); Portuguese Civil Code (1867), as continued in Goa.

[172] 7 CONSTITUENT ASSEMBLY DEBATES 540–50 (Nov. 23, 1948) (debates on Draft Article 35, later Article 44).

5. Practical Complexity
India contains tribal customs, regional traditions, and varied kinship systems that are difficult to merge.
6. Political Misuse
The issue has often been used in electoral politics rather than sincere reform discourse.[173]

7) CHALLENGES IN IMPLEMENTATION IN INDIA

1. Diversity of Communities
India has numerous religions, sects, tribes, and customary systems.
2. Drafting a Fair Code
The challenge is to create a genuinely neutral code rather than replacing one religion's norms with another's.
3. Constitutional Balancing
Any legislation must harmonize:

- Article 14 (Equality)
- Article 15 (Non-discrimination)
- Article 21 (Dignity and Liberty)
- Article 25 (Religious Freedom)

4. Federal Questions
Can states legislate first? Can Parliament legislate comprehensively? These issues may involve federal interpretation.
5. Social Acceptance
Law without public legitimacy may remain ineffective.[174]

8) RECENT DEVELOPMENTS UP TO 2026

Uttarakhand Uniform Civil Code
Uttarakhand became the first post-independence Indian state to enact a UCC framework. It generated national debate on:

- registration of live-in relationships
- marriage and divorce uniformity
- inheritance standards

[173] Marc Galanter & Jayanth K. Krishnan, Personal Law Systems and Uniform Civil Code Debates in India, in LEGAL PLURALISM IN SOUTH ASIA 112, 118–24 (Oxford Univ. Press 2018).
[174] 7 CONSTITUENT ASSEMBLY DEBATES 540–50 (Nov. 23, 1948); M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1234–38 (8th ed. 2018).

- equal civil obligations

Law Commission Discussions

Different Law Commissions have examined reform of family laws. Some reports suggested that rather than one sweeping code, discriminatory provisions in all personal laws should be removed progressively.

Judicial Climate

Courts continue emphasizing constitutional morality, equality, and women's dignity in family law disputes.[175]

9) WAY FORWARD

A practical and balanced path for India may include:

1. Gradual Reform Model

Instead of immediate nationwide imposition, reform discriminatory provisions in all personal laws step by step.

2. Optional Civil Code First

Allow citizens the choice to opt into a modern common family code.

3. Stakeholder Consultation

Include:

- religious scholars
- women's groups
- tribal representatives
- jurists
- civil society
- state governments

4. Protect Customs Not Violating Rights

Benign cultural practices may continue where they do not violate equality or dignity.

5. Strong Drafting Principles

Any future UCC should be based on:

- equality
- consent
- monogamy

[175] Law Comm'n of India, Consultation Paper on Reform of Family Law, at 1–8 (2018); Law Comm'n of India, 21st Law Commission Reports on Family Law Reform.

- child welfare
- inheritance fairness
- dignity of women
- secular administration

6. Public Legal Awareness

Citizens should understand that UCC concerns civil law, not interference with rituals or worship.[176]

10) CONCLUSION

The Uniform Civil Code remains one of India's most complex constitutional debates. It lies at the intersection of equality, secularism, diversity, religious freedom, and gender justice. Comparative experience worldwide shows that many nations have adopted common civil frameworks, but each country has followed its own historical path.

India's challenge is unique because of its extraordinary pluralism. Therefore, any successful UCC must emerge not through coercion, but through dialogue, fairness, constitutional values, and social trust.

The real question is not whether India should choose uniformity over diversity, but whether it can create a just civil framework that respects diversity while guaranteeing equal rights to every citizen. If approached carefully, India can move toward a model that harmonizes liberty, fraternity, and justice in the true spirit of the Constitution.

[176] INDIA CONST. arts. 25–28; *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar*, A.I.R. 1954 S.C. 282 (India).

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The Role of Compliance in a Body Corporate and Its Types

By Shahil Rangra,[177]

Abstract

Compliance has become an indispensable element of modern corporate governance and sustainable business operations. It refers to the adherence of a body corporate to applicable laws, regulations, contractual obligations, ethical standards, and internal policies governing its activities. In an increasingly globalized and digitally regulated environment, compliance is no longer a mere procedural requirement but a strategic necessity for risk management, institutional credibility, and long-term growth. This paper examines the concept, objectives, and significance of compliance in a body corporate with special reference to Indian corporate regulation. It analyses how compliance safeguards companies from legal penalties, reputational damage, financial losses, and operational disruptions while strengthening investor confidence and stakeholder trust.

The study further explores major categories of compliance, including company formation compliance, statutory compliance, governance compliance, human resource compliance, tax compliance, anti-money laundering obligations, commercial contracts compliance, data privacy and cybersecurity compliance, workplace safety compliance, and environmental compliance. It also highlights the role of compliance officers, internal control mechanisms, audits, and technology-driven monitoring systems in ensuring effective implementation. The paper concludes that a strong compliance culture contributes not only to lawful business conduct but also to transparency, accountability, competitiveness, and corporate sustainability. In the contemporary corporate era, successful companies are not merely profit-oriented enterprises but responsible and compliant institutions.

Keywords Compliance; Body Corporate; Corporate Governance; Statutory Compliance; Human Resource Compliance; Tax Compliance; Anti-Money Laundering; Data Privacy; Cybersecurity; Commercial Contracts; Risk Management; Environmental Compliance; Companies Act 2013; Corporate Regulation; India.

1) Introduction

In the modern corporate world, compliance has emerged as one of the most important foundations of governance, accountability, and sustainable growth. Every company, whether a startup, partnership-converted entity, private limited company, public company, or multinational corporation, functions within a framework of laws, regulations, ethical standards, and industry requirements. The responsibility of ensuring adherence to such obligations is known as compliance. In simple terms, compliance means following the rules prescribed by

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law, regulatory authorities, contractual obligations, or internal corporate policies.[178]
The concept of compliance has become increasingly significant due to globalization, digital transactions, investor scrutiny, labour protections, tax regulation, anti-corruption measures, and data privacy obligations. Earlier, many businesses treated compliance as a secondary administrative burden. However, in today's competitive and highly regulated economy, compliance is regarded as a strategic necessity. A company that neglects compliance may face legal penalties, financial losses, reputational harm, regulatory investigations, cancellation of licenses, or criminal liability for its officers. On the other hand, a company that maintains a robust compliance culture earns trust from investors, customers, employees, and the public.[179]
Compliance is not limited to filing forms or renewing licenses. It extends to every area of business activity, including corporate governance, employment practices, taxation, safety measures, data protection, anti-money laundering systems, commercial contracts, and environmental responsibility. Therefore, compliance acts both as a shield against risk and as a framework for responsible growth.[180]

