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Acting Chairperson, NHRC

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Preface

Human rights are deeply interlinked with our collective existence. Our culture has always embraced new individuals, ideas, and ways of living. Over the centuries, Indian society has evolved as a beautiful mix of cultures and values like equality, justice, fairness, dignity to all, and diversity. The Fundamental Rights as well as Directive Principles of State Policy are nothing but a reflection of the values we have always cherished. The rights and freedoms granted by the Constitution of India form the backbone of the human rights discourse in our country.

The National Human Rights Commission has always been at the forefront of protecting and promoting human rights in the country. Since its foundation in 1993, the Commission has taken numerous steps to ensure that all individuals can lead lives with the spirit of equality, fairness, and dignity. As part of its mandate under the Protection of Human Rights Act 1993, the NHRC has the responsibility to spread human rights awareness, and this journal is one of the many ways in which the Commission fulfils its duty.

The Annual English Journal of the National Human Rights Commission is on its 23rd Edition. First published in 2002, the journal has relentlessly endeavoured to be a platform where diverse voices from the country can express their views on myriad topics. We are privileged to have authors who are distinguished scholars, human rights activists, bureaucrats, former diplomats, former ministers, and experts in their respective fields. The journal contains articles and essays on various aspects of human rights like climate change, mental health, privacy, women's health, to name a few. The journal has played an important role in promoting high-quality scholarship on human rights issues as well as in spreading awareness in society. It is my sincere belief that this year's edition will be an indispensable source of knowledge for all its readers, and will guide them to be more sensitive towards the vulnerable and the marginalised.

Finally, I would like to take this opportunity to thank all the esteemed Members of the Editorial Board for their valuable cooperation, and to all our learned authors who took out the time to express their views and ideas for the benefit of our readers.

(Vijaya Bharathi Sayani)

From the Editor's Desk

The National Human Rights Commission (NHRC), under Section 12(h) of the Protection of Human Rights Act, 1993, is mandated to protect and promote human rights as well as understanding of different dimensions of human rights issues. The Annual English Journal is a significant effort to enrich the discourse by presenting diverse perspectives on a wide range of human rights themes. First published in 2002, the Annual English Journal has maintained a rich legacy of facilitating the exchange of ideas, information, and discussions on human rights, not just in India, but around the world.

The Commission is driven by the goal of a just society where all individuals can exercise their fundamental rightsand lead a life of dignity. The principle of 'Vasudhaiva Kutumbakam'- the whole world is one family- has guided NHRC's various activities. It is only when the world comes together that we can have the strength to face the ever-evolving challenges of the 21st century.

This 23rd edition of the Journal features a collection of articles and essays by prominent subject experts, academicians, human rights defenders, former diplomats, civil servants, and activists. The concept of human rights is constantly evolving, and it is in recognition of these newly emerging challenges that the Journal contains articles and essays on issues such as the rights of the transgender community, new criminal laws, rights of denotified, nomadic, and semi-nomadic tribes, and the role and impact of technology.

Foremost, I sincerely thank the authors for their generous contributions despite their preoccupation with many other important tasks. I thank the Members of the Editorial Board for their valuable input in bringing out this issue. I also thank Smt. Anita Sinha, Joint Secretary, NHRC, for coordination and support throughout this process. I would also like to put on record the efforts of Dr. Rajul Raikwar, Consultant (Research); Ms. Madhura Naniwadekar, Junior Research Consultant (JRC); and other JRCs who have contributed to this issue. I am thankful to Dr. A D Gnanagurunathan for his assistance in the editing.

I am sure that this issue will offer invaluable insights into the different dimensions of human rights to all its readers.

[Bharat Lal]

Institutional Framework for Protection and Promotion of Human Rights in India- A Perspective

Bharat Lal* and Aiswarya S Kumar**

Abstract

India is one of the oldest living civilisations in the world, and a myriad cultures, traditions and beliefs have been shaping it. The modern Indian society is a manifestation of the confluence of ancient and traditional ethos which withstood the test of time. Beyond their metaphysical pre-eminence, Indian philosophical treatises have also been engaging the notion of human rights in an indigenous fashion. From the Vedic period to the framing of the Indian constitution, protecting the human rights of all has been a priority. Indic religions perceive human rights as essential for living a life of dignity and integrity and has been deemed as fundamental to lead a meaningful life. Periodic rise of social movements signifies denial of these basic rights and the struggles to reclaim them, which includes the fight for independence from colonial rule.While it is generally recognised as a western concept, protection and promotion of human rights has been the way of life in India. In this context, this paper explores the evolution of human rights in India, and the various protection mechanisms established to protect the rights of the most vulnerable sections of society. It is also an attempt to underscore the importance of Indian cultures and traditions that profess human rights as integral to the holistic development of every individual in the society.

Keywords: Indian Constitution, Fundamental Rights, Social Justice, Sustainable Development, Universal Declaration of Human Rights

1. Introduction

Indian ethos and culture are deeply rooted in values that emphasise empathy, compassion, and the inter-connectedness of individuals within society. These principles have been nurtured over centuries, with religious and philosophical traditions contributing significantly to building the moral fabric of the nation. Indian

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culture regards empathy and compassion as fundamental virtues and considers the welfare of others as a personal responsibility, transcending individual needs to create a harmonious society. The concept of 'leaving no one behind' and 'take everyone along' is deeply embedded in Indian culture and its value system. This principle of inclusivity and care for all is reflected in various cultural practices, religious teachings, and social structures throughout India's history.

2. Ancient Literature References to Human Rights

Vedic literature, which forms the cornerstone of Indian thought, accentuates on obligations, responsibilities, and the communal good. Ancient texts such as the *Rig Veda* highlight the importance of adhering to one's *Dharma* (duty) for the benefit of society.[1] The *Upanishads*, which are considered the philosophical essence of the Vedas, further promote the ideals of equality and universal brotherhood.[2] The focus is on creating a harmonious social order, where actions are driven by shared responsibilities rather than self-centred desires. The idea of duty surpassing individual rights encourages a spirit of cooperation, emphasising that societal well-being is a collective responsibility, and communal benefits take precedence overpersonal gain.[3] These teachings foster peaceful coexistence, compassion, and respect for diversity, reflecting the broader Indian ethos of empathy and communal harmony.[4]

3. Human Rights During India's Struggle for Independence

Indian independence movement, besides the stated objective of overthrowing the colonial yoke, has witnessed numerous freedom fighters and social reformers working concomitantly to ensure dignity, equality, and justice for all. Subsequently, the contest to determine and protect civic and political rights as well as cultural and socio-economic rights consumed the nation leadership.Prominent figures like Mahatma Gandhi, Dr D.K. Karve, Pandit Madan Mohan Malviya, Annie Besant, Aruna Asaf Ali, Khan Abdul Ghaffar Khan, and Baba Amte who dedicated their lives to promote equity and inclusion, secure human rights and championsocial reforms. These pioneers were

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[1]Shailendra Kumar and Sanghamitra Choudhury, 'Ancient Vedic Literature and Human Rights: Resonances and Dissonances' (2020) 7 Cogent Social Sciences 2.

[2]Swami Rama, 'Eternal Knowledge: The Wisdom of the Upanishads'(Himalyan Institute, 21 December 2020) https://himalayaninstitute.org/online/eternal-knowledge-the-wisdom-of-the-upanishads/ accessed 08 October 2024

[3]Uttamasiri and Yeshpal,'The Buddhist Concept and Culture of Peace' (2023) 4 International Journal of Research Publication and Reviews 172

[4]Megan Cole,'Promoting Nonharm and Many-sided View Through Jain Studies' (UC Irvine, School of Humanities, 16 Mary 2023) https://www.humanities.uci.edu/news/promoting-nonharm-and-many-sided-view-through-jain-studies accessed 08 October 2024

among the first to be recognised as 'human rights defenders' (HRDs), who addressed both colonial oppression and deep-rooted social inequalities within Indian society. Their work has left a lasting impact on the social fabric of the nation, influencing generations to uphold values of justice, equality, and human dignity.Together, these freedom fighters and social reformers laid the foundation for modern human rights advocacy in India.

Further, women's rights were a central concern for many of these reformers, as they sought to challenge the entrenched patriarchal norms that restricted women's roles in society. Interestingly, the rights and status of women were not alien to Indian thought. Ancient Indian texts, including the Vedas and Upanishads, recognised the intellectual and spiritual capabilities of women.[5] Women philosophers such as Gargi and Maitreyi, who engaged in philosophical discourses along with men, were renowned for their wisdom and insight. These women were held in high esteem, acknowledging their vital role they played in society as scholars, thinkers, and spiritual leaders.

4. Impact on Global Human Rights Discourse

India's contribution to the drafting of the international human rights framework is significant. Dr Hansa Mehta and Lakshmi N. Menon played a crucial role in ensuring that the text of the Universal Declaration of Human Rights (UDHR) was inclusive and gender equal.[6] Dr Mehta was instrumental in replacing the phrase *'all men are born free and equal'* with *'all human beings are born free and equal'*. This seemingly small yet profound change ensured that women were explicitly recognised in the global human rights discourse, influencing the way rights were understood and applied across the world. Lakshmi Menon, another prominent figure, advocated for equality and social justice in the international arena, further cementing India's role in promoting gender equality on a global scale.

The protection of rights in Indian culture has historically extended beyond its own citizens, embodying the ancient principle of *Vasudhaiva Kutumbakam*, meaning 'the world is one family.' This concept has guided India's approach to refugees and displaced persons throughout its history. During World War II, India provided refuge to over 6,000 Polish citizens, including over 1,000Polish children who had fled the

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[5] The Folk Stories, 'Celebrating the Power of Women in Ancient India' (Medium, 3 July 2024) https://medium.com/@thefolkstories/celebrating-the-power-of-women-in-ancient-india-d85655c87a29 accessed 9 October 2024

[6] Vibuti Patel, 'Lost in History: India's Women Freedom Fighters' (Impact and Policy Research Instititute, 27 August 2022)https://www.impriindia.com/insights/history-indias-women-freedom-fighters/ accessed 23 October 2024

horrors of the Nazi regime.[7] The role of 'Jam Saheb' of Jamnagar in providing safe and secure home in such a challenging time has become a model for the whole world. Post-independence, India welcomed the refugees from Tibet, then East Pakistan, Sri Lanka, Afghanistan, Myanmar and many African countries. This longstanding tradition of offering sanctuary those who are persecuted underscores Indian ethos of empathy and compassion, and its dedication to upholding human rights on a global scale.

5. Human Rights in the Indian Constitution

Human rights form the very foundation of the Preamble of the Indian Constitution, emphasising the values of justice, liberty, equality, and fraternity. These principles reflect the commitment of the Indian state to safeguard the inherent dignity and rights of its citizens.

The Indian Constitution goes beyond the Preamble by enshrining human rights in the form of Fundamental Rights and Directive Principles of State Policy (DPSP). Fundamental Rights, enshrined in Part III of the Constitution, are legally enforceable rights that guarantee individuals' civil and political freedoms. The DPSP, outlined in Part IV, are guidelines for the state to frame laws and policies aimed at creating a more just, equitable, and welfare-oriented society.

Rights such as the Right to Equality (Articles 14–18), Right to Freedom (Articles 19–22), and Right against Exploitation (Articles 23–24), constitute the cornerstone of individual liberties. The DPSP are non-justiciable, but these principles guide the state in formulating policies and programmes that promote a just and equitable society. They play a critical role in shaping laws and policies aimed at improving the quality of life for all citizens, particularly the disadvantaged. These principles emphasise social justice, economic equality, and the right to education, work, and public assistance, aiming to create a society where opportunities are available to all, and the state prioritises welfare over profit. Programmes such as *Pradhan Mantri Aawas Yojana*, *Jal Jeevan Mission*, *Swachh Bharat Mission*, *Ayushman Bharat*, the Mid-Day Meal Scheme, and the National Rural Livelihood Mission (NRLM) reflect the state's commitment to human rights by addressing fundamental socio-economic needs and ensuring that all citizens have access to basic services and opportunities to lead a dignified life.

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[7]Notes From Poland, 'Poland and India Commemorate Maharajas Who Sheltered Thousands of Polish Refugees in WW2'(Notes From Poland, 6 July 2022) https://notesfrompoland.com/2022/07/06/poland-and-india-commemorate-maharajas-who-sheltered-thousands-of-polish-refugees-in-ww2/ accessed 14 November 2024

[8]Government of India, 'National Mental Health Programme (NMHP)' (Ministry of Health and Family Welfare, 7 April 2017) https://mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf accessed 07 October 2024

In addition to constitutional guarantees, several laws have been introduced to protect the rights of marginalised communities and ensure their civil and political rights are upheld. For instance, The Mental Healthcare Act, 2017,[8] Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act,[9] and the Transgender Persons (Protection of Rights) Act[10] reflect the state's proactive role in addressing the unique challenges faced by vulnerable and marginalised communities and guaranteeing their dignity and inclusion in the broader framework of human rights. In tandem, these provisions, policies, and laws reinforce India's commitment to safeguarding human rights and fostering an equitable society.

6. Indian Judiciary as Protector of Human Rights

India's judicial system is an independent machinery that functions to uphold the sanctity of the constitution. The Supreme Court of India is vested with the authority to enforce the Fundamental Rights enshrined in the Constitution. This power, derived from Article 32, allows individuals to directly approach the Supreme Court if their Fundamental Rights are violated. The SC, often referred to as the 'guardian of the Constitution', has the responsibility to ensure that the rights of citizens are protected from infringement by the state or any other authority. Through this constitutional mandate, the Supreme Court plays a pivotal role in upholding individual rights, and ensuring that the values of justice, equality, liberty, and fraternity are actively practiced and upheld in the Indian society. Landmark rulings like *Maneka Gandhi v. Union of India* (1978),[11] *Vishaka v. State of Rajasthan* (1997), *Navtej Singh Johar v. Union of India* (2018),[12] and *K.S. Puttaswamy v. Union of India* (2017)[13] have expanded the scope of rights, addressing issues like personal liberty, gender equality, LGBTQ+ rights, and privacy.

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[9]Government of India, 'The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015' (Ministry of Tribal Affairs, 16 January 2016) https://www.indiacode.nic.in/bitstream/123456789/15238/1/4-preventionofatrocities.pdf accessed 08 October 2024

[10]PRS Legislative Research, 'The Transgender Persons (Protection of Rights) Bill, 2016'(PRS Legislative Research, 21 July 2017) https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016 accessed 08 October 2024

[11]Shraddha Jain,'Procedure Established by Law'(iPleaders, 01 November 2022) https://blog.ipleaders.in/procedure-established-by-law/ accessed 09 October 2024

[12]Supreme Court Observer, 'Constitutionality of Section 377 IPC'(Supreme Court Observer, 16 June 2023) https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/ accessed 09 October 2024

[13]Supreme Court Observer, 'Fundamental Right to Privacy'(Supreme Court Observer, 24 August 2022) https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/ accessed 09 October 2024

In addition to the Supreme Court, High Courts in India also play a crucial role in safeguarding Fundamental Rights through their powers under Article 226 of the Constitution. Article 226 empowers High Courts to issue writs – habeas corpus, mandamus, prohibition, quo warranto, and certiorari–to enforce the rights of individuals, thereby reinforcing the judiciary's role as a protector of constitutional freedoms.

Public Interest Litigation (PIL), a judicial innovation, has become a powerful tool for securing public interest and extending the availability of justice to disempowered, weak and socially disadvantaged groups. In ensuring environmental and climate justice, PILs have played a critical role. PILs allow any individual or group, regardless of personal interest, to file a petition in the courts to address matters of public concern or rights violations. It has enabled access to justice by empowering marginalised and underprivileged sections of society to seek legal remedies without the traditional barriers of locus standi.[14] By using PILs and its power to enforce Fundamental Rights, the Indian judiciary has played a transformative role in upholding the rule of law and ensuring that justice is not limited to the privileged but extends to all citizens, especially the weaker and underprivileged sections of society.

7. The National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC), India, functions as the apex organisation that oversees the protection and promotion of human rights in India. Established under the Protection of Human Rights Act (PHRA), 1993, the NHRC is the voice of the most vulnerable and excluded communities in society. Through its wide scope of functions and powers, the NHRC brings justice to the aggrieved, offers recommendations on ways to address new challenges, and brings together various stakeholders with the aim to ameliorate the lives of people. The NHRC is made up of a chairperson, five full-time members, and seven deemed members. The Chairpersons of the following National Commissions also make up the ex-officio members of the NHRC:

i.) Chairperson of the National Commission for Scheduled Castes
ii.) Chairperson of the National Commission for Scheduled Tribes
iii.) Chairperson of the National Minority Commission
iv.) Chairperson of the National Commission for Women
v.) Chairperson of the National Commission for Protection of Child Rights
vi.) Chairperson of the National Commission for Backward Classes

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[14]Shubham Sonthalia, 'Public Interest Litigation –Guardian of Human Rights in India'(2020) 3 International Journal of Legal Science and Innovation, 995

vii.) Chief Commissioner for Persons with Disabilities

The NHRC regularly holds Statutory Full Commission meetings of all the seven national commissions. Through these meetings, the commissions discuss the issue of ensuring the protection of rights of the marginalised sections, share best practices and deliberate upon the annual action plans.

7.1 Functions of the NHRC

The functions of the NHRC are laid down in Section 12 of the PHRA. It includes complaint redressal; reviewing laws under the Constitution so that they are not redundant; undertaking research, visits, organising conferences; working with human rights defenders and other key stakeholders; identifying new threats to human rights and bringing it to the notice of stakeholders; promoting the study of human rights among the masses.

7.1.1 Complaint Redressal

Section 12 (a) of the PHRA, 1993, mandates the Commission to inquire into complaints on human rights violations presented to it either by the victim, or a person on behalf of the victim, or on *suo motu* basis. The Commission also conducts enquiries into orders of any court on complaints of human rights violations or negligence in the prevention of such violation by a public servant. This is the most important function of the Commission.

The user-friendly 'Online Complaint Management System' of the NHRC (www.hrcnet. nic.in) enables people to file complaints in any of the 22 Indian languages listed in the Eighth Schedule of the Constitution. This has empowered people to file their grievances easily from any place, at any time, in any language and enabled the Commission to deliver speedy justice. The number of complaints registered with the Commission has reflected a decreasing trend, from 91,887 cases in the year 2016-2017, to 76,628 cases in 2019-2020.[15] The Commission calls for detailed reports on the action taken against the complaints registered, ensuring transparency and accountability. NHRC also attempts to allay the grievances of the victims by recommending compensation to the victim or the next of kin.

7.1.2 Taking *Suo Motu* Cognizance

The Commission takes *suo motu* cognizance of human rights violations through media reports, acting on its own initiative to address incidents that may otherwise go

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[15]National Human Rights Commission (NHRC), India. (2020). *Annual Report 2019-20.* New Delhi: National Human Rights Commission (NHRC), India.

unnoticed. When the NHRC comes across media reports of human rights abuses, it can launch investigations, request reports from authorities, and take necessary actions to ensure accountability. This proactive stance allows the NHRC to respond swiftly to violations and ensures that even those without direct access to the commission can have their issues addressed. This is also reflected in the increase in number of *suo motu* cases taken up by the Commission, from 16 in 2021-22 to 106 in 2023-24.

7.1.3 Camp Sittings, Visits and Open Hearings

One of the ways the NHRC brings justice closer to those who need it, is through camp sittings and open hearing in different states, where the Commission sets up temporary offices in different regions to address complaints of human rights violations as well as sensitise government machinery to protect, promote and uphold human rights of all individuals. These visits make justice more accessible, especially for individuals who may face barriers in reaching formal legal systems due to geographical or socio-economic constraints.

7.1.4 Spot Inquiries

In addition to camp visits, the NHRC conducts spot inquiries at public institutions such as hospitals, prisons, and shelters to assess the conditions on the ground. These spot inquiries allow the Commission to gather first-hand information on the state of human rights in these institutions, providing a clear picture of how well human rights standards are being upheld. By visiting these sites unannounced, the NHRC ensures that its assessments are accurate and reflect the realities faced by individuals in these settings.

7.1.5 Advisories

The NHRC also plays a proactive role in addressing human rights violations through advisories on pressing issues. The Commission takes note of violations that occur regularly and at different places, and therefore issues general advisories to the union and state governments and Union Territory administrations to bring these to their notice. These advisories are issued as guidelines and provide recommendations to address the challenges faced by such defenceless groups. Recent advisories issued for the Protection of Human Rights of the Widows, Ensuring the Welfare of Transgender Persons, Mitigating Deliberate Self Harm and Suicide Attempts by Prisoners, on Mental Health, and on Individuals engaged in Beggary, highlight the precarious nature of the lives that the members of these communitieslead.

7.1.6 Promoting Research

The National Human Rights Commission is mandated to undertake and promote research in the field of human rights. The Commission identifies areas of critical importance, and funds research studies. In collaboration with researchers from across various fields, the NHRC seeks to bridge the knowledge gap on human rights, while identifying persisting and evolving challenges on the ground. Additionally, it reviews policies, laws, treaties and other international instruments in force for the protection and promotion of human rights. The Commission also monitors the implementation of its recommendations to the union and state governments and their parastatal organisations and UT authorities.

7.1.7 Core Group Meetings, Open House Discussions and Conferences

Collaborations with Civil Society Organisations (CSOs), Non-Governmental Organizations (NGOs), and Human Rights Defenders (HRDs) play a crucial role in helping the NHRC understand the challenges faced by common citizens. These groups are often on the frontlines, working closely with affected populations, and have first-hand knowledge of the issues at the grassroots level. These collaborations help the Commission shape more responsive and inclusive policies, ensuring that the voices of the most disadvantaged communities are heard, and their rights are protected.

To stay updated on the ground realities and assess ongoing human rights challenges, the NHRC regularly organises core group meetings, open house discussions, conferences, and seminars. These events bring together a wide range of participants, including experts, activists, policymakers, and representatives from different sectors of society. They create a platform for direct engagement with civil society, human rights defenders and the public, enabling the Commission to listen to diverse perspectives and concerns on various pressing human rights issues.

7.1.8 Outreach and Advocacy

At the heart of NHRC's activities is the desire to reach out to the masses and spread awareness about human rights. Through a multitude of activities aimed at outreach and advocacy, the NHRC educates and empowers people.

The Commission publishes monthly newsletters which detail the activities carried out in the previous month. They provide a bird's-eye-view of the work of the Commission, and are circulated among the network of HRDs, SHRCs, agencies of United Nations and published on the Commission's website for the public to access.

The internship programme of the NHRC is a significant feature of the Commission's efforts to encourage youth and students to be active participants in protecting and promoting human rights. The two physical internships – Summer and Winter – and eight online short-term internships give students from the remote parts of the country the opportunity to interact with subject experts, NHRC officials and take part in research projects on human rights issues.

NHRC collaborates with parastatal organisations, universities and colleges to organise training and capacity-building programmes, moot court competitions, debate competitions and visits to the Commission as part of its endeavour to promote and encourage discussions on human rights among all key stakeholders.

NHRC organises short film and photography competitions on human rights, where the jury comprising both NHRC officials and external experts shortlist the winners. This is an opportunity for people to showcase their perspective on human rights and challenges to human rights through various mediums. The Commission also releases two annual journals, an English journal titled 'Journal of the National Human Rights Commission' and a Hindi journal titled, *Manav Adhikar:Nai Dishayein*, where experts in human rights share their thoughts and opinions to inform the public.

