

VOLUME X

ISSUE-III (JUL - SEP 2024)



# QUEST

A Quarterly Journal of the Students published  
by the Indian Institute of Legal Studies

## INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law

Approved under Section 2(f) & 12B of the UGC Act, 1956

Accredited by NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India, New Delhi

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## MESSAGE

### FROM FOUNDER & CHAIRMAN'S DESK



#### SHRI JOYJIT CHOUDHURY

**Founder & Chairman  
Indian Institute of Legal Studies**

It's been quite some time that I have used my prerogative for penning in a few lines under the Caption "From the desk of the Chairman." The pandemic has Pandemic has probably changed the preferred and known rules in education and it is disheartening to see the once buzzing campuses filled with vibrant and youthful energy being bereft of the exuberance that existed.

If we take a look at the history of the Corona Virus, it originated sometime in the middle of December, 2019 in China at a live seafood market and then spread to the Wuhan area. Gradually, it spread to Italy, U.S.A., Europe and other countries of the world. The affected countries

have been called to take immediate steps to detect, treat and reduce the further spread of the virus to save lives of the people. Presently the COVID-19 is no more confined to China, Italy or U.S.A. It has become a global issue. The economic impact has had devastating and cascading effect world- wide with closure of business entities, rampant job loss coupled with non-existent economic activities putting the lives and the livelihood of a large section of the world's population in peril.

The poor vulnerable daily wage earners and migrant workers are the ones who are worst affected. Concrete measures must be adopted by the governments to provide this section of the population with sustainability incomes or else the world shall witness an increase in the pre-existing inequalities. The Governments must strengthen social protection and livelihood, reorient public finance to augment human capabilities, introduce measures to limit bankruptcies and create new sources of job creation.

To my view, the Pandemic has caused a dramatic and perceived change in the socio-economic structure of the entire world. Millions of wage-earners in the United States have been bugged of leaving their current employment and demanding higher wages and they have chosen to be unemployed if wages are not commensurate with their expectations. This is probably the outcome as to how the pandemic has led to increased inequality and unequal income distribution amongst different

classes. According to Oxfam's "The inequality virus" report in the Indian context, India's billionaires increased their wealth by 35 percent while 25 per cent of the population earned just Rs. 3000 as income per month. The unforeseen and unpredictable nature of the mutant waves have caused immense distortions in the labour market which has exposed the migrant labourers to the destitution of low incomes at their native places or starvation at their outstation job sites.

Research based data shall illuminate us about the devastation caused by cyclical mutant waves in the times to come but in the meantime, we have no choice other than to maintain status quo till the pandemic subsides. It is heartening to see that in spite of closure of many educational institutions, the editorial team has put in their honest efforts to publish the journal in such antagonizing and unprecedented times. I sincerely laud and appreciate their endeavors in making this happen. Wish everybody good luck & health.

A handwritten signature in black ink, appearing to read "J. Choudhury", with a horizontal line underneath it.

**JOYJIT CHOUDHURY**

## MESSAGE

### FROM PRINCIPAL'S DESK



I would like to convey my sincere thanks and congratulate the “Quest Editorial Board” and its contributors for their ethos and time. I believe that this edition will enrich the readers for enhancing their knowledge. In the journey of ‘Quest’ the tireless work of students, teachers and other contributors are appreciated. This edition will focus on the mind of the readers and its reflection spread around the society.

I would also like to thank the students and teachers who have shared their ideas, views, emotions, and expressions for fruitful completion of the journey of “Quest” (this edition), and I hope it will continue in future also. It also serves the purpose of Indian Institute of Legal Studies for which it is meant.



A handwritten signature in black ink that reads "Trishna Gurung". The signature is written in a cursive style and is contained within a light gray rectangular border.

**Dr. Trishna Gurung**  
Principal-in-charge,  
Indian Institute of Legal Studies

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# LONG ARTICLE



# LEGAL CHALLENGES TO IMPLEMENT NEW CRIMINAL LAWS IN INDIA



-Piyush Mani Tripathi<sup>1</sup>

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## ABSTRACT

*India's criminal justice system, historically rooted in colonial-era laws such as the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and the Indian Evidence Act (IEA), is undergoing a significant transformation. On August 11, 2023, the Government of India introduced three new laws: the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik*

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*Suraksha Sanhita (BNSS), and Bhartiya Sakshya Adhiniyam (BSA), aimed at modernizing the criminal justice framework to address contemporary challenges. This article examines the historical background of these colonial laws and provides an overview of the new legal provisions. The government's intention behind this reform is to enhance the efficiency of law enforcement and judicial processes.*

*The article delves into several legal challenges associated with implementing these new laws, including the overburdened judiciary, the need for extensive training for judicial personnel and legal professionals, and balancing cases registered before and after the enactment. It also discusses the efficiency of law enforcement agencies and examines social challenges such as public acceptance and legal awareness. The aim of this study is to explore the complexity and challenges faced by different governing bodies in successfully implementing these new criminal laws.*

**KEYWORDS :** *Criminal, Reform, Colonial-era, laws, Technology, Cybercrime.*

# 1. INTRODUCTION

India, the second most populous country in the world, faces significant challenges in maintaining law and order. One of the key issues is the reliance on outdated criminal laws, many of which were enacted during the British colonial era. These laws, particularly the Indian Penal Code (IPC)<sup>2</sup>, the Code of Criminal Procedure (CrPC)<sup>3</sup>, and the Indian Evidence Act (IEA)<sup>4</sup>, are often considered inadequate to address the complexities and evolving nature of modern society.

Recognizing these limitations, the Union Home Minister, Amit Shah, introduced three new bills in the Lok Sabha on August 11, 2023, aimed at overhauling the existing criminal justice system. These bills—Bharatiya Nyaya Sanhita (replacing the IPC), Bharatiya Nagarik Suraksha Sanhita (replacing the CrPC), and Bharatiya Sakshya Adhinyam (replacing the Indian Evidence Act)—are designed to modernize and streamline India’s criminal laws, making them more relevant to contemporary needs.<sup>5</sup>

While the introduction of these new laws marks a significant step toward reform, their implementation presents several challenges. These include the need for extensive training of law enforcement agencies, judicial

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<sup>2</sup>The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

<sup>3</sup> The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

<sup>4</sup>The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

<sup>5</sup>The Hindu, *Video Explained: What Are the Three New Criminal Laws?*, Apr. 22, 2024, <https://www.thehindu.com/news/national/video-explained-what-are-the-three-new-criminal-laws/article68356058.ece>.

personnel, and legal professionals to understand and apply the new provisions. Moreover, the transition from the old legal framework to the new one will require widespread public awareness and changes in procedural practices within the courts.

This article will explore historical aspects of previous criminal laws and the proposed reforms, analyze the challenges associated with implementing these new laws, and evaluate their potential impact on India's criminal justice system.

## **2. HISTORICAL BACKGROUND AND NEED FOR REFORM**

India, one of the world's oldest civilizations, has a rich and diverse history that shaped its criminal justice system. The development of this system can be categorized into four main periods: ancient, medieval, colonial, and modern. In ancient India, the foundations of criminal justice were laid through religious texts like the Vedas and Dharmashastras, which provided principles for justice and morality. These texts emphasized the importance of righteousness, moral conduct, and the rule of law, forming the basis for early legal doctrines. During the medieval period, the Indian criminal justice system saw the influence of Islamic legal principles, particularly under the influence of Sharia law. This integration brought new ideas and practices that influenced both the



judiciary and social regulations of the time.

The colonial era marked a transformative phase in India's legal system. With the British administration came the Regulation Act of 1773, which laid the structural foundation for the English legal system in India. This period witnessed the introduction of several key laws, including the Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872. Remarkably, many of these laws continue to govern India's criminal justice system even after independence, underscoring their lasting impact on the country's legal framework. The history of these three major outlined below

## **2.1 THE INDIAN PENAL CODE 1860 (IPC) <sup>6</sup>**

The Indian Penal Code (IPC) originated during the British colonial era in India, based on the recommendations of the first Law Commission of India, established in 1834 under the Charter Act of 1833. The principal architect behind the code was Thomas Babington Macaulay, who played a leading role in drafting it. The IPC was officially enacted on October 6, 1860, and came into force on January 1, 1862. It applied to the entirety of British India, excluding princely states. After India gained independence in 1947, the IPC was adopted as the principal criminal code for the Republic of India. Despite its colonial origins, it remains in effect, with various amendments made over time to meet modern needs and

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<sup>6</sup>EBC, *The Indian Penal Code*, <https://ebc.co.in/the-indian-penal-code/>.

demands.

## **2.2 CODE OF CRIMINAL PROCEDURE 1973(CRPC) <sup>7</sup>**

The Code of Criminal Procedure was first enacted in 1882, following the British Crown's takeover of the administration of India after the 1857 Rebellion. The code underwent several amendments, notably in 1898, 1923, and 1955. After independence, the First Law Commission submitted its 14<sup>th</sup> report, recommending amendments to the code. In 1961, the Law Commission was reconstituted and, in 1969, submitted its 41<sup>st</sup> report, advocating for a revision of the CrPC. As a result, the Criminal Procedure Code Bill of 1971 was drafted but delayed until 1972. The revised Criminal Procedure Code Bill of 1972 was passed by both Houses of Parliament, with 125 amendments, and came into force on April 1, 1974.

## **2.3 INDIAN EVIDENCE ACT, 1872(IEA)<sup>8</sup>**

The Indian Evidence Act traces its origins to the British era. In 1837, an Act was passed allowing even convicted persons to give evidence, and soon after, parties involved in litigation could act as witnesses for their own cases. Despite some criticism, notably by Charles Dickens, the law

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<sup>7</sup>Lawctopus, *Notes on Introduction to CrPC*, <https://lawctopus.com/clatalogue/clatpg/notes-on-introduction-to-crpc/amp/>.