2) Meaning of Compliance in a Body Corporate

A body corporate is recognized in law as a separate legal person distinct from its shareholders, members, or directors. Because it enjoys rights such as owning property, entering contracts, borrowing funds, suing others, and being sued, it must also fulfill legal duties. Compliance ensures that the company performs these duties according to the law and accepted standards.
Corporate compliance may be understood as a structured system through which a company identifies applicable laws, develops internal controls, trains employees, monitors behaviour, reports risks, and corrects violations. It includes compliance with external legal requirements, such as statutes and regulations, and internal obligations, such as codes of conduct, governance manuals, ethical policies, and operational procedures.
In large organisations, compliance responsibilities are often handled by company secretaries, legal advisors, chartered accountants, internal auditors, risk officers, and dedicated compliance teams. In many multinational corporations, a Chief Compliance Officer supervises regulatory adherence across departments and jurisdictions. The purpose of compliance is not only to avoid punishment but also to create a disciplined, transparent, and efficient institution.[181]

3) Objectives of Corporate Compliance

The objectives of compliance are wide-ranging and directly connected to corporate success. First, compliance ensures that business operations remain lawful and do not violate statutory

[178] India, Companies Act, No. 18 of 2013, §§ 92, 129, 134, 173 (India) (providing obligations relating to annual returns, financial statements, board reports, and meetings).
[179] See Organisation for Economic Co-operation and Development, *Corporate Governance Factbook* (2023) (discussing compliance as a pillar of corporate governance).
[180] See World Bank, *Doing Business Reports* (highlighting regulatory compliance and business environment standards).
[181] International Organization for Standardization, ISO 37301:2021 Compliance Management Systems—Requirements with Guidance for Use.

obligations. Second, it protects directors and senior management from personal liability arising from corporate misconduct. Third, it helps prevent fraud, corruption, bribery, insider abuse, and unethical practices.

Compliance also safeguards employee welfare by ensuring lawful wages, safe working conditions, equal opportunity, and social security benefits. It protects customers by promoting product safety, fair dealing, truthful disclosures, and privacy rights. In financial matters, compliance ensures tax transparency, accurate reporting, and lawful accounting practices.

Another important objective is risk reduction. A company that actively follows compliance standards faces fewer disputes, regulatory actions, and litigation costs. Finally, compliance enhances reputation and long-term investor confidence. Many investors today examine governance and compliance culture before investing capital. Thus, compliance is no longer merely a legal requirement; it is a business advantage.[182]

4) Company Formation Compliance

The first stage of corporate compliance begins at the time of incorporation. Before commencing operations, a company must fulfill formation requirements under the relevant corporate law. In India, the Companies Act, 2013 provides the legal framework for incorporation and early-stage compliance.

The process generally includes approval of the company name, preparation of the Memorandum of Association and Articles of Association, filing incorporation documents with the Registrar of Companies, obtaining a Certificate of Incorporation, securing Permanent Account Number and Tax Deduction Account Number, opening a bank account, and appointing directors. A company must also establish its registered office, appoint its first auditor, issue share certificates where applicable, and obtain a certificate of commencement of business if required.

These steps are not mere formalities. They establish the legal identity of the company and allow it to begin business in a valid manner. Failure to complete incorporation compliance may delay operations, create future disputes, or attract penalties. Therefore, formation compliance is the first legal milestone in the corporate lifecycle.[183]

5) Statutory Compliance

Statutory compliance refers to adherence to all laws enacted by Parliament, State Legislatures, and competent authorities that apply to the business activities of a company. This is one of the broadest and most continuous forms of compliance. A company may simultaneously be subject to company law, tax law, labour law, environmental law, intellectual property law, consumer law, and sector-specific regulation.

For example, in India, a corporate entity may need to comply with the Companies Act, 2013, Income Tax Act, GST laws, labour welfare legislation, provident fund laws, gratuity provisions,

[182] India, Prevention of Corruption Act, No. 49 of 1988 (India); Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.
[183] Gower's Principles of Modern Company Law (discussing incorporation as the foundational stage of corporate existence).

maternity benefit obligations, and industrial relations laws. Depending on the sector, additional compliance may arise under banking, insurance, telecom, pharmaceuticals, or securities regulations.[184]

Statutory compliance requires timely filing of returns, maintenance of registers, tax payments, license renewals, disclosures, and record preservation. Non-compliance can result in fines, prosecution, attachment of assets, director disqualification, and reputational damage. Therefore, every company must maintain a compliance calendar and internal review mechanism.[185]

6) Governance and Rules Compliance

Corporate governance compliance relates to the way a company is directed, controlled, and supervised. Good governance ensures accountability, fairness, transparency, and ethical conduct in decision-making. It also balances the interests of shareholders, management, employees, creditors, and society.

Governance compliance requires proper conduct of Board meetings, maintenance of minutes, disclosures of conflict of interest, regulation of related party transactions, internal financial controls, audit systems, and respect for shareholder rights. Listed companies may additionally require independent directors, audit committees, nomination committees, and risk management frameworks.

A company with weak governance may suffer fraud, internal misuse of authority, diversion of funds, or strategic collapse. Many corporate scandals across the world were caused not by poor profits, but by governance failures. Thus, governance compliance is the backbone of long-term corporate credibility.

7) Human Resource Compliance

Employees are among the most valuable assets of any body corporate. Human Resource compliance ensures that the employer-employee relationship is managed lawfully, ethically, and efficiently. It protects workers while also reducing labour disputes for the company.

HR compliance covers appointment letters, employment contracts, payment of lawful wages, overtime rules, provident fund contributions, social security schemes, gratuity, maternity benefits, leave policies, workplace safety, and lawful termination procedures. It also includes prevention of sexual harassment policies, equal opportunity norms, anti-discrimination standards, and grievance redressal mechanisms.[186]

A company that neglects HR compliance may face labour unrest, employee claims, penalties, low morale, and loss of talent. In contrast, companies that respect employee rights usually

[184] Organisation for Economic Co-operation and Development, *Corporate Governance Factbook* (2023) (discussing broad regulatory obligations affecting companies).
[185] India, Banking Regulation Act, No. 10 of 1949; Insurance Act, No. 4 of 1938; Telecom Regulatory Authority of India Act, No. 24 of 1997; Drugs and Cosmetics Act, No. 23 of 1940; Securities and Exchange Board of India Act, No. 15 of 1992 (India).
[186] International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (1998).

experience better productivity, loyalty, and workplace culture.[187]

8) Tax Compliance

Tax compliance is a crucial obligation because every company must contribute lawfully to the revenue system of the State. It includes both direct taxes and indirect taxes. A business must maintain proper books of accounts, deduct taxes at source where applicable, file returns, and respond to notices issued by tax authorities.