8. Special Monitors and Rapporteurs

To enhance its monitoring and advisory capacity, the NHRC appoints Special Rapporteurs and Special Monitors who act as the 'Eyes and Ears' of the Commission. These individuals are tasked with examining, monitoring, evaluating, and reporting on various human rights issues across the country. Their role is crucial in providing an independent assessment of the situation on the ground, often through field visits to areas where human rights violations are reported or where vulnerable communities require additional support.

9. State Human Rights Commissions and Other State Commissions

The State Human Rights Commissions play a vital role in safeguarding and promoting human rights across the country. The PHRA, 1993, mandates the establishment of SHRCs in all the states in India, where they have the power to deal with human rights violations within their states. At present, there are 27 SHRCs across the country working in tandem with the NHRC in protecting and promoting human rights. Some of the national commissions also have their counterparts in states in the form of state commissions. This network of national and state commissions enables cross-learning and collaboration, enhancing the human rights across the country.

10. Conclusion

Human rights are deeply embedded in Indian cultures and values, reflecting a long-standing commitment to dignity, respect, and compassion for all individuals. Concepts such as *Vasudhaiva Kutumbakam* embody the idea that all individuals deserve to be treated equally and with dignity and respect, regardless of their background. This cultural heritage provides a strong foundation for the protection of human rights, ensuring that the pursuit of justice and fairness is not only a legal obligation but also a moral imperative in Indian society.

In line with these values, India's approach to human rights aligns with the global goal of 'leaving no one behind', a key principle of sustainable development. This goal emphasises the importance of ensuring that all individuals, especially the most vulnerable and marginalised, have access to opportunities and resources necessary for their well-being and mobility. By striving for sustainable development, India recognises that the protection of human rights is essential to achieving a future where all citizens can participate equally in society and where growth is shared by all.

The robust mechanisms established through institutions like the judiciary, State Human Rights Commissions, and other statutory bodies embody India's dedication to upholding the principle of 'leaving no one behind'. By focusing on the rights of the excluded and weak, these institutions bridge gaps in equity and ensure access to justice and resources for all. Their efforts reaffirm that safeguarding human rights is not just about addressing violations but also about fostering an environment where dignity is bestowed, and opportunity are universally available.

Ultimately, India's institutional framework strengthens its commitment to sustainable and inclusive development, where human rights are seen as both a means and an end. By ensuring equal opportunities and safeguarding the right to live a dignified life, these institutions contribute to the vision of a just and equitable society—one in which every individual can thrive and participate fully. Through their collective work, these bodies lay the foundation for a future where the ideals of justice, fairness, and respect are realised for all.

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Elections in India: A Human Rights Perspective

Akshay Rout*

Abstract

This article seeks to argue that elections in India have been impressive catalysts in creating, fostering and fulfilling the rights of a billion plus people. It deals with the right to vote in detail and its connection with well-being of citizens. First credit has been extended to the founding fathers of Indian nation and framers of the constitution for imagining and providing suffrage to ordinary people. Election Commission of India has been discussed for giving significant effect to the right to franchise by meeting the challenges both of magnitude and complexity in a dynamic manner. In the process, the article dives into some key facts and technicalities of Indian elections, with specific reference to the world's largest election in history, that is the election to the 18th Lok Sabha of India, which concluded in June 2024. Some of the prominent global developments regarding voting rights of the people in link with human rights have been referred for a rounded understanding. UN declarations and the US presidency have been referred to in this context. The article also places before readers some of the concerns that voting rights and elections have come to face in recent times and suggests timely and coordinated action for sustaining democracy in future. The article concludes that India, and its election commission can play a role in knowledge and practice sharing for securing a right based global democratic order. The article suggests that democracy evaluators and human rights organisations also have a positive and responsible part to play besides the election management bodies.

Keywords: Election, Voting, Right, Constitution, Democracy

1. Free India Adopts Adult Suffrage

At the heart of elections in India is that the power was transferred from colonial Britain to the people of India in 1947, but not to any feudal lord, or a political agency, nor any government. This profound principle received its full effect only through the

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first general election in 1951-1952. Earlier in 1949, the framers of Indian constitution took an audacious step that placed the right to vote in the hands of ordinary Indians, predominantly illiterate, mostly steeped in poverty. Article 326 of the constitution put it simple and straight: "The elections to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage." The entitlement did not differentiate on gender, caste, language, religion or social and economic status.

Sceptics, including prominent global persons dubbed it a misadventure; the optimists called it an experiment. Citizens, especially women in several fellow nations, including older democracies of Europe and the United States, secured their franchise in several stages, for which they struggled over a century.

There was an overwhelming consent in India, among freedom fighters, political parties and legal luminaries that the transferred power belonged to the people to be exercised by a government elected through their instrument of vote. The constitutional debates dwelt on the idea of making voting rights a part of the Fundamental Rights before finally moving it to Chapter XV (elections) and giving it a special standing. The fundamental rights enshrined in the constitution are best served and safeguarded through voting that represents direct stake holding and participation. Alertness among citizens and their assertion through ballot potentially leads to policies and services, directed at their wellbeing. Father of the Indian nation, Mahatma Gandhi, ever concerned about the moral sinews of any political intervention saw adult suffrage as enabler "to satisfy all the reasonable aspirations".

2. Voting as Human Rights

The global stage was set in 1948 by the United Nations' Universal Declaration of Human Rights. Accordingly, Article 21(3), of the Declaration said,

> *The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Later in 1976, Article 25 of the International Covenant on Civil and Political Rights (ICCPR), further reinforced,

> *Every citizen shall have the right and the opportunity, ... To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*

Building support for the legislation to guarantee the right to vote, the 36th President of the USA, Lyndon Johnson, had argued: "This right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies." In 1965, at the signing of the Voting Rights Act that widened franchise in his country by prohibiting any racial discrimination, Johnson famously remarked, "The vote is the most powerful instrument ever devised by man for breading down injustice and destroying the terrible walls which imprison men because they are different from other men."

3. First Indian Election

Elections, with various grades of limitations, were evolving during the British rule, which also contributed to the building electoral system in India. In the Constituent Assembly debates, T Prakasam pointed out that the right of adult suffrage was not new to India, or was a western import, the practice thousand years back was evidenced in temple walls of Tamil Nadu.

Ahead of the first election, Dr Rajendra Prasad, the first President of the Republic, brought into focus the gravity of this right to vote when he told electors of the newly born nation, "You have the power of gods, and let me hope you would use it like gods".

Nothing could describe the celebration of the newly conferred right than the eyewitness account of the then US ambassador Chester Bowles:

> *I have seen the spectacle of more than one hundred million free Indians going to the polls in the world's largest free election, and I can imagine no achievement greater. ... I have seen women defy old customs and cast their first vote. I have seen "untouchable" walk for miles to stand in the voting line next to Brahmans. I have seen Muslims and Christians, Buddhists, Jains and Hindus, half-naked peasants and rich landlords, workers in shorts and undershirts and Western dressed officials, all waiting their turns in deciding the future of their country.*

4. More Elections, Rights, and Democracy

In the past seven decades, Indians have queued up to exercise their right to vote over four hundred times for their state legislatures and eighteen times for the House of the People, the Lok Sabha of Parliament. In independent India, scheduled castes and scheduled tribes, backward classes, farmers, labour groups have affirmed their rights and leaderships through the ballot. The most radical voices have received legitimacy

through the same process. A shining example was the last Lok Sabha election in the union territory of Jammu and Kashmir, where citizens voted in record numbers to take control of their own destiny by discarding the polemic on their rights and liberties.

A deeper understanding would reveal that right to vote underpins the entire range of human rights, as citizens through consent create an authority that would ensure such rights for them. Dr B R Ambedkar, the head of the constitution drafting committee had underlined that "the principle of one man, one vote and one vote, one value" could usher in political democracy, if not of social and economic equality. In right to vote, the likes of rights of minorities or right of freedom of speech or freedom of press, receive impetus.

In 2023, the Supreme Court of India while dealing with a case of appointment of Election Commissioners observed:

> *Through the electoral process and voting, citizens participate in democracy. By voting, citizens take part in the public affairs of the country. Thus, citizens by voting enjoy their right to choose the composition of their government. It is their choice, and their ability to participate.*

For enabling a government, in Abraham Lincoln's words, "of the people, by the people and for the people,"the consent or vote needs to be honestly assembled and correctly counted. In similar sense, rejection of the outcome of a properly conducted election amounts to denial of rights of the people.

5. Faltering Elections

In this context, it is problematic to watch the downslide of elections in several parts of the world bringing in its wake a dent on democracy. Elections are getting increasingly vulnerable to manipulation, at times becoming fake, or abandoned mid-way. There is a growing trend among political contenders who consider the election is fair only if they win. Even regimes which accelerate economic growth and strengthen social welfare may still fail to appreciate citizen's need for political freedom and effective voting rights. Electoral violence– pre, post and during polls– process glitches, counting delays, boycotts, competing claims and street protests have marred elections in India's South Asian neighbourhood, and elsewhere as well. Disputes and legal battles in the aftermath of the 2020 US Presidential elections still linger, while another presidential election is around the corner and not without dark clouds in the sky.

Election Management Bodies (EMBs) worldwide, those entrusted with the job of

conducting elections, got to respond to the situation with diligence and courage. On them, as also on lawmakers and executives rests the protection and fruition of citizen's right to vote.

6. Election Commission of India

Election Commission of India (ECI), a constitutional body, mandated to ensure that the voting rights of citizens are secured and given effect. The chief Election Commissioner and two Election Commissioners are entitled to the rank and privileges of judges of the Supreme Court. Their immunities preclude any interference from the executive or other sources. The uniqueness of ECI is derived from constitutional and statutory ring-fencing of its uncompromising authority over the entire electoral process starting from notifying the dates of election till the announcement of results. Pleading strongly in the Constituent Assembly for an integrated and permanent structure, Dr Ambedkar said,"The whole of the election machinery should be in the hands of a Central election Commission… so that no injustice is done."

7. Election Managers, the Steel Frame

Besides the superbly crafted enabling provisions of the constitution and the three-member commission, it is the federal and provincial officials, who manage the exercise of franchise. Independence and impartiality are the expected attributes of this otherwise small machinery, which gets very specially supplemented during election times. Staff and security numbered fifteen million in last Lok Sabha election, larger than the population of many countries. These men and women drawn from the steel frame civil services: administration, police, revenue, accounts, and others. The duty to conduct of elections is sacred with the burden of Caesar's wife, when they ought to be believed by all stakeholders to be correct. Amidst increasing complexity of poll environment, Election Commission has to fortify the voter against intimidation, inducements and misinformation. The motivation, alacrity and sense of honour with which the staff discharge their election duty is exceptional. Election staff literally walk the rigorous extra mile carrying the Electronic Voting Machine (EVM) and other poll material, sometimes riding camels and elephants and crossing rivers and snow-clad terrain to reach voters in remote villages.

8. Commendable Service to Voter

ECI's performance has been commendable as it has consistently been delivering not only free and fair polls but also elections that are participative, inclusive and accessible. India's eligible voting community is 970 million, compared to 173 million

in first election, three times more than the total population of USA and one and a half times more than the total population of entire Europe. The electorate includes about twenty million newly enrolled 18-year-olds, a number larger than every country of northern Europe.

Keenness of India's election managers to safeguard the right to vote is reflected in the array of measures for ease of voting. Over a million polling stations dot the length and breadth of the country, all empathetic to people with disabilities, minorities, migrants, service voters, transgenders and senior citizens. A range of Assured Minimum Facilities (AMF), including shed, drinking water, toilet, ramp and wheelchair for the needy, on spot voter facilitation have been part of fixtures at every booth. People with disabilities and 85-year-old and above are extended the convenience of home voting facility.

9. Inclusion and Rights

Inclusion is the focus as it constitutes the core of voting rights. Addressing exclusion requires committed hard work by all EMBs. In India, symbols are provided on the ballot for the illiterate, transgenders can register as 'others', polling process and voters are secured through vulnerability mapping, special polling stations in identified cities cater to Kashmiri Pandits displaced due to violence, there is option for IT enabled registration— just to name a few measures. Data base is created to identify the 100-year-old, other senior segments and those with disabilities so that particular care can be taken. The electoral roll for Lok Sabha polls had over eight million voters in the age of eighty-five plus, out of which 218,000 were centenarians. About 9 million were persons with disabilities, and 48,000 electors belonged to transgender category. Each eligible person of an estimated three million Particularly Vulnerable Tribal Groups (PVTG), scattered over forests and mountains, was meticulously taken on the electoral roll. There is a drive for registration of the homeless too. The rights-based vision of EC is reflected in its recent motto: "No Voter to be Left Behind."

The location of some of the polling stations in India's summer election tells a story. In Bharuch, Gujarat, a booth was set up in a shipping container in Alia Bet island, another one was inside a wildlife sanctuary in Waynad in Kerala, yet another in the scattered islands in Dumbur Lake in northeastern state of Tripura. Voters in interior Chandameta in insurgency hit Bastar in Chhattisgarh voted for the first time in a polling station set up for them. At Tashigang in the Himalayan state of Himachal Pradesh, a polling station was set up at an altitude of 15,256 feet, making it the world's highest. Polling party trekked for 44 hours through treacherous terrain, climbing steep rocks in Patkai mountain range to enable a solitary woman in a remote hamlet of Malogam in the border state of Arunachal Pradesh.

10. Women's Rights

The case of women in voting needs a special mention. An ECI order during last Lok Sabha election affirmed,

> *the Commission considers the whole process of conduct of election as a major enhancer of status of women in India and is committed not to allow any erosion of this status in any manner during the election period under its own aegis.*

Special facilitation is done for women at polling stations including setting up of some booths staffed exclusively by women. At the commencement of the first electoral roll in 1951, many women insisted on registering only as daughter or wife to a male and not in their own names and would rather forfeit their suffrage. Today, women count over 470 million in India's list of electors, quite close to men. Just during 2019-2024, gender ratio moved from 928 to 948 that speaks for women's growing claim on franchise. In the 2019 Lok Sabha election, they edged past men for the first time in turnout at polling stations. By emphatic exercise of their voting rights, women have not only managed to bring their agenda into manifestoes of political parties – gas connection, free transport, cash allowances, healthcare, preference in job and education– but also dominated campaign narrative. The historic decision for reservation of a third of the seats for women in legislature is not unrelated to high voting by women. In a cascading impact, about 1.5 million elected women lead at various levels in India.

11. Voting Right of Youth

Two amendments to statutes have further widened voting rights in India. The first one in 1989 is the reduction of voting age from 21 to 18 for entitling the younger among the youth. The second one was amendment of section 14(b)of Representation of the People Act in 2021allowing four cut-off dates for registration of new voters in place of only 1st January so that the youngsters who become eighteen do not have to wait and miss a voting.

12. The Voting Gap and SVEEP

It would appear ironic that a section of the eligible Indian citizens, over 30 per cent of them fail to exercise their right to franchise; the case of a right gifted, and not availed. Reasons and barriers are varied: social, economic and cultural barriers, realities of demography and geography, issues of accessibility and vulnerability or sheer ignorance, disinterest or complacence. It does not augur well for future that

that the youth lag more particularly. This amounts to a democratic deficit in polity, which India and other countries, specially EMBs need to address. Voter apathy and indifference can be one slow but sure way of decline and may be demise of democracy than any other dramatic disruption.

It is heartening to see robust interventions from Election Commission to make elections more voter centric in the last decade and half. The Systematic Voters' Education and Electoral Participation (SVEEP) programme has been an effective response. There is significant rise in engagement with voting community and scientific interventions to raise demand. ECI has recently initiated a process to sensitise school children about voting rights, and the results are encouraging. Against the global trend of decline in voting, India has bounced into a dramatic increase of getting past the 65 per cent turnout level quite consistently in the last three national elections compared to 45 per cent in the first election. The message being taken around is: "Nothing like voting, I vote for sure." Its time voter participation is seen not as a political issue but as an issue of human right and civic duty.

13. Securing Rights, Elections and Democracy Together

In India, where election has served as a system of inclusion in a large and composite population and where poll outcomes have been consistently undisputed, the right to vote has proved its abundant worth. It should provide signals of hope and healing to wherever in the world democracy is under stress. During a visit in 2011, Hillary Clinton complimented India's election management as global gold standard. Nations that are believers of right to vote may like to harness India's expertise. Irrespective of the stages of evolution of various EMBs, they can have a common work agenda in maintaining a pure electoral roll, voting technologies, women participation, youth engagement, facilitation of senior citizens and persons with disabilities and newer risks like fake news in social media. The cohort on 'Election Integrity,' created as part of President Joe Biden's 'Summit for Democracy,' initiative in 2021 can be one mechanism of such mutuality.

A word for those in the profession of preparing democracy indices globally. They will do well to account for both the quality and quantity of democratic elections in any polity as the first parameter in their evaluation. Another word for human rights activists and organisations: time has come for devoting more energy to research and dissemination on the right of voting thanthey have done so far.

Bibliography:

1. Leap of Faith, Second Edition, Sept, 2023, ECI
2. Election Commission of India, <https://www.eci.gov.in/>
3. Gerhard Peters and John T. Woolley, "Lyndon B. Johnson, Remarks in the

Capitol Rotunda at the Signing of the Voting Rights Act" <https://www.presidency.ucsb.edu/documents/remarks-the-capitol-rotunda-the-signing-the-voting-rights-act>

4. United Nations, Universal Declaration of Human Rights (1948), <https://www.un.org/en/about-us/universal-declaration-of-human rights#:~:text=Article%2021&text=The%20will%20of%20the%20 people,by%20equivalent%20free%20voting%20procedures>.

5. United Nations, International Covenant on Civil and Political Rights (1966) <https://nhrc.nic.in/sites/default/files/International%20Covenant%20on%20 Civil%20and%20Political%20Rights.pdf>

6. Supreme Court of India (2015), <https://main.sci.gov.in/ supremecourt/2015/1458/1458_2015_3_1501_42634_Judgement_02-Mar-2023.pdf>

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The Evolution of Transgender Rights and the Changing Healthcare Landscape in India

Anita Sinha[*] and Lakshmi Kumari[**]

Abstract

This article examines the evolution of transgender rights and healthcare in India, tracing historical and contemporary challenges and policy transformations. Historically revered in ancient Indian society, transgender individuals faced systemic discrimination during British colonial rule, a trend that persisted post-independence. The rise of sexually transmitted diseases, notably HIV/AIDS, highlighted the severe health disparities faced by transgender persons, prompting significant policy shifts. The recognition of transgender health crises catalysed advancements in rights and healthcare, including the landmark NALSA judgment and the National Health Policy 2017. Despite progress, transgender individuals continue to encounter barriers such as transphobia and limited access to comprehensive healthcare. Recent initiatives, including the Transgender Persons (Protection of Rights) Act 2019 and NHRC advisories, aim to address these issues, though implementation remains a challenge. This article discusses the current state of transgender healthcare in India, recent policy developments, and recommendations for improving service delivery and inclusivity.

Keywords: Transgender Rights, Healthcare, NALSA Judgment, Transgender Persons Act 2019, Policy Transformations

1. A Historical Context: From Reverence to Repression

In ancient Indian society, transgender individuals were regarded with great respect and often held esteemed positions, revered for their perceived divine connection. Their significance is reflected in the great Indian epics, the Ramayana and Mahabharata, where they were honoured for their ability to navigate both spiritual and worldly realms. However, with the advent of British colonial rule, the status of transgender individuals in India diminished significantly. Colonial policies and Victorian morality

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imposed rigid gender norms that marginalised and criminalised them, stripping away their social position. The British colonial administration implemented laws that systematically disempowered transgender individuals, notably through the Criminal Tribes Act of 1871 and its 1897 amendment, which classified Eunuchs as "habitual offenders."[1] This legal framework institutionalised their oppression and contributed to the widespread stigmatisation of transgender persons, a marginalisation that continued even after India's independence. This historical discrimination deprived the community of fundamental rights such as access to education and employment, pushing many to the fringes of society, where begging or sex work became survival mechanisms.

2. Healthcare Disparities as a Catalyst for Transgender Rights Reform

The marginalisation transcended various aspects of life, with healthcare being among the most impacted. Exclusion from mainstream healthcare systems led to severe health disparities, which were starkly evident during the global HIV/AIDS epidemic in the late 20th century. The community's involvement in sex work coupled with lack of access to proper healthcare further exacerbated their vulnerability during such crises, compounding the effects of their historical and systemic discrimination. This, however, emerged as the catalyst for initiating a new era of reform concerning transgender individuals. It is widely acknowledged that public health challenges cannot be effectively addressed by leaving any group behind. From the bubonic plague to the COVID-19 pandemic, history has demonstrated the necessity of collective efforts to overcome health crises. The HIV/AIDS epidemic of the late 20th century was no exception. As the virus spread rapidly, especially within marginalised communities, governments were compelled to re-evaluate their strategies.

The HIV/AIDS crisis sparked collaborations with grassroots workers, NGOs, civil society organisations, and researchers. They played a crucial role in bringing transgender health issues to the forefront. Through their work, they discovered the community's disproportionate vulnerability to HIV/AIDS. The National Integrated Biological and Behavioural Surveillance (IBBS) conducted by the National AIDS Control Organisation (NACO) in 2014-15 reported that the HIV prevalence among transgender individuals in India was 7.5 per cent, compared to a national adult HIV prevalence of 0.26 per cent.[2] The phenomenon is observable in other countries as well.

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[1] The Criminal Tribes Act of 1871 was amended in 1897 to include Section 24, which specifically targeted eunuchs, labeling them as "habitual offenders." This act mandated their registration, restricted their rights, and institutionalised their marginalisation. See *The Criminal Tribes Act, 1871 (Act No. XXVII of 1871)*, amended by *Act No. VI of 1897*, Section 24

[2] National AIDS Control Organisation (NACO), *National Integrated Biological and Behavioural Surveillance (IBBS) 2014-15*, Ministry of Health and Family Welfare, Government of India, 2015, 5 & 81

Globally, transgender women are 34 times more likely to live with HIV than the general adult population.[3] Recognising the interconnectedness between high prevalence of infection and denial of basic rights helped stakeholders to broaden the focus to include advocacy for the overall rights and well-being of transgender individuals. These efforts not only raised awareness about their systemic marginalisation but also marked a significant step forward in addressing the challenges faced by the transgender community in India. Interestingly, this situation highlights a unique trend: second-generation rights of transgender persons–such as the right to health–gained attention before first-generation human rights like the right to self-identify, personal autonomy, dignity, and freedom from discrimination.

The prioritisation of health as a gateway to rights is a pattern observed across various sectors including revisiting of discriminatory laws such as Section 377 of the erstwhile Indian Penal Code. The said section instilled fear amongst same-sex and transgender couples, discouraging them from seeking healthcare due to the risk of punishment, further marginalising these communities and worsening health disparities. The National Human Rights Commission (NHRC), as early as the financial year 2001-02, recommended revisiting laws such as Section 377 of the Indian Penal Code and the Narcotic Drugs and Psychotropic Substances (NDPS) Act to empower marginalised populations with access to HIV/AIDS prevention, care, and support mechanisms.[4] Further, the Ministry of Health & Family Welfare (MoH&FW) addressed transgender health concerns well before the Ministry of Social Justice & Empowerment (MoSJ&E).The National AIDS Control Organisation (NACO) under MoH&FW began implementing specific programmes targeting transgender persons, including *hijras*, as part of its HIV/AIDS prevention efforts from the financial year 2008-09 onwards. While the MoSJ&E only began focusing on transgender-related issues in 2012.[5]

3. Judiciary and Legal Milestones in Transgender Rights

The twenty-first century has marked significant progress for transgender individuals in India, driven by various interventions and initiatives aimed at enhancing their rights and well-being. A pivotal moment was the *NALSA v. Union of India* judgment in 2014, which recognised transgender individuals as the "third gender", affirming

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[3]UNAIDS, *Confronting Inequalities: Lessons for Pandemic Responses from 40 Years of AIDS*, Joint United Nations Programme on HIV/AIDS (UNAIDS), 2021, 23

[4]National Human Rights Commission (NHRC), *AnnualReport*, *2001-02*, 356

[5]Ministry of Social Justice and Empowerment, India. (n.d.). <https://socialjustice.gov.in/common/47564#:~:text=Ministry%20of%20Social%20Justice%20%26%20Empowerment%20has%20been%20dealing%20with%20the,the%20month%20of%20May%202016>accessed 5 October 2024

their right to self-identify. This landmark ruling laid the foundation for subsequent legal and policy advancements, including the National Health Policy 2017, which addressed transgender health for the first time in India's history, emphasising the need for equitable healthcare for marginalised communities.