<sup>8</sup>Lawctopus, *Concept & Historical Background of Evidence*, <https://www.lawctopus.com/academike/concept-historical-background-evidence/>.

of evidence evolved, and between 1835 and 1855, eleven Acts related to evidence were consolidated. In 1856, Sir Henry Summer Maine was tasked with drafting an Indian Evidence Act, but his draft was deemed unsuitable for Indian conditions. The responsibility then passed to Sir James Fitzjames Stephen, who drafted the final version in 1872. This became the Indian Evidence Act, 1872, coming into force on 1<sup>st</sup> September 1872. Before independence, many Indian states had already adopted the Act, and post-independence, it was recognized as the law for all Indian courts.

### **3. MODERNIZED PROVISIONS UNDER NEW CRIMINAL LAWS**

On August 11, 2023, the Central Government introduced three new criminal laws: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA). These laws were first reviewed by a 31-member Parliamentary Standing Committee before being introduced in the Lok Sabha by the Union Home Minister. And when the bill pass by both the houses The President of India gave assent to these laws in 2023, and they are set to come into force on July 1, 2024, replacing the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian

Evidence Act, 1872. The primary objective of these new criminal laws is to modernize India's legal system and reform various aspects of the criminal justice framework.

- The **Bharatiya Nyaya Sanhita** (BNS)<sup>9</sup>, "which replaced the Indian Penal Code (IPC), introduces significant reforms aimed at addressing contemporary criminal challenges. While the IPC had 511 sections, the BNS streamlines the legal framework with 358 sections and defines 20 new crimes. Key reforms include expanding the definition of terrorism, incorporating newer offenses like organized crime and mob lynching, and removing outdated provisions such as sedition. The BNS also broadens the scope of sexual offenses, particularly in relation to cybercrimes, and strengthens punishments for 33 offenses, including rape, with the possibility of capital punishment in certain cases. Overall, the BNS modernizes and simplifies the language of criminal law, making it more accessible and comprehensible.

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<sup>9</sup>Ministry of Home Affairs, Government of India, *Bharatiya Nyaya Sanhita, 2023*, [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf).

- The **Bharatiya Nagarik Suraksha Sanhita (BNSS)**<sup>10</sup>, which replaces the Code of Criminal Procedure (CrPC), brings significant reforms to improve the efficiency and transparency of the criminal justice system. The BNSS contains 531 sections, compared to 484 in the CrPC, and introduces two new chapters, bringing the total number of chapters to 39. It focuses on ensuring a more efficient and transparent criminal justice process. It emphasizes greater accountability of law enforcement agencies, including provisions for filming searches and seizures and allowing citizens to file FIRs regardless of jurisdiction. BNSS also introduces measures to reduce pre-trial incarceration by making bail more accessible for petty offenses. With a strong focus on technology, trials can be conducted through video conferencing, and electronic surveillance is introduced to monitor those released on bail, and ensuring a balance between civil liberties and the need for justice.
- The **Bharatiya Sakshya Adhinyam” ( BNA)**<sup>11</sup> which replaces the Indian Evidence Act 1872, Bharatiya

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<sup>10</sup>LiveLaw, *Bharatiya Nagarik Suraksha Sanhita, 2023*, [https://www.livelaw.in/pdf\\_upload/bharatiya-nagarik-suraksha-sanhita-513878.pdf](https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-513878.pdf).

<sup>11</sup>Ministry of Home Affairs, *Bharatiya Nyaya Sanhita, 2023*, [https://www.mha.gov.in/sites/default/files/250882\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250882_english_01042024.pdf).

Sakshya Adhiniyam contains 170 sections instead of 167 sections in Indian Evidence Act 1872. It modernizes the rules surrounding the admissibility of evidence in court, especially concerning electronic and forensic evidence. It formalizes the role of digital records, DNA testing, voice samples, and other scientific methods, making them essential tools in criminal investigations. Additionally, it strengthens protections for witnesses and ensures that modern forensic tools are widely used in gathering evidence. By simplifying the rules for presenting electronic evidence and emphasizing the use of technology, this law ensures that the criminal justice system can keep pace with technological advancements.

## **4. LEGAL CHALLENGES.**

After the ascent of President Draupadi Murmu on December 25, 2023, three new criminal laws came into force on July 1, 2024. However, implementing such significant legal reforms in a country like India, home to 17.78% of the world's population<sup>12</sup>, is a complex task. The British-era criminal laws, such as the Indian Penal Code of 1860 and the Code of

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<sup>12</sup>Worldometer, *India Population (Live)*, <https://www.worldometers.info/world-population/india-population/>.

Civil Procedure of 1973, took considerable time to adapt to Indian society. Similarly, the introduction of these new criminal laws is expected to impact a wide range of stakeholders, including government officials, law enforcement agencies, legal professionals, and academic institutions.

Despite this, the central government has directed various ministries and other key stakeholders to incorporate the new criminal laws into their training programs to ensure proper implementation. Nevertheless, several challenges remain in integrating these new laws into the criminal justice system, as outlined below.

## **4.1 ESSENTIAL TRAINING FOR IMMEDIATE IMPLEMENTATION**

As we know, the true test of any law begins when it is applied on the ground. Similarly, the real challenge with these three new criminal laws will arise once various stakeholders begin to engage with them, and the courts start interpreting them. For this, immediate and comprehensive training of stakeholders, (such as legal professionals and law enforcement agencies), is critical. However, train a large number of stakeholders across diverse fields—such as the judiciary, legal practitioners, and law enforcement agencies—presents a significant challenge.

To better understand the magnitude of the issue, one can refer to the Indian Justice Report 2022, which reveals that the total strength of police

officers in India is approximately 20.49 lakh, whereas the current number of training institutes stands at only 211.<sup>13</sup> This clearly indicates a substantial gap between the available training infrastructure and the immediate need for training a large number of officers. Considering that these new criminal laws will play a crucial role in police procedures, this gap could lead to confusion and improper proceedings in the absence of timely and adequate training.<sup>14</sup>

## **4.2 SHORTAGE OF JUDICIAL OFFICERS**

India's ratio of judges to population is among the lowest in the world, contributing significantly to delays in the justice delivery system. According to the Ministry of Law and Justice report dated 29 January 2024, the sanctioned strength of Supreme Court judges is 34, and the Supreme Court is currently functioning at full capacity. However, a glaring disparity exists in the High Courts. Out of the sanctioned 1,114 judges, only 783 are currently serving, leaving 331 posts vacant.<sup>15</sup> This shortage creates a significant gap between the number of sanctioned judges and those actually working, exacerbating the already existing

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<sup>13</sup>Tata Institute of Social Sciences, *India Justice Report 2022 – National Factsheet*, [https://tiss.edu/uploads/files/IJR\\_2022\\_National\\_Factsheet.pdf](https://tiss.edu/uploads/files/IJR_2022_National_Factsheet.pdf).

<sup>14</sup>Indian Express, *New Criminal Law: NDA*, <https://indianexpress.com/article/opinion/columns/new-criminal-law-nda-9415938/lite/>.

<sup>15</sup> Sansad, *Lok Sabha Questions Annexure AU174*, <https://sansad.in/getFile/loksabhaquestions/annex/1715/AU174.pdf?source=pqals>.



backlog of cases.

This judicial vacancy is one of the primary reasons for the high pendency of cases across courts. The shortage not only delays the resolution of cases but also hampers the efficient implementation of newly introduced laws. For instance, with the recent introduction of three new criminal laws, it is critical to have an adequate number of judges to ensure proper and timely enforcement.

### **4.3 IMPLEMENTATION GAP**

In India, various laws at the central and state levels are designed to promote public welfare, but a persistent issue is the gap between legislative intent and ground-level implementation. This implementation gap is evident across many areas and is likely to affect the three newly enacted criminal laws as well. Several factors contribute to this disparity, such as inadequate training and lack of awareness among law enforcement agencies, as well as insufficient infrastructure.

For example, in rural areas, there is often limited public awareness about new or existing laws, and in some cases, even the police are not fully aware of specific laws, such as those concerning cybercrime. The lack of adequate infrastructure in rural police stations further exacerbates the problem, resulting in ineffective enforcement of criminal laws. This lack of proper implementation hinders the realization of the legislative goals and ultimately affects public welfare.

## 4.4 TECHNOLOGICAL INFRASTRUCTURE

The newly Introduced criminal laws—Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam—place a strong emphasis on the digitalization of various aspects of legal proceedings. This includes evidence collection, the use of forensic science, virtual court trials, and other technologically driven advancements. For instance, in the Bharatiya Nagarik Suraksha Sanhita 2023, Section 2(1)(a) defines the term “audio-video electronic” and Section 2(1)(i) explains “electronic communication,”<sup>16</sup> both reflecting the envisioned integration of digital tools within the criminal justice system in India.

However, to effectively implement these provisions, robust technological infrastructure is essential. This raises a significant concern, particularly in rural areas where basic infrastructure, such as consistent electricity supply and access to technology, remains inadequate. According to the Pradhan Mantri Adarsh Gramin Yojana, there are still 890 villages in India that do not have access to electricity.<sup>17</sup> Many such villages face challenges in technological infrastructure, making the transition to a digitalized criminal justice system difficult. Without proper

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<sup>16</sup>Ministry of Home Affairs, *250883 English*, [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf).

<sup>17</sup>Pradhan Mantri Adarsh Gram Yojana, *New HHMI Village Data*, <https://pmagy.gov.in/NewHHMIVillage.php?MI=Ni4x>.

infrastructure, the intended benefits of these laws may not reach all regions uniformly, posing challenges to their nationwide execution.

## **4.5 RESOURCES LIMITATIONS**

The Implementation of the three new criminal laws in India faces several resource-related challenges, as outlined below:

**4.5.1 Training and Infrastructure:** The successful execution of these laws requires comprehensive training for law enforcement agencies and the judiciary. This training demands both physical and digital infrastructure across the entire country to ensure uniformity in understanding and applying the new legal provisions.

**4.5.2 Technological Upgrades:** The new laws place significant emphasis on the use of digital tools, such as video recording of evidence collection, virtual trials, and digital submission of complaints. To implement these reforms effectively, substantial investments are required to upgrade police stations and courts with the necessary technology. This includes ensuring access to high-speed internet, secure digital platforms, and advanced data storage facilities.