Companies in India generally deal with income tax, GST, customs duties, TDS obligations, and audit requirements depending on turnover and transactions. International businesses may also face transfer pricing obligations and cross-border reporting duties.

Improper tax compliance can lead to penalties, interest liabilities, prosecution, blocked refunds, audits, and prolonged disputes. Therefore, strong accounting systems and regular tax review are essential parts of corporate governance.[188]

9) Anti-Money Laundering Compliance

Anti-Money Laundering compliance has become increasingly important, especially for banks, financial institutions, fintech companies, insurers, and entities dealing with high-value transactions. Money laundering refers to disguising illegally obtained funds as legitimate money.

To prevent such activity, companies may be required to verify customer identity, conduct Know Your Customer procedures, monitor suspicious transactions, preserve records, classify risks, and report unusual activity to competent authorities. Employees must also be trained to identify red flags.

AML compliance not only protects the company from regulatory action but also contributes to national and international efforts against organised crime, terrorism financing, corruption, and fraud.

10) Commercial Contracts Compliance

Modern business operates through contracts. Every relationship involving suppliers, employees, consultants, distributors, technology vendors, customers, and investors is often governed by written agreements. Compliance in this field means ensuring that contracts are properly drafted, legally enforceable, and consistently performed.

Examples include employment agreements, confidentiality agreements, non-disclosure agreements, service contracts, licensing arrangements, consultancy contracts, lease deeds, software agreements, vendor arrangements, and shareholder agreements.

Contract compliance requires careful attention to payment terms, confidentiality clauses, limitation of liability, indemnity provisions, intellectual property ownership, deadlines, renewal

[187] India, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 (India); Constitution of India arts. 14–16.

[188] India, Income-tax Act, No. 43 of 1961, §§ 92–92F (India) (transfer pricing provisions); Organisation for Economic Co-operation and Development, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.

dates, and dispute resolution mechanisms. Poor contract management often results in litigation and financial loss.[189]

11) Data Privacy and Cybersecurity Compliance

In the digital age, personal data has become one of the most valuable corporate assets. Companies collect data relating to customers, employees, suppliers, and users. Such data must be protected against misuse, unauthorised access, and breaches.

Data privacy compliance includes lawful collection of data, obtaining consent where required, publishing privacy notices, limiting retention periods, controlling internal access, securing data through technical safeguards, and responding to breaches. It also includes vendor due diligence where third parties process data.

The importance of privacy has grown significantly after recognition of privacy as a fundamental right under Article 21 of the Constitution of India. Globally, strict frameworks such as the GDPR have influenced corporate standards. A company that mishandles data may face lawsuits, regulatory penalties, and severe reputational damage.[190]

12) Risk and Safety Compliance

Risk and safety compliance is particularly important in manufacturing units, factories, construction sites, mines, warehouses, logistics systems, and chemical industries. Businesses have a duty to provide safe working conditions and to prevent avoidable harm.

This area includes compliance with fire safety norms, machine inspections, occupational health measures, hazardous material handling, emergency response planning, workplace accident reporting, child labour prohibitions, and protective equipment requirements.

If a company ignores safety compliance, consequences may include injury, death, compensation claims, criminal prosecution, plant closure, and loss of trust. Therefore, safety compliance is not merely legal—it is moral and humanitarian.[191]

13) Environmental Compliance

Corporate responsibility today extends beyond profit to environmental sustainability. Companies are increasingly required to comply with pollution control standards, waste disposal norms, water use permissions, emission limits, and hazardous waste handling rules.

Environmental compliance also includes sustainability reporting, responsible sourcing, renewable energy adoption, and reduction of carbon footprint. Businesses that ignore environmental obligations may face closures, penalties, public protest, and investor withdrawal. Conversely, environmentally responsible companies attract modern investors and

[189] India, Indian Contract Act, No. 9 of 1872, §§ 73, 124–125 (India) (damages and indemnity); India, Arbitration and Conciliation Act, No. 26 of 1996 (India).

[190] World Economic Forum, *Global Cybersecurity Outlook* (discussing reputational and financial consequences of data breaches).

[191] India, Employees' Compensation Act, No. 8 of 1923 (India); Indian Penal Code, No. 45 of 1860, §§ 304A, 336–338 (India) (now corresponding provisions under Bharatiya Nyaya Sanhita, 2023); Occupational Safety, Health and Working Conditions Code, No. 37 of 2020 (India).

consumers.[192]

14) Role of Compliance Officers and Internal Systems

Many companies appoint compliance officers or create compliance departments to coordinate legal obligations. Their role includes tracking regulatory changes, preparing compliance calendars, advising management, conducting employee training, monitoring internal controls, investigating violations, and reporting risks.

Internal audits, whistleblower systems, ethics hotlines, policy manuals, and digital compliance tools further strengthen the system. Compliance must be integrated into daily operations rather than treated as a year-end formality.[193]

15) Benefits of a Strong Compliance Culture

A company with a strong compliance culture gains several advantages. It faces lower legal risk, stronger governance, better investor confidence, improved employee morale, easier market expansion, and stronger brand reputation. Compliance also helps prevent fraud, internal abuse, and financial leakage.

Customers increasingly prefer businesses they trust. Investors increasingly choose companies with transparent governance. Employees prefer organisations that are ethical and fair. Therefore, compliance directly contributes to competitive advantage.

16) Consequences of Non-Compliance

Non-compliance can have serious consequences. These include monetary penalties, criminal prosecution, cancellation of licenses, tax recovery proceedings, civil litigation, regulatory restrictions, reputational harm, and disqualification of directors. In severe cases, a company may collapse under the weight of legal liabilities and public distrust.

Many famous corporate failures across the world were rooted in compliance breakdowns, weak governance, and unethical conduct rather than lack of revenue. This demonstrates that profitability without compliance is unstable.[194]

17) Future of Compliance

Technology is transforming compliance through automated filings, AI-driven monitoring, real-time alerts, digital contract systems, analytics dashboards, and cybersecurity tools. The future of compliance will be preventive rather than reactive. Companies will increasingly use technology to detect risk before violations occur.

At the same time, human judgment will remain important because ethics, governance, and legal interpretation cannot be fully automated. The most successful corporations will combine

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[192] India, Environment (Protection) Act, No. 29 of 1986, §§ 15–16 (India) (penalties for contravention); *M.C. Mehta v. Union of India*, (1987) 1 S.C.C. 395 (India).