Additionally, the colonial-era Section 377 of the erstwhile Indian Penal Code was revised in 2018 following the Supreme Court's reinterpretation in the *Navtej Singh Johar v. Union of India* case, which decriminalised homosexuality. This ruling echoed recommendations made by the NHRC back in 2001-02. Furthermore, the newly enacted *Bharatiya Nyaya Sanhita* (BNS) closely aligns with the Supreme Court's decisions, reinforcing the strides made toward LGBTQIA+ rights in India.

The government has showed equal commitment in ensuring rights for transgender persons. The work relating to transgender persons was allocated to the Department of Social Justice & Empowerment under the Allocation of Business Rules in the month of May 2016, while the ministry has been dealing the matter since July 2012.[6] Building on these advancements, the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred as Act of 2019) further solidified the legal framework for transgender rights in India. The said Act of 2019 aims to safeguard the rights of transgender individuals by recognising their right to self identify their gender. The Act of 2019 further prohibits discrimination in various sectors, including education and employment. It also mandates the establishment of welfare boards for their social and economic upliftment and provides a framework for the issuance of transgender certificates.

4. Healthcare Challenges and Gaps in Addressing Transgender Needs

The landmark NALSA judgment, along with the 2019 Transgender Persons Act, created a crucial legal framework for the rights of transgender individuals in India. However, progress in healthcare reform for the transgender community has been slow and fraught with challenges. Public spaces and healthcare systems in India remain predominantly structured around a gender binary, leaving transgender individuals marginalised, particularly in medical settings. An important provision of the 2019 Act, Section 15(d), mandates that the government produce a health manual for sex reassignment surgery (SRS), in line with the World Professional Association for Transgender Health (WPATH) guidelines. While some Indian hospitals have protocols based on international best practices, there is still no comprehensive national standard for SRS. This lack of uniformity not only puts transgender individuals at risk of

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[6]Ibid

suboptimal outcomes but also limits their ability to seek recourse if complications occur. The Ministry of Health & Family Welfare (MoH&FW) is in the process of formulating guidelines for medical interventions related to disorders of sexual differentiation in infants and children, with a focus on ensuring medically stable lives. However, there is a need for similar guidelines for adults as well. Moreover, having guidelines alone is insufficient. It is critical to ensure that qualified experts are available to provide necessary care. Section 15(e) of the 2019 Act calls for a revision of medical curricula to address transgender health issues, but medical education still lacks specialised training in gender non-conforming needs, post-surgery care and hormonal therapy contributing to a scarcity of qualified professionals.

Research shows that transgender children face a higher risk vulnerability that includes increased risk of getting infected and facing sexual violence due to their marginalised status. The IBBS study (2014-2015) found that the average age of sexual encounters for transgender persons was 15 years,[7] but HIV programmes often reached them only after they turned 18. The Protection of Children from Sexual Offences Act (POCSO), 2012, which is meant to protect children from sexual assault, is gender-neutral and applies to all individuals under 18, including transgender persons. However, societal perceptions and the implementation of the POCSO Act may still carry biases. The adult transgender persons are equally vulnerable to sexual violence, especially those who are engaged in sex work. Although, government initiatives have been evolving to respond to the challenges, however, it is not matching the seriousness shown to deal with the cases affecting cisgender women. The current Indian law does not afford them the same legal protections against rape as it does for cisgender women. The Bharatiya Nyaya Sanhita (BNS) does not recognise transgender individuals as victims of rape in the same way as women, leaving them more vulnerable in cases of sexual violence. Under Section 12(d) of the 2019 Act, individuals responsible for sexual abuse against transgender persons face imprisonment of six months to two years, whereas the punishment for the rape of a cisgender woman under relevant law in India can extend beyond 10 years. While there is detailed medical procedure for examination of women or girl rape victim, however, the similar guidelines is yet to be framed in case of transgender persons. The medical fraternities are also required to be appropriately sensitised enough and provide healthcare, for issues such as anal injuries resulting from rape, without holding any biasness against the community. Persistent stigma and discrimination continue to harm the physical and mental well being of transgender individuals.

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[7]National AIDS Control Organisation (NACO), *National Integrated Biological and Behavioural Surveillance (IBBS) 2014-15*, Ministry of Health and Family Welfare, Government of India, 2015, 32

Transgender individuals face significant mental health challenges, often due to the societal failure to recognise or respect their gender identity. Rejection by family and society is a major contributor to mental health struggles such as chronic stress, anxiety, and depression, with many transgender people being disowned by their families. Economic marginalisation, stemming from discrimination in education and employment, forces many into low-paying jobs or sex work, perpetuating cycles of poverty and mental distress. Access to mental health services is limited by discriminatory attitudes among healthcare providers and a scarcity of transgender-affirmative care. A research project titled *Substance Abuse and Mental Health Issues among the LGBT Community in India*,[8] sponsored by the NHRC, undertaken by AIIMS Bhubaneswar, has established a link between high prevalence of mental illness in the transgender community and increased susceptibility to substance abuse. Their patterns of substance use, such as engagement in chemsex, carry additional risks, including the potential for HIV. In response to these challenges, the Ministry of Health & Family Welfare (MoH&FW) is developing a Mental Health Module tailored to the LGBTQIA+ community. This is a crucial step towards addressing the mental health needs of transgender individuals.

Transgender individuals with disabilities face unique and compounded challenges, experiencing dual layers of stigma due to their gender identity and disability. This often results in heightened social exclusion, barriers to healthcare, and economic marginalisation. Service providers are frequently untrained to offer both transgender-affirmative and disability-inclusive care, further complicating access to necessary services. Economic hardships, combined with limited mental health support, exacerbate chronic stress and mental health issues within this community. Addressing these intersecting challenges requires targeted advocacy and policy reforms, such as improving healthcare provider training, enhancing accessibility in public spaces, developing inclusive mental health services and building more equitable and supportive environment for all.

5. NHRC's Efforts in Promoting Inclusivity

The National Human Rights Commission (NHRC) has played a pivotal role in advocating for transgender persons' rights including better healthcare access. The NHRC has actively supported the government in creating laws aligned with the NALSA judgment, aimed at protecting the rights of transgender persons. The NHRC

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[8]Padhy, S. K. (2024). *Substance Abuse and Mental Health Issues Among the LGBT Community in India: A Study of Inter-relationship Between Mental Health Disorders and Stress, Coping, Perceived Social Support, Occupation, and Religiosity*. New Delhi: National Human Rights Commission (NHRC), Bhubaneswar: AIIMS.

has provided critical input on drafts of the Transgender Persons (Protection of Rights) Bill, and its Core Group on LGBTI Issues, formed in 2018, has consistently deliberated on issues to ensure the community's overall welfare. Notably, Section 15 of the 2019 Transgender Persons Act highlights the right to healthcare for transgender individuals, mandating that the government ensure access to essential services such as hormone therapy and sex reassignment surgery (SRS) without discrimination. This section emphasises the government's responsibility to make these services widely accessible across the country. The NHRC has initiated "Training of Trainers" programmes aimed at educating public servants, including police officers, on key human rights issue. The said initiative also include sessions on LGBTQIA+ persons matters to sensitise public officials regarding the need of the community members. During the COVID-19 pandemic, recognising the heightened vulnerabilities of transgender individuals, the NHRC issued an *Advisory for the Protection of the Rights of LGBTQI+ Community in Context of COVID-19.*

Though, the National Health Policy, the Mental Healthcare Act (2017), and the Act of 2019, set a legal framework to secure healthcare rights for transgender individuals, implementation has been inconsistent, prompting the NHRC to intervene. On 15 September 2023, the NHRC issued an advisory focused on six key areas to ensure the welfare of transgender individuals, one of which was healthcare. This advisory called for the establishment of medical boards at the district level to assist transgender persons in accessing appropriate healthcare, including sex reassignment surgery consultations, treatments, and counseling in district civil hospitals. Following this, significant progress has been observed at both the central and state levels. The Action Taken Reports submitted to the NHRC by the authorities highlighted several initiatives taken at various levels. These include creation of medical boards at district as well as hospital levels such as the Government Multi-Speciality Hospital in Chandigarh and Sadar Hospital in Bihar. Major hospitals like Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, are conducting sex reassignment surgeries, and these procedures are expected to be covered under the Ayushman Bharat Scheme once PGIMER is empanelled as one of the hospitals under the scheme. The service of free surgeries is already available at Rajiv Gandhi Hospital in Chennai, Rajaji Government Hospital in Madurai, and SCB Medical College & Hospital in Cuttack. The state of Telangana is considering extending *Arogyasri* cards to transgender individuals, and Gujarat hospitals have been directed to arrange for sex reassignment surgeries. Additionally, the Ministry of Health & Family Welfare has initiated the establishment of transgender clinics in central government hospitals, including Dr Ram Manohar Lohia Hospital in New Delhi and Osmania General Hospital in Hyderabad.

Further, the Ministry of Social Justice & Empowerment and the National Health Authority have strengthened efforts to provide trans-inclusive healthcare through a Memorandum of Understanding (MoU) under the Pradhan Mantri Jan Arogya Yojana (PM-JAY). This collaboration offers over 50 medical packages, ensuring cashless treatment for transgender individuals, with coverage up to Rs. 5 lakh annually through the Ayushman Bharat TG Plus health insurance package. The comprehensive coverage includes essential transition-related services like hormone therapy, sex reassignment surgery, and post-operative care, accessible at both private and government healthcare facilities. Beyond physical care, mental health support is also included, acknowledging the emotional challenges often associated with gender transition. These initiatives will not only ensure equitable and inclusive healthcare for the transgender community, but will also act as a motivating factor for transgender persons to apply for the transgender certificate, which is a pre-requisite document to access the benefit of this comprehensive healthcare scheme.

The programme encourages transgender individuals to apply for Transgender Certificates to claim these benefits. The Standard Operating Procedures (SOPs) for the scheme's implementation are currently being developed. Moreover, AIIMS Delhi is also set to establish a dedicated centre of excellence for transgender healthcare.

6. Path to Progress: Toward a More Inclusive Future for Transgender Rights in India

India's evolving journey toward transgender rights mirrors a powerful shift from reverence in ancient times to marginalisation and, more recently, a growing recognition of the transgender community's rightful place in society. Landmark legal victories, such as the 2014 NALSA judgment and the Transgender Persons (Protection of Rights) Act, 2019, have laid the groundwork for progress, yet significant challenges remain, particularly in healthcare. Bridging these gaps requires not only strong legal frameworks but also a cultural shift toward inclusivity, with a focus on streamlining healthcare access and ensuring transgender individuals play a key role in shaping policies that impact their lives.

Awareness and documentation are critical tools in addressing issues faced by sexual minorities. While the government claims to have simplified process for obtaining transgender identity certificates, many in the community still face obstacles. A common issue is the lack of awareness and sensitivity among public servants responsible for issuing these certificates. Simplifying the procedure is crucial, as the TG card serves as the gateway to accessing government schemes and benefits. To address this, public servant training–particularly for those in law enforcement, healthcare, and

social welfare–must include lessons on intersectionality, helping foster empathy and inclusivity. Long-term sensitisation efforts are essential for creating an environment that embraces all marginalised groups.

Additionally, the development and timely implementation of guidelines and Standard Operating Procedures (SOPs) under initiatives like Ayushman Bharat TG Plus health insurance package are critical for ensuring comprehensive healthcare access. Enhancing healthcare infrastructure and providing specialised training for medical professionals in transgender-affirmative care, including medical interventions, post-surgical care, mental health support, and hormonal therapies, are vital steps toward addressing the unique needs of transgender patients.

Expanding medical coverage under *Garima Greh* (transgender shelter homes) is another key recommendation. Revisiting the guidelines to include medical expenses would greatly help transgender persons residing in the shelters in promoting holistic well-being. Further, recognising and supporting transgender persons with disabilities is imperative, as they face compounded challenges due to dual stigmatisation. Tailored welfare measures, such as targeted healthcare, financial assistance, and accessible public services, should be developed to meet their unique needs. A gender-fluid approach in treating transgender persons is crucial, along with a rights-based approach to policy formulation that actively involves the transgender community. Engaging transgender individuals in policy development will ensure that their specific needs are accurately addressed, improving their quality of life and integration into society.

India stands at a pivotal moment in its journey toward transgender equality. With sustained efforts from policymakers, healthcare professionals, civil society, and the transgender community itself, the nation can create a future where every individual, regardless of gender identity, can access their fundamental rights-most importantly, the right to live with dignity and receive quality healthcare.

References:

1. Government of India, National Integrated Biological and Behavioural Surveillance (IBBS) 2014-15, (National AIDS Control Organization, 2015, Ministry of Health and Family Welfare)
2. Joint United Nations Programme on HIV/AIDS (UNAIDS), Confronting Inequalities: Lessons for Pandemic Responses from 40 years of AIDS, 2021. UNAIDS
3. National Human Rights Commission, India (2001-02). *Annual Report*
4. NALSA v. Union of India, (2014) 5 SCC 438

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

6. Bharatiya Nyaya Sanhita, 2023 <https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf> accessed 14 October 2024

7. Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019<https://socialjustice.gov.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf> accessed 17 October 2024

8. Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012<https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf> accessed 4 October 2024

9. Government of India.*National Health Policy, 2017*. (Ministry of Family Health & Welfare, 2017)<https://mohfw.gov.in/sites/default/files/9147562941489753121.pdf> accessed 30 September 2024

10. Government of India.*Advisory for Ensuring the Welfare of Transgender Persons*. (National Human Rights Commission, 2023) <https://nhrc.nic.in/sites/default/files/Advisory%20for%20ensuring%20the%20welfare%20of%20Transgender%20Persons_Sep2023.pdf> accessed 24 September 2024

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Knowledge-Based Technologies and Human Rights

Asoke Mukerji*

Abstract

India's objective of becoming a US$ 5 trillion economy by 2025, which is interlinked with core human rights such as the eradication of poverty and generation of employment, depends on the resilience and sustainability of its national efforts. Innovation, application, and transfer of knowledge-based technology is vital for accelerating the achievement of its goal. The Indian state has led the way, emphasising the importance of using information and communication technologies (ICTs) for development, both nationally and internationally, to empower the basic human rights of its citizens in a "whole of society" effort. An important challenge for India is the growing "securitisation of technology" by some partner countries, which obstructs India's commitment to using technology for development. "Securitisation of technology" also contradicts the decision of the UN that affirms the right to development as an "inalienable human right". Within India, knowledge-based technologies have played a pivotal role in India's widespread application of technology for development and empowerment. India's application of knowledge-based technology for development has made technology an "agent of equality and inclusion". The Digital India platform, with its three priority areas of digital infrastructure, digital access, and empowerment of human rights, has proved effective in implementing the human rights goals inherent in Agenda 2030's Sustainable Development Goals.

Keywords: ICTs, Digital India, Sustainable Development Goals, Human Rights

1. Introduction

India's objective of becoming a US$ 5 trillion economy by 2025, which is interlinked with the eradication of poverty and generation of employment, depends on its expanding role in international trade. Currently, international trade contributes 46 per cent of India's GDP.[1] The innovation and transfer of knowledge-based technology,

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including through effective and equitable international cooperation, is vital for accelerating achievement of India's goal.

2. Knowledge-based Technology

Computers, software development, information-technology enabled services, biometrics, mobile telephony, and the rapid integration of digital technologies, have all played their roles in the process of India's rapid development during the past decade. The Indian state has led the way, emphasising the importance of using knowledge-based technologies for development to empower the basic human rights of its citizens. Following India's economic reforms launched in 1991, the Indian state has added non-governmental stakeholders to make this transformation into a "whole of society" effort.

3. Supercomputers

Computers were introduced into India's national governance structures from the mid-1980s. They were meant to maximise the power of computing technology, augmenting and disseminating information flows that would increase the productivity of 70 per cent of India's population that relied on agriculture for their livelihood. This was the backdrop to the proposal made by Prime Minister Rajiv Gandhi in June 1985 to US President Ronald Reagan, for the supply of a supercomputer from the United States to India for "weather prediction and other scientific uses".

The oral agreement of the two leaders was blocked for two years by the United States government, despite the private sector Control Data Corporation, which manufactured the Cray XMP model (touted as the world's fastest computer) was willing to export it to India. The United States suggested that India import an older generation Cray computer of lower capacity like the Cyber 205, which India refused to purchase.[2]

India sought to acquire a similar supercomputer manufactured by Nippon Electronic Company (NEC) of Japan. This attempt, too, was thwarted by Western inter-governmental guidelines regulating transfers of dual-use technology,[3] mostly introduced following India's "peaceful nuclear explosion" in 1974. The intention of the restrictions was to limit the flow of international dual-use technologies to India,

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[1]World Bank Group, 'Trade (%of GDP) – India'.   <https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?locations=IN> accessed 04 September 2024

[2]David E. Sanger, 'U.S. Lets India Buy Computer' The New York Times, (New York, 27 March 1987) D1. <https://www.nytimes.com/1987/03/27/business/us-lets-india-buy-computer.html> accessed 04 September 2024

[3]'Multilateral Export Control Policy: The Coordinating Committee (CoCom)',<https:// www.princeton.edu/ota/disk3/1979/7918/791810.PDF> accessed 04 September 2024

even though these were meant for civilian socio-economic purposes.

During Prime Minister Rajiv Gandhi's visit to the United States in October 1987, President Reagan said publicly that both sides had agreed "to consult regularly to ensure that US supercomputer exports to India reflect the rapid pace of scientific advances while at the same time safeguarding US technology."[4]

In response, India established its own Centre for Development of Advanced Computing (C-DAC) in March 1988 to build "supercomputers in the context of denial of import of supercomputers by (the) USA". This was the origin of India's PARAM parallel computing project, enabling it to manufacture and apply supercomputer technology primarily for civilian purposes in a self-reliant, sustainable manner.[5]

4. Development as an "Inalienable Human Right"

An important lesson learnt by India from this early episode was the predominant focus on "securitisation" of technology by the West, which obstructed independent India's commitment to using technology for development. That this policy continues was evident during the recent Covid-19 pandemic, with the opposition of developed countries to relaxing patent restrictions for the Covid Vaccine Waiver Initiative at the World Trade Organization (WTO) sponsored by India and South Africa.[6]

India's thrust on prioritising development to give substance to human rights has been a consistent policy objective since September 1947. Mrs Vijayalakshmi Pandit, representing India in the UN General Assembly (UNGA), barely a month after India's independence had said, "We cannot eat an ideology; we cannot brandish an ideology and feel that we are clothed and housed. Food, clothing, shelter, education, medical services-these are the things we need."

The very concept of "development" was debated in the UN for decades. In December 1986, India and other developing countries asked the UNGA to take a decision on the "right to development" through a majority vote. The outcome was the historic UN Declaration on the Right to Development (DRTD), which is the applicable global

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[4]Remarks Following Discussions With Prime Minister Rajiv Gandhi of India. 20 October 1987. Ronald Reagan Presidential Library & Museum.<https://www.reaganlibrary.gov/archives/speech/remarks-following-discussions-prime-minister-rajiv-gandhi-india> 04 September 2024

[5]Success Stories & Testimonials, Centre for Development of Advanced Computing, Pune, India.<https://www.cdac.in/index.aspx?id=testimon#mashelkar> 04 September 2024

[6]"Global North States' Persistent Refusal to Waive COVID-19 Vaccine Intellectual Property Rights Violated Non-discrimination Guarantee, UN Committee Warns", 31 August 2023. United Nations Office of the High Commissioner for Human Rights.<https://www.ohchr.org/en/press-releases/2023/08/global-north-states-persistent-refusal-waive-covid-19-vaccine-intellectual>04 September 2024

framework for India in implementing its national development objectives. It is striking that the UN, in adopting the DRTD, affirmed that the right to development was an "inalienable human right".[7]

5. An Integrated Framework for Technology and Human Rights

India's priority in giving a human-centric framework for its national efforts to innovate and apply technology for development conditioned its participation in two major international initiatives after the Cold War. These were the creation of the General Agreement on Trade in Services (GATS) by the newly formed World Trade Organization (WTO) in 1995, and the Tunis Agenda for the Information Society adopted by the UN in 2005.[8]

5.1 General Agreement on Trade in Services

The United States, European Communities, Brazil, and India were the four countries that contributed 44 per cent of the negotiating proposals (42 out of 95) on the GATS treaty during the Uruguay Round negotiations.[9] India's contributions in the final text of the GATS on increased participation of developing countries (Art. IV) and progressive liberalisation (Art. XIX) ensured a significant role for its citizens in the growing global trade in services after 1995.

Using the GATS as an international framework, India's exports of services have grown from $7 billion in 1996 to $341 billion in 2023-24. Telecommunication, computer, and information services exports contributed $163.6 billion of this figure, placing India second in the world in this sector.[10] This development has generated new skilled technology-oriented jobs in India, with technology-driven exports employing about 25 million people (directly and indirectly) in India. In turn, this has added significantly to India's sustainable development objectives of quality education, good jobs, and economic growth. Today, the services sector contributes over 50 per cent of India's GDP, compared to its contribution of 4.6 per cent to India's GDP[11] in 1996.

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[11]Government of India, Economic Survey 2023-2024, "State of the Economy" (Ministry of Finance, 2023)<https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap01.pdf> accessed 04 September 2024

[7]'Statement at 2nd Session of UNGA by Mrs. Vijayalakshmi Pandit', Permanent Mission of India, New York. 19 September 1947 <https://pminewyork.gov.in/pdf/uploadpdf/64080lms2.pdf> accessed 04 September 2024

[8]United Nations General Assembly Resolution A/RES/41/128 dated 4 December 1986. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/496/36/IMG/NR049636.pdf?OpenElement> accessed 04 September 2024

[9]Juan A. Marchetti and Petros C. Mavroidis, 'The Genesis of the GATS (General Agreement on Trade in Services)' (2011) The European Journal of International Law, Vol. 22,No. 3, 689, 721.