**4.5.3 Forensic Expertise:** The laws mandate the involvement of forensic experts in serious crime investigations. To meet this

requirement, it is essential to ensure the availability of trained forensic professionals and modern forensic laboratories throughout the country. However, there is currently a shortage of such experts and facilities, particularly in rural and underserved areas, posing a significant challenge.

Despite these needs, the budget allocated by the Government for the Ministry of Law and Justice for 2024-2025 stands at ₹5,940.95 crore,<sup>18</sup> which is insufficient to address all these requirements. A much larger budget would be necessary to develop adequate infrastructure, provide proper training, and equip law enforcement agencies and courts with modern technology, as well as to enhance forensic capabilities nationwide. Without sufficient funding, the ambitious reforms envisioned in these new laws may face serious hurdles in their effective implementation

## **5. RECOMMENDATIONS**

The successful implementation of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam faces several challenges. To address these, the following

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<sup>18</sup>Government of India, *Economic Survey Volume I*, <https://www.indiabudget.gov.in/doc/eb/vol1.pdf>.

recommendations are proposed:

## **5.1 COMPREHENSIVE AND IMMEDIATE TRAINING**

A robust and immediate training program should be introduced for law enforcement agencies, judicial officers, legal professionals, and other stakeholders. This will prevent confusion and improper proceedings regarding the new criminal laws. The focus should also be on increasing the number of training institutions to bridge the gap between the current infrastructure and what is required.

## **5.2 ADDRESSING JUDICIAL VACANCIES**

For proper interpretation and implementation of the new criminal laws, an adequate number of judicial officers is crucial. Efforts should be made to increase the number of judicial appointments, especially in lower courts and high courts, to fill the current vacancies and ensure that the justice delivery system is efficient.

## **5.3 BRIDGING THE IMPLEMENTATION GAP**

It is vital to ensure that laws are not only enacted but also effectively implemented at the ground level. This can be achieved by conducting awareness programs, particularly in rural areas, to educate the public and law enforcement agencies about the new legal developments. These programs should also address evolving crimes like cybercrimes, making

sure that the enforcement agencies are well-equipped to handle modern criminal challenges.

## **5.4 STRENGTHENING TECHNOLOGICAL INFRASTRUCTURE**

There is a pressing need to improve the technological infrastructure, particularly in rural areas where access to electricity and digital tools is limited. In addition, more forensic laboratories should be established, and professionals should be trained to handle investigations in line with the provisions of the new criminal laws, especially in underserved areas.

## **5.5 RESOURCE ALLOCATION AND BUDGET INCREASE**

The budget for the Ministry of Law and Justice should be increased to support the necessary technological upgrades and training programs. Adequate resource allocation is essential for the successful implementation of these new laws, ensuring that all regions and sectors are adequately prepared for the transition.

## 6. CONCLUSION

The three new criminal laws introduced by the central government on August 11, 2023, represent a significant and positive step towards modernizing India's criminal justice system and eliminating the remnants of British colonial-era laws. These laws—Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam—are designed to address contemporary challenges like terrorism, organized crime, cybercrimes, and new forms of offenses. They aim to streamline legal processes and enhance the efficiency, transparency, and technological integration of the system. However, implementing these laws will present challenges, such as the need for extensive training for law enforcement, judicial officers, and legal professionals. There is a shortage of judicial officers, as highlighted by the significant gap between sanctioned and serving judges in lower courts and higher courts, which exacerbates delays and case backlogs. Moreover, India faces a persistent issue of the implementation gap, where laws enacted at the central level fail to be executed effectively on the ground, particularly in rural areas where awareness and technological infrastructure are inadequate. The new laws emphasize digitalization, but rural areas still lack essential infrastructure such as reliable electricity and internet access, posing further hurdles. Additionally, resource constraints remain a major issue, with the budget allocated for law and justice falling short of what's required for comprehensive training, technological

upgrades, and strengthening forensic capabilities. To address these challenges, the government must devise a phased plan. This should include immediate training for stakeholders, filling judicial vacancies in lower courts and high courts, strengthening technological infrastructure across the country, particularly in rural regions, and ensuring adequate budget allocations for a smooth transition. Only with proper planning, resources, and execution will these new laws bring meaningful reform to the society and Indian criminal justice system.



# **EMPOWERING FUTURE: AN ANALYSIS OF THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 WITH A FOCUS ON CHILDREN”**



- Shorbottam Moitra & Sagnika Chakraborty<sup>19</sup>

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## **ABSTRACT**

*The Rights of Persons with Disabilities Act, 2016, was enacted to fulfill India's obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and to replace the earlier Persons*

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*with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995. This research focuses on the Act's purpose, which is to promote and protect the dignity, equality, and inclusion of individuals with disabilities, with a special emphasis on children. Tracing the historical background, the study highlights key developments in disability rights both globally and within India that shaped the need for an updated and more comprehensive legislative framework. The Act's provisions aim to ensure accessible education, healthcare, and rehabilitation services for children, while promoting inclusive policies in schools and public spaces. The research also delves into the implementation of the Act, examining the mechanisms used by government agencies, schools, and healthcare providers to enforce its mandates. Special attention is given to how effectively The Act has been integrated into existing systems, particularly regarding early intervention and educational Inclusion. By analysing the outcomes of this implementation, the study assesses whether the objectives of the Act are being met, identifies ongoing challenges, and suggests reforms necessary to strengthen protections for children with disabilities.*

**KEYWORDS:** *Disabilities, Children, Constitution, Right to Equality, Accessibility.*

# 1. INTRODUCTION

The Rights of Persons with Disabilities Act, 2016, replaced the earlier 1995 Act and marked a significant step forward in ensuring the protection and inclusion of disabled individuals in India. Historically, people with disabilities in India faced widespread discrimination and were often regarded as burdens on society. This negative perception persisted until the 1980s when there was a growing awareness that disabled individuals should be given opportunities to participate in societal development. Governments, NGOs, and the public began to recognize that disability is a medical condition that could be addressed through proper rehabilitation measures.

The rehabilitation movement gained momentum after the United Nations declared 1982-1992 as the Decade of Disabled Persons. This global initiative emphasized the importance of improving the status of disabled people by focusing on their education, employment, and overall well-being. It encouraged increased funding and policy efforts to support these individuals in leading independent and dignified lives.

In response to these developments, the Indian government took concrete steps to support the rehabilitation of people with disabilities. The Rehabilitation Council of India was established in 1986 to provide a framework for their rehabilitation and ensure the availability of trained professionals. Additionally, the National Policy on Disability, introduced

in 2009, outlined a comprehensive approach to addressing critical issues affecting the disabled community, such as access to education, employment opportunities, and social security. This policy aimed to create a more inclusive society where disabled individuals could thrive as equal participants.

## **2. EVOLUTION OF THE RIGHT OF PERSONS WITH DISABILITIES ACT, 2016<sup>20</sup>**

For much of India's history, people with disabilities were marginalized and stigmatized. Society often viewed disability as a curse or personal tragedy, resulting in exclusion from mainstream social, educational, and economic activities. Disabled individuals were generally seen as dependent on families or communities, with little expectation that they could contribute to society. This stigmatization, combined with a lack of supportive infrastructure, led to significant social and economic disadvantages.

In the mid-20<sup>th</sup> century, global attitudes towards disability began to change, with growing recognition that disabilities were not merely medical conditions but also social challenges that could be addressed with the right policies. By the 1980s, disability rights movements began

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<sup>20</sup> Arnab Bose, *A Review of the Rights of Persons with Disabilities Act, 2016*, <https://www.rgics.org/wp-content/uploads/RPWD-Act-Review-Paper.pdf>.

gaining traction around the world. Advocates emphasized the importance of enabling disabled individuals to live independently and participate fully in society. Rehabilitation, education, employment opportunities, and accessibility were prioritized as key areas of focus.

A major turning point was the United Nations' declaration of 1982-1992 as the Decade of Disabled Persons. This global initiative aimed to promote equal opportunities, accessibility, and rights for people with disabilities. The declaration encouraged countries worldwide to review their disability policies and improve rehabilitation services. In India, it led to greater attention on disability issues and helped build momentum for legislative reforms.

India's first significant disability law came in 1995 with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. This Act was a direct outcome of India's participation in the Decade of Disabled Persons. It laid down basic rights for persons with disabilities and focused on ensuring their participation in education, employment, and access to services. However, the 1995 Act had limitations. It was seen as inadequate in addressing modern-day needs, especially in light of India's obligations under international human rights frameworks.

In response to these growing pressures, including both international commitments and domestic advocacy for disability rights, the Indian government drafted a new law. The Rights of Persons with Disabilities

Act, 2016 was passed to replace the outdated 1995 legislation. This Act was designed to provide a more comprehensive and rights-based approach to disability. It broadened the definition of disability to include more categories, increased the percentage of reservations in government jobs and educational institutions, and introduced provisions for better accessibility, healthcare, and legal protections. It also aligned Indian law with the CRPD's requirements and provided for the appointment of special grievance redressal authorities.

### **3. PURPOSE, RATIONALE, AND KEY HIGHLIGHTS**

The Rights of Persons with Disabilities Act, 2016 aims to grant specific rights to individuals with disabilities while protecting them from social stigma and discrimination. According to Section 2(s) of the Act, a “person with disability” is defined as someone who has a long-term mental, physical, sensory, or intellectual impairment that, combined with societal barriers, limits their effective participation in society.

This definition of disability in the 2016 Act is broader and more inclusive than the one in the previous law. The Persons with Disabilities Act, 1995 only recognized individuals with at least 40% certified disability as disabled persons.

Additionally, Section 27 of the Act addresses the rehabilitation of disabled individuals. It places the responsibility on the appropriate

government to ensure their rehabilitation, with a focus on areas such as education, employment, and healthcare. The government is also required to offer financial support to non-governmental organizations involved in assisting with the rehabilitation of disabled people.

### **3.1. NEED FOR THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016**

The Rights of Persons with Disabilities Act, 2016 was primarily enacted to protect the interests of individuals with disabilities. It aimed to uphold their dignity, prevent discrimination, and promote an inclusive society.