[193] India, Companies Act, No. 18 of 2013, §§ 134(5), 177, 204 (India); Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (compliance officer and governance responsibilities).

[194] India, Companies Act, No. 18 of 2013, §§ 164, 447, 450 (India) (director disqualification, fraud, and general penalties); Income-tax Act, No. 43 of 1961 (India); Central Goods and Services Tax Act, No. 12 of 2017 (India).

technology with strong leadership values.[195]

18) Conclusion

In conclusion, compliance plays a crucial role in the governance, stability, and long-term survival of a body corporate. It ensures that corporate procedures are conducted according to legal and ethical standards while reducing future disputes, penalties, and operational disruptions. Compliance supports the structure of a company by creating discipline, transparency, accountability, and security.

Whether the subject is statutory law, labour welfare, taxation, contracts, governance, privacy, anti-money laundering systems, safety, or environmental responsibility, each form of compliance contributes to healthy corporate functioning. In the modern era, successful companies are not only profitable companies but also compliant companies.

Therefore, every body corporate must treat compliance not as a burden but as a strategic priority. A strong compliance culture protects the company in the present and secures its future in the years to come.

[195] U.S. Department of Justice, *Evaluation of Corporate Compliance Programs* (2024) (emphasizing proactive risk detection, continuous monitoring, and timely remediation).

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The Pillars of Democracy: Understanding Judicial Independence

By Shahil Rangra,[196]

Abstract

Judicial independence is a fundamental pillar of democratic governance and constitutionalism. It ensures that courts function free from external influence, political pressure, personal bias, or institutional interference, thereby enabling judges to decide cases impartially according to law. This paper examines the concept, significance, and constitutional foundations of judicial independence with special reference to India. It analyses the relationship between judicial independence, rule of law, separation of powers, and judicial review as essential components of a modern democracy. The study further explores the historical evolution of the doctrine and highlights constitutional safeguards such as security of tenure, removal procedures, financial autonomy, and administrative control designed to preserve judicial neutrality.

The paper also addresses contemporary threats to judicial independence, including political interference, corruption, judicial delays, media trials, social pressure, and structural deficiencies within the justice delivery system. Comparative perspectives from the United States, the United Kingdom, and international standards under the United Nations Basic Principles on the Independence of the Judiciary are discussed to demonstrate global approaches to protecting judicial autonomy. Further, the paper evaluates the role of public trust, legal awareness, transparency, and responsible journalism in strengthening judicial legitimacy. It concludes that judicial independence remains indispensable for protecting fundamental rights, ensuring accountability of State institutions, and maintaining democratic balance. Continuous reforms, technological modernization, transparency in appointments, and strengthening of subordinate courts are necessary to preserve the dignity and effectiveness of the judiciary in India.

Keywords: *Judicial Independence; Democracy; Rule of Law; Separation of Powers; Judicial Review; Constitution of India; Fundamental Rights; Judiciary; Accountability; Constitutionalism; India; Legal Reform.*

1) Introduction to Judicial Independence

Judicial independence is one of the most essential foundations of a democratic State. A country may possess elections, laws, and constitutional institutions, but if the judiciary is not free and impartial, justice cannot truly exist. The judiciary is entrusted with interpreting laws, protecting

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constitutional values, and resolving disputes among citizens and governments. Therefore, it must function without fear, favour, pressure, or bias.[197]

Whenever courts are influenced by political leaders, wealthy individuals, private corporations, or social groups, the fairness of justice is endangered. A judge must decide cases only on the basis of law, evidence, and conscience. If outside forces control judgments, public trust declines and democracy weakens. Hence, judicial independence is not merely a legal principle; it is a practical necessity for liberty and good governance.[198]

The framers of modern constitutions understood that concentration of power leads to tyranny. Therefore, they created independent courts to act as guardians of rights and limitations on governmental authority. In India, the Constitution grants a respected position to the judiciary and creates safeguards to ensure its independence.[199]

Judicial independence also promotes peace and stability. When people believe that courts are fair, they seek legal remedies rather than violence or revenge. The judiciary becomes the final hope of the common person against injustice. Thus, independent courts are rightly called one of the strongest pillars of democracy.[200]

2) Meaning and Concept of Judicial Independence

Judicial independence means that judges and courts are free from external control while performing judicial functions. They must not be influenced by the executive, legislature, political parties, media pressure, business interests, or personal relationships. Independence ensures that judges can decide matters honestly and impartially.[201]

This concept has both institutional and individual dimensions. Institutional independence means the judiciary as an organ must remain autonomous in administration, appointments, finances, and functioning. Individual independence means each judge must be secure in tenure and free to decide cases according to law without fear of punishment or expectation of reward.

Judicial independence does not mean judges are above the law. It does not imply unlimited authority or absence of accountability. Judges remain bound by the Constitution, ethics, legal procedure, and standards of conduct. Their independence exists so that they can perform duties responsibly and fairly.

The concept also includes impartiality. Even if judges are formally independent, justice suffers if they are biased. Therefore, neutrality, competence, integrity, and fairness are closely connected with independence. A truly independent judiciary combines freedom with responsibility and authority with restraint.[202]

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[197] M.P. Jain, *Indian Constitutional Law* 215 (8th ed. 2018).
[198] A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 110 (10th ed. 1959).
[199] INDIA CONST. pmbl.; INDIA CONST. arts. 124–147.
[200] H.M. Seervai, *Constitutional Law of India* vol. 1, at 78 (4th ed. 1991).
[201] United Nations Basic Principles on the Independence of the Judiciary, G.A. Res. 40/32 (1985).
[202] H.W.R. Wade & C.F. Forsyth, *Administrative Law* 391 (11th ed. 2014).

3) Importance of an Independent Judiciary

The importance of judicial independence can be understood in several ways. First, it protects the fundamental rights of citizens. If government authorities violate liberty, equality, privacy, or freedom of expression, independent courts can provide remedies. Without free courts, rights become meaningless promises.

Second, it strengthens democracy by preventing abuse of power. Governments elected by majority may still act unlawfully. Independent courts ensure that executive and legislative authorities remain within constitutional limits. This prevents authoritarian tendencies.[203]

Third, it promotes equality before law. Rich and poor, powerful and weak, majority and minority must all be treated equally in courts. Only an impartial judiciary can guarantee such equality.

Fourth, judicial independence contributes to economic development. Investors, businesses, and workers need confidence that contracts will be enforced and disputes resolved fairly. Stable legal systems attract growth and innovation.