[10]Government of India, Economic Survey 2023-2024, "External Sector"(Ministry of Finance, 2023)<https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap04.pdf> accessed 04 September 2024

5.2 Tunis Agenda for the Information Society

The second major international framework to which India has contributed a human-centric development vision is the UN's Tunis Agenda, adopted unanimously in 2005.[12] Focusing on the use of ICTs for building an "information society", all members of the UN agreed in 2015 that the internet was a "multilateral, transparent, democratic and multi-stakeholder" process, in which it was a priority to protect human rights online, including the freedom of expression and privacy.[13] India stressed the "close linkages" between the Tunis Agenda and Agenda 2030 on Sustainable Development, asserting that it was "fully committed towards realising the Agenda through active deployment of ICT infrastructure and services."[14]

6. Software and Hardware Technologies

ICTs have played a pivotal role in India's application of technology for development and empowerment. At the conclusion of the WTO negotiations on telecoms in February 1997, India joined seventy countries on a far-reaching agreement to liberalise the market for telecom services using ICTs, including for "on-line data processing, on-line database storage and retrieval, [and] electronic data interchange", linked to mobile telephony.[15]

This provided the framework for India's private sector technology companies, empowered by India's economic reforms launched in 1991, to offer India's growing capacities in software programming of computers across the world, as major economies confronted the impending Y2K 'millennium bug' issue.[16] The demand for software to respond to this issue propelled India's software development in selected sectors, with Indian computer software professionals, grouped together under India's National Association of Software and Service Companies (NASSCOM) partnering with the Indian state. This partnership made India into a $200-billion software exporting global

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[12]United Nations General Assembly, Resolution A/RES/60/252 dated 26 April 2006 <https://documents.un.org/doc/undoc/gen/n05/502/72/pdf/n0550272.pdf>accessed 04 September 2024

[13]United Nations General Assembly, Resolution A/RES/70/125 dated 16 December 2015 <https://unctad.org/system/files/official-document/ares70d125_en.pdf>accessed 04 September 2024

[14]'Statement by Mr. J.S. Deepak, Secretary, Department of Electronics & Information Technology at the United Nations High-Level Meeting on WSIS+10 Review', Permanent Mission of India, New York. 15 December 2015 <https://pminewyork.gov.in/IndiaatUNGA?id=NDky>accessed 04 September 2024

[15]World Trade Organization, 'The WTO Negotiations on Basic Telecoms' (6 March 1997). <https://www.wto.org/english/news_e/pres97_e/summary.htm>accessed 04 September 2024

[16]'Govt Units to Spend Adequately on Y2K Compliance', (UNI, Rediff.com, 23 March 1999) <https://www.rediff.com/computer/1999/mar/23y2k.htm>accessed 04 September 2024

power by 2024.[17]

At the same time, India became a member of the WTO's Information Technology Agreement (ITA), aimed at zero import tariffs for computers and peripherals. This was endorsed by NASSCOM, enabling the government to make available to its software professionals imported manufactured equipment required for writing and exporting software at a time when India's manufacturing capacity in such products was minimal.[18]

The subsequent growth of IT-manufacturing in India, expected to be worth $300 billion in 2026, has been significant. India manufactures $50 billion worth of mobile phones a year[19] and is the world's second-largest telecommunications market with a total telephone subscriber base at 1,198.28 million in March 2024. The wireless broadband subscribers in India stood at 884.01 million in March 2024,[20] forming the most significant technology-driven "platform" for access to, and use of, technologies through smartphones, which today perform the function of "mobile computers" for India's 1.4 billion population. In recognition of this growth, India is witnessing a spurt of projects for the manufacture of smartphone hardware, including the smart chips that process these high-performance devices.[21]

The significance of India's decision to open the telecommunication market to new technologies amplified India's earlier decision in 1995 to liberalise its financial services market.[22] Today, India's network of 12 public sector banks, 21 private sector banks, 44 foreign banks, and 12 small finance banks, and 17,36,972 micro-ATMs, has resulted in the widespread application of new financial and telecommunication technologies to empower ordinary Indians.[23]

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[17]Electronic and Computer Software Industry and Exports' (India Brand Equity Foundation, April 2024) <https://www.ibef.org/exports/electronic-and-computer-software-industry-in-india> accessed 04 September 2024

[18]'This point is important to recall in the light of subsequent criticism of India's decision to join the ITA, which is perceived to have disadvantaged manufacturers of ICT hardware in India.

[19] See n.17 supra.

[20]'Telecom Industry in India' (India Brand Equity Foundation, August 2024) <https://www.ibef.org/industry/telecommunications>accessed 04 September 2024

[21]'India Takes a Giant Leap on the Semiconductor Manufacturing Front' (Communications Today, 01 March 2024)   <https://www.communicationstoday.co.in/india-takes-a-giant-leap-on-the-semiconductor-manufacturing-front/>accessed 04 September 2024

[22]"India-Schedule of Specific Commitments", World Trade Organization, 26 February 1998.GATS/SC/42/Suppl.4.   p.   8<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-SC/SC42S4.pdf&Open=True>accessed 04 September 2024

[23]'Banking Sector in India' (India Brand Equity Foundation, July 2024) <https://www.ibef.org/industry/banking-india>accessed 04 September 2024

7. Biometric Identity and Empowerment of Human Rights

In September 2010, India launched the Aadhar "biometric based identity programme" seeking to provide a unique identification number to individual residents in India.[24] This scheme, the largest of its kind in the world, has enrolled over 1.4 billion individuals by August 2024.[25] The Indian Banks Association, in partnership with India's central bank regulator, the Reserve Bank of India, launched the National Payments Corporation of India to "provide infrastructure to the entire banking system in India for physical as well as electronic payment and settlement systems". The Aadhar card became an integral part of India's digital technology journey, being used in direct benefit bank transfers from the government to hundreds of millions of Indians, most of whom had lived outside the banking system till then.

The importance of this development was underscored by Prime Minister Narendra Modi during the 75th anniversary events of the UN in 2020. He said:

> *In the last six years, we opened 400 million bank accounts for the unbanked, out of which 220 million are owned by women. We have leveraged the power of technology for financial inclusion. This is based on the trinity of a unique identity number, a bank account and a mobile connection for everyone. It has allowed us to make direct benefit transfers of 150 billion dollars to over 700 million persons.[26]*

The biggest impact of this convergence between India's telecommunication and financial reforms for empowerment of human rights is the *Pradhan Mantri Jan Dhan Yojna* (PMJDY) scheme, with the objective of providing "universal access to banking facilities with at least one basic banking account for every household, financial literacy, access to credit, insurance and pension facility".[27] The scheme demonstrates India's ability to innovate a new paradigm of people-centric development that uses digital technology for inclusive development and empowerment of basic human rights.

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[24]'Legislative sanction for Aadhar', Rajya Sabha Starred Question 152, 11.03.2016 <https://uidai.gov.in/images/rajyasabha/Au152.pdf>accessed 04 September 2024

[25]Government of India, 'Aadhar Dashboard', Unique Identification Authority of India, 31 August 2024 <https://uidai.gov.in/aadhaar_dashboard/>accessed 04 September 2024

[26]Narendra Modi, 'India Firmly Believes that Path to Achieve Sustainable Peace & Prosperity is Through Multilateralism', 17 July 2020<accessed 04 September 2024

[27]Government of India, 'Pradhan Mantri Jan Dhan Yojna' (Department of Financial Services, Ministry of Finance, India, August 2024) <https://pmjdy.gov.in/about>accessed 04 September 2024

8. Agenda 2030 on Sustainable Development

Agenda 2030 on Sustainable Development, with its 17 Sustainable Development Goals (SDGs), was adopted unanimously by the UN in September 2015.[28] The core focus on human rights in Agenda 2030 is visible in the interlinkage between the SDGs:

> *Eradicating poverty in all its forms and dimensions is an indispensable requirement for sustainable development. To this end, there must be promotion of sustainable, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting integrated and sustainable management of natural resources and ecosystems.[29]*

India's Prime Minister Narendra Modi affirmed that "much of India's development agenda is mirrored in the Sustainable Development Goals."[30] The eradication of poverty (SDG 1) was acknowledged as the overarching goal of Agenda 2030. Technology plays a major role in enabling India to implement the SDGs of Agenda 2030 and empower the basic human rights of its 1.4 billion citizens.

9. Global Conference on Cyber Space

India adopted a "whole of society" approach, bringing together government, businesses, academia, and civil society in implementing the Tunis Agenda. At the same time, India became an active partner in the Global Conference on Cyber Space (GCCS), a process outside the UN that was launched with India's active participation in London in 2011. The GCCS has met in Budapest in 2012 (with a focus on the relationship between internet rights and internet security), in Seoul in 2013 (with a focus on an open and secure cyberspace), in The Hague in 2015 (with a focus on strengthening cyber capacity-building and more effective coordination of international cooperation in the use of digital technologies) and in New Delhi in 2017.

The New Delhi GCCS meeting in November 2017 was inaugurated by Prime Minister Narendra Modi. Its theme was "a secure and inclusive cyberspace for sustainable

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[28]United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development' (Department of Social and Economic Affairs, 25 September 2015) <https://sdgs.un.org/2030agenda>accessed 04 September 2024

[29]United Nations,'The Sustainable Development Agenda',Sustainable Development Goals <https://www.un.org/sustainabledevelopment/development-agenda/>accessed 04 September 2024

[30]"Statement by Prime Minister Shri Narendra Modi at the Sustainable Development Summit, New York, on September 25, 2015". Permanent Mission of India, New York <https://pminewyork.gov.in/pdf/menu/32556pms_25sept.pdf>accessed 04 September 2024

development", stressing the significance of inclusiveness and human rights in a global digital world, while addressing the bridging of digital divides.[31]

10. Digital India

India's established credentials, based on its track record of applying ICTs for development and empowerment of human rights on a national scale, are anchored in its Digital India programme. The three human-centric priority areas are digital infrastructure, digital access, and empowerment of human rights.[32]

India's advocacy of using digital technologies as a means for accelerating implementation of Agenda 2030 on Sustainable Development was welcomed by the G-20 New Delhi Summit in September 2023. The G-20 noted the role of digital technology in "bridging the existing digital divides" and accelerating "progress for inclusive and sustainable development".

Of particular significance was the recognition of India's Digital Public Infrastructure (DPI) model as a template. The G-20 agreed to create a framework of principles for DPI which would enable it to be adapted by G-20 countries. India offered to share its DPI, which uses shared digital systems built and leveraged by both the public and private sectors, using open-source software, with other G-20 and Global South partner states to enable delivery of services at a societal scale.

11. Conclusion

India's journey in using knowledge-based technologies for development has played a significant role in empowering the human rights of its 1.4 billion citizens. As India's Prime Minister Narendra Modi stated about India's contributions to human rights and development on the eve of the New Delhi G-20 Summit,

> *Our approach towards leveraging technology is motivated by a spirit of inclusion, last-mile delivery, and leaving no one behind. At a time when technology used to be thought of as an agent of inequality and exclusion, we are making it an agent of equality and inclusion.*

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[31]Government of India, 'India to host Global Conference on Cyber Space 2017' (Press Information Bureau, Ministry of Electronics & IT, 16 November 2017) <https://pib.gov.in/newsite/printrelease.aspx?relid=173571>accessed 04 September 2024

[32]Government of India, 'Digital India Vision and Vision Areas (Ministry of Electronics & IT) <https://www.digitalindia.gov.in/vision-vision-areas/>accessed 04 September 2024

Emerging Mental Health Issues in India

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Abstract

Emerging mental health issues in India include rising stress and anxiety, substance use disorders, depression, and increased suicide rates. Post-COVID mental health challenges, workplace stress, and the impact of climate change and disasters and their effects on mental health are gaining attention. Although mental health awareness is growing, stigma and lack of accessibility remain significant barriers, especially in rural and underserved areas. The rights-based approach to mental health, enshrined in the Mental Healthcare Act (2017), places a series of legal obligations on the state to ensure access to mental health services for all citizens. This shift in focus from charity-based to rights-based mental health care emphasises the importance of providing equitable, comprehensive, and culturally appropriate services to every individual in need. However, the realisation of these rights has been hindered by several challenges. These include a lack of trained mental health professionals, limited infrastructure, and underfunding in the public health system. Innovative solutions such as task shifting, task sharing, and leveraging digital technologies like telemedicine are critical to overcoming these barriers and ensuring equitable mental health care for all citizens.

Keywords: Mental Health, Mental Illness, Rights Based Mental healthcare, Mental healthcare Act, 2017

1. Historical Perspective

Mental health services in the pre-colonial era was focused on providing shelter for those with severe mental illness. The passing of the Lunacy Act in 1858 has enforced the establishment of asylums for both the Europeans and the natives throughout

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British India. With the introduction of effective medications in the post-colonial period, mental asylums transitioned into hospitals offering outpatient services. Further, medical colleges began offering formal qualifications in psychiatry, including diplomas and MD degrees.[1] In the 1970s and 1980s persisting shortage of psychiatrists lead to the formulation of the National Mental Health Programme (NMHP) in 1982. A key component, the District Mental Health Programme (DMHP), was rolled out in 1996 to empower primary care physicians to manage mental health conditions. These physicians receive training and supervision from a district team consisting of a psychiatrist, social worker, clinical psychologist, and psychiatric nurse.[2]The DMHP has undergone two reviews,[3,4] both of which were positive, leading to its expansion across most districts in the country.[5]

2. Problem Statement

A nationwide survey on the prevalence of mental illness, one of the largest and most well-designed studies in India, was conducted with a sample size of 39,532 individuals across 12 states. The 2016 results indicated that nearly one in ten individuals require mental health services.[6] However, the majority of those with mental illnesses were not receiving modern medical care. The treatment gap remained over 70 per cent, despite the tripling of psychiatrists and widespread District Mental Health Programme (DMHP) coverage. This highlights a significant treatment gap in India's mental healthcare system.

3. Substance Use and Addiction

The Ministry of Social Justice and Empowerment conducted the substance use in India survey.[7] It revealed that approximately 15 per cent of the population aged 10-75 years (about 160 million people) consume alcohol, with 5.2 per cent being problematic users and 2.7 per cent dependent. Opioid use affects 2.1 per cent of the population,

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[1]Shridhar Sharma, 'Postgraduate Training in Psychiatry in India' (2010) 52 Indian Journal of Psychiatry S89.

[2]BN Gangadhar and others, 'Mental Health Programme in India: Has the Tide Really Turned?' (2023) 157 The Indian Journal of Medical Research 387.

[3]Indian Council for Market Research, 'Evaluation of District Mental Health Programme' (2009).

[4]Pratima Murthy, Sudhir Kumar and Desai NG, *Mental Health Report Vol II 10 06 2016 (1)* (2018).

[5]Pratima Murthy and Mohan K Isaac, 'Five-Year Plans and Once-in-a-Decade Interventions: Need to Move from Filling Gaps to Bridging Chasms in Mental Health Care in India' (2016) 58 Indian Journal of Psychiatry 253.

[6]'National Mental Health Survey' <https://indianmhs.nimhans.ac.in/phase1/nmhs-reports.php> accessed 20 May 2024.

[7]Atul Ambekar and others, 'Magnitude of Substance Use in India' (2019) New Delhi: Ministry of Social Justice and Empowerment, Government of India.

while cannabis use is also widespread, affecting 2.8 per cent. Though cocaine use remains less common, it is emerging among urban youth. Substance abuse disorders contribute significantly to social disruption, economic costs, and disease. The United Nations' Sustainable Development Goals (SDGs) for Agenda 2030 addresses this. Under Goal 3, Target 3.5 aims to "strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol".[8]This underscores the urgent need for comprehensive intervention strategies, including awareness, prevention, treatment, and rehabilitation. The complex relationship between mental health and substance use, where one often exacerbates the other, highlights the urgent need for comprehensive interventions, including awareness, prevention, treatment, and rehabilitation strategies across the country.

4. Impact of Social Media and Digitalisation

India's rapid digitalisation has introduced new mental health challenges, particularly among youth.[9] Social media fosters cyberbullying, social comparison, and addiction, leading to increased anxiety, depression, body image issues, and low self-esteem. Overuse of digital devices disrupts sleep and encourages sedentary lifestyles, further harming mental health. Digital burnout, characterised by chronic stress from constant online engagement, is prevalent.[10] Additionally, easy access to pornography, without proper sex education, exacerbates sexual dysfunction and psychological issues. Online gaming addiction causes social withdrawal and sleep disturbances, while online gambling often leads to financial ruin and mental distress.

5. Suicide and Attempted Suicide

In 2022, India reported a suicide rate of 12.4 per 100,000 population. Key contributing factors included familial issues (31.7 per cent), illness (18.4 per cent), and substance abuse or addiction (6.8 per cent). Men were disproportionately affected, with a male-to-female ratio of 72:28.[11]The National Suicide Prevention Strategy (2022) aims to reduce suicide rates through a comprehensive approach, focusing on improving

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[8]United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs' <https://sdgs.un.org/publications/transforming-our-world-2030-agenda-sustainable-development-17981> accessed 3 September 2024.

[9]John A Naslund and others, 'Social Media and Mental Health: Benefits, Risks, and Opportunities for Research and Practice' (2020) 5 Journal of Technology in Behavioral Science 245.

[10]Yashita Ahluwalia and Yatan Pal Singh Balhara, 'Ensuring Mental Well-Being in the Digital World: Challenges and Approaches' (2024) 4 Indian Journal of Clinical Psychiatry 79.

[11]'Accidental Deaths & Suicides In India Year Wise | National Crime Records Bureau' <https://www.ncrb.gov.in/accidental-deaths-suicides-in-india-year-wise.html?year=2022&keyword=> accessed 1 September 2024.

surveillance for accurate data, raising mental health awareness, and expanding access to mental health services. Community-based interventions and gatekeeper training programmes are prioritised to equip individuals with skills to identify and respond to suicide risks. Measures are being implemented to restrict access to common means of suicide, such as pesticides and firearms. The strategy also emphasises reducing the stigma associated with mental health and suicide to foster a more supportive environment for at-risk individuals.[12] The target is to reduce the suicide rate by 10 per cent by the year 2030, as suggested by the World Health Organization (WHO).[13] The Mental Health Care Act (MHCA) 2017 decriminalises suicide under Section 115, shifting the focus from punishment to therapeutic intervention for those who attempt suicide.[14]

6. Mental Health in Special Population

6.1 Custodial Settings

The "Bangalore Prison Mental Health Study" highlights the mental health and substance use issues prevalent in the Central Prison, Bangalore.[15] It reveals that nearly 80 per cent of the prison population has a diagnosable mental disorder or substance use problem, with 61.3 per cent testing positive for drugs through urine screening. Additionally, prison staff experience high levels of stress and poor mental health, reflecting systemic challenges within the prison environment. The report stresses the need for comprehensive health screenings, better living conditions, and enhanced mental health care protocols for both prisoners and staff. It calls for systemic reforms, such as improved training for prison personnel, greater healthcare resources, and the implementation of national health programmes within prisons.

6.2 Disaster and Climate Change

India's diverse geography and large population make it susceptible to various natural and man-made disasters, including earthquakes, floods, cyclones, and industrial accidents. These events often result in a high prevalence of mental health disorders such as depression, anxiety, somatoform disorders, and substance use. Disasters like the

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[12]'India's National Suicide Prevention Strategy' (MHIN) <https://www.mhinnovation.net/resources/indias-national-suicide-prevention-strategy> accessed 1 September 2024.

[13]World Health Organization. Comprehensive Mental Health Action Plan 2013-2030. Geneva: World Health Organization; 2021.

[14]Mental Healthcare Act, 2017, Section 115.

[15]Suresh Bada Math and others, 'Mental Health and Substance Use Problems in Prisons' (2011) The Bangalore Prison Mental Health Study: Local Lessons for National Action. Bangalore, India: National Institute of Mental Health and Neuro Sciences.

2004 Tsunami,[16] 2013 Himalayan flash floods[17] and 2020 COVID-19 pandemic have shown how pre-existing mental health conditions can relapse or worsen. Vulnerable groups such as children, women, the elderly, and the disabled are particularly at risk.[18] Mental health issues persist long after the disaster, necessitating long-term care strategies. Immediate responses should include psychological first aid, community-based interventions, and integration of mental health services into general healthcare. The National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore, serves as a nodal centre for disaster management, offering telepsychiatry and training programmes to foster community resilience. NIMHANS' Telepsychiatry sevices are pivotal in extending care during disasters.[19,20]

6.3 Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI)

LGBTQI individuals in India face significant mental health challenges due to social stigma, exclusion, and discrimination from families, workplaces, and healthcare settings.[21] They are at heightened risk for sexually transmitted diseases (STDs), HIV/ AIDS, psychiatric disorders, and suicidal behaviour, including substance abuse.[22] However, family acceptance, supportive partnerships, and access to community support, both online and offline, can serve as protective factors against mental health conditions and stigma. Training healthcare professionals in affirmative therapeutic practices and providing inclusive care can significantly improve the mental health outcomes of LGBTQI+ individuals.

7. Geriatric Mental Health

India's ageing population is projected to reach 324 million by 2050, with 20 per cent of the elderly currently experiencing depression and 4.1 million living with dementia.

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[16]Suresh Bada Math and others, 'Psychological Impact of the Tsunami on Children and Adolescents From the Andaman and Nicobar Islands' (2008) 10 Primary Care Companion to The Journal of Clinical Psychiatry 31.

[17]Naveen Kumar Channaveerachari and others, 'Psychiatric and Medical Disorders in the Aftermath of the Uttarakhand Disaster: Assessment, Approach, and Future Challenges' (2015) 37 Indian Journal of Psychological Medicine 138.

[18]Biju Viswanath and others, 'Psychological Impact of the Tsunami on Elderly Survivors' (2012) 20 The American Journal of Geriatric Psychiatry: Official Journal of the American Association for Geriatric Psychiatry 402.

[19]Suresh Bada Math and others, 'Disaster Management: Mental Health Perspective' (2015) 37 Indian Journal of Psychological Medicine 261.

[20]Suresh Bada Math and others, 'Telepsychiatry Operational Guidelines-2020' (2020) Bengaluru: NIMHANS Pub.

[21]Sweta Saraff and others, 'Stigma and Health of Indian LGBT Population: A Systematic Review' (2022) 7 Stigma and Health 178.

[22]Suresh Bada Math and Shekhar P Seshadri, 'The Invisible Ones: Sexual Minorities' (2013) 137 Indian Journal of Medical Research 4.

These numbers are expected to rise by 2050.[23] Mental health issues in older adults are often accompanied by physical conditions like diabetes, cardiovascular diseases, and sensory impairments. Integrating mental health services into existing general healthcare systems is crucial to addressing this dual burden. Informal care, such as that provided by family members or community groups, is more commonly utilised by older adults, especially in rural areas. Future initiatives should focus on building multidisciplinary teams, enhancing community-based care, and leveraging technology to provide comprehensive mental health services for the elderly.[24]

8. Child and Adolescent Mental Health

The prevalence of mental health disorders among children and adolescents ranges from 6.46 per cent in community settings to 23.33per cent in schools.[25] Common issues include depression, anxiety, conduct disorders, developmental disorders, and substance abuse. The National Mental Health Survey (2016) found that 7.3 per cent of children aged 13-17 years have mental disorders, with higher rates in urban areas. Significant concerns include depressive disorders, agoraphobia, intellectual disabilities, and psychotic disorders.[26]

The National Mental Health Programme and *Rashtriya Kishor Swasthya Karyakram*, need to emphasise the mental health needs of young populations and are often not effectively implemented. To improve access and early intervention, integrating child and adolescent mental health services into primary healthcare is essential. Developing a national policy focusing on mental health for young populations, incorporating provisions for early diagnosis, treatment, and prevention, is necessary. Additionally, enhancing community-based care through school programmes, peer counselling, and family support will help reach underserved populations. Increasing the number of trained professionals and raising awareness about mental health, substance abuse, and suicide prevention can reduce stigma and improve service utilisation.

9. Subsyndromal Category – Need for Innovative Approach

Mental health conditions that have not yet reached a threshold of illness, known

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[23]Subhashini K Rangarajan and others, 'Public Health Perspectives of Geriatric Mental Health Care' (2021) 43 Indian Journal of Psychological Medicine S1.