The Act was introduced in response to India's international commitments under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted by the UN General Assembly in December 2006, and ratified by India in 2007. The Convention required signatory states to create or amend existing laws to eliminate barriers to the growth and development of disabled individuals. As part of this, India's National Policy on Disabled Persons had to be aligned with the principles of the 2007 Convention.

The Convention placed obligations on states, private entities, and civil society to secure the rights of disabled individuals. Signatory countries were tasked not only with implementing the Convention but also ensuring that domestic laws complied with constitutional provisions. Furthermore, they were required to submit periodic country reports. In

keeping with its obligations, India passed the 2016 Act and submitted its first country report in November 2015.

This Act, furthermore, widened the definition of disability by incorporating 21 types of disabilities, as compared to 7 in the preceding statute. The schedule to the Act covers physical disability, mental disability, intellectual disability, and disability resulting from chronic neurological conditions and blood disorders. Acid attack victims and those with speech and language disabilities have been included in the list for the first time.

### **3.2 OBJECTIVE OF RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016**

- The main goal of the Act is to guarantee that individuals with disabilities can exercise their right to equality and live with dignity and respect.
- The Preamble of the Act states that its purpose is to protect disabled individuals from all forms of discrimination. It seeks to promote the complete social, political, and economic involvement of people with disabilities.
- This Act encourages inclusive education and establishes employment protections for disabled individuals. Consequently,



it aims to empower them through inclusive development and active participation in society.

### **3.3 SALIENT FEATURES OF THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016.**

- **EDUCATIONAL SAFEGUARD-**

Chapter III of the Act focuses on the education of children with disabilities. Section 16 outlines the responsibilities of government-funded educational institutions to ensure inclusive education for disabled children. These institutions are prohibited from discriminating against students with disabilities and are required to offer educational, sports, and recreational facilities tailored to their needs. They must also provide reasonable accommodations, enhance campus accessibility, ensure that children who are deaf or blind receive education through appropriate communication methods and suitable teaching strategies, offer transportation facilities, and monitor the participation and progress of disabled students.

Section 17 is dedicated to promoting inclusive education. It establishes that the government and local authorities must create training institutes and provide training for staff and professionals on how to foster inclusive educational environments. Additionally,

children with benchmark disabilities are entitled to receive free books and other educational materials until they reach the age of 18.

People suffering from benchmark disabilities are provided special provisions in Chapter VI of the Act. Section 31 provides that every child suffering from a benchmark disability has a right to free education in any neighbourhood school or in any special school until he attains the age of 18. All higher government educational institutions as well as educational institutions receiving government grants are mandated to provide a minimum of 5% reservation in favor of children suffering from benchmark disabilities.

- **OTHER RIGHTS OF DISABLED PERSONS-**

Individuals with disabilities have the right to equality and protection from discrimination based on their disability. The government is tasked with ensuring the dignity and integrity of disabled persons, allowing them to live in the community without being forced into specific arrangements. They have equal rights and cannot be compelled to undergo infertility procedures. Accessibility at polling booths is mandated for disabled individuals, who must also be safeguarded against violence, exploitation, and degrading treatment. Consent is required for participation in research, and they are entitled to safety and protection during emergencies or natural disasters. Section 7(2) mandates registered organizations to inform the

Executive Magistrate of any suspected violence or abuse against disabled persons. Section 38 allows individuals with benchmark disabilities to apply for high support from a notified authority, with applications assessed by an Assessment Board. Furthermore, the Act stipulates that employees who acquire disabilities while in service cannot be dismissed and may be transferred to suitable positions without a reduction in pay.

## **4. LEGAL PROTECTION OF PERSON WITH DISABILITIES INCLUDING CHILDREN**

The Rights of Persons with Disabilities (RPWD) Act, 2016 is a landmark legislation in India that provides comprehensive legal protection and promotes the rights of persons with disabilities, including children. Enacted in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the Act expands the definition of disability to include 21 conditions and adopts a rights-based approach to ensure equality and dignity. With special reference to children, the Act mandates inclusive education, ensuring free and compulsory education for children with disabilities up to the age of 18 in mainstream schools. It also emphasizes early identification and intervention, protection from abuse, and access to healthcare and rehabilitation services. Additionally, the law provides for skill

development, reservation in higher education, and the creation of a barrier-free environment, aiming to ensure that children with disabilities can live with dignity, autonomy, and equal opportunities.

## **4.1 CONSTITUTIONAL RIGHTS**

### **ARTICLE 14<sup>21</sup>: RIGHT TO EQUALITY**

Article 14 of the Indian Constitution guarantees the right to equality before the law and equal protection of the laws. It prohibits any form of discrimination, ensuring that every individual, including persons with disabilities, is treated equally in the eyes of the law. For persons with disabilities, Article 14 ensures that they are not subjected to discriminatory treatment in any sphere of life, whether it is education, employment, or access to public services.

However, equality under Article 14 also embraces the concept of “reasonable classification”, which allows for affirmative action or special provisions for marginalized or disadvantaged groups, including persons with disabilities, to address existing inequalities. This means that while the law provides equal treatment, it also recognizes the need for special measures to ensure substantive equality for persons with disabilities.

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<sup>21</sup> INDIA CONST. art. 14.

The Supreme Court of India's 2021 Ravindra Dhariwal case<sup>22</sup> interpreted Article 14 of the Constitution of India to include the idea of inclusive equality for people with disabilities. The court ruled that people with disabilities are equal citizens of India and have the same rights to resources as other citizens. The court also stated that the denial of their rights would be unfair to them and their families, and would create problems for society.

## **ARTICLE 15<sup>23</sup>: PROHIBITION OF DISCRIMINATION**

Article 15 of the Indian Constitution prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. While it does not explicitly mention disability, its provisions have been interpreted by courts to include persons with disabilities under its protective umbrella. Furthermore, Article 15(3) allows the State to make special provisions for children and other vulnerable groups, which has been extended to persons with disabilities. Persons with disabilities are often marginalized, and Article 15 can be invoked to ensure that they are not discriminated against in matters of public employment, education, or access to services.

In *Vikas Kumar v. Union Public Service Commission* case<sup>24</sup> the Supreme Court stating that the government must ensure reasonable

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<sup>22</sup>Ravindra Kumar Dhariwal v. Union of India, (2023) 2 SCC 209.

<sup>23</sup> INDIA CONST. art. 15.

<sup>24</sup>Vikas Kumar v. Union Public Service Commission, AIR 2021 SC 2447, AIR Online 2021 SC 56.

accommodations under the Rights of Persons with Disabilities (RPWD) Act, 2016. The Court referred to Article 15 and noted that denying a qualified candidate based on disability without assessing their ability to perform the job amounts to discrimination. The judgment emphasized that such blanket medical standards should be revisited to accommodate persons with disabilities, ensuring equality under Article 15.

## **ARTICLE 21A<sup>25</sup>: RIGHT TO EDUCATION**

Article 21A of the Indian Constitution, which guarantees the Right to Education, is directly relevant to persons with disabilities, ensuring that all children between the ages of 6 to 14 years, including children with disabilities, have the right to free and compulsory education. This article underscores the State's responsibility to provide inclusive education that accommodates the diverse needs of all children, including those with disabilities.

To ensure the practical implementation of Article 21A for children with disabilities, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 was enacted, which mandates inclusive education and prohibits discrimination on grounds of disability. Additionally, the Rights of Persons with Disabilities (RPWD) Act, 2016 complements Article 21A by mandating appropriate education systems and

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<sup>25</sup> INDIA CONST. art. 21A.

infrastructure, such as trained teachers, accessible curricula, and suitable accommodations for children with disabilities.

## **ARTICLE 41<sup>26</sup>: RIGHT TO WORK, TO EDUCATION, AND TO PUBLIC ASSISTANCE IN CERTAIN CASES**

Article 41 of the Indian Constitution falls under the Directive Principles of State Policy (DPSP) and mandates the State to make provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disability. While not enforceable in a court of law, Article 41 guides the State in framing laws and policies for the welfare of disadvantaged groups, including persons with disabilities. Article 41 has influenced various laws and policies related to disability rights, such as the Rights of Persons with Disabilities (RPWD) Act, 2016, which ensures access to education, employment, and social welfare for persons with disabilities. Though DPSPs are non-justiciable, they have guided the judiciary in interpreting and expanding the rights of persons with disabilities.

Article 41 has played a critical role in shaping disability rights in India by guiding the State in making laws and policies that cater to the needs of persons with disabilities. Although not directly enforceable, this article has influenced landmark judgments like *Javed Abidi v. Union of India*<sup>27</sup>,

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<sup>26</sup> INDIA CONST. art. 41.

<sup>27</sup>*Javed Abidi v. Union of India*, 1999 1 SCC 467.

where the judiciary reinforced the government's obligation to improve accessibility and support for persons with disabilities, bringing their rights closer to realization.

## **ARTICLE 46<sup>28</sup>: PROMOTION OF EDUCATIONAL AND ECONOMIC INTERESTS OF WEAKER SECTIONS**

Article 46 of the Indian Constitution is a directive principle of state policy, which obligates the State to promote the educational and economic interests of weaker sections of society, including Scheduled Castes, Scheduled Tribes, and other socially and educationally disadvantaged groups. While Article 46 does not specifically mention persons with disabilities, they are considered a vulnerable group, and the principles of this article extend to promoting their welfare and protecting them from social injustice and exploitation.

The article's mandate to improve the status of weaker sections aligns with the objectives of the Rights of Persons with Disabilities Act, 2016, which seeks to provide persons with disabilities (PwDs) equal access to education, healthcare, employment, and other essential services. Thus, while Article 46 broadly focuses on the weaker sections of society, it is

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<sup>28</sup> INDIA CONST. art. 46.



interpreted to include persons with disabilities as part of the effort to reduce disparities and ensure social justice.

## **ARTICLE 51A(k)<sup>29</sup>: FUNDAMENTAL DUTIES**

Article 51A(k) of the Indian Constitution imposes a fundamental duty on parents or guardians to provide opportunities for education to their children between the ages of 6 and 14. This provision applies to all children, including those with disabilities, and is directly linked to their right to education as guaranteed by Article 21A (Right to Education).