Fifth, it promotes social peace. Courts provide peaceful settlement of conflicts relating to property, family matters, crime, and public administration. Where people trust courts, society becomes more orderly and less violent.

4) Historical Evolution of Judicial Independence

The principle of judicial independence developed gradually through constitutional history. In earlier societies, rulers often controlled judges directly. Courts frequently functioned as instruments of kings or emperors. Over time, political thinkers recognised that justice requires separation from absolute power.

A major milestone occurred in England through the Act of Settlement of 1701. This law granted judges security of tenure and protected them from arbitrary removal by the Crown. Their salaries were also secured. These reforms reduced royal influence and advanced the rule of law.

Later, British constitutional practices influenced many countries. Courts became more professional and gained institutional dignity. Though Parliament remained supreme in Britain, judicial impartiality became a respected constitutional tradition.[204]

In India, the colonial administration established High Courts and later the Federal Court. After independence, the Constitution of India created the Supreme Court and an integrated judicial system with safeguards such as tenure security, removal by impeachment, and judicial review.[205]

5) Separation of Powers

Judicial independence is closely connected with the doctrine of separation of powers. According to this doctrine, governmental power should be distributed among three branches:

[203] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
[204] Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* 44 (2009).
[205] Montesquieu, *The Spirit of Laws* bk. XI, ch. 6 (1748).

legislature, executive, and judiciary. The legislature makes laws, the executive implements laws, and the judiciary interprets laws.

The purpose of this arrangement is to prevent concentration of power. If one institution controls law-making, enforcement, and adjudication, liberty is endangered. Separation creates restraint and balance among institutions.

India follows a functional rather than rigid separation of powers. There is some overlap because ministers are members of Parliament and delegated legislation exists. However, the judiciary remains distinct and constitutionally protected. Article 50 directs the State to separate the judiciary from the executive in public services.

This doctrine supports independence because courts must be free to review actions of other branches. If judges depend upon executive favour, they cannot impartially examine executive misconduct. Therefore, separation of powers and judicial independence operate together in democratic governance.[206]

6) Constitutional Safeguards in India

The Constitution of India contains several provisions to secure judicial independence. Judges of the Supreme Court and High Courts enjoy security of tenure and cannot be removed at the pleasure of government.

Removal is possible only through a difficult parliamentary process on grounds of proved misbehaviour or incapacity. This prevents arbitrary dismissal and political retaliation.

Salaries, allowances, and pensions of judges are charged on the Consolidated Fund and generally protected from executive manipulation. Financial security helps preserve independence.

Courts possess the power of judicial review and may invalidate unconstitutional laws and unlawful executive actions. They also exercise administrative control over subordinate courts in many respects.

These constitutional provisions collectively ensure that judges may perform duties fearlessly and impartially while maintaining institutional dignity.[207]

7) Rule of Law and Judicial Role

The rule of law means supremacy of law over arbitrary power. No person, however powerful, is above law. Government officials must act according to legal authority, and citizens must receive equal protection.

The judiciary is the principal guardian of this principle. Courts ensure that arrests follow procedure, taxes are lawfully imposed, contracts are honoured, and rights are respected. If authorities exceed powers, courts intervene.

In India, the judiciary has repeatedly emphasised fairness, reasonableness, and non-arbitrariness under Articles 14 and 21 of the Constitution. Through interpretation, courts have expanded

[206] State of Bihar v. Bal Mukund Shah, AIR 2000 SC 1296.
[207] S.P. Gupta v. Union of India, 1981 Supp SCC 87; Supreme Court Advocates-on-Record Ass'n v. Union of India, (1993) 4 SCC 441.

access to justice and procedural safeguards.
Thus, the rule of law becomes meaningful only when independent courts enforce it consistently and courageously.[208]

8) Judicial Review and Its Significance

Judicial review is the power of courts to examine constitutionality of legislative and executive acts. It is among the strongest protections for democracy.
In India, this power arises from several constitutional provisions including Articles 13, 32, and 226. If Parliament or State legislatures pass laws violating constitutional guarantees, courts may declare them void. Likewise, unlawful executive actions may be quashed.
Judicial review preserves constitutional supremacy. Since the Constitution is the highest law, all authorities must conform to it. Courts ensure this hierarchy.
Landmark cases such as Kesavananda Bharati v. State of Kerala, Maneka Gandhi v. Union of India, and Minerva Mills Ltd. v. Union of India illustrate how judicial review has shaped Indian democracy.

9) Threats to Judicial Independence

Despite constitutional safeguards, several threats continue to challenge judicial independence. Political interference in appointments, transfers, or public discourse may create pressure. Even perception of such pressure harms trust.[209]
Corruption is another serious threat. If judges or court staff engage in misconduct, public confidence declines rapidly. Integrity is therefore indispensable.
Delay in justice delivery also weakens independence indirectly. When cases remain pending for years, citizens lose faith in institutions and seek extra-legal solutions.
Media trials and social media campaigns can distort facts and create emotional pressure around pending cases. Sensationalism may undermine fair adjudication.
Personal biases based on class, caste, gender, religion, or ideology may unconsciously influence decisions. Continuous judicial education and ethical reflection are necessary to minimise such biases.[210]

10) Global Perspectives

Across the world, judicial independence is considered essential though institutional models differ. In the United States, federal judges are appointed by the President with Senate confirmation and generally enjoy life tenure.
In the United Kingdom, reforms such as the Constitutional Reform Act 2005 strengthened separation between judiciary and political offices. Independent commissions assist in appointments.

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[208] H.W.R. Wade & C.F. Forsyth, *Administrative Law* 18–25 (11th ed. 2014); Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
[209] Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1.
[210] H.M. Seervai, *Constitutional Law of India* vol. 1, at 122–24 (4th ed. 1991); Restatement of Values of Judicial Life, Supreme Court of India (1997).

The United Nations Basic Principles on the Independence of the Judiciary (1985) emphasise secure tenure, fair appointments, adequate resources, and freedom from improper influence. Although structures vary, the common ideal remains constant: judges must decide according to law, not command.[211]

11) Challenges and Reforms in India

India's judiciary faces enormous workload and case backlog. Vacancies in courts increase delay. Many litigants wait years for final decisions, undermining access to justice.

Reforms should include timely appointments, increased judge strength, better training, modern court management, and simplified procedures. Technology can help through e-filing, virtual hearings, and digital records.

Alternative dispute resolution such as mediation, conciliation, and arbitration can reduce burden on courts. Lok Adalats and legal services authorities also contribute significantly.