[24]Sharad Philip and others, 'Future-Proofing Geriatric Mental Health Care Services in India: Training and Policy Directions' (2021) 43 Indian Journal of Psychological Medicine S134.

[25]Malhotra Savita and Bichitra Nanda Patra,'Prevalence of Child and Adolescent Psychiatric Disorders in India: ASystematic Review and Meta-analysis'(2014) Child and Adolescent Psychiatry and Mental Health9.

[26]Md Mahbub Hossain and Neetu Purohit, 'Improving Child and Adolescent Mental Health in India: Status, Services, Policies, and Way Forward' (2019) 61 Indian Journal of Psychiatry 415.

as subsyndromal conditions, still require timely[27] intervention.Without timely intervention, these conditions may progress into full-blown disorders. Non-formal professionals, such as neighbourhood counsellors, could be instrumental in providing early support, making help more accessible and reducing stigma. Consulting a psychiatrist still carries significant stigma, so task shifting and task sharing are necessary strategies to address this issue. Training a broader range of personnel to handle such cases would expand the human resource pool in mental healthcare and foster early intervention.

10. Rights Based Mental Healthcare

The National Human Rights Commission (NHRC) and the Supreme Court have urged the reduction of long-stay patients in psychiatric hospitals, highlighting concerns about the rights of those with mental illness. Historically, human rights violations, such as chaining and isolation, have been reported. Following a fire accident in a mental health facility, a series of Public Interest Litigations (PILs) led to the periodic monitoring of state-run hospitals.[28,29] Physical inspections revealed significant gaps in care, though improvements have been made over the years.[30] Despite progress, many patients remain institutionalised without community reintegration. The Mental Health Care Act, 2017, which replaced the older 1987 Act, focuses on protecting individual rights and promoting the dignity of persons with mental illness.[31]

11. Mental Healthcare Act, 2017

The Mental Healthcare Act, 2017, marks a paradigm shift in India's mental health policy by legally ensuring the rights of individuals with mental illness. The Act mandates the state to develop human resources that meet international standards within a decade. The NIMHANS Digital Academy, in collaboration with other digital academies across India, plays a pivotal role in this effort by providing comprehensive training to mental health professionals. Through this, individuals are guaranteed access to mental healthcare services, non-discriminatory treatment, and legal recourse

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[27]Narayana Manjunatha, 'Trishul Division of Mental Health: Conveying All Sadness or Stress of Life Is NOT a Mental Illness to People, the Public, Professionals, and Policymakers' (2023) 65 Indian Journal of Psychiatry 983.

[28]Dr. Upendra Baxi (I) vs State Of Uttar Pradesh And Anr. (1983)2SCC308

[29]Nagaraja DN, Murthy P (eds) Mental Health Care and Human Rights. New Delhi: National Human Rights Commission (NHRC), 2008.

[30]Channabasavanna SM, Murthy P.,'The National Human Rights Commission report 1999: A Defining Moment' Agarwal SP (ed.) Mental Health – An Indian Perspective 1946-2003. New Delhi: Elsevier, 2004. pp. 108–12.

[31]Suresh Bada Math and others, 'Mental Healthcare Act 2017 – Aspiration to Action' (2019) 61 Indian Journal of Psychiatry S660.

if their rights are violated. The Act establishes mental health as a justiciable right, significantly advancing mental healthcare in India.[32]

12. Community-Based Living for Persons with Mental Health Issues

A significant number of beds in state mental hospitals remain occupied by long-stay patients. In a landmark ruling, the Honourable Supreme Court (Writ Petition No. 412/2016),[33] stressed deinstitutionalisation, mandating that individuals who have recovered or are fit for discharge should not remain in mental health institutions. The supreme court had urged the government to develop strategies for transitioning individuals into community-based living, ensuring their rights and dignity. The National Strategy for Inclusive and Community-Based Living for Persons with Mental Health Issues outlines a shift from institutional care to community-based support, involving collaboration between government, NGOs, and community stakeholders. The strategy aims to provide persons with mental health issues the opportunity to live with autonomy and dignity.[34]

13. Digital Mental Health Technology

Digital technology has the potential to revolutionise community-based mental healthcare by increasing accessibility and reducing stigma. Innovations such as telemedicine platforms, mobile health applications, virtual therapy, and AI-based tools offer comprehensive mental health services remotely. These technologies enable self-assessment, therapy, and support, making care available anytime, anywhere. However, challenges such as privacy, data security, and maintaining care quality must be addressed. The Tele-MANAS initiative extends digital care to underserved populations, while the Mental Health Care Act, 2017, ensures the protection of human rights.[35]

In summary, combining digital tools with community services represents the future of mental healthcare, shifting from hospital-centred, specialist-driven models to community and primary care-focused systems.

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[32] Suresh Bada Math and others, 'Mental Health Care Act, 2017: How to Organize the Services to Avoid Legal Complications?' (2022) 64 Indian Journal of Psychiatry S16.

[33] 'Gaurav Kumar Bansal vs The State Of Uttar Pradesh on 10 July, 2017' <https://indiankanoon.org/doc/162348665/> accessed 1 September 2024.

[34] L Narasimhan and others, 'National Strategy for Inclusive and Community Based Living for Persons with Mental Health Issues' (2019) New Delhi: The Hans Foundation.

[35] Barikar C Malathesh and others, 'Embracing Technology for Capacity Building in Mental Health: New Path, Newer Challenges' (2021) 92 Psychiatric Quarterly 843.

Inclusive Governance and Human Rights

M.J. Akbar*

When conflicts over geography push the world towards another contiguous conflagration, killing innocents with heartless abandon, it is easy to miss that one of the great conflicts of our times is ideological: democracy versus dictatorship. This debate will shape our world, for democracy is the fundamental human right of the 21st century and contemporary hallmark of human progress.

Dictatorship was once conventional, either in the form of feudalism or colonialism. Today, dictatorship is at best an alibi, a fake excuse trotted out by cliques or oligarchies to justify continued exploitation of their own people. Democracy places freedom at the apex of human achievement: freedom of thought, freedom from deprivation and poverty, freedom from gender prejudice, and the freedom to change governments if those in power do not deliver. The new political template has been redefined by the impulses of a republican age, driven by the changing values of the people: the public is at the heart of the republic.

The critical difference between democracy and dictatorship is human rights, in which the individual is as important as the collective. The rationale is not complicated. The people did not win freedom from their monarchs and foreign viceroys in order to replace them with domestic tyranny or state oppression in the pursuit of static theories like Marxism.

Modernity in the 21st century is built on four pillars: free speech and conscience; the right to believe in religion, in which the divine is a personal choice; total elimination of poverty and injustice; and gender emancipation. This is the edifice of human rights in contemporary civilisation. Women cannot be treated as male property as they were in almost every society till the 19th century; they were not given a vote in Britain and France till the 20th century had become old. A generation later, universal freedom and equality are sacred human rights, a phenomenon of unique and unprecedented human progress.

Reductionist ideologies find it convenient to limit human rights to basic needs like food, shelter and medicine. They are vital, of course. Food, shelter, education, medicine are no longer negotiable benefits; they are the primary duty of governance,

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as is a rising standard of living. Famine, the brutal and savage reality of colonialism in India and across the colonised world, is now a distant memory in most of the world. Any government which permits hunger has no reason to survive.

But if progress has to mean anything, then surely it must evolve into something more than a comfortable materialism as sugar coating for intellectual serfdom. The Bible told us that man does not live by bread alone, but every Christian elite for two millennia ignored this as the idealism of prophets. That Biblical idealism is a fundamental human right of the 21st century.

Communist China is a successful state, but it is not a modern state. It has succeeded in poverty reduction and gender empowerment, but its people have not expressed free will since creation. The Chinese people cannot change their government; they do not have a vote. They have never heard of an election. The Marxist government has apportioned to itself the divine right of kings, by which any change in leadership is the privilege of a secretive conclave, much as it was in feudalism. In theory, members of the Chinese Communist Party can vote for a leader, but as in any autocracy they have been reduced to obedient apparatchiks whose loyalty is measured by careful eyes. Like the feudal nobility, they get rewards for obedience. It is the party, not the state, which has an army, and owns the nation's natural resources, and controls the economy. China has no government. The Chinese Communist Party has an administration. You can recognise a dictatorship by dictated applause of managed audiences when dictators appear before television cameras. The ruling oligarchy doles out doses of happiness as insurance against insurrection.

Economic enhancement is and must be a basic right; but so must be the right to live in a state where the mind is without fear and the head is held high. You cannot laugh when your head is bowed. You only laugh when your head is raised. In a democracy political humour is never condemned to the underground; it sails through social media and thrives in social institutions.

China does not permit religious belief. Democracies, sensibly, included the right to be atheist in their concept of faith freedom. Freedom after all means that you cannot impose. Faith suppression has created a dangerous vacuum in Chinese society that could explode when frustration hits critical mass. Rationalists will smile at this proposition if they are kind, or sneer if they are not. They forget that religion will always hold a powerful grip on our imagination as long as we are unable to find an explanation for the mystery of birth and death.

Freedom is indivisible. Freedom is a sophisticated right. This ideological battle began in earnest about a century ago, with the staggered end of the age of empires and the

rise of the republican nation state as a primary building block of the international architecture of stability. As is obvious from any look at the world map, the battle has not yet been conclusively won. But the advance in the past half century, accelerating with the collapse of the Soviet Union and reinvention of Russia, has been phenomenal. Dictatorship is in terminal decline or has disappeared from East Europe, Latin America and large swathes of Asia.

There are still dictators and oligarchs who justify their usurpation of political authority and economic privilege in the name of the collective good. This fiction is most apparent in worst-case authoritarian Africa, but evident elsewhere too. Their armies are instruments of domestic oppression instead of guardians of frontier security. Evidence suggests that this is not sustainable.

A century ago, two great men with opposed ideologies rose to the top of global attention as they sought, with equal sincerity, to fashion a new future for mankind: Mohandas Karamchand Gandhi and Vladimir Lenin. Gandhi believed in democracy, non-violence, faith freedom, equality across caste and gender, and radical poverty elimination. Gandhi's non-violence was also a fundamental human right; the right to live and become the change.

Lenin believed in violent revolution, total disruption of the social order to abolish class, rejected religion and dismissed elections as bourgeois luxuries. We know which ideology has survived. Marxist-Leninism collapsed in an embarrassing heap in the 1980s. Chinese Communism tottered through only because it turned Mao Zedong into a paper tiger, printing currency notes with his image and abandoning every single Maoist economic tenet and social diktat. Deng Xiaoping famously was not interested in the colour of the cat as long as it caught mice. He threw the red cat into the dustbin of history. That tells the story.

Non-violence, in dramatic contrast, has established human rights across the globe. Non-violence ended colonialism in India, and once this horrific European project failed in India it could not survive anywhere else. Non-violence decimated Communism; the uprising which dismantled the Soviet Union was peaceful. Non-violence ended apartheid in South Africa and successfully challenged racism against Blacks in America. Beijing tottered when non-violent students took over Tiananmen Square. The power of non-violence has been underestimated in a world addicted to violence.

Gandhi's greatest achievement was not the liberation of India from the British, but the liberation of Indians from fear. Freedom from fear is the ultimate human right.

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New Criminal Laws: Focusing on Delivery of Justice

Praveen Sinha*

Abstract

The Bharatiya Nyaya Sanhita (BNS), 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhiniyam (BSA), 2023, the three new criminal major laws have repealed and replaced the Indian Penal Code (IPC), 1860, the Code of Criminal Procedure (CrPC), 1973, and the Indian Evidence Act (IEA), 1872, respectively. They have come into force from the 01 July 2024. 'Nyaya' means 'Justice', the change in nomenclature eloquently symbolises the changed focus of the Criminal Justice System (CJS) from 'penalising the accused' to 'delivery of justice'. This article discusses the significant reforms envisaged by the new criminal code for enhanced delivery of justice to each of the stakeholder in the CJS – the victim, witness, accused and the society.

Keywords: Reforms, criminal justice, victims, offences

1. Introduction

The following extract from the 'Statement of Objects and Reasons' of the BNSS, 2023, succinctly encapsulates the avowed spirit and objectives of the new criminal laws.

> *Fast and efficient justice system is essential component of good governance. However, delay in delivery of justice due to complex legal procedures, large pendency of cases in the courts, low conviction rates, insufficient use of technology in legal system, delays in investigation system, inadequate use of forensic technology are the biggest hurdles in speedy delivery of justice, which impacts the poor man adversely. In order to address these issues, a citizen centric criminal procedure is need of the hour.*

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In addition, the objects of BNS, 2023, also include strengthening law and order and securing life and liberty of the citizens.

Delivering justice to all the stakeholders of the CJS entails putting in place legal structures and procedures which instill confidence in the fairness and efficiency of each stage of investigation, prosecution and trial, thereby ensuring justice to victim, sense of safety and security to the society, proper treatment to witness and fair trial to the accused, while upholding their human rights. The ensuing paragraphs highlight some of the salient initiatives of the new laws to achieve these goals.

2. Victim - Centric Reforms

Criminal justice reforms have historically focused more on the rights of accused, while relatively neglecting those of the victims of crime. Crime being an offence against the state, the victim was not even recognised as a proper stakeholder in the CJS, deprived of the basic right to information leave aside participatory rights. The victim-centric reforms were long overdue. Even the UN Victims' Declaration (1985),[1] 154th Law Commission Report (1996)[2] and Justice Malimath Committee Report (2003)[3] have recommended several measures for empowerment of victim in the CJS. The new laws place victim at the centre of the CJS, mainly through the following measures:

1) First and foremost, the definition of 'victim' has been revised. In the CrPC, 1973, victim is defined as a person who has suffered loss or injury for which the accused person has been charged.[4] This prerequisite for the accused to be charged has been removed, thus eliminating the fundamental impediment to victims' receiving due compensation and relief, only on account of the accused not getting charged for the offence.[5]

2) Another significant reform pertains to easier registration of complaints of cognisable cases. Known as First Information Report (FIR), they set the CJS in motion. These citizen-friendly measures include:

    i. Registration of Zero FIR — Information regarding commission of offence may now be given at any police station anywhere in India,

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[1]Justice for Victims of Crime and Abuse of Power (1985), General Assembly Resolution 40/34
[2]Law and Justice Ministry, On the Code of Criminal Procedure 1973, Chapter X Law Commission, Protection and Facilities to Witnesses, (Law Com No 154, 1996)
[3]Ministry of Home Affairs, Committee on Reforms of Criminal Justice System (2003)
[4]CrPC, 1973, s. 2 (wa).
[5]BNSS, 2023, s. 2 (1)(y).

irrespective of jurisdiction, which will register it and later transfer it to the jurisdictional station.[6] This will be especially helpful to women, children, poor and weak who can lodge complaint from their place of convenience. This will also stop the informant being made to run from one police station to another, due to lack of jurisdictional clarity. Several Supreme Court judgements have recommended implementation of Zero FIR, as has Justice Verma Committee that was set up after Nirbhaya gang rape case in 2012.

ii. e- FIR — Information can also be given through electronic communication.[7] However, the informant has to sign it in person within three days. This will benefit the informants who cannot visit the police station immediately.

iii. For those aggrieved by the refusal of the police station or the Superintendent of Police to register the complaint, an additional remedy of submitting application to the magistrate has been provided.[8]

iv. For proper monitoring of complaints regarding commission of non-cognisable offences (cases where police can investigate only on orders of court) made to the police station, the new law mandates the police to forward fortnightly report to the magistrate.[9]

3) Informational rights bestowed upon the victim include receiving a copy of the registered FIR free of cost[10] and information on the progress of the investigation within a period of 90 days.[11] The victim, if represented by an advocate, shall also be supplied copy of police report and other documents by the magistrate.[12]

4) Participatory rights given to the victim include the right to engage advocate of choice, with permission of the court, to assist the prosecution;[13] and the right to be given an opportunity of being heard, before the prosecutor presses to withdraw from prosecution cases against any person.[14]

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[6]BNSS, s. 173 (1).

[7]BNSS, 2023, s. 173 (1)(ii).

[8]BNSS, 2023, s. 173 (4).

[9]BNSS, 2023, s. 174 (1)(ii).

[10]BNSS, 2023, s. 173 (2).

[11]BNSS, 2023, s. 193 (3)(ii).

[12]BNSS, 2023, s. 230.

[13]BNSS, 2023, s. 18 (8), *Proviso*.

[14]BNSS, 2023, s. 360, *Second Proviso*.

5) These rights are in addition to the existing right to compensation from the state under victim compensation scheme and the court awarded compensation at the time of sentencing, to be paid by accused person.[15]The privacy rights which prohibit printing or publishing names of victims of certain sexual offences, which may disclose her identity, remain intact.[16]

6) Certain special provisions have been made for the benefit of women, children, elderly and transgender.

2.1 Special Provisions for Woman, Child, Elderly and Transgender

2.1.1 Woman

(a) The first chapter on offences in BNS, 2023 (Chapter V), is a new dedicated one on 'offences against woman and child', symbolising the special importance given to the subject. Even the UN Declaration on the Elimination of Violence against Women, 1993, urges to make efforts to eliminate such violence. Certain provisions introduced for ensuring safety and upholding the dignity of woman, inter alia, include:

i. A new offence of 'employing deceitful means or making false promise to marry a woman for sexual intercourse' has been introduced.[17] Deceit includes inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

ii. Offences of 'voyeurism' and 'disrobing' of woman have been made gender neutral in respect of accused.[18]

iii. The scope of offence of marital rape has been enlarged, by extending it to sexual intercourse between a man and his wife under eighteen years from earlier age limit of fifteen years.[19]

iv. In the IPC, 1860 'death penalty' was one of the alternate punishments for offence of gang rape on woman below twelve years age.[20] The BNS, 2023, has made it more stringent by extending it to offences where the victim's age is below eighteen years.[21]

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[15]BNSS, 2023, s. 396.

[16]BNS, 2023, s. 72 (2)

[17]BNS, 2023, s. 69.

[18]BNS, 2023, ss. 77 and 76.

[19]BNS, 2023, s. 63, Exception 2; IPC, 1860, s. 375, Exception 2.

[20]IPC, 1860, s. 376DB

[21]BNSS, 2023, s. 70 (2)

<ol type="i" start="5">
<li value="5">Certain additional safeguards regarding recording of the statement of victim of rape have been made. It shall be, as far as practical, recorded by a woman police officer in the presence of her parents or guardian or near relative or social worker of the locality and may also be recorded through any audio/video visual means, including mobile phone.[22] The police officer shall also get the statement recorded by a magistrate as soon as possible. It shall be recorded by woman magistrate and in her absence by a male magistrate in the presence of a woman.[23]
<li value="6">The medical practitioner is now mandated to forward the medical examination report of rape victim to the investigation officer, within seven days of examination.[24]

(b) In certain provisions of the old criminal law, women have been treated as the property of husband or even equated with servant or clerk of the husband. Even an adult female did not have the right to receive summons on behalf of any absent family member.[25] The dignity and individuality of women have been upheld by removing such discriminatory provisions.[26] Similarly, the offence of 'adultery'[27]in the IPC,1860, which criminalised consensual sexual intercourse with the wife of another man, without the consent or connivance of that man, has now been omitted in the new law.[28]

2.1.2 Child

The new criminal laws have also given extra emphasis on child rights. Some notable ones are:

(a) A uniform definition of 'child' as any person below the age of 18 years has been introduced, replacing different confusing phrases like 'minor girl', 'person under the age of 18 years', 'young person', 'person under the age of 20 years'.[29] This is similar to that recognised by the UN Convention on the Rights of the Child (1989).[30]

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[22]BNSS, 2023, s. 176 (1), *Second Proviso*.

[23]BNSS, 2023, s. 183 (6)(a), *First Proviso*.

[24]BNSS, 2023, s. 184 (6).

[25]CrPC, 1973, s. 64.

[26]BNS, 2023, ss. 3(3), 84, 164 Exception; IPC, 1860, ss. 27, 498, 136 Exception.

[27]IPC, 1860, s. 497.

[28]IPC, 1860, s. 377.

[29]BNS, 2023, s. 2 (3).

[30]UN, Convention on the Rights of the Child (1989), General Assembly Resolution 44/25

(b) A new offence 'hiring, employing or engaging a child to commit an offence' has been created in the BNS, 2023.[31]

(c) Several offences like 'procuration of child', 'kidnapping of child from lawful guardianship' and 'importation of child from foreign country' have been made gender neutral, thereby extending same protection to male child which was hitherto available to girl child only.[32]

2.1.3 Elderly

(a) For the benefit of the elderly parents, maintenance proceedings against persons refusing to maintain their father or mother can now also take place where the dependent father or mother reside.[33]

(b) The persons above 65 years hitherto could have been examined during investigation only at their residence. The new law further extends this relaxation to persons above 60 years, as also to enquiry of a suspicious death.[34] Further, they have been given another option of getting examined at the police station.

2.1.4 Transgender

(a) For the first time, transgender has been defined as a separate category in the BNS, 2023.[35]

(b) Furthermore, acceding to the demand of the LGBTQ community, offence of sodomy in the IPC, 1860, has been removed from the new law.[36]

3. Witness Protection

1) Full and truthful testimony of witness, shielded from fear and intimidation, is the foundation stone of a free and fair trial. Several Law Commission Reports,[37] Malimath Committee Report and Constitutional Court judgements[38] have highlighted the necessity of a comprehensive witness protection scheme. The BNSS, 2023, has now mandated every state

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[31] BNS, 2023, s. 95.

[32] BNS, 2023, ss. 96, 139 (1) and 141.

[33] BNSS, s. 145 (1)(d)

[34] BNSS, 2023, ss. 179 and 195, *First and Second Proviso*.

[35] BNS, s. 2 (3).

[36] IPC, 1860, s. 377.

[37] Viz. 154th 178th 198th

[38] Mahender Chawla &Ors. Vs. Union of India &others. [2018]

government to prepare and notify a witness protection scheme for the state.[39]

2) The aged, infirm and woman witnesses have been given special protection. They can be examined only at their residence or, at their option, at the police station.[40]

4. Justice to Accused

The principle of presumption of innocence of accused till proved guilty, principles of natural justice —rule against bias *(Nemo Judex in Causa Sua)*, rule of fair hearing *(Audi Alteram Partem),* a reasoned speaking decision and the right to constitutional and judicial remedies form the cornerstone of Indian CJS. Right to speedy justice and the right to fair trials enshrined in the Fundamental Right to Life and Liberty guaranteed by Article 21 of the Indian Constitution.[41]Arbitrariness in exercise of police powers, delayed and expensive criminal justice system often erode public faith in the institutions. The new criminal laws, especially the BNSS, 2023, have seriously addressed the problem of delay in investigation, prosecution, enquiry, inquiry, trial and other allied proceedings by introducing time limits for almost forty different activities. Introduction of technology at all stages of criminal proceedings is another path breaking reform. Some of these momentous initiatives, which have the potential to transform the speed and quality of justice delivery, are discussed below.

4.1 Right to Speedy Justice

4.1.1 Setting Timelines

Outer time limits have been set for performance of several important activities at the stage of investigation, inquiry and trial. Some such activities at the investigation stage include preliminary enquiry to ascertain *prima facie* commission of cognisable offences, that are punishable by three to seven years of sentence;[42]forwarding several types of reports by investigator/medical officer;[43] further investigation by police

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[39]BNSS, 2023, s. 398.

[40]BNSS, 2023, ss. 179 (1), *First Proviso* and 195 (1)

[41]Hussainara Khatoon and others v. Home Secretary, State of Bihar, [AIR 1979 SC 1369]; Moti Lal Saraf v. Union of India, 2007(1) [SCC Cri, 180].