This fundamental duty is particularly important for children with disabilities because it emphasizes the responsibility of parents or guardians to ensure that such children receive appropriate educational opportunities, including special education where needed. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 and the Rights of Persons with Disabilities (RPWD) Act, 2016 work in tandem to make inclusive education a reality. The RPWD Act, 2016 guarantees that children with disabilities have the right to free education in an appropriate environment until they are 18 years old, reinforcing the duty under Article 51A(k).

Parents of children with disabilities may face challenges such as lack of awareness, social stigma, or limited resources. However, the legal framework ensures that these children are not denied their right to

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<sup>29</sup> INDIA CONST. art. 51A, cl. (k).

education due to disability, and that the responsibility for facilitating their educational access is shared by the State and the parents.

## **4.2 SCHEMES UNDER NATIONAL TRUST ACT<sup>30</sup>**

### **DISHA (EARLY INTERVENTION AND SCHOOL READINESS SCHEME)**

This is an early intervention and school readiness scheme for children in the age group of 0-10 years with the four disabilities covered under the National Trust Act<sup>31</sup> and aims at setting up Disha Centres for early intervention for a person with disability through therapies, trainings and providing support to family members.

### **GYAN PRABHA (EDUCATIONAL SUPPORT)**

The Gyan Prabha scheme aims to encourage people with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for pursuing educational/vocational courses like graduation courses, professional courses and vocational training leading to employment or self-employment. National Trust will provide a specific amount per

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<sup>30</sup>The Rights of Persons with Disabilities Act, No. 49, Acts of Parliament, 2016 (India).

The National Trust Act, No. 44, Acts of Parliament, 1999 (India).

The Mental Healthcare Act, No. 10, Acts of Parliament, 2017 (India).

<sup>31</sup> The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, No. 44, Acts of Parliament, 1999 (India).

course to a Person with Disability which will generally cover fees, transportation, books, out of pocket expenses (OPEs) etc.

### **SAMARTH (RESPITE CARE)**

The objective of Samarth scheme is to provide respite homes for orphans or abandoned, families in crisis and also for persons with disabilities from Below Poverty Line (BPL) & Low income Group (LIG) families, including destitute with at least one of the four disabilities covered under The National Trust Act.

### **NIRAMAYA (HEALTH INSURANCE SCHEME)**

The objective of Niramaya scheme is to provide affordable Health Insurance to persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. All enrolled beneficiaries will get a health insurance cover of up to Rs. 1.0 lakh as defined in the chart OPD treatment including the medicines, pathology, diagnostic tests, etc.

## **4.3 SCHOLARSHIPS FOR STUDENTS WITH DISABILITY<sup>32</sup>:**

There are scholarships provided under the Scheme of National Scholarships for Persons with Disabilities. Every year, 500 New scholarships are awarded for pursuing post-matric professional and

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<sup>32</sup> Disability Rights (Rights of Persons with Disabilities Act & National Trust Act) and Mental Healthcare Act, at 18.

technical courses of duration more than one year. However, for students with cerebral palsy, mental retardation, multiple disabilities and profound or severe hearing impairment, scholarship is awarded for pursuing studies from Class IX. Students with 40% or more disability, whose monthly family income does not exceed Rs. 15,000, are eligible for scholarship. A scholarship of Rs. 700/- per month to day-scholars and Rs. 1,000/- per month to hostellers is provided to the students pursuing Graduate and Post Graduate level technical or professional courses. A scholarship of Rs. 400/- per month to day-scholars and Rs. 700/- per month to hostellers is provided for pursuing diploma and certificate level professional courses. In addition to the scholarship, the Students are reimbursed the course fee of up to Rs. 10,000/- per year.

## **5. LANDMARK JUDGMENTS REGARDING RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016**

The judiciary plays a crucial role in upholding and interpreting the Rights of Persons with Disabilities Act, 2016, which aims to safeguard the rights and dignity of individuals with disabilities in India. Through various landmark judgments, the courts have reinforced the principles of equality, non-discrimination, and inclusivity, ensuring that the provisions of the Act are effectively implemented. The judiciary has emphasized the

need for reasonable accommodations in education, employment, and public services, thereby holding authorities accountable for their obligations under the Act. By adjudicating cases related to access, entitlements, and protections for persons with disabilities, the judiciary not only shapes the legal landscape but also promotes awareness and enforcement of disability rights, fostering a more inclusive society.

### ***5.1 Disabled Rights Group V. Union Of India***<sup>33</sup>

In the case *Disabled Rights Group vs. Union of India and Others* (Civil Writ Petition No. 292/2006), a petition was filed in the Supreme Court of India by the Disabled Rights Group (DRG) on behalf of Ms. Pooja Sharma, a wheelchair-bound student who was denied reasonable accommodations by a nationally recognized law institute. Ms. Sharma was unable to continue her education due to the institution's refusal to modify her hostel bathroom for wheelchair access, provide a private room, or offer an assistant when needed. The Supreme Court sought input from the Bar Council of India (BCI) in response to this issue. In September 2011, the BCI passed a resolution requiring all law colleges in India to make their courses accessible to disabled students. The resolution mandated a minimum 3% reservation for differently-abled students and emphasized that mere reservation was not enough. The BCI stressed that law colleges must be equipped with adequate physical and

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<sup>33</sup> *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397, AIR ONLINE 2018 SC 543.

academic infrastructure to cater to the unique needs of disabled students. The Council added a provision to its rules, requiring law colleges to provide necessary facilities to ensure the effective participation of disabled students, teachers, and staff in educational activities.

## ***5.2 M.C. Mehta V. State Of Tamil Nadu And Others<sup>34</sup>***

Child labour in India remains a significant issue, depriving children of their childhood and endangering their physical and mental health. Despite constitutional safeguards like Article 24, which prohibits the employment of children under 14 in hazardous industries, and the recognition of free and compulsory education as a fundamental right under Article 45 (following the Unni Krishnan case<sup>35</sup>), child exploitation persists. The Supreme Court highlighted the severe violations in Sivakasi's match factories, where children were employed in dangerous conditions. The court's directives aimed to protect child workers, including setting up a committee to oversee reforms and recommending improvements like better working conditions, transport, wages, and welfare measures. However, the challenge of child labour continues, with millions of children still engaged in work, especially in the unorganized sector, indicating the need for stronger government action to address the issue comprehensively.

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<sup>34</sup> M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756, AIR 1997 SC 699.

<sup>35</sup> Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645.

### ***5.3 State Of Kerala V. Leesamma Joseph<sup>36</sup>***

In *State of Kerala v. Leesamma Joseph*, the Supreme Court addressed the question of whether disabled individuals are entitled to reservation in promotions. Interpreting the provisions of both the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the Rights of Persons with Disabilities Act, 2016, the Court ruled in favor of such reservation. The Court emphasized that while enacting laws is straightforward, changing societal attitudes to fully implement these laws is more challenging.

It highlighted the intent of both Acts to provide equal opportunities for disabled individuals, asserting that this can only be achieved by extending reservations to promotions. Additionally, Section 20(2) of the 2016 Act requires government establishments to ensure reasonable accommodation and a supportive environment for disabled employees. Thus, the Court concluded that disabled persons are entitled to reservation in promotions.

### ***5.4 Avni Prakash V. National Testing Agency<sup>37</sup>***

In *Avni Prakash v. National Testing Agency*, the petitioner, diagnosed with 40% permanent disability and dysgraphia, claimed she was entitled to reasonable accommodation under the guidelines issued by the Ministry

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<sup>36</sup>The State of Kerala v. Leesamma Joseph, AIR 2021 SC 3076.

<sup>37</sup>Vikash Kumar v. Union Pub. Serv. Comm'n, (2021) 5 SCC 370, AIR 2021 SC 2447.

of Social Justice and Empowerment for disabled candidates in written examinations. However, when she appeared for the NEET exam, she was denied the necessary accommodations due to the examination center's unawareness of the legal provisions. The Supreme Court held that the National Testing Agency (NTA) was obligated to ensure all exam centers were aware of the statutory provisions for disabled individuals. The Court emphasized that the right to equality and reasonable accommodation cannot be restricted by requiring a benchmark disability threshold. It ruled that such accommodations are essential for ensuring equality and non-discrimination, and the provisions for disabled candidates must be published in the NEET bulletin. The Court reaffirmed that statutory rights for disabled people cannot be diluted or denied based on stringent interpretations of benchmark disability.

### ***5.5 Nirmalya Banerjee V. Union Of India And Ors<sup>38</sup>***

In this case, the petitioner filed a writ petition seeking 3% reservation for handicapped children in school admissions, citing the obligations under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which mandates free education and various measures for children with disabilities. The petitioner highlighted the failure of the respondents to adequately provide aids, appliances, and governmental support, resulting in non-compliance with the Act. The

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<sup>38</sup> S. Banerjee v. Union of India & Ors., AIR 1990 SC 285.



court allowed the petition to the extent of requiring compliance with the Act, directing the respondents to make necessary decisions within two months before the next school session, file a compliance report within four months, and scheduled the matter for review in July 2013.

## **6. CONCLUSION**

The Rights of Persons with Disabilities Act, 2016 (RPWD Act) represents a significant step toward ensuring the rights and dignity of persons with disabilities in India, with particular emphasis on children. The Act is aligned with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and it broadens the definition of disabilities from 7 to 21 conditions, ensuring a more inclusive approach. The Act provides for full and equal participation in society, including access to education, employment, and healthcare.

In the context of children, the RPWD Act emphasizes inclusive education, aiming to integrate children with disabilities into mainstream schools. The Act mandates that educational institutions, whether government-funded or private, provide free education to children with disabilities between the ages of 6 and 18. It also promotes the development of special schools where necessary. Importantly, the Act focuses on removing barriers to accessibility, requiring schools to ensure disabled-friendly infrastructure, curriculum modifications, and appropriate training for teachers.