Greater transparency in appointments and administration may improve public confidence while preserving independence. Merit, diversity, and integrity should guide selections.[212]

12) Public Perception and Legal Awareness

Public trust is the invisible strength of the judiciary. Courts rely not on armies but on legitimacy. If citizens believe judges are fair, judicial orders are respected.

Legal literacy is therefore important. Many people remain unaware of constitutional rights, legal aid, and remedies. Schools, universities, bar associations, and civil society should promote awareness.

Responsible journalism is equally necessary. Constructive criticism strengthens institutions, but misinformation damages democracy. Live streaming of important hearings and publication of judgments enhance transparency.[213]

13) Conclusion

The future of judicial independence depends on constant vigilance. Governments, judges, lawyers, media, and citizens all share responsibility to protect free courts.

India's judiciary has played a historic role in defending liberty, equality, and constitutionalism. Yet continued reform is necessary to address delay, vacancies, opacity, and inequality of access.

Judicial independence remains the soul of justice and the shield of democracy. Where judges decide fearlessly, citizens live with dignity. Where courts are impartial, power remains limited. Therefore, preserving judicial independence is not merely the duty of judges; it is the collective duty of the nation.

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[211] G.A. Res. 40/32, United Nations Basic Principles on the Independence of the Judiciary (Nov. 29, 1985); G.A. Res. 40/146 (Dec. 13, 1985).

[212] Supreme Court Advocates-on-Record Ass'n, (2016) 5 SCC 1.

[213] Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639; Sahara India Real Est. Corp. v. SEBI, (2012) 10 SCC 603.

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THE DURABILITY OF MEDIATION AGREEMETNS: AN INVESTIGATION INTO COMPLIANCE AND BREAKDOWN FACTORS

BY ARCHIT PANDEY [214]

ABSTRACT

Mediation has increasingly become a valuable alternative to traditional legal processes, offering flexibility, freedom for the parties involved, and fewer disputes in a system that is often overloaded. Its success, however, is measured not just by whether an agreement is reached, but by how durable that agreement is over time. This paper explores the factors that contribute to the longevity of mediated agreements, focusing on compliance, clarity, fairness, and the cultural context in which mediation occurs. The study also examines the legal landscape in India, particularly the Mediation Act of 2023, highlighting how it addresses past challenges related to enforceability. Unlike adversarial litigation, mediation allows parties to craft their own solutions, which often helps preserve relationships and reduce hostility. Yet, the ultimate measure of success in mediation lies not only in reaching an agreement but ensuring that it can withstand the test of time. The paper also discusses why some mediation agreements fail and provides recommendations for aligning policy with best practices. It suggests that the future of mediation in India depends on building trust, eliminating ambiguities, and investing in professional mediation infrastructure. Only with these elements in place can mediation achieve truly enduring solutions.

Keywords: Mediation, Durability, Compliance, Enforceability, Mediator neutrality, Enforcemen

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INTRODUCTION

In India, it is a known fact that the judiciary is overburdened with cases. This is where Alternate Dispute Resolution (ADR) comes to the rescue and has been extremely important and also preferred over the traditional litigation. From the options available in ADR, Mediation has been an emerging hero. Mediation focuses on dialogue, collaboration, and party autonomy. It allows the parties in a dispute to create their own outcomes which are legally feasible and also socially and also economically acceptable. Another advantage of this is that the relationship of the parties is preserved to a certain extent and the scope of hostility is also reduced significantly. However, the durability of mediation agreements becomes a critical concern because the real meaning and value of a mediation lies not only in reaching a settlement but it also ensures that these settlements can stand the test of time in the future.

Durability of mediation agreements extends beyond the result or outcome of conflict wherein the settlement would just mark the end of a dispute at a particular point of time but the concern regarding durability is long-term compliance to the same with the terms and conditions of the mediation outcome without falling back to square one which would leave the parties the only option of litigation. Therefore, it becomes important that the performance of such agreements is of a sustained nature and is legitimate. Thus, an important question must be asked:

WHAT ENSURES THAT MEDIATION AGREEMENTS REMAIN DURABLE, AND WHAT FACTORS CONTRIBUTE TO THEIR BREAKDOWN?

The Indian legal framework has been struggling to find a full proof answer to such questions because when a court refers the parties' mediation, the enforceability of the same can be done through consent decrees, but the private mediations were put down in the arena of contractual obligations only and this would require separate litigation for the enforcement of the same. This dual nature of the process of mediation weakened the assurance that people got in mediation in the first place.

Although the new Mediation Act was introduced in 2023 to deal with such issues, the mere existence of such statutory backing cannot guarantee durability of any of such agreements. There is multiple more factors required to the reviewed and realigned to address these issues such as clarity of drafting, fairness of terms, neutrality of mediators, vague obligations,

perceived bias, power imbalances between parties. etc. A doctrinal method of research analysis of these elements and factors can help the lawmakers develop India into a more reliable and sustainable system of ADR.

LITERATURE REVIEW

Kranti, Aditya.[2] The study is on role of mediation in India and the advantages of cost efficiency, flexibility, and confidentiality. It also highlights some serious challenges which include lack of awareness, inconsistent mediator training and weak enforceability of mediated settlements. According to the author, a strong statutory framework is not present in India that can make compliance of agreements certain and expand the impact that a mediation settlement can have.

Singla, Satyam.[3] This article examines the role of judicial oversight in mediation settlements, emphasizing how Indian courts carefully review terms that could conflict with statutory rights or public policy. The study highlights that privately negotiated mediation agreements have generally faced weaker enforceability than those recorded by the courts, creating a sense of uncertainty. This inconsistent judicial approach demonstrates that excessive intervention and the lack of standardized recognition can threaten the long-term stability of mediation agreements in India.

Ollapally, Laila T.[4] The importance of institutionalizing mediation in India, both through court-annexed programs and private mechanisms has been highlighted in this piece of writing. Drawing on experiences at the Bangalore Mediation Centre, she demonstrates that judicial support, adequate infrastructure, and well-trained mediators are essential for ensuring compliance. Without this kind of institutional backing, mediated agreements are vulnerable and may struggle to achieve long-term durability.

CONCEPTUAL FRAMEWORK

The theoretical foundations of mediation compliance are very strong, drawn from psychology law as well as conflict resolution research. These theories help us explain why parties complies with the mediated outcomes and the conditions under which it is strengthened and undermined. Apart from just the theoretical grounding, the certain context related factors such as clarity,

[2] Aditya Kranti, THE EFFECTIVENESS OF MEDIATION AS A DISPUTE RESOLUTION IN INDIA.

[3] Satyam Singla, JUDICIAL INTERVENTION IN MEDIATION SETTLEMENTS.