[42]BNSS, 2023, s. 173 (3)(i)

[43]BNSS, 2023, ss. 174 (1)(ii), 51(3), 184 (6).

after filing of charge-sheet;[44]granting prior sanction for prosecution of an accused.[45] At the inquiry and trial stage, timelines have also been set for various processes like supply of police report, documents etc.;[46]committal of cases;[47]filing discharge petition;[48]framing of charge;[49] filing application for plea bargaining[50]pronouncement of judgement after completion of trial.[51]

4.1.2 Enhanced Use of Technology

The new criminal law introduces use of technology at almost all stages of criminal proceedings like registration of FIR, recording of statement by police/magistrate, service of summons, issue of warrants by electronic means, search/seizure proceedings, supply of records in digital means or recording of evidence during trial.[52]Enhanced use of technology would reduce delay, bring more transparency, diminish scope for corruption, improve efficiency in the system of record keeping, provide much needed relief from physical discomfiture to the accused, witness and even the victim.

Definitions of several offences have been amended to include those committed by means of electronic devices. An "act endangering sovereignty, unity, integrity of India"[53] and "promoting enmity between different groups by words or visible representation or electronic communication"[54] are a couple of such offences.

The revised rules of evidence place electronic /digital evidence on equal footing with traditional documents. Definition of 'document' and 'evidence' has been revised,[55]electronic or digital records have been brought under primary evidence[56] and the scope of the secondary evidence widened to incorporate copies made through mechanical processes.[57] Two new terms 'audio-video electronic means' and 'electronic communication' have been defined in the BNSS, 2023.[58]

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[44]BNSS, 2023, s. 193 (9), *Proviso*.

[45]BNSS, 2023, s. 218 (1), *Second Proviso*.

[46]BNSS, 2023, s. 230.

[47]BNSS, 2023, s. 232, *First Proviso*.

[48]BNSS, 2023, s. 250 (1).

[49]BNSS, 2023, s. 263 (1).

[50]BNSS, 2023, s. 290 (1).

[51]BNSS, 2023, s. 392 (1).

[52]BNSS, 2023, ss. 173 (1), 180*First Proviso*, 183 (1) *First Proviso*, 64 (2) Proviso, 227 (1), 105, 185 (2) *Proviso*, 193 (3)(i), 193 (8) *Proviso*, 254 (1) *Proviso*, 265 (3) *Second Proviso*.

[53]BNS, 2023, s. 152.

[54]BNS, 2023, s. 196.

[55]BSA, 2023, ss. 2 (1)(d) and 2 (1)(e).

[56]BSA, 2023, s. 57, *Explanation 4, 5, 6 and 7*.

[57]BSA, 2023, s. 58 (ii).

[58]BNSS, 2023, ss. 2 (1) (a) and 2 (1) (i); BNS, 2023, s. 2 (8).

4.1.3 Procedural Changes

Certain new provisions expected to expedite the trial include limiting the number of permissible adjournments during trial to two;[59]expanding the ambit of the summarily triable cases;[60]provision of deemed prosecution sanction when not received within 120 days;[61]evidence by successor in office of public servants in certain cases.[62]

(a) Right to Fair Investigation and Trial

   i) Several new provisions have been introduced to check the arbitrary exercise of police powers. They include mandatory audio-video electronic recording of police searches with a copy to be sent to nearest magistrate without delay,[63] recording grounds of search in case diary[64] and the sequence of custody in case of electronic evidence in the Final Police Report.[65]In offences punishable by seven years or more, forensic expert is to mandatorily visit the scene of crime and also carry out its videography.[66]Further, a time limit has been fixed for police to conduct further investigation, after submission of charge-sheet.[67]Additional safeguards have also been introduced regarding arrests by police. The state government has to establish a police control room in every police station and district headquarter, designate a police officer for maintaining details of arrestee, which have to be displayed even in digital mode.[68]In certain cases, prior permission has to be obtained before arresting aged or infirm person.[69]New provision for second medical examination of arrestee on doctor's opinion is also made.[70] Handcuffing of arrestee is permissible only in certain specified cases.[71]

   ii) As protection against frivolous and malicious complaints, magistrate shall

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[59]BNSS, 2023, s. 346 (2), *Fourth Proviso*, (b).

[60]BNSS, 2023, s. 283 (2)

[61]BNSS, 2023, s. 218 (1), *Second Proviso*.

[62]BNSS, 2023, s. 336.

[63]BNSS, 2023, s. 105.

[64]BNSS, 2023, s. 185 (1).

[65]BNSS, 2023, s. 193 (3)(i)(i).

[66]BNSS, 2023, s. 176 (3).

[67]BNSS, 2023, s. 193 (9), *Proviso*.

[68]BNSS, 2023, s. 37.

[69]BNSS, 2023, s. 35 (7).

[70]BNSS, 2023, s. 53 (1) *Proviso*.

[71]BNSS, 2023, s. 43 (3).

now take cognisance of a complaint case only after hearing defence of the accused.[72]

iii) An additional stage of preliminary enquiry, to ascertain whether there exists a *prima facie* case before proceeding with regular investigation, has been introduced for certain types of offences.[73]

iv) An elaborate multi-tier 'Directorate of Prosecution' has been created to properly supervise the prosecution of cases.[74]

(b) Reformatory Approach

Certain new provisions reveal a liberal and reformatory approach towards the accused. Some of these provisions are:

i   'Community Service' has been introduced as a new form of punishment for six petty offences.[75]

ii   Several offences in the IPC, 1860, like **'adultery'**,'unnatural offences' — sodomy and bestiality, 'sedition', 'attempt to commit suicide' and 'thuggery' have been removed from the new laws.[76]

iii   Lenient approach towards the first-time offender is adopted in plea bargaining cases by reducing the punishment for them,[77] as also in grant of bail to first time under trials.[78] Same leniency in punishment is adopted in petty theft cases where the stolen amount is restored.[79]

iv   Provision for free legal aid to the poor accused is retained.[80]

v   The custody of accused is no more mandatory for collection of specimen or sample[81] or for production along with charge-sheet before the magistrate.[82]

5. Society and State – Ensuring Safety and Security

The final stakeholder in the CJS is the society and the state. It is the primary duty of

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[72]BNSS, 2023, s. 223.

[73]BNSS, 2023, s. 173 (3)(i).

[74]BNSS, 2023, s. 20.

[75]BNS, 2023, s. 4 (f); BNSS, 2023, s. 23, *Explanation*.

[76]IPC, 1860, ss. 497, 377, 124A, 309, 310.

[77]BNSS, 2023, ss. 293 (c) and (d).

[78]BNSS, 2023, s. 479.

[79]BNS, 2023, s. 303 (2), *Proviso*.

[80]BNSS, 2023, s. 341.

[81]BNSS, 2023, s. 349, *Second Proviso*.

[82]BNSS, 2023, s. 190 (1), *Proviso*.

the state to preserve and protect the unity, integrity and sovereignty of the country. Ensuring safety and security to its citizens through proper maintenance of law and order and an effective control over crime, criminals and disruptive activities is also its basic responsibility. To achieve these goals, some of the key changes brought about by the new laws, including introduction of new offences like 'Organised Crime' and 'Terrorist Act' in the general penal law, are mentioned below.

5.1 New offences

i   Organised crime, petty organised crime, snatching, lynching (murder or grievous hurt by five or more persons on the grounds of victim's social profile) have been introduced as offences.[83] A provision is created for attachment and forfeiture of property obtained as proceeds of crime.[84] The ambit of several offences has been enlarged. These include 'causing grievous hurt', 'theft in dwelling house' and 'mischief'.[85] An aggravated form of death by rash and negligent driving is also created.[86]

ii 'Terrorist act', 'abetment outside India of offence in India', 'act endangering sovereignty unity and integrity of India' and 'promoting enmity between different groups on specific grounds and doing acts prejudicial to maintenance of harmony' have also been made offences in the BNS, 2023.[87]

5.2 Enhanced Punishments

The quantum of punishment for certain offences has been increased, and in certain offences minimum punishment has been provided. The power of magistrates to impose fine has been increased.

5.3 Trial in Absentia

To counter the challenge of fugitive criminals, a new detailed provision of trial in absentia of persons declared as proclaimed offender has been introduced.[88] The scope to declare an absconding accused a proclaimed offender has also been expanded to cover all cases punishable by over ten years imprisonment.[89]

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[83]BNS, 2023, ss. 111, 112, 304, 103 (2), 117 (4).

[84]BNSS, 2023, s.107.

[85]BNS, 2023, ss. 117, 305, 324 (3), 326.

[86]BNS, 2023, s. 106 (2).

[87]BNS, 2023, ss. 113, 48, 152, 196.

[88]BNSS, 2023, s. 356.

[89]BNSS, 2023, s. 84(4).

6. Conclusion

The new criminal laws will prove transformational in delivery of justice, if properly implemented in letter and spirit by each arm of the CJS — the police, prosecutor, prison authorities and the courts. However, this may sometimes involve successfully navigating through the competing rights and conflicting interests of different stakeholders — victim, accused, witness and society. Critiques have pointed out few gaps in law such as absence of effective remedy to the victims of non-consensual sodomy, bestiality and marital infidelity consequent to repeal of the offences of 'unnatural offences' and 'adultery' contained in sections 377 and 497 of the IPC, 1860, respectively. These gaps need to be addressed. Furthermore, the extensive usage of technology and forensics envisaged by the new laws will require massive upgradation in infrastructure and training of human resources, which reportedly is being taken up on priority.

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Privacy and Hence Digital Privacy is a Fundamental Right

Rajeev Chandrasekhar *

1. Background

As we near the end of 2024, when we look back and look ahead, we see a picture of a world that seems beset with challenges and conflicts —polarised discourses, global pandemic, conflict in Europe and West Asia, and countries in South Asia are encountering domestic turmoil and outside interference, etc. So, one cannot be faulted for approaching the task of envisioning the future with some trepidation.

Yet, there is a bright spot, despite the gloom. One can arguably say that we are witnessing the best possible period in the history of humankind for technological innovation and scientific research, and the transformation that they have brought into the daily lives of the people and societies all over the world.

Technological innovation, that started with the computer and progressed to the internet and now accelerating at a tremendous velocity with AI and other cutting edge technologies, is disrupting and causing tectonic changes in its wake — embedding individuals and communities into what is referred to as cyberspace. The world that we live now, we identify as citizens more in the digital world than in the physical world and that is increasing by the day. This cyberspace is different from physical world in one significant aspect: it is borderless and till recently with limited governance and laws of any consequence, compounded by the ability to harm and commit crimes across multiple sovereign jurisdictions.

2. Need for Digital Citizens Rights

As citizens become digital citisens (*digital nagriks*), there is growing discussion and discourse about the safety and rights of digital citizens in this ubiquitous, borderless cyberspace. First, India as the world's largest and one of the oldest democracies has a written constitution that lays out the fundamental rights of every Indian citizen. Secondly, India is amongst the world's fastest growing digital economies with unprecedented pace of digitisation of citizens with over 890 million Indians connected to the internet and digitising their lives, which is likely to touch 1.3 billion by 2026.

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For years, tech companies have behaved like a law unto themselves, escaped scrutiny and regulation of any kind because they were positioned as innovators. They quoted jurisdictions, used community rules to escape compliance with local laws or accountability. Most of them are either US or Europe based companies, who are now referred to as Big Tech. Companies and platforms that have enormous influence, including financial strength and power to influence people and even elections. For long, they have exploited personal data of their users and created search engines, targeted digital advertising engines generating billions of dollars of revenues and valuation. In almost every case, these platforms have morphed from small innovation start-ups to multibillion behemoths that dominate the cyberspace today — by exploiting and misusing consumer data. This is accelerating today with AI models that need data as a raw material to train and learn.

3. Why is Privacy Important for Digital Citizens

India's constitution starts with phrase "We the people" and is built around the principle that every citizen of India has fundamental rights. That every citizen enjoys the same fundamental rights equally. That to protect and uphold these fundamental rights are obligation of the government and state.

There has been a debate going on about individual liberty and rights vs a broader public interest and rights. Our constitution prescribes and upholds individual rights as fundamental rights that can be subject to reasonable restrictions: for example, Article 19 Right to Free Speech has reasonable restrictions under Article 19(2).

The debate on privacy is a recent one, the last two decades. Strongest opposition to the privacy debate came on the grounds of national security, where collective good was argued as having precedence over personal privacy.

At the core of digitalisation is data, especially personal data. The data that contains identifiers about the individuals is the raw material that has catalysed new data economy. Many of the fast-growing applications like search engines, social media platforms, apps, and websites have at its core, collecting, harvesting and processing huge volumes of personal data of people using their platforms. This started almost by accident. The large scale "use" of this personal data, at its most benign, to train learning models and improve services to its most worrying application of profiling users and targeting them. This phenomenon created a step function expansion in the debate and discourse of privacy and informational and data privacy. While misuse of personal data was widely known, the 2010 Facebook-Cambridge Analytica scandal

brought the spotlight on the risks and dangers even to democratic processes, which, in turn, heightened the debate around privacy and data protection into a clamour for legislated protection of the individuals' privacy online.

As Bill Gates said,

> *Historically privacy was almost implicit, because it was difficult to find and gather information. Bit in the digital world, whether its digital cameras to satellites or just what you click on in the internet, we need to have more explicit rules, not just for governments but for private companies too.*

Privacy went from an obscure abstract concept to a robust need for right to privacy.

4. Evolution of the Privacy Debate in India

The privacy debate in India is an example of how democracies legislate for new, emerging challenges for their people. It is a shining example of a fundamental right that citizens argued for, fought and wrested from a reluctant state. And so the evolution of this debate makes for a fascinating case study for all other democracies and rule based nations and societies.

India's first major national digitalisation project was the idea of a national ID. First mooted by the Government of Prime Minister Atal Behari Vajpayee in 2002, it floundered for some years as a battle for a conventional register approach to identity conflicted with the idea of a digital ID. Aadhaar, the digital ID version was launched in 2008. The approach to building this mammoth database was expensive and flawed from its inception. Building the database revolved around coercing citizens to enroll, with weak verification, approach to storing, and processing of the data of citizens. Over 500 million people were rapidly enrolled with this leaky framework with all the consequent effects, where parts or all of the databases including individual citizen ID details were available openly for purchase. Aadhaar under that dispensation quickly became a good idea gone bad and thus became the foundation for what became and has become a loud voice for privacy framework.

As a first time MP, this was one of the issues that I focussed on very early, and I was determined to argue for more rights for citizens across a broad spectrum of issues from voting rights to privacy. The then architects of Aadhaar digital ID had seduced the media and public policy establishment about all the great things that a digital ID can

(all correct) and so there was hardly any commentary or discourse around privacy or data protection. Senior editors would comment that privacy was elitist and poor do not care about it. To counter the growing demand for privacy and scrutiny, the architects of Aadhaar came up with a response that "It is designed with inbuilt privacy".

My first step was introducing a private members bill in 2010, The Right to Privacy Bill, 2010. This made MPs and media more aware of this issue. In 2012, Justice Ajit Shah Committee said, "a privacy legislation must statutorily establish a right to privacy to all individuals in India. It further recommended that the right be applicable in all situations and must not require that "a reasonable expectation be present for the right to be invoked". Still the then government did not act, leaving no option than approaching the courts. Because repeated petitions to the then government were either stonewalled or met with responses that privacy was elitist or that privacy was designed into Aadhaar.

A PIL was filed in 2013 in the Supreme Court, by a number of petitioners led by Bengaluru based Justice Puttaswamy—with my support and my own intervening petition on privacy to be declared a fundamental right.

A separate constitutional bench of the SC took up the issue to determine whether privacy was a right under the current laws (there was no legislative backing for the digital ID project thus far). In 2017, despite opposition by government's counsel and previous judgements of the Supreme Court, the right to privacy was held to be Fundamental Right under Article 21 of the constitution in the Justice K. S.Puttaswamy and Others vs Union of India case. The new Government of Prime Minister Narendra Modi supported this judgement and remains even today a major milestone, almost foundational in many ways, in India's journey to create a framework of digital citizens rights.

The next step was to codify this right — to lay out a framework that would continue to encourage innovation in digital space whilst clearly casting obligations on all digital platforms and entities (private and government) vis a vis the citizens' rights to data and informational privacy.

Thus began the next step of drafting a data protection law. The government had set up Justice Sri Krishna Committee. The government introduced a draft by late 2019 in the parliament and then referred it to a Special Joint Committee of Parliament (of which I was a member) for scrutiny in late 2019 and early 2020, just when COVID-19 started derailing the world.

The committee met several times and the result unfortunately – perhaps due to long deliberation and the disruptions caused by COVID-19 – led to a unwieldy bill despite deposing and getting suggestions from many witnesses from across the digital spectrum, from consumers to big tech to startups to industry associations to lawyers to judges.

In July 2021, I was given an opportunity to serve as a Minister in the IT Ministry, and with PM Narendra Modi's support initiated a back-to-basics rewrite of the bill. In less than six months, we had a brand-new bill that was the Digital Personal Data Protection (DPDP) Bill 2022, which after consultations was introduced in Parliament and passed as law in 2023.

5. Digital Personal Data Protection Bill – A Future Ready Architecture of Citizens Right to Privacy

The DPDP bill codifies for the digital cyberspace, the Fundamental Right to Privacy under Article 21 of Indian Constitution. The DPDP is a principle led legislation unlike prescriptive legislations such as General Data Protection Regulation(GDPR) passed by the European Union Parliament. The DPDP framework is built around the following principles (and therefore rights) of

1. User consent and data limitation
2. Purpose limitation
3. Storage limitation
4. Narrow and well-defined exemptions on limited grounds
5. Penalties and fees for breach of obligations by a Data Protection Board.

This act and framework is a more modern architecture for data protection than GDPR, and is principle-led and non-prescriptive unlike GDPR. It enables two seemingly conflicting objectives or binaries of a) Protecting citizens rights b) Encourage innovation and enterprises. The act also is designed to be future ready i.e. to evolve with progress in technology by use of sub-ordinate legislations (rules) that can keep pace with emerging challenges without having to recreate or re-legislate.

Consent is at the heart of DPDP framework —consent refers to the right of a user to have his/her data sought or used by any platform (referred to in the law as data fiduciary) only with explicit approval from the digital citizen whose data it is. The principle of user consent also establishes that the digital citizen is in effect the owner of the data and that the data fiduciary uses it in trust and in agreed ways only. Consent

is a right that is derived from the Right to Privacy. The DPDP 2023 act provides for consent structures like consent managers — a platform intermediary that can in turn intermediate consent management process between digital citizen (referred to in the act as data principal) and the platform itself.

DPDP also lays down a data limitation framework, data fiduciaries, data limitation, purpose limitation and storage limitation. Data limitation is about seeking that minimum data from the data principal as required under the consent sought. Purpose limitation refers to the right of the data principal to ensure that the data consented to and given to the platform can be used only for the purpose consented to, hence purpose limitation. Therefore, data limitation and purpose limitation become an obligation on the data fiduciary. For example, if a user A is using a platform for social media, then the data sought should be only that is required for the user accessing the service (data limitation) and the data then obtained by the platform should be only used to deliver that service (purpose limitation).

Storage limitation, the third in the limitation trio, refers to the right of the data principal that ensures that the data is not stored by the data fiduciary or the platform when it is no longer required to deliver the service.

DPDP recognises the diversity of the cyberspace and various functional domains operating on the internet. It allows other laws to prescribe higher thresholds for data protection, but never lower. For example, it permits banking regulator to prescribe narrower definitions for personal data i.e. sensitive personal data etc. and to lay down restrictive rights and obligations around those.

Recognising ubiquitous internet, the DPDP Act recognises that data fiduciaries may store data on cloud and process it outside India as well. But gives the right to the government to blacklist those jurisdictions where the rights under the DPDP act are not complied with. This permits more flexibility to tech platforms but ensures that this is subject to the rights of the data principal being complied with.

Apart from this contemporary, simple legislative approach, other major feature of this legislation was the extensive public consultation and scrutiny across the complete spectrum of stake holders including startups, legal community, public policy experts, consumer groups, Big Tech, etc. These consultations held across the country in person and online ensured that this was not a top-down government legislation as much as a legislation designed, drafted and scrutinised by all including consumers in the technology and innovation ecosystem.

DPDP ensures that governments are not exempted from this legislation. Government in India, due to recent rapid digitalisation, is one of the biggest data fiduciary and custodian of digital personal data of our citizens. The obligations for all government custodians of data remain the same as those in the private sector. Narrow exemptions for exceptional circumstances for law and order, national security and other emergent situations have been defined.

DPDP establishes a framework of data privacy rights for the digital citizen and the legal obligations on all entities (government or private) that collect this data. It does not envisage any criminal consequences in event of a breach of obligation but provides for significant financial penalties to be imposed (after determination by a separate Data Protection Board) as a punitive consequence of breach or non-compliance. These penalties serve a vital purpose: to ensure tech companies and platforms adhere to this law. There is no need for a citizen to have to demonstrate consequences or harm in event of a breach to ensure accountability, thus moving the needle of convenience in favor of the individual digital citizen. Further, the adjudication in event of a breach has been made simple, as Data Protection Board is a digital entity, where the end-to-end adjudication process is digital and online.

DPDP is creating a new regime and brings the curtains down on the era of misuse, exploitation and belief that consumers have no rights on the internet.

6. Future in Review: Safe and Trusted Cyberspace for Digital Citizens

For years Big Tech and technology players in general escaped regulation from government by masquerading as pure innovators. That mistake has left the world almost irreversible consequences of these big tech platforms with vertical and horizontal integration that are becoming too difficult or well-nigh impossible to regulate, even for the most sophisticated and capable governments and jurisprudence.

The pace at the tech sector is growing and evolving continues its scorching pace and if anything, the gap between regulations and guard rails and innovation only increases. Even as India was struggling with its challenging privacy legislation and guard rails, the phenomenon of Artificial Intelligence in the last three years has exploded. AI applications, Large Language Models, all depend on huge amounts of data to train and develop. The entire data ecosystem that the AI space is using is largely unregulated and is being left to the platforms to crawl the internet.

While the DPDP is an important marker in the overall framework for India's vibrant fast growing digital economy, it is still just the first of many other steps that are required to ensure a comprehensive framework of rights and obligations that will transform the cyberspace into a safe, trusted and accountable one vis a vis its digital users.

Regulating AI and the data sets that go into training AI platforms and models will require more than the DPDP. There is a need to specify rules and guard rails on the use, ownership and monetisation of non-personal or anonymised data (personal data with identifiers removed). A discussion is required on value share between models that are trained on an individual's data (personal or otherwise) and the owner of data. Are there new rights for the digital citizen that need to be discussed around non-personal data?

With over 900 million Indians using the internet and becoming world's largest connected country and largest single block of users on the global internet, India has to help shape the future of digital citizens rights on the internet and cyberspace and so India's DPDP legislation is a beacon of fundamental rights for digital citizens and obligations for all platforms. The responsibility is ours to make sure that the internet is a space which is safe, trusted and accountable for all its users.