Additionally, the Act guarantees the provision of aids and appliances to assist children in their educational journey. It obliges the government to provide scholarships, books, uniforms, and learning materials free of cost. Schools are also required to provide suitable transportation facilities for children with disabilities, ensuring mobility is not a hindrance to their right to education.

Furthermore, the RPWD Act recognizes the vulnerability of children with disabilities to abuse, exploitation, and neglect. It emphasizes safeguarding their rights by making special provisions for healthcare, rehabilitation, and the protection of their legal rights. Penalties are prescribed for those who discriminate against or harm children with disabilities. Overall, the RPWD Act, 2016, with its focus on the educational, social, and legal empowerment of children with disabilities, reflects a commitment to creating an inclusive society where every child, regardless of their abilities, can realize their full potential.



**SHORT ARTICLE**



# ACID ATTACK: CRIME, ASSET REGULATION AND LEGAL MATTER



- Sandhya Singh<sup>39</sup>

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## ABSTRACT

*Acid attack is a severe crime in India causing grievous hurt to the victim, affecting their physical, mental, emotional, and economical situations. There are several reasons why this crime often takes place but in most of the cases we see that it is because men faces rejection which harms their ego and leads them to conduct this crime, many a times it is also because of peer jealousy, domestic violence the husband and his family torturing the wife for dowry. It is a severe form of violence with far reaching consequences crossing multiple domains - Criminal Justice, Asset*

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*Regulation, and Legal Redress. This article delves into acid attacks from these perspectives. Acid attack aims at causing grievous harm under Section 320 mainly the Second and Sixth points, Section 322, Section 326, Section 307 of The Indian Penal Code. These sections impose sanctions on offenders.*

*Acid is easily within reach as it is used in industries and household products, raising issues of asset regulation this leads to weak control over the sale and purchase of acid. There must be restrictions on acid sales and requirements for identifying verification during purchase.*

*Acid attack emphasizes legal and institutional concerns for providing compensation and recovery for the victims suffering from acid attack. Victims need to go over a long legal battles and procedures to get financial support, medical treatment and rehabilitation further complicating their recovery process.*

*This article emphasis not only on acid attack, as a violent crime but also the need to restrict the sale of acid as an asset control and supporting the victims with legal system.*

**KEYWORDS:** *Attack, Control, Crime, Public Awareness, Grievous hurt.*

# 1. INTRODUCTION

Acid attack one of the most heinous crime in India in which acid or another corrosive substance is thrown at a person, causing grievous hurt to the victims making them suffer for life time, affecting them physically as acid destroys their physical and facial features which makes them insecure about their appearance, and this makes them economically as acid attack victims has to go through several medical treatments, including surgeries, skin grafts, and physical therapy, are expensive and it extends over many years and mentally weak as they are denied to work in their workplaces moreover the victims itself gets de-motivated to come out and work with the appearance they have. We see that most survivors of acid attacks are women and girls. There are several reasons why this crime often takes place but in most of the cases we see that it is because men face rejection which harms their ego and leads them to conduct this crime, many a times it is also because of peer jealousy, domestic violence, the husband and his family torturing the wife for dowry, and the purpose of acid attack in not to kill directly, but to destroy their appearance.<sup>40</sup> Globally, there are approximately 1,500 acid attacks a year, but it is crime that often goes unreported for fear of reprisal.

Acid attack aimed at causing grievous harm under<sup>41</sup> Section 320 mainly the second po int which states that (permanent privation of the sight of

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<sup>40</sup>ActionAid UK, <https://www.actionaid.org.uk>.

<sup>41</sup>The Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

either eye) and the sixth point (permanent disfiguration of the head or face), also the Section 322 (Voluntarily causing grievous hurt), 326 A (voluntarily causing grievous hurt by use of acid), 307 (attempt to murder) of the Indian Penal Code, these sections impose sanctions on offenders. As per these laws and sanctions which are imposed any person causing these crimes are subjected to punishment which brings relief to the survivors as these lays one step forward towards justice and confirms that crimes are less.

## 2. ASSET REGULATION

Mainly if we talk about India, **Asset Regulation** was easier to get as it was cheaper, which collectively contributes towards high rate of crimes. Acids were available in cheaper rates in market for several purposes such as for use in industries for manufacturing, cleaning and construction, cleaning in household and it was not totally banned from supplying because it would affect sectors where acids are responsibly and safely utilized, which makes strict regulation challenging . Later when the acid attacks were increasing the <sup>42</sup>State did not had any rules but the Supreme Court set guidelines about the sale of acid and had put restrictions on sale and purchase of acids. In the Case of *Laxmi v. Union of India and Others*, AIR (2014) 4 SCC 427,<sup>43</sup> it was held that these guidelines are to

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<sup>42</sup>Nyaaya, <https://www.nyaaya.org>.

<sup>43</sup>Laxmi v. Union of India & Ors., (2014) 4 SCC 427, AIR 2014 SC 1275.

be followed, Sellers who sell acid were required to get the license to sell acids, and could only sell it to the buyer who they know personally, but the buyers had to provide their identity with the address of the person with a specific reason of buying acid. It could not be sold to the minors. Within 15 days they must declare the stocks of acid to the Sub-Divisional Magistrate of the District, and if the license expires the sellers had to sell it to other shops, who has license for selling acid within the time period of three month. Further it was urged to all the States and Union Territories to impose rules and regulations on selling and buying of acids and other corrosive substances. In many countries acids are easily purchased with minimal or no oversight, enabling its misuse for criminal purposes.

There should be awareness amongst the retailers about the misuse of acid. Less corrosive alternatives could help mitigate the risk of acid falling into the wrong hands. Public awareness campaigns can play a role in preventing acid attacks. These would emphasize the severity of acid-related crimes and educate citizens on the legal repercussions can help deter potential attackers.

### **3. LEGAL MATTER**

Acid attack being a Legal Matter justice must be provided for the acid attack victims, while there is no specific treaty dedicated solely to acid attacks, but there are various human rights instruments that can be



applied to address and prevent acid violence, such as <sup>44</sup> **Universal Declaration of Human Rights** (UDHR) as acid attack violates fundamental human rights, including the right to life, security, and dignity, <sup>45</sup> **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW) which aims to protect women from gender- based violence and can be use to make strict laws for better protection of women as primary victims of acid attacks are women, **Convention Against Torture** (CAT) acid attacks are categorized as torture or inhumane treatment under CAT.

Many Countries have established or revised national laws to address acid attacks directly. In India as mentioned above there are certain sections under the Indian Penal Code which assures punishing the criminals by imprisonment or a fine, it also includes provisions to compensate the victims and the state government being responsible for providing financial assistance for medical and rehabilitative expenses. In 2011, Pakistan introduced the <sup>46</sup>**Acid Control and Acid Crime Prevention Act**. This act ensures punishment for perpetrators and sets guidelines for the sale and purchase of acid. In United Kingdom, the perpetrators are prosecuted for grievous bodily harm. Additionally, the <sup>47</sup> **Offensive**

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<sup>44</sup>Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).

<sup>45</sup>Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>46</sup>National Assembly of Pakistan, <http://www.na.gov.pk/>.

<sup>47</sup>Legislation.gov.uk, <https://www.legislation.gov.uk/>.

**Weapons Act 2019** which introduced measures to restrict acid sales. In Bangladesh, the <sup>48</sup>**Acid Control Act, 2002** mandates that only licensed individuals can purchase acid, with heavy penalties for unauthorized possession or sale.

Sentencing for acid attack perpetrators often includes long-term imprisonment and fines. But there are challenges which persist, including difficulties in gathering evidence, false testimonies, and the social stigma victims face, which may deter them from seeking justice. Many a times the perpetrators are influential individuals who may attempt to intimidate victims or interfere with judicial proceedings. Apart from sentencing the perpetrator there are compensation fund provided to the victims, while other medical and psychological support. As in India's Compensation Scheme which is for Women Victims/ survivors of Sexual Assault and other crimes with Compensation Funds intended to cover medical, psychological, and social rehabilitation costs. Several Non-Governmental Organizations (NGOs) also plays a crucial role in supporting the acid attack survivors, they advocate for strong laws and provides rehabilitation services. Organizations like <sup>49</sup>**Acid Survivor Trust International (ASTI)** and **Acid Survivors Foundation (ASF)** offer legal aid, counseling, and financial help to the victims. They are also engaged in awareness campaigns and push for policy changes both

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<sup>48</sup>Bangladesh Laws, <http://bslaws.minlaw.gov.bd/act-1041.html>.

<sup>49</sup>Acid Survivors Foundation, <https://www.acidsurvivors.org/>.

at the national and international level.

## **4.CONCLUSION**

Acid Attacks are a huge social issue, which does not just talks about the grievous crime but also includes the gaps in regulating the assets and legal matters and system across the globe. In order to address acid attack it requires comprehensive strategies which includes strict regulation of acid in the market, there must be severe punishment for the perpetrators and a proper support system for the victims maybe it be through compensation fund, medical treatment, and rehabilitation. The public should be provided with awareness and campaigns in order to education them and lessen the crime. International Collaboration, Public Awareness and government commitment are necessary to create a safer environment and preventing future attacks. There must not be any delay in the justice.

# A CRITICAL ANALYSIS OF THE WAQF (AMENDMENT) BILL, 2024



- MD Wasim Khan<sup>50</sup>

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## ABSTRACT

*The Indian Lok Sabha introduced the Waqf amendment bill, 2024 to amend the 1995 waqf act and increase the government's supervision of the waqf properties. The main intention was to repeal the Mussalman Wakf act 1923, to be renamed as 'united waqf management, Empowerment, Efficiency, and development act', 1995. Some of them are limiting the function and autonomy of waqf boards, making it obligatory for the chief administration to register all waqf properties, and allow machinery like District Collectors to decide on the status of property. The bill has politically caused controversies, as described as taken away the muslims ability to govern themselves in the matter to do with the religion*

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*while others says that it has solved the problems that has been persistent in the administration. Judicial precedents refer to any relevant supreme court or high court judgment that have influenced or could influence the reform civil society and media role touch how advocacy groups , media investigation , or RTI activism have shaped the push for reforms. Technological integration mention inactive like GIS mapping and online public access to waqf properties detail, promoting transparency and civic engagements. This may help in maintaining all the records in a proper manner and help to increase the transparency for the public*

**KEYWORDS:** *Amendment Bill, Government oversight, Waqf properties, Transparency, Accountability.*

# 1. INTRODUCTION

The Waqf Amendment Bill 2024 is one of the progressive measures for bringing about change to the structural and governance of the Waqf properties in India. A Waqf, which means, endowment made for Islamic charitable purposes constitutes a very vital source that provides for the welfare and development of the community. However, there being a lot of legal structures that encompass the management of these properties, the Waqf institution has faced the following problems, Inefficiency opacity, and inadequate control structures are some of the issues the existing legal framework of Waqf properties has witnessed.