[4] Laila T Ollapally Mediator, Integrating Mediation: A Holistic Approach to Administration of Justice in India.

fairness and culture critically help in shaping durable adherence to settlements. Hence, the theoretical basis for compliance is as follows:

1. Voluntariness Theory (Menkel-Meadow, 2001)

This theory suggests that compliance is higher when the parties feel that the decision is their own and not imposed by someone else. This consensual nature of mediation helps in fostering a sense of ownership. Since individuals tend to protect outcomes, they have actively shaped, mediated agreements that emerge from voluntary participation usually se e stronger long-term commitment.

2. Procedural justice theory (Tyler, 1990)

Parties to mediation are more likely to adhere to the outcomes when they believe that the process was impartial, it was inclusive and respectful. A fair and adjudicated process enhances the perceptions of dignity and lowers the feelings of coercion, which in turn makes compliance less about obligation and more about consent.

3. Enforceability theory (Bouelle, 2011)

Practical compliance is reinforced when mediated settlements are supported by mechanisms of enforceability. The knowledge that agreements can be legally enforced offers security and discourages opportunistic violations, even in cases where voluntary compliance is high.

4. Legitimacy Theory

According to the legitimacy theory, agreements endure if the mediated outcomes are derived from legitimacy, neutrality of the mediator, balanced treatment of parties and impartial procedure.

Factors Influencing Compliance

- Clarity of terms: If the agreements are drafted in an ambiguous manner or are vague in its term, it creates scope for differing interpretations and disputes at the implementation stage. Precision in documenting timelines and responsibilities enhances transparency and reduces the prevalent compliance gaps.[5]
- Fairness: One important indicator of whether parties believe they have a moral obligation to cooperate is perceived equity. Resentment may result in non-compliance

[5]Enforceability_Of_Mediated_Settlement_Agreements_in_India.Pdf, https://www.lawsenate.com/publications/articles/Enforceability_Of_Mediated_Settlement_Agreements_in_Indi a.pdf (last visited Sept. 23, 2025).

if one side feels that the other is biassed or at a disadvantage. Durability is maintained by agreements that fairly divide costs and rewards.

- Cultural context: Compliance is frequently impacted by societal expectations, community support, and relationship maintenance in collectivist societies like India. Results that are in line with the values of community harmony acquire moral weight, but those that are thought to be detrimental to interpersonal relationships may encounter opposition.

LEGAL FRAMEWORK IN INDIA

The development of Mediation as a dispute resolution process has been very slow and more so when the question of its binding nature or durability comes into the picture. Arbitration and Conciliation Act, 1996 has been there since almost the past three decades in order to regulate the arbitration or conciliation procedure but Mediation has not been so lucky and mediation agreements was treated differently and it was dependent of how such agreements were made.

Pre-2023 Position

Before 2023 and the passing of the Mediation Act in that year, there existed no other single law that would deal with mediation, its process, or enforceability. Instead, the entire thing was dependent on whether the mediation process was referred by the court or was held privately. Section 89 of the Code of Civil Procedure, 1908 gave courts the power to refer disputes to mediation and if the parties would resolve their disputes in this manner, the agreement in between them could be recorded as a consent decree, which would ultimately give it same force as a judgement. But on the other hand, private mediation worked in a contrasting manner. Private Mediation had no special legal status.[6] They were treated only like a contract and therefore in order to enforce such contract, in case of non-performance, the parties had to file a fresh suit to enforce the same. This uneven treatment created confusion down the line, resulting in private mediation agreements being non-durable and weak.

Post-Mediation Act, 2023

The Act changed this position by giving mediation agreements a stronger legal foundation:

Section 18: Granting mediated settlement agreements, the same legal force as a court decree.

[6] Beyond International Commercial Arbitration? The Promise of International Commercial Mediation.

Section 27: Permitting challenges only on limited grounds such as fraud, corruption, impersonation thereby striking a balance between safeguarding and the risk of excessive litigation.

Section 12: Requiring settlements to be in writing, thereby improving certainty and record-keeping.

Impact on Durability

The new law has improved the long-lost trust in mediation by removing the existing ambiguities and doubts and it has strengthened the enforcement of the mediation process. However, the success of mediation in the long run is dependent on the cautioned drafting of the settlement terms, the mediators being neutral and also the ability of the courts limit the interference by it in the process of mediation.

DURABILITY OF MEDIATION AGREEMENTS UNDER INDIAN LAW

Enforceability

The enforceability of mediated settlement agreements (MSAs) has always been central to their durability. It ensures that the parties can depend and rely on the negotiated terms without the fear of breach of non-compliance. A mediated agreement is only as effective as the extent to which parties can rely on its binding nature. Mediated settlements in India have historically remained fragmented, in contrast to arbitral rulings, which have long been accepted under the Arbitration and Conciliation Act, 1996. When recorded as a consent decree under Section 89 of the Code of Civil Procedure (CPC), court-referred mediations became enforceable and bound the parties in the same way as a court order.[7] Private mediations, on the other hand, had no such standing; they were viewed as purely contractual agreements that could only be enforced by a different lawsuit for violation. Because of the ambiguity this dual approach caused, mediation's credibility as a long-term dispute resolution method declined.

Gaps in the Law before the Mediation Act, 2023

Significant gaps weakened the durability of mediation agreements before the enactment of Mediation Act of 2023. Some of these were:

[7]Enforceability_Of_Mediated_Settlement_Agreements_in_India.Pdf, https://www.lawsenate.com/publications/articles/Enforceability_Of_Mediated_Settlement_Agreements_in_India.pdf (last visited Sept. 19, 2025).

1. Absence of uniform enforceability- Settlements that were private between the parties did not have any form of automatic binding force and required independent contractual enforcement.
2. Unclear legal status: There was never a statutory recognition of mediation agreements as a distinct enforceable category, which was not the case for arbitral awards.
3. Over-reliance on judicial intervention: Parties had to approach the courts in order to familiarise mediated outcomes, which caused a lot of delays and undermined the efficiency of mediation.

Evolution of enforceability: Pre and Post Mediation Act Position

Court-referred mediations as per Section 89 of CPC, as clarified in the case of Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010), attained enforceability when they were recorded as consent decrees, thereby ensuring durability through judicial sanction. In contrast to that, private mediations lacked such backing, settlements were treated merely as contracts, thereby necessitating a separate suit for enforcement as discussed in Salem Advocate Bar Assn. v. Union of India

The mediation Act of 2023 marked a significant shift by strengthening the judicial framework as well as enhancing the enforceability of mediation agreements. The institutional foundation of the act was considerably improved after the act came into being as it provided greater certainty and reduced the risk of any form of dispute over compliance. It also pushes for the development of professional standards for mediators, ensuring that they work with both skill and fairness. At the same time, it introduces a more organised way to deal with challenges, without weakening the strength or durability of settlements. Taken together, these changes make mediation a more trusted, dependable, and widely accepted way of resolving disputes.