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The Stigma and Challenge of Having No Fixed Address: Rights of Denotified, Nomadic, and Semi-Nomadic Tribes in India

Sandeep Chachra*

Ghumantu jatis of India, also known as nomadic tribes or itinerant communities, are groups that have historically led mobile lifestyles, moving from place to place for their livelihoods. In India, there are broadly three types of nomadic communities: (i) those engaged in hunting, trapping, gaming, etc. such as Konda Reddis, Chenchus, Kadar and Cholanayakas, Kakkipakkis, (ii) pastoral communities, including Pardis, Guzzars, Banjaras, Bhils, Minas, Kurabas, Kurumas Dangers, Madhuras, and others, and (iii) peripatetic groups involved in peddling, itinerancy, fortune-telling, storytelling, acrobatics, dancing, and drama, such as Lohars, Kaikaris (basket makers), Kewats (jute weavers), Yerakalas (basket makers), Pitchakuntla, Jogis, and more.[1] These communities collectively make up around 10 per cent of India's population.[2] Many of these communities have mixed religious identities, making it challenging to categorise them solely based on religion. For instance, some communities like Meo follow a blend of Hindu and Muslim faiths in their beliefs and practices.[3]

1. The Global Scenario and the Impact of European Colonialism

One of the primary vulnerabilities faced by nomadic tribes has been the loss of access to traditional lands. As agricultural expansion, state-building, and industrialisation spread, nomadic tribes were frequently pushed off their grazing routes and hunting grounds. This displacement often resulted in conflicts over land use, restricted access to natural resources, and forced sedentarisation, which disrupted their traditional ways of life.[4]

European colonialism, which started in the late 15th century, has caused untold harm on tribal communities, many of whom were nomadic. In fact, while the de-population

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[1]Bhangya Bhukya and Sujatha Surepally,'Unveiling the World of the Nomadic Tribes and Denotified Tribes: An Introduction'(2021) 56 (36)Engage Economic and Political Weekly

[2]Government of India, Report of the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes (Ministry of Social Justice and Empowerment, 2008)

[3]Bhangya Bhukya and Sujatha Surepally (2021).supra

[4]Anatony M. Khazanov, Nomads and the Outside World (University of Wisconsin Press, 1994)

of many continents which was a result of European settler colonialism, is fact that is now more universally acknowledged, the argument some make is that use of the term "genocide" may be an oversimplifying of the diverse and varied experiences of colonised peoples, who faced a range of atrocities not always characterised by genocidal intent.[5]

Colonial policies often aimed to assimilate indigenous peoples, erasing their identities through forced conversions to Christianity, boarding schools that forbade native languages.[6] Legal systems, set up by colonial administrations marginalised traditional governance and land rights. In many regions, indigenous communities were exploited for labour and natural resources, with little to no benefit accruing to the people themselves.[7]

Despite efforts to recognise and protect indigenous rights, many communities continue to struggle against encroachments on their lands by industries such as mining, logging, and agriculture. The ongoing fight for sovereignty, cultural preservation, and environmental justice underscores the enduring resilience of indigenous peoples against centuries of adversity.

2. Tribal Oppression Under British Colonial Rule in India

British colonialism had a profound and often devastating impact on the tribal populations in India, marked by economic exploitation, social marginalisation, and cultural disruption. The British administration introduced policies and systems that undermined the traditional livelihoods, autonomy, and social structures of tribal communities, leading to widespread oppression and resistance.

With the introduction of land revenue systems like the Zamindari, Ryotwari, and Mahalwari systems, tribal lands were often reclassified as government or private property, resulting in large-scale dispossession and displacement of tribal people. This land alienation pushed many tribal communities into poverty and forced labour, as they lost access to their ancestral forests and agricultural lands, which were integral to their subsistence and cultural practices.[8]

British forest policies further marginalised tribal communities by restricting their

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[5] Jared Diamond, Guns, Germs, and Steel: The Fates of Human Societies (W.W. Norton & Company 1997)

[6] David Wallace Adams, Education for Extinction: American Indians and the Boarding School Experience, 1875-1928 (University Press of Kansas, 1995)

[7] Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006)8 (4) Journal of Genocide Research 387

[8] Ramchandra Guha, Savaging the Civilized: Verrier Elwin, His Tribals, and India (University of Chicago Press, 1999)

access to forests through the Indian Forest Acts of 1865 and 1878. This not only curtailed the traditional rights of tribal people but also criminalised their way of life, making them subject to legal penalties for engaging in customary practices.[9]

Additionally, the British colonial authorities categorised many tribal groups as "criminal tribes" under the Criminal Tribes Act of 1871, branding them as habitual criminals based on their nomadic lifestyles. This stigmatisation led to severe discrimination, surveillance, and forced settlements in reformatory camps, stripping these communities of their dignity and freedom. Though the act was repealed in 1952, the legacy of the "criminal tribe" label continues to affect these communities.[10]

3. Global Efforts to Promote Rights of Tribal Communities – Especially Nomadic Communities

One of the key international frameworks supporting nomadic and semi-nomadic rights is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007. The Indian delegation had voted in favour of the declaration stating that India had consistently favoured the promotion and protection of indigenous peoples' rights, and pointed out that the declaration did not define what constituted indigenous peoples.[11]While not all nomadic groups identify as indigenous, the declaration's provisions on self-determination, land rights, and cultural protection have been instrumental in advocating for the rights of mobile communities globally. UNDRIP emphasises the importance of recognising traditional land use patterns and ensuring that nomadic tribes have access to their customary territories and resources.[12]

The International Labour Organization's (ILO) Convention No. 169 on Indigenous and Tribal Peoples, adopted in 1989, also provides a legal framework for protecting the rights of nomadic and semi-nomadic tribes. The convention calls for the recognition of these groups' distinct cultural identities and their rights to participate in decision-making processes that affect their lives, including those related to land use and resource management.[13]

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[9]Mahesh Rangarajan,Fencing the Forest: Conservation and Ecological Change in India's Central Provinces 1860-1914(Oxford University Press, 1996)

[10]Meena Radhakrishna, Dishonoured by History: 'Criminal Tribes' and British Colonial Policy(Orient Longman, 2001)

[11]United Nations, 'General Assembly Adopts Declaration on Rights of Indigenous Peoples: 'Major Step Forward Towards Human Rights For All', Says President.' GA/10612, UNGAOR 61st Sess (13 September 2007)<https://press.un.org/en/2007/ga10612.doc.htm>

[12]United Nations,'United Nations Declaration on the Rights of Indigenous Peoples'(2007)

[13]International Labour Organization, 'Indigenous and Tribal Peoples Convention, 1989 (No. 169)

4. Measures for Nomadic Tribes and De-Notified Tribes in India

The Government of India has implemented constitutional provisions,[14] legislative measures, and development programmes to protect tribal communities. Key laws, such as the Forest Rights Act (2006) and Panchayat Extension of Scheduled Areas Act (1996), empower tribes to manage local resources. Affirmative action policies provide reservations in education, employment, and politics. The Ministry of Tribal Affairs oversees welfare schemes like the *Vanbandhu Kalyan Yojana* and scholarships to improve education, healthcare, and economic opportunities.[15] The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) provides legal protection against discrimination and violence, ensuring tribal communities' safety and dignity.[16] However, NTDNT communities have needed special provisions.

Recognising the injustice and colonial implications of the Criminal Tribes Act, the Government of India repealed it in August 1949, and on 31 August 1952 de-notified the "criminal tribes" identified by the Criminal Tribes Act. These communities have over the years referred to themselves as 'De-notified Tribes' or DNTs, and by the more wider term Nomadic Tribes and De-Notified Tribes or NTDNTs — based on the understanding that the vulnerabilities faced by these communities are shared even by those nomadic tribes that may not have been notified as criminal under the Criminal Tribes Act. Since then, 31 August has been celebrated as '*Vimukti Diwas*' or liberation day.[17]

Then National Commission for De-notified, Nomadic and Semi-Nomadic Tribes, headed by Balakrishna Renke submitted its report, which included several recommendations for the advance of NTDNT communities. The Renke Commission had carried out a study to understand the status of the de-notified tribes and highlighted that 50 per cent of NTDNTs lacked any kind of documents and 98 per cent were landless.[18] Subsequently, in 2017 the National Commission under Chairperson Bhiku Ramji ldate came out with a report which delved deeper into the challenges faced by the de-notified tribes.[19]Taking into account these suggestions in February 2024

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[14]Constitution of India, Articles 15, 16, 46, 244, 330, 332 (1950)

[15]Government of India, Annual Report 2019-20 (Ministry of Tribal Affairs,2020)

[16]Government of India, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Ministry of Law and Justice,1989)

[17]Priyanka Khullar, 'Breaking Stigma, Securing Rights and Dignity' (ActionAid Association, 2022)<https://www.actionaidindia.org/story/breaking-stigma-securing-rights-and-dignity/>

[18]Government of India, National Commission for Denotified, Nomadic and Semi-Nomadic Tribes (Ministry of Social Justice & Empowerment, 2008)

[19]Government of India, Report of the *National Commission for Denotified Nomadic and Semi-Nomadic Tribes* (Ministry of Social Justice & Empowerment, 2017)

the government decided to establish a National Board for De-notified, Nomadic and Semi-Nomadic Tribes for a duration of three years.

The government has launched several welfare schemes to improve the socio-economic status of nomadic communities. These include scholarships for students from DNT, NT, and SNT backgrounds, such as the Dr Ambedkar Pre-Matric and Post-Matric Scholarship schemes, which are designed to increase access to education. Additionally, the government provides skill development programmes and financial support for housing, aiming to create sustainable livelihoods for nomadic families.[20]

The government has also been working on issuing identity documents, such as Aadhaar cards and voter IDs, to members of nomadic communities, helping them access public services and benefits. Efforts to improve legal recognition and representation in policy-making are ongoing, although challenges remain due to the diverse and mobile nature of these groups.

Despite these initiatives, nomadic communities and de-notified tribes continue to face significant barriers, including land insecurity, social stigma, and limited access to healthcare and education. The government's efforts reflect an ongoing commitment to integrating these communities into mainstream society while respecting their cultural heritage.

5. The Way Forward – A Community Perspective

ActionAid Association recently undertook an exercise of collective listening encompassing extensive consultations at both the state and community levels, to understand from the communities involved what a comprehensive agenda reflecting the diverse needs and perspectives of de-notified and nomadic tribes would be. In total about 70,000 community members met in meetings spread across the states of Andhra Pradesh, Bihar, Gujarat, Haryana, Maharashtra, Rajasthan, Telangana and Uttar Pradesh. These views have been published and shared with multiple stakeholders.[21]

5.1 Need to Fast-track Urgent Development Interventions for Particularly Vulnerable Amongst Nomadic Tribes and De-notified Tribal Communities

A study of the living conditions of communities including the *pardhis*, the Vasudev

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[20]Government of India, Annual Report 2019-20 (Ministry of Social Justice & Empowerment, 2020)

[21]A Nomadic Tribe, (2024). 'A Nomadic Tribes and De-notified-Tribes Agenda for Just Futures' (ActionAid Association, 2024)<https://www.actionaidindia.org/publications/a-nomadic-tribes-and-de-notified-tribes-agenda-for-just-futures/#:~:text=A%20Nomadic%20Tribes%20and%20De%2Dnotified%2DTribes%20Agenda%20for%20Just%20Futures&text=In%201871%2C%20the%20British%20colonial,Western%20Provinces%2C%20Punjab%20and%20Oudh>

community, the *mhasanjogi,* the *madari*, the *boom boommattukaran* and tribal communities engaged in community-based sex work, can indicate the diverse challenges faced by particular NTDNT groups and illustrate the need for targeted and urgent policy and development interventions to address their specific vulnerabilities. They also show the need for creating a special category for the particularly vulnerable among NTDNT communities. This would be similar to the way the Government of India looks at the pre-agricultural level of technology, low level of literacy, economic backwardness and a declining or stagnant population as criteria for deciding if a tribe is a Particularly Vulnerable Tribal Group (PVTG).

5.2 The Enactment of New Laws and the Revocation of Some Old Laws to Protect Rights of Nomadic Tribes and De-Notified Tribes

A new law should be drafted to explicitly recognise De-notified Communities, similar to the 1992 Statute on Minorities. Legislation akin to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is needed to address offenses against NTDNT communities.

We need to revoke the Habitual Offenders Act, because it, in many ways, extends the stigmatisation caused by the Criminal Tribes Act. This will go a long way to end criminalisation and police atrocities against NTDNTs. A review of the Prevention of Begging Act (1959), Bombay Prevention of Begging Act (1959), Prevention of Cruelty to Animals Act (1986), Wildlife Protection Act (1972), Forest (Conservation) Act (1980), and excise laws is essential to eliminate discrimination and uphold the rights of NTDNT communities.

5.3 Statutory Enumeration of Nomadic Tribes and De-notified Tribal Communities

We need a special census and the enumeration of De-notified, Nomadic and Semi-Nomadic Tribes should be carried out. NTDNTs should receive special focus in the decadal census, and priority in the issuing of unique identification (UID) and other government ID cards. States unaware of the existence of nomadic communities should refer to the provisional lists of nomadic communities prepared by the National Commission on De-notified and Nomadic Tribes to enable identification of communities. The district administrations must proactively issue caste certificates and birth and death certificates to NTDNTs in the districts. Pastoral, former hunter-gatherers and other forest communities should be paid special attention due to their geographical isolation during this process.

5.4 Mainstreaming Nomadic Tribes and De-notified Tribal Communities in All On-going Programmes and Schemes

The transient lifestyle of De-notified and Nomadic Tribes (DNTs and NTs) aggravate the challenge they face in accessing basic services, education, and healthcare. Targeted interventions are essential, including a special NTDNT sub-plan in union and state budgets. Initiatives should include residential schools, healthcare through mobile dispensaries, vocational training, and financial inclusion programmes. Special attention is needed for women and children, with loans, protection cells, and arts schools. Employment opportunities should be expanded through Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and self-employment schemes, while efforts to destigmatise and promote NTDNT cultural heritage are vital.

5.5 Affirmative Action for Nomadic and De-notified Tribes

There is need to create a distinct category for NTDNTs within SC, ST, and OBC classifications, with sub-reservation for particularly vulnerable groups, pending the creation of a Third Schedule under the Constitution. There is need to allocate a separate quota in education and government jobs to bridge gaps and promote social inclusivity.

5.6 Institutional Framework for Promoting Rights of Nomadic Tribes and De-notified Tribes

Establishing a separate ministry at state and central levels and creating statutory commissions for NTDNTs can provide focused attention and resources. Additionally, ensuring representation of NTDNTs in decision-making bodies and setting up welfare boards in each state will help address their unique needs, promote their welfare, and protect their rights. This framework will ensure inclusive development and empowerment of these historically marginalised communities.

5.7 Economic Empowerment of Nomadic Tribes and De-notified Tribes

De-notified Tribes (DNTs) and Nomadic Communities face economic challenges despite their unique traditional skills. Their crafts, although culturally rich, lack market access due to insufficient design and marketing support. Traditional performers struggle to find platforms, and those with knowledge of forest flora are underutilised in conservation efforts. To address this, the government should provide targeted design and marketing support, promote performing arts through the Ministry of Tourism, and integrate traditional forest knowledge into conservation. Additionally, viable

alternative livelihoods and skill development programmes are essential to prevent community members from engaging in illicit activities for survival.

5.8 Protection and Rehabilitation of Nomadic Tribes and Denotified Tribes in Forest Areas

We need sensitisation of forest officials, and initiate strict disciplinary action against those who harass NTDNTs, especially when communities are unjustly targeted after "poaching" incidents. In addition, special protection against sexual harassment should be provided to women and girls from NTDNTs working in remote forest areas, with stringent action against misconduct by forest officials. Further, provision of land titles for relocated communities under the Forest Rights Act, 2006, and recognition of pastoralist rights including grazing and water access, to ensure their sustainable livelihoods.

5.9 Shelter and Infrastructure Development

We need to conduct a survey of NTDNT settlements to assess housing needs, forming the basis for a suitable shelter programme for houseless communities. Ensure the inclusion of NTDNTs in PMAY through targeted policy initiatives and create dedicated sub-schemes within PMAY for their specific housing requirements. Provide eligible NTDNT households with free or subsidised housing, ensuring access to safe, secure shelter. Develop diverse housing models that accommodate NTDNTs' livelihood and cultural needs, such as locating homes near traditional work areas. Implement a dedicated infrastructure programme to provide basic amenities in NTDNT settlements, enhancing their quality of life.

5.10 Police Sensitisation and Training

We need to design and implement mandatory training for police to address biases and improve cultural sensitivity toward NTDNTs. Involve police in NTDNT welfare programmes to build trust and better understand community vulnerabilities. Enforce strict actions against police who violate due process with NTDNTs, including unlawful detentions and harassment. Establish special cells for NTDNT women to report harassment, ensuring their safety and access to justice. Nationwide removal of caste-based labour practices in prisons to prevent discrimination against NTDNT inmates.

6. Conclusion

We need to recognise that the British enacted the Criminal Tribes Act of 1871 driven

by a combination of their own bias, prejudice and fear. British and European biases against nomadic populations, especially the Romany people (often referred to as Roma or Gypsies), have been longstanding and pervasive, rooted in stereotypes and social prejudices. Historically, the Romany were often depicted as inherently criminal, deceitful, and untrustworthy, which led to their marginalisation and persecution. In Britain, laws such as the Vagrancy Acts criminalised the itinerant lifestyles of nomadic groups, contributing to their stigmatisation and exclusion from mainstream society.[22]

Across Europe, the Roma faced systemic discrimination, including forced assimilation, expulsions, and restrictions on movement. During the Nazi era, anti-Romany sentiments escalated into genocide, with hundreds of thousands of Roma being murdered in the Holocaust.[23] These biases were not just social but institutionalised, as seen in policies that aimed to "settle" or "civilise" nomadic groups, undermining their cultural autonomy and ways of life.

The portrayal of nomadic groups as social outcasts and criminals was often used to justify discriminatory policies and practices, reinforcing negative stereotypes. This historical bias continues to affect the Roma and other nomadic communities today, as they face ongoing challenges in accessing education, employment, and housing, and continue to be targets of racism and xenophobia in many European countries.[24]

The Criminal Tribes Act, thus, was less about actual criminal behaviour and more about controlling and assimilating communities that resisted the colonial order.

Nomadic tribes are an integral part of Indian culture and ethos, embodying centuries-old traditions, diverse lifestyles, and unique skills. Their contributions to arts, crafts, music, and oral traditions enrich India's cultural tapestry. Their deep knowledge of nature and sustainable living practices also reflect the country's rich, diverse heritage and adaptability.

We need to recognise that the project of promoting rights of the ghumantu jatis of India, the nomadic, semi-nomadic and de-notified tribal communities is part of the ongoing and urgent project to de-colonise India.

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[22]David Mayall, Gypsy Identities 1500-2000: From Egipcyans and Moon-men to the Ethnic Romany (Routledge, 2004)

[23]David M. Crowe, A History of the Gypsies of Eastern Europe and Russia (Palgrave Macmillan, 1996)

[24]Nando Sigona and Nidhi Trehan, Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization, and the Neoliberal Order (Palgrave Macmillan, 2009)

Health and Nutritional Status of Rural Women

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Abstract

India's rural population, constituting 64 per cent of the total populace, includes about 440.92 million women, almost half of whom face significant health and nutritional challenges. Despite an improved sex ratio and increased female workforce participation, rural women encounter dual issues of undernutrition and rising overnutrition. Key government initiatives like Poshan Abhiyan, Integrated Child Development Services (ICDS), and Pradhan Mantri Matru Vandana Yojana (PMMVY) aim to address these issues by enhancing nutritional support and healthcare access. However, socio-cultural factors, early marriages, and gender biases continue to impede progress. Effective strategies to improve rural women's health and nutrition must include a rights-based approach and community-led interventions. Strengthening public-private partnerships and ensuring inter-departmental convergence are critical for developing sustainable and impactful solutions. Such comprehensive measures are essential for achieving equitable health outcomes and aligning with the 2030 Sustainable Development Goals.

Keywords: Rural Women, Maternal Health, Nutrition, Government Programmes, Community-Led Programmes

1. Introduction

India's rural population, accounting for approximately 64 per cent of the country's total population, plays a crucial role in the nation's socio-economic framework.

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Among this, the rural women population is estimated to be around 440.92 million, comprising almost 50 per cent of the population.[1] India's sex ratio has improved from 943 females per 1,000 males in 2011, to 985 females in recent years.[2]

Recognising this, over the past decade, various policies and programmes have been introduced and strengthened to harness the potential of women, particularly by enhancing their entrepreneurial skills, creating opportunities not only in urban but also in rural areas as well. As a result of these efforts, opportunities for women are no longer confined to urban areas but are expanding in rural regions as well with Worker Population Ratio (WPR) among females in rural areas increased from 19.0 per cent in 2018-19 to 40.0 per cent in 2022-23.[3]

Initiatives under the National Rural Livelihood Mission (NRLM) such as *Mission Shakti*, the *Lakhpat Didi Scheme*, and the *Deendayal Antyodaya Yojana*, have enabled more women to enter the workforce. As a result of this, majority of females (63 per cent) are self-employed in rural areas.

Programmes like *Beti Bachao, Beti Padhao*, which addresses the declining child sex ratio and emphasises girls' education, and the *Pradhan Mantri Matru Vandana Yojana*, a flagship maternity programme supporting pregnant and lactating women, have been instrumental in women's empowerment. Additionally, platforms like the *eShram portal*, *Mahila E-Haat*, an online marketplace for women entrepreneurs, as well as the *Sukanya Samriddhi Yojana*, a savings scheme for securing the future of the girl child, highlight the holistic and sustained approach to women's empowerment as a fundamental pillar of India's development.[4]

It has been well-documented that investing in multisectoral nutrition strategies directly and indirectly improves the lives of women and girls, and improved nutrition promotes gender equality. Recognising the importance of nutrition in women empowerment, India has made significant investments in nutrition.

[1]World Bank Group, Rural Population (% of total population) – India (n.d.)<https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?end=2023&locations=IN&start=1960&view=chart>

[2]Government of India, Women and Men in India 2021: Social Statistics Division National Statistical Office (Ministry of Statistics and Programme Implementation, 2021)<https://www.mospi.gov.in/publication/women-and-men-india-2021>

[3]Press Information Bureau, Periodic Labour Force Survey (PLFS) Annual Report 2022-2023 Released Increasing Trend in Labour Force Participation Rate and Worker Population Ratio Constant Decrease in Unemployment Rate (Ministry of Statistics and Programme Implementation, 2023) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1966154>

[4]'Anant Sutra Sashakt Nari, Sashakt Bharat' (Narendra Modi, 2024) <https://cdn.narendramodi.in/cmsuploads/0.06344800_1709901652_pdf.pdf>

2. Government Initiatives to Improve Nutrition and Health in Rural Women

The Indian government has launched several initiatives aimed at improving the health and nutritional status of rural women. These programmes are designed to address the multifaceted challenges faced by this population, with a focus on enhancing access to nutrition, healthcare, and social support.