To that effect, the proposed amendments seek to solve these problems through increasing the efficiency of the Waqf boards in the country. Some main provisions of the Bill include efficiency of the working bureaucracy, appropriate mechanisms for control of financial activities, and appropriate management for the proper use of the Waqf property for public interest. Due to lack of clear policy that governs management of the properties, there have been cases of corrupt practices and misuse of funds which are eradicated by the amendment for a sustainable management of Waqf properties.<sup>51</sup>

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<sup>51</sup> Legallight, Waqf Properties, What is Waqf Property, Meaning of Waqf, Law of Waqf, Muslim Law, Waqf Act 199, YouTube (Apr. 13, 2024), <https://www.youtube.com/watch?v=FGCUIPGpmbms>.

Furthermore, the Bill focuses on technology about the utilization of Waqf properties and this entails digitization and enhance record keeping issues on the Waqf properties. This modern approach is believed will bring about transparency and also make it easy for stakeholders to obtain information relating to use of Waqf assets.

Further, the Rapporteurs of the Waqf Amendment Bill 2024 go further to extend local communities' participation in decision making on the management of the waqf. Participation of the deprived segment of the society is aimed at ensuring the utilization of the Waqf properties for the waqf development of the socio-economic fabric of the societies.

As debates on the Bill continue, its ability to redesign the management of Waqf in India is subject to consideration to improve performance in charitable institutions. It is noteworthy that the Bill bears evidence of continuation of the process of administrative reform of the Waqf and the expansion of its positive role in society.

## **2. SALIENT FEATURES OF THE WAQF AMENDMENT BILL,2024**

Waqf amendment Bill 2024 is spearheading essential reforms relating to the actualization, governance and management of the Waqf properties in India. The following are the key features of the Bill:

- **Streamlined Governance Structure:** The Bill also seeks to introduce an enhanced model of good governance of the boards of Waqf institutions. This involves the qualification of individuals in the power of decision making over the assets of these endowments' specializations in finance, law and administration to manage the Waqf properties.
- **Enhanced Transparency and Accountability:** I find that the hallmarks include many aspects including transparency. The Bill requires that all Waqf boards be subject to periodic audits as well as the presentation of quarterly financial statements, including written reports of income and expenditure supported by records of assets. The following aims at reducing corruption and at the same time increasing the public confidence in the Waqf administration
- **Digitization of Records:** To avail modern structure in management of Waqf, the Bill provided the management of records concerning properties of Waqf by going digital. This program is expected to enhance record keeping with the aim of making information easily available to the stakeholders in addition to enhancing efficient tracking of the use of properties
- **Community Participation:** Another feature of the Bill is the focus of the rights of local communities in the decision-making on uses of the Waqf assets. The amendment to this



article classifies consultation and management decision making as a way of making sure that the community gains direct benefit from the assets of the Waqf.

- **Dispute Resolution Mechanism:** In another dispute which involves issues to do with the Waqfs properties, the Bill has provided a favorable mechanism in the resolution of such disputes. This also entails the formation of special tribunals to address issues of the waqf hence offloading the judiciary excess burden.
- **Focus on Asset Utilization:** The Bill lays down conditions how boards should enhance the use of the assets, it is stressing the active development of properties for general utility, education, and health. This anticipatory strategy is undertaken in an effort to enhance utilization of the Waqf resources for the most benefit of the society.
- **Regulatory Oversight:** New checks and balances are put in place to scrutinize the operations of Waqf boards with the intention of implementing the new regulation and redeeming any warranted misdeem.

These features collectively serve the purpose of renewing management of Waqf properties, so that they can serve for their intended noble causes while being accountable to society.

### 3. KEY ISSUES AND ANALYSIS OF THE WAQF AMENDMENT BILL, 2024

The Waqf Amendment Bill 2024 has been necessitated by problems that require fixing in the overall management of Waqf institutions in India. However, several key issues warrant careful consideration:

- **Implementation Challenges:** Despite the provisions on the management of the waqf institution laid down in the Bill, the appropriateness of such provisions also varies with their enforcement. The analysis also reveals that many Waqf boards face the challenges of inadequate facilities and qualified human capital to implement the change as is being proposed. All these changes may not get implemented as planned if the required training and funding are not provided.
- **Resistance to Change:** The amendment aims to bring professionalism in the management of these resources, an aspect, which may come with lots of resistance from traditional stakeholders. Involvement of these benchmarking stakeholders is essential to draw their consensus and reduce any resistance to change of governance structures.
- **Community Participation:** While this is a key mantra in the Bill, achieving community participation requires understanding of sundry population in the community Including all the represented communities in the decision-making process and privileging the

often-forgotten minorities will be a challenge and might easily turn into an overrepresentation of people who speak louder and are in a better position.

- **4 Digital Divide:** The fact that the authorities are now seeking to digitize the records of the various Waqf is a good development, yet the question of how the different sections of the society will gain access to these records will be majorly crucial. Quite a number of such communities especially in rural areas may not even possess or have understanding of the technological and computerized systems. Closing this digital gap must be done to ensure digitization benefits are availed to all who stand to benefit.
- **Legal Framework:** The setting up of specialized courts for dispute management is a liberal act, however, it creates the question of the guidelines under which these tribunals will function. Professional boundaries must be clearly defined and enforced so that there is no hope of either side exploiting the other.
- **Financial Oversight:** Although the Bill requires increased financial accountability the efficiency of audits and statements is defined by the performers. This way, independence of oversight mechanisms is crucial to enhance confidence in managing Waqf properties.

To sum up, as emerging from the above discussions the proposed Waqf Amendment Bill 2024 carries out lots of reforms but their

viability powerful hinges on the following challenges having been effectively responded to using the right implementation strategies, adequate stakeholder participation and constant evaluation. The approach of integrating the modern governance with the traditional practices will prove to be a significant success in striving to ensure that Waqf management system enhances its accountability levels.

#### **4. COMPARISON BETWEEN THE WAQF ACT, 1995 AND THE WAQF AMENDMENT BILL, 2024**

The comparison between the waqf act, 1995 and the waqf amendment bill, 2024 are based on the following features :-

- **Objective:**

The Waqf act, 1995 it is a mechanism for arbitration of disputes and for proper management of Islamic charitable trust land properties for misuse and encroachment.

The Waqf Amendment Bill,2024 enhances the level of transparency, effectiveness of management and the processing of the problems connected with the ambiguity of provisions of the original Act.

- **Definition of Waqf:**

The Waqf Act, 1995 stated it as the permanent dedication by a Muslim of any property for a religious, pious, or charitable purpose.

The Waqf Amendment Bill, 2024 extended it to in order to cover more detailed classifications to minimize controversy over the definition of the property for waqf.

- **Waqf Board:**

The Waqf Act, 1995 constituted the Waqf Board for the administration and supervision of the properties among states.

The Waqf Amendment Bill, 2024 constituted the waqf board with more authorities vested with the central waqf council in relation to the state waqf board.

- **Management of waqf properties :**

According to The Waqf Act, 1995 offices which gives the formulation of institutions control , leasing and dealing with the waqf properties .

The waqf amendment bill 2024 stipulates the increased standards of compliance and enhance measures for sanctions in the incidents ,unauthorized lease , sale or conveyance of the waqf.

- **Dispute Resolution :**

The Waqf Act 1995 resolves disputes by setting up waqf tribunals.

The Waqf Amendment Bill 2024 adopts faster methods of handling disputes and sets more rigorous timeframe for the procedure of the waqf tribunals.

- **Transparency And Accountability :**

The Waqf Act 1995 is relatively a small leeway for documenting activities in records and managing properties in an accessible manner .

The Waqf Amendment Bill 2024 is centered on the adoption of digital records, audits, with required disclosure to strengthen accountability .

- **Penalties And Offences:**

The Waqf Act 1995 redresses a clear regulation of the penalties for mismanagement but a relatively restricted coverage on serious offences.

The Waqf Amendment Bill 2024 redresses a criminal penalty for encroachment, unauthorized transfers etc. for first time as well as second time offenders. Section 61<sup>52</sup> of the act outlines penalties for failing to comply with the Board's directions or other lawful obligations under the Act.

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<sup>52</sup> Waqf Act, No. 43 of 1995, § 61, Acts of Parliament, 1995 (India).

- **Central Waqf Council Role :**

The Waqf Act 1995, states that it is mainly executive and recommendatory with very limited measures against the state boards.

The Waqf Amendment Bill 2024 states that it is an expanded part with ability to get involved in particular situation and guarantee the non-compliance of the act.

## **5. CONCLUSION AND SUGGESTIONS**

Waqf Amendment Bill 2024 which is under consideration is geared to transform the fortunes, upgrade and put a heavy social, economic and productive utility to all the properties in India. By doing the suggestions made by the government it is possible to enhance the transparency, accountability and effectiveness of the administration in relation to Waqf assets. This will ensure protection of the interests of the Waqf beneficiaries as well as enhance the economic impact of these property relying communities

In the long run, reform of management can result in efficient use of resources, augmenting of its revenues, and social welfare of society in accordance with social justice, economic emancipation. The adoption of this bill will require the cooperation of stakeholders, constant supervision and response to emergent needs of the community into the future.