Durability Assessment

By removing and reducing uncertainty and ambiguity, this act helps in making mediated settlements more stable in its nature and far more enforceable. Having said that, their long-term effectiveness will still depend on how clearly the terms of the agreements have been drafted, the fairness of the mediators, as well as the ability of the courts to exercise their power of restraint in going beyond the limited grounds for interference.

FACTORS CONTRIBUTING TO BREAKDOWN OF MEDIATION AGREEMENTS

Meditation offers parties a cooperative and flexible way to resolve their disputes but durability of a settlement agreement is not guaranteed because agreements may collapse even though they were signed due to some factors that were always denied. This happens because of the way these agreements were drafted or maybe because of hurdles and hinderances that come up whenever the parties try to implement such agreements. The legal environment, the mediation procedure itself, and also the substantive quality of settlements may help in understanding the factors that contribute to the failures of mediation agreements.

When seen from a legal stance, the problem usually lies in the clarity and the enforceability of such agreement because settlements that are drafted in a vague manner and contain grey areas can create scope for multiple different interpretations, which eventually makes the conflict

more aggressive rather than just resolving it. A culture of doubt has been built when it comes to the binding force of such agreements due to the existence of a history weak enforcement in the area of private mediation. The new act has granted private mediation a greater recognition but the compliance of the same still remains an issue.[8]

Another factor that reduces durability of mediation agreements are the procedural issues. When there is a power imbalance in between the parties, could be financial, social, positional, etc., the submissive party could be in position of compulsion to accept the terms of the dominant party even though such terms cannot let them sustain their practices or businesses. These types of settlements would never sustain because of it being made under pressure and this absence of voluntariness undermines compliance because parties are less likely to uphold the settlements they never actually agreed to.

Finally, flaws within the agreements itself can render it unstable as settlements that divide obligations in a one-sided manner often result in resentment and further dispute. In India, cultural and relations further complicate the matters. Disputes in India usually involve families or business relationships.[9] Here, outside influences can very well challenge the terms of the settlements. Even if both the parties are willing, practical difficulties remain and can prevent the parties from executing their obligations which results in breakdown of the settlement agreement. Therefore, the fall of a mediation agreement cannot be attributed to only single cause. Usually there are a mixture of those factors like a combination of legal uncertainties, procedural weaknesses, and shortcomings.[10]

[8] Yun Zhao, The Enforceability of Mediation Agreements, in MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION IN MODERN CHINA 71 (Yun Zhao ed., 2022), https://doi.org/10.1007/978-981-19-2112-4_5.
[9] R98adr.Pdf, https://www.lawreform.ie/_fileupload/reports/r98adr.pdf (last visited Sept. 23, 2025).
[10] Long-Term Success of Mediated Agreements: Key Factors in Illinois, (May 31, 2024), https://annaklaw.com/success-of-mediated-agreements/.

POLICY AND DOCTRINAL RECOMMENDATIONS

- **Mediator training and accreditation:** This means ensuring mediators can draft durable settlements and maintain neutrality between the parties.
- **Strengthen enforcement mechanisms:** Issuing model clauses and to prevent ambiguous drafting.
- **Post-settlement monitoring:** Establishing mediation centres that can periodically check compliance. Example, adopting similar model like Singapore institutional Model.
- **International harmonization:** Encouraging global harmonization to improve cross-border enforceability, India would benefit from ratifying the Singapore Convention on Mediation (2018).
- **Judicial Consistency:** It' s important that courts must refrain from extending grounds for challenge under section 27. This is because frequent judicial interference undermines the durability.

Doctrinal recommendations

Mediated settlement agreements should be recognised as a distinct category of enforceable legal instruments, rather than being confined to the realm of contractual obligations. Treating them merely as contracts diminishes their normative value and hinders the central role in the dispute resolution system.[11] The Mediation Act of 2023 takes a positive step by equating mediated settlements with court decrees under section 18, yet doctrinal clarity is necessary to reinforce their sui generis nature.

Secondly, durability depends not only on statutory enforceability but also on the legitimacy and fairness of the process that generates these agreements. A structural safeguard would be providing drafting guidelines and standards by incorporating principles of procedural fairness and voluntariness. Future challenges under Section 27 will be less likely if mediators maintain their neutrality, parties have equal chance to engage, and consent is given voluntarily and voluntarily.

[11] Brandon, Enforcing Mediated Settlement Agreements, or, When Is a Deal Really a Deal: An Analysis of Murphy v. Institute of International Education - New York State Bar Association, (Aug. 12, 2022), https://nysba.org/enforcing-mediated-settlement-agreements-or-when-is-a-deal-really-a-deal-an-analysis-of-murphy-v-institute-of-international-education/.

Together, this dual emphasis would make sure that the Mediation Act's promise of durability is realised in practiced, rather than undermined by avoidable disputes or judicial overreach.[12]

CONCLUSION

Mediated settlement agreements have become a significant development in India's dispute resolution system, reflecting a global shift toward non-adversarial and mutually acceptable approaches to resolving conflicts. By granting legal recognition to these agreements, the law supports efficiency, justice, and party autonomy, while offering a credible alternative to the traditional court system. To fully realize the potential of mediation, India needs to strengthen its legal framework, raise awareness, and invest in strong institutional support. Together, these steps can help ensure that mediation consistently produces results that are not only fair and timely but also durable.

Looking ahead, several measures could improve both the enforceability and overall effectiveness of mediated settlement agreements in India. First, ongoing promotion and public awareness campaigns are essential. Mediation's advantages, such as cost-effectiveness, confidentiality, and faster resolution, should be highlighted to encourage more individuals and businesses to see it as a viable alternative to litigation. Alongside this, legislative reforms that clarify the enforceability of mediated agreements would give parties greater confidence in choosing mediation.

Investing in training for mediators and other stakeholders is equally important. High-quality training enhances professional competence and raises the overall standard of mediation services across the country. By combining awareness, stronger laws, and professional development, India can foster a more trusted and effective culture of mediation, ensuring that the process delivers meaningful and lasting outcomes.

[12] Long-Term Success of Mediated Agreements: Key Factors in Illinois, (May 31, 2024) https://annaklaw.com/success-of-mediated-agreements/.

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Contact Information

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