# **CASE NOTES**





# JUSTICE K.S. PUTTASWAMY VS. UNION OF INDIA (2017) 10 SCC 1, AIR 2017 SC 4161



- Basudha Mitra<sup>53</sup>

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**CASE NAME:** Justice K.S. Puttaswamy vs. Union of India .

**COURT:** Supreme Court of India.

**CITATIONS:**(2017) 10 SCC 1, AIR 2017 SC 4161

**DATE OF JUDGEMENT:** 24/08/2017.

**BENCH:** Justice J. S. Khehar ,Justice Jasti Chelameswar,Justice S. A. Bobde,Justice R. K. Agrawal,Justice R. F. Nariman,Justice A. M. Sapre,Justice D. Y. Chandrachud,Justice S. K. Kaul,Justice S. A. Nazeer.

**STATUTES REFERRED:-** the Indian Constitution 1949:-

- Article 14: The right to equality
- Article 19: The right to freedom of speech and expression

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- Article 21: The right to life and personal liberty

## 1. INTRODUCTION

The case of Justice K.S. Puttaswamy vs. Union of India<sup>54</sup> marks a turning point in the Indian legislature .

One of the most significant and historically significant rulings ever handed down was in this case. The judgement delivered in this case marks a turning point in the Right to Privacy as a fundamental right and is protected under Articles 14,19 and 21 of the Constitution of India.

Right to Privacy states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. It also states that everyone has the right to the protection of the law against such interference or attacks. The court specially adopted the three criteria that must be met before Article 21 rights can be infringed upon:

- Legality (i.e., through an existing law);
- Necessity (i.e., legitimate state objective);
- Proportionality(i.e., a rational connection between the invasion's intended goal and the methods used to achieve it)

To address the issues brought on by the advancing digital age , the Court adopted a liberal interpretation of fundamental rights. It advocated for the

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<sup>54</sup>Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

protection of individual autonomy and privacy as well as the extension of individual liberty to digital spaces.

The decriminalization of homosexuality in India as a result of this Supreme Court decision took place on September 6, 2018, legalizing same-sex relationships between consenting adults.

With this decision, India, the largest democracy in the world, joined the US, Canada, South Africa, the EU, and the UK in recognizing this fundamental right.

## **2. FACTS OF THE CASE**

In 2009, the Indian Government devised the Aadhaar project as a universal identification system to better track disbursement of services provided by it. According to the Aadhaar project, biometric information of individuals is to be collected for identification and authentication of service delivery and was initially begun by way of an executive order in 2009. However, the sharing of biometric data and even phone numbers did not feel safe for many people, and there was a fear of misuse of fingerprints and other biometric data if leaked. As the Aadhaar card was also linked with their phone numbers, which created a fear among people that their data might get leaked by only one click by any person. According to the Aadhaar card project, it was also made mandatory by the government that to make an Aadhaar card was important for each and every citizen of India, and also it was important to share certain details of individuals while making the Aadhaar card, which included their bank account details.

, school admission ,filing returns and also many other personal details which violated the Right to Privacy<sup>55</sup> which is a fundamental right.

Government also stated that any person without an Aadhaar card will not get the public welfare schemes . On the contradict to the above situation Justice K.S Puttaswamy pleaded in front of the Supreme Court that Aadhaar card on becoming compulsory will violate people's Right to Privacy and also stated that government can't stop Public Welfare Schemes for any reason.

There was also a debate that whether Right to Privacy is a fundamental right in India or not ?.

In the two large bench judges' case of MP Sharma<sup>56</sup> which is a 8 bench judges case and Kharak Singh<sup>57</sup> which is a 6 bench judges case, it was held that Right to Privacy is not valid in India whereas in the cases of Maneka Gandhi , Govind vs.State of Madhya Pradesh and R.Rajgopal v.s. State of Tamil Nadu which were small bench judges cases it was held in those cases that Right to Privacy is valid in India . There was a conflicting decision regarding Right to Privacy.

Justice K.S. Puttaswamy vs. Union of India case is also popularly known as the Aadhaar case. This case was divided into 2 parts:-

### **Validity of Aadhaar Act:**

This was the first part of the case in which there were 5 bench judges .

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<sup>55</sup>India Const. art. 21.

<sup>56</sup> MP Sharma and Others vs. Satish Chandra, 1954 AIR 300, 1954 SCR 1077.

<sup>57</sup> Kharak Singh vs. The State of U.P.& Others, 1963 AIR 1295.

K.S. Puttaswamy stated that all data are saved in a central server but there are no safety measures to protect them. He also stated that the government welfare is a fundamental right of the citizens.

### **Right to Privacy as a Fundamental Right:**

This was the second part of the case in which there were 9 bench judges. In this it was stated that the cases of MP. Sharma and Kharak Singh were invalid cases and Right To Privacy is a Fundamental Right.

## **3. ISSUES RAISED**

- I. Whether Part III of the Constitution of India include the right to privacy as a fundamental right?
- II. Whether the right to privacy is violated by the Aadhar Scheme?

## **4. ARGUMENTS**

### **4.1 ARGUMENT FROM PETITIONER'S SIDE**

The petitioner argued that this construction violates the fundamental right under Article 14, 19 and 21. The petitioner mainly relied upon the judgement in the cases of seven Judges Bench decision in Maneka Gandhi vs. Union of India<sup>58</sup>, the minority judgement of Justice Subba Rao in Kharak Singh<sup>59</sup> was specifically approved while the decision of the majority was overruled. The Petitioner argued that the right to privacy

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<sup>58</sup>Maneka Gandhi v. Union of India, (1978) 1 SCC 248, AIR 1978 SC 597.

<sup>59</sup>*Id.*

is a natural right and it should be maintained while the constitution would have to be read in line with the Preamble.

## **4.2 ARGUMENT FROM RESPONDENT'S SIDE**

The respondent stated that the Indian Constitution did not specifically protect the right to privacy and relied on the judgement in the case of M.P. Sharma<sup>60</sup> and in the case of Kharak Singh<sup>61</sup>. The judgement was pronounced by an eight Judge and a six Judge Bench , and the respondent argued that they would therefore be binding over the judgements of smaller benches given subsequently. The Respondents further argued that the makers of the Constitution did not intend to make the right to privacy a fundamental right.

## **5. JUDGEMENT**

In this case the judgement was delivered by nine Judge Bench on 26<sup>th</sup> September,2018. The court in its judgement held that privacy is a distinct and independent fundamental right under Article 21 of the Constitution . The judgement in the case of M.P.Sharma and Kharak Singh was overruled , insofar as the latter held that the right to privacy was not a fundamental right. The court rejected the insular view of personal liberty adopted by Kharak Singh which Justice D.Y. Chandrachud referred to as

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<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

the ‘silos’ approach borrowed from A.K. Gopalan. The court observed that this approach of viewing fundamental right in watertight compartments was abrogated after Maneka Gandhi. The Court further observed that the majority opinion in Kharak Singh suffered from an internal contradiction, as there was no legal basis to have struck down domiciliary visits and police surveillance on any ground other than privacy – a right which they referred to in theory but held not to be a part of the Constitution. The Court also held that the decision subsequent to Kharak Singh upholding to the principles laid down in the judgement .

The court also said that whether Part III of the Constitution guarantee right to privacy . The Bench established that privacy was “not an elitist construct”. It rejected the argument of the Attorney General that the right to privacy must be forsaken in the interest of welfare entitlements provided by the state.

It was also held by the court that in the modern age of internet information privacy is not an absolute right and when a person wants to have a control over his data , it may lead to the violation of his privacy to a considerable extent.

The court also held that Section 57, section 33(1),(2),section 47,section 2d of the Aadhaar Act were made unconstitutional by a five Judge Bench on 26<sup>th</sup> of September 2018 and also stated that the Aadhar Act is a valid one .

The nine-judge bench overruled the judgement of both the cases of M.P. Sharma and Kharak Singh. The court also held that article

14,article19,article 20,article 21 and article 25 of the Indian Constitution are the foundation of the Right to Privacy. The right to privacy of an individual is not only protected by the Constitution under Article 21 but is also an intrinsic part of the scheme of Part III which guarantees fundamental rights. The Supreme Court stated that Right to Privacy is a fundamental right and not an absolute right.

## **6. CASE ANALYSIS**

This case claims that the Aadhaar card which was made compulsory by the government for every individual do not violate the right to privacy . A retired judge Justice K.S Puttaswamy pleaded in front of the Supreme Court that the Aadhaar Card on becoming compulsory violates the Right to Privacy and also stated that Government can't stop Public Welfare schemes for any reason .There was also an argument that whether the right to privacy is a fundamental right or not. On all this argument the hon'ble Supreme Court held that Right to Privacy is a fundamental right and its foundation is given in article 14,article 19,article 20,article 21 and article 25 of the Indian Constitution and even overruled the judgement of the cases M.P. Sharma and Kharak Singh.

The court also stated that the Aadhaar Act is a valid one and held that certain section such as section 57, section 33(1)(2), section 47 and section 2(d) of the Aadhaar act are unconstitutional or should be reframed . But the court is totally silent on the fact that whether the personal data



such as bio data , phone number ,finger print and so on of individual which is collected for making the Aadhaar card are they safe from any misuse the same question which was asked by Justice K.S. Puttaswamy whether it is safe or not.

## **7. CONCLUSION**

Justice K.S.Puttaswamy vs. Union of India<sup>62</sup> is a significant precedent – setting case. This case includes the “Right to Privacy “ paradigm as a fundamental right in the Indian Constitution . In addition to this the judges held that the Aadhaar Act is a valid one by making certain sections of the act unconstitutional and also held right to privacy as a fundamental right under part III of the Indian Constitution.

The honorable bench also said that the citizens will not be left with a choice as Aadhaar will be mandatory for availing the welfare schemes and benefits from the government and if a citizen is excluded from the availing the schemes and benefits of the government due to not having the Aadhaar card as a result it can lead to violation of the dignity of the citizens. The bench also stated that it is not important to link Aadhaar to PAN card as there is no constitutional rational behind it . The judgement and the steps taken by the court was to protect the privacy of the citizens of the nation and it also shows that Right to Privacy is a fundamental right.

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<sup>62</sup>*Ibid*