Pregnant and lactating women are among the most nutritionally vulnerable groups. To ensure the healthy development of the foetus and the unborn child, it is crucial that women receive an adequate supply of micronutrients starting from the preconception period. Recognising this, both the union and state governments in India are continuously working to enhance the nutritional status of women of reproductive age, with the Continuum of Care approach at the core of all nutritional interventions. Some of these interventions are:

2.1 *Poshan Abhiyan* (National Nutrition Mission)

Launched in 2018, Poshan Abhiyan is a flagship programme designed to improve the nutritional outcomes of children, pregnant women, and lactating mothers. The initiative targets reducing stunting, undernutrition, anemia, and low birth weight through the convergence of various nutrition-related schemes. With a dedicated three-year budget of ₹9,046.17 crore starting from 2017-18, Poshan Abhiyan serves as an overarching framework and also draws resources, funds, and technical support from existing programmes such as Integrated Child Development Services (ICDS), *Pradhan Mantri Matru Vandana Yojana* (PMMVY), National Health Mission (NHM), Swachh Bharat Mission (SBM), National Rural Livelihood Mission (NRLM), Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), and the Public Distribution System (PDS). The programme aims to align efforts across these schemes to positively impact nutrition outcomes. Through a holistic approach that emphasises community participation, behaviour change communication, and intersectoral convergence, Poshan Abhiyan has made significant progress in combating malnutrition, particularly in rural areas.[5]

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[5]Government of India, Poshan Abhiyaan (Ministry of Women & Child Development (n.d.) <https://www.poshanabhiyaan.gov.in/>

2.2 Integrated Child Development Services (ICDS)

ICDS is one of India's most extensive programmes addressing the health and nutrition needs of children, pregnant women, and lactating mothers. The programme, through Anganwadi centres aims to provide six services: supplementary nutrition, early childhood non-formal education, health education and nutrition counselling, immunisation, health check-ups, and referral services. Anganwadi centres essentially focus on the first 1000 days of life, and thus play a crucial role in improving maternal and child health outcomes in rural areas.[6]

2.3 Pradhan Mantri Matru Vandana Yojana (PMMVY)

PMMVY is a maternity benefit programme that provides financial assistance to pregnant women and lactating mothers for the birth of the first two children for their nutritional needs to be met, further aiming to reduce malnutrition and promote the overall well-being of women, empowering them to raise healthier generations. The scheme aims to improve the health and nutrition status of women during pregnancy and lactation by supporting dietary diversification and regular health check-ups.

2.4 *Pradhan Mantri Surakshit Matritva Abhiyan* (PMSMA)

The PM Surakshit Matritva Abhiyan emphasises the importance of regular check-ups and healthcare monitoring during pregnancy. By providing free, assured and comprehensive antenatal services on the 9th of every month by a healthcare professional, this initiative aims to reduce the maternal mortality ratio and ensure the safety of both mother and child.

2.5 Village Health, Sanitation and Nutrition Day

Village Health Sanitation and Nutrition Day (VHSND) is organised by Accredited Social Health Activist (ASHA) workers, Auxiliary Nurse Midwife (ANMs) and Anganwadi Worker (AWW) once a month in Anganwadi centres targeting rural women and children where information is disseminated on healthcare services, maternal and child health, nutrition, family planning, sanitation, and communicable diseases, while also providing services such as vaccination, dispensing of medicines for ailments, distribution of condoms and Oral Contraceptive Pills (OCPs)

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[6]Government of India, Integrated Child Development Services (ICDS) (Ministry of Women & Child Development (n.d.) <https://icds.gov.in/>

etc. VHSNDs serve as a key component to access of primary care in rural areas and have an essential role to play in India's strategy to attain the 2030 SDG goals of zero hunger, good health and well-being, clean water and sanitation and reduced inequalities.

2.6 JEEVIKA Programme in Bihar

The Jeevika programme significantly improved rural women's health and nutrition through self-help groups (SHGs) and trained community resource persons known as *Poshan Sakhis*. As a result of this intervention, women are now more aware of dietary diversity, the need for balanced nutrition, and the importance of pregnancy spacing. This has led to notable improvements in maternal and child health. From 2018 to 2022, the proportion of women consuming a diverse diet in Bihar increased from 20 per cent to 60 per cent, and children's diet quality also improved. The programme's success lies in its ability to scale quickly through community engagement and peer-to-peer learning.[7]

3. Challenges in Improving Nutritional Status of Women in Rural Areas

According to NFHS-5, 21.2 per cent of rural women are underweight (BMI <18.5 kg/m²), while 19.7 per cent are overweight or obese, highlighting the dual burden of malnutrition. Undernutrition, driven by limited access to diverse foods, remains a major issue, with deficiencies in protein, vitamins, and iron being prevalent.[8]

Despite significant improvements, undernutrition has been slow to decline, driven by a lack of access to diverse and nutritious foods. Protein-energy malnutrition, vitamin A deficiency, iodine deficiency, and iron-deficiency anaemia are particularly prevalent among rural women.[9] Anaemia, affecting 58.5 per cent of women aged 15-49, poses significant health risks, particularly during pregnancy.

Overnutrition is also on the rise, linked to sedentary lifestyles and increased consumption of processed foods, contributing to obesity-related non-communicable

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[7]Deepika Anand, Mohammad Anas, and Raj Ganguly, 'India: Improving the Health and Nutrition of Rural Women and Children in Bihar' (World BankBlogs,2024)<https://blogs.worldbank.org/en/endpovertyinsouthasia/india-improving-health-and-nutrition-rural-women-and-children-bihar>

[8]International Institute for Population Sciences, National Family Health Survey (NFHS-5), 2019-21: India: Volume I.Mumbai: IIPS.

[9]Alice Sims, Paige van der Pligt, Preeti John, et al, 'Food Insecurity and Dietary Intake among Rural Indian Women: An Exploratory Study'(2021) 18 (9) International Journal of Environmental Research and Public Health 4851 <doi: 10.3390/ijerph18094851. PMID: 34062823; PMCID: PMC8124183>

diseases like hypertension and diabetes. Addressing these challenges requires a holistic approach, including better access to nutritious foods, promoting healthy eating habits, and raising awareness about the risks of both under- and overnutrition.[10]

Experience from nutritional interventions has shown that projects leading to economic empowerment in a woman's life do not automatically lead to a greater capacity to make informed choices regarding other areas of life such as entitlement to an adequate and nutritious diet. In fact, studies reveal that gender gap in nutrition is more due to socio-cultural reasons than economic.[11] Gender bias, particularly evident in the preferential treatment of male children, significantly impacts the well-being of women, who are often the last to eat and the first to sacrifice their needs for their families. This undervaluation of women's health within families perpetuate cycles of poor health and nutrition.

Early marriage and repeated pregnancies, which are prevalent in rural areas, further deteriorate women's health. These practices, coupled with limited access to healthcare services, particularly during pregnancy and childbirth, contribute to high maternal morbidity and mortality rates.

4. Recommendations and Future Directions

To further enhance the health and nutritional status of rural women, the following recommendations are proposed:

4.1 Rights-based Approach

To improve the nutritional status of women in rural areas, a rights-based approach should be adopted that acknowledges health and nutrition as fundamental human rights. India's policies, such as the National Health Policy 2017 and the National Policy for Women 2016, reflect this perspective but need to be fully realised through effective implementation, particularly in underserved rural areas.

To ensure that all women, irrespective of socio-economic status or geographic location, have access to quality healthcare, nutrition, and essential resources; policies must focus on closing gaps in healthcare infrastructure and service delivery in rural regions. Government programmes must prioritise the most vulnerable populations by tailoring interventions to meet local needs.

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[10]Prashant Mathur and Rakesh Pillai,'Overnutrition: Current Scenario &Combat Strategies (2019) 149 (6) Indian Journal of Medical Research 695<doi: 10.4103/ijmr.IJMR_1703_18. PMID: 31496522; PMCID: PMC6755771>

[11]Divya Mishra,'Gender Gap in Food Security and Nutrition: Special Case of India in the G20'(2023) 79(4) India Quarterly, 79(4) 564<https://doi.org/10.1177/09749284231203324>

A rights-based approach also ensures that women are empowered to actively participate in decisions regarding their healthcare and nutrition. This can be achieved by creating supportive environments, including education and outreach initiatives that foster self-agency. Strong government commitment and accountability mechanisms are crucial to uphold the rights-based approach. Monitoring and evaluation frameworks should track the progress of these programmes with a gender and equity lens as well, ensuring that they are reaching the intended populations.

4.2 Community-led Nutrition Interventions

A study by United Nations Children's Fund (UNICEF) revealed that grassroots-level initiatives led by local women can transform the community's approach to nutrition. One of the key findings of the study was that communities actively engaged in nutrition-related activities, such as kitchen gardening and the cultivation of traditional crops, enjoyed a more diverse and nutritious diet.[12]

Additionally, Randomised Control Trials (RCTs) such as the UPAVAN trial have highlighted the potential of community-led interventions such as nutrition-sensitive agriculture (NSA) videos, nutrition-culture specific videos, and participatory learning approaches have the potential to bring behaviour change and to improve maternal and child diet quality in rural India.[13]

To strengthen rural health and nutrition, such community-led interventions should be scaled up by leveraging local knowledge and practices. Empowering community health workers and nutrition advocates to provide culturally relevant education and support ensures interventions are accessible and acceptable. Women's collectives, such as Self-Help Groups, play a critical role in promoting behaviour changes like kitchen gardening and the cultivation of traditional crops, which can improve dietary diversity. Grassroots-level engagement not only strengthens health-seeking behaviour but also fosters long-term improvements in maternal and child health, creating sustainable, community-driven solutions to malnutrition.

Collaborating with community health workers ensures that interventions are locally

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[12]Team VOH, Community-led Nutrition Programs in Rural India Enhance Diet Diversity and Empower Women: Study (Voice of Health Care, 2024) <https://www.voiceofhealthcare.org/updates/COMMUNITY-LED-NUTRITION-PROGRAMS-IN-RURAL-INDIA-ENHANCE-DIET-DIVERSITY-AND-EMPOWER-WOMEN:-STUDY~wMdgKORSs4AKAiUHayE1M>

[13]Suneetha Kadiyala, Helen Harris-Fry, Ronali Pradhan et al, 'Effect of Nutrition-Sensitive Agriculture Interventions with Participatory Videos and Women's Group Meetings on Maternal and Child Nutritional Outcomes in Rural Odisha, India (UPAVAN trial): A Four-arm, Observer-blind, Cluster-randomised Controlled Trial (2021) 5(5) Lancet Planet Health e263 <https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00001-2/fulltext>

tailored and culturally sensitive, further enhancing their effectiveness. The integration of local practices and the promotion of traditional food systems create a more resilient approach to addressing health challenges, fostering better nutrition and overall well-being in rural areas.

5. Inter-Departmental Convergence

The Ministry of Rural Development (MoRD), through its flagship initiative *Deendayal Antyodaya Yojana* - National Rural Livelihoods Mission (DAY-NRLM), has played a pivotal role in addressing rural women's health and nutrition challenges. By empowering Self-Help Groups (SHGs), MoRD has successfully created a platform for behavioural change, focusing on food, nutrition, health, and hygiene (FNHW) practices. The work of SHGs in promoting dietary diversity, menstrual hygiene, and safe drinking water practices underscores the potential of women collectives in improving rural health outcomes.

Additionally, the existing VHSNDs held monthly, which see an inter-convergence of ASHAs, ANMs, Anganwadi workers, SHG leaders, and local representatives to provide health, sanitation, and nutrition services can be strengthened and leveraged in more effective ways. Considering the availability of different community-level stakeholders, the practice of husband companionship during ANC visits could be easily promoted through this platform as pregnant women are more likely to adhere to IFA courses if their husband attends ANC, and the platform can serve as effective mediums to collectively address knowledge and food taboos at a family level. Encouraging husband participation in ANC visits and improving coordination between local bodies and health workers far more effectively influence positively community beliefs and behaviours regarding maternal and child nutrition.

Through the overarching framework of Poshan Abhiyan, which already calls for action from various allied departments such as ministry of women and child development, ministry of health and family welfare, department of education, public distribution system, food security etc., the tone and intent for inter-sectoral collaboration has already been set and this momentum can be channelised for furthering the case for convergence for the cause of improving nutrition of rural women.

6. Public Private Partnerships

Public-Private Partnerships (PPPs) offer a promising avenue to strengthen rural healthcare systems and improve the nutritional status of women. By fostering

collaborations between government bodies and private sector entities, PPPs can bring in technical expertise, innovative health technologies, and additional funding, which are critical for overcoming challenges like limited access to healthcare services in remote areas. Many of the examples of successful community-led interventions have been through public private CSR partnerships and they can be further tapped into for taking them to scale.

The 2019 Global Syndemic of Obesity, Undernutrition, and Climate Change Lancet Commission report argues that food systems globally are now made up of powerful commercial interests that promote overconsumption of unhealthy foods on one hand and weak governance and policy inertia by governments and the public sector. To tackle this, The Lancet Commission emphasised that governments across the world should play a substantial role in reducing large commercial interests in policy development processes to enable the implementation of policies that benefit human health. To do this, there is a need to re-design business models to shift focus from short-term, profit-only outcomes to sustainable models that benefit society and the environment. Incentivising the private sector to engage with governments through clear frameworks can play a pivotal role in scaling up nutritional education campaigns, improving diagnostic capabilities, and expanding outreach for preventive healthcare.[14]

India is already leading the way in this through strategic partnerships and purchasing from the private sector in line with the vision of the National Health Policy 2017. The private sector's role can be instrumental in addressing supply chain issues, ensuring the availability of essential nutritional supplements such as iron-folic acid (IFA) tablets and fortified foods. Furthermore, partnerships with private healthcare providers and tech companies can help introduce telemedicine platforms to reach underserved populations, reducing the burden on rural health centers. These initiatives can bridge the gap caused by the shortage of skilled healthcare professionals in rural areas and ensure timely interventions for pregnant and lactating women.

7. Conclusion

We stand at a pivotal moment where strategic investments in nutrition and health can break cycles of poverty and inequality. By closing gaps in healthcare access, enhancing nutritional education, and fostering inter-departmental collaboration, we can pave the way for a future where every woman has the opportunity to thrive. This

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[14]Boyd A Swinburn, Vivica IKraak, Steven Allender et al, 'The Global Syndemic of Obesity, Undernutrition, and Climate Change: The Lancet Commission Report'(2019) 393 (10173) Lancet 791 <https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)32822-8/fulltext>

requires synergies between development partners, local enterprises, private sector and communities to increase the likelihood of success and sustainability of cost-effective interventions. In addition to this, research institutes and think tanks can play a crucial role as knowledge partners bridging gaps between stakeholders and driving evidence-based solutions. Through such collective efforts, we can build a future where rural women are not only surviving but flourishing to create a truly inclusive and equitable "*Viksit Bharat*".

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The Human Right Agenda for Climate Action

Sunita Narain*

Abstract

Climate change is not just an environmental crisis but a key human rights issue. The challenge lies in reducing global emissions while ensuring the right to development for millions, especially in low-income countries. The world's most vulnerable populations, who have contributed least to the climate crisis, are disproportionately affected by its impacts wildfires, floods, and extreme weather events. The 2023 IPCC Sixth Assessment Report (AR6) confirmed that human activities are driving these changes, as the accumulation of greenhouse gases pushes the planet beyond its limits.

The link between economic growth and emissions makes the politics of climate negotiations complex. Historical emissions are not merely a matter of the past; they shape our present, with wealthier nations occupying a significant share of the global carbon budget. Equity is essential for any effective climate agreement, to ensure that the burden of emissions reductions is shared fairly and developing countries grow sustainably.

Furthermore, climate finance needs to be scaled up to support the transformation required in these regions. Without access to affordable clean energy, millions will remain in poverty, exacerbating global inequalities. Failure to address these issues will only deepen the cycle of climate injustice, migration crises, and economic instability. To combat this, we need a transformative approach that prioritises equity, substantial climate finance, and the right to a sustainable future for all.

Keywords: Climate Change, Global Emissions, IPCC Sixth Assessment Report, Climate Finance, Clean Energy, Human Rights, Climate Justice

Climate change is an existential threat. But what we continue to deny is the need for drastic emission reduction in a world where millions still need the right to development. The most inconvenient truth is not that we have a crisis of climate change, but that it is challenging to build this new economic growth model, which is accessible and affordable to all and at the same time low-carbon and sustainable. This is why climate

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change action must be framed as an issue of human rights. It is about the right to development of all and the right to ensure that the Planet – our only home – is secured for generations to come.

The world is already experiencing doomsday scenarios that climate scientists had projected for the distant future. The UN's top climate science body, Intergovernmental Panel on Climate Change (IPCC), in its 2023 Sixth Assessment Report (AR6[1]) confirmed what we already knew and observed in the world around us: wildfires triggered by extreme heat and moisture loss; devastating floods caused by extreme rain events; and tropical cyclones powered by the changing temperatures between the sea and land surface. The report stated that human activities, for certain, are to be blamed for these climate events. Anthropogenic carbon dioxide (CO_2) and other greenhouse gases (GHGs) have warmed the planet beyond its tolerance level.

It is also clear that we no longer need science to forecast the possibility of the impacts of a changing climate. We see it in our world — extreme weather events are increasing in frequency and intensity, and have a devastating effect on life and economy.[2] Across the world, the poor already living at the margins of survival, are severely impacted by extreme weather events. They are the first victims of climate change — even though they have not contributed to the stock of greenhouse gases in the atmosphere.

The increasing number of disasters because of growing intensity and frequency of weird and abnormal weather will push the poor into destitutes. Their impoverishment and marginalisation will add to their desperation to move away from their lands and to seek alternative livelihoods. Their only choice will be to migrate to the city or even to another country. The double-jeopardy in the interconnected world is the push – lack of options – to the pull bright lights that suggest a choice to better futures. Such developments may add to the already critical situations faced by the boat people; those with barriers like The Wall and those who are part of migrant counting. This is making our world insecure and violent. This is the cycle of destructive change that we must fight. Our globalised world is inter-connected and inter-dependent. It is something we must recognise.

This is also why equity is a pre-requisite to an ambitious and effective climate agreement. It is not something that can be diluted, discarded or erased. Dissect, dice and slice the data any which way and the conclusion will be the same—few countries have appropriated the carbon budget, and their accumulated emissions are the cause

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[1]The Sixth Assessment Report of the United Nations Intergovernmental Panel on Climate Change is the sixth in a series of reports which assess the available scientific information on climate change

[2]'India's Atlas on Weather Disasters' (DownToEarth) <https://www.downtoearth.org.in/weather_disasters_india>

of the temperature increase, which is taking the world towards catastrophe.

The IPCC report also stated that the world is running out of carbon space and it is time we fix the problem. This is where science and politics infuse in climate change negotiations.

The fact is that the pollutants, also called greenhouse gases like carbon dioxide and methane, have an extraordinarily long life in the atmosphere. So, carbon dioxide CO_2 that was emitted in, say 1900, will still be present and fill up the global atmospheric space. Historical emissions thus matter in the case of climate change. They are not history, in fact, they are the present.

Further, these pollutants are linked to economic growth since the bulk of the CO_2 emissions are from the burning of fossil fuels, that are used to generate electricity, transport goods and power our houses and factories. So, when the world discusses climate change it is discussing the economy not just the ecology of the planet.

And, most inconveniently, as the gases persist in the global atmospheric space and as these emissions are from the generation of wealth in countries, combating climate change is about sharing growth between nations; or in other words, sharing the carbon budget.

Every tone of carbon dioxide that is emitted ends up 'forcing' temperatures to rise. This is why when scientists discuss climate change, they are forced to confront the politics of who emits how much. The carbon budget is calculated as that amount of carbon dioxide that can be emitted to keep the world below a certain temperature-rise threshold.

It is also an irrefutable fact that few countries have appropriated the carbon budget and their accumulated emissions are the cause of the temperature increase, which is taking the world towards catastrophe. The industrialised countries and the new entrant China appropriated 73 per cent of the carbon space till 2019, and even after the reduction targets they have given, they will still occupy 70 per cent by 2030. China alone will take up 33 per cent of the available carbon budget between 2020 and 2030. It has not set emission reduction targets; and while it has made grand promises of moving towards renewable energy, its non-fossil fuel energy generation in 2019 was lower than India's. It is time China was de-hyphenated from the Group of 77 and also from India.

In terms of annual emissions too the situation appears the same. The world emitted 36.44 gigatonnes of CO_2 in 2019. India added 7 per cent to the world's total CO_2 emissions in 2019. The entire continent of Africa, with 17 per cent of the world's population, contributed a mere 4 per cent to the world's total CO_2 emissions in 2019.[3] Put this in another perspective, these countries are today way down in the human development index. They will need to grow economically, provide energy to their people, industrialise and urbanise. All of this will add to emissions because so far, emissions of CO_2 are directly linked to GDP. And this when the world has run out of carbon budget space – the IPCC 2021 Report has already sounded the '*code red*' – and has said that the world is hurtling towards a climate catastrophe.

Either we accept climate apartheid, that certain parts of the world do not have the 'right' to develop, or we greatly enhance efforts to ensure that this economic growth is secured without pollution, which means funding the transformation in these countries at a scale never done before. The human rights agenda for climate change was never more necessary than now.

This then is the first agenda for climate change negotiations: not to work to erase the reality of climate injustice, but to embrace it for the future. The fact is that in 1992 at the Rio Conference[4] when the UN Framework Convention on Climate Change (UNFCCC) was agreed upon, it was built on the principle of common but differentiated responsibility (CBDR).[5] This meant simply that already rich countries would reduce, create space for the emerging world to grow and that the emerging world would grow differently with enabling funds and technology.

But in the last 30 years, the single biggest effort has been to undermine and to finally erase the principle of equity from climate change negotiations. This is why the 2015 Paris Agreement[6] was lauded—as the agreement removed the very concept of historical emissions and consigned climate justice to a postscript. Worse, it created a weak and meaningless framework of climate change action that would depend on what a country could do; not what it was expected to do based on its contribution to

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[3]Sunita Narain and Avantika Goswami, 'The Numbers Behind Climate Change' (DownToEarth, 27 October 2021) <https://www.cseindia.org/the-numbers-behind-climate-change-11033>

[4]The United Nations Conference on Environment and Development (UNCED), also known as the Rio de Janeiro Conference or the Earth Summit, was a major United Nations conference held in Rio de Janeiro from 3 to 14 June 1992.

[5]Common but Differentiated Responsibility (CBDR) is a principle that acknowledges that countries have different levels of responsibility for environmental issues based on their economic capacity and historical contributions to the problem. It's a guiding principle for international cooperation and solidarity. CBDR was established in 1992 at the first Earth Summit in Rio de Janeiro as Principle 7 of the Rio Declaration.

[6]The Paris Agreement was an international treaty adopted in December 2015 to reduce greenhouse gas emissions and limit global warming. The agreement's goal was to limit global warming to 1.5–2°C above pre-industrial levels.

the stock of emissions or fair share. It should not surprise us then that the sum of the nationally determined contributions (NDC)[7] – national reduction targets – takes the world towards a minimum of 3°C temperature rise or more.

This is what the global negotiations must first correct. There cannot be an effective or ambitious climate agreement, without it being equitable and fair. Countries will only cooperate if there is fair burden sharing and this needs to be understood for the last decade that we have to keep the world below the guard rail of 1.5°C.[8]

The second biggest agenda then is finance: real, tangible and at the scale of the transformation that is needed. For too long this promise of finance has been lost in the imagery. It is what has led to the huge breakdown in trust between countries.[9]

We know that the quantum of money called climate finance is inadequate. We know that there is no agreed definition of what the world means by climate finance, and this allows for much creative accounting. But what we do not know, or discuss, is that whatever is being given in the name of climate finance is not concessional—roughly 5 per cent is grants and the rest is loans or equity. It is also then no surprise that what is termed as climate finance is not going to the countries where it is needed most. It is no surprise because these funds go where there is opportunity to make money; where there is (at least perceived) less risk in the financial market stability; and so, where the cost of finance is lower.

The cost of finance (interest rates) to, say, set up a solar plant, would be 2-5 per cent in Europe; 12-14 per cent in Brazil; and as high as 20 per cent in some African countries. This would make the plant unfeasible in Brazil and African countries. Worse, if this money goes to Africa in the form of loans –as it invariably does, with high interest rates – it would only add to their problem of repayment of loans. Countries cannot afford to default on a loan as that makes their credit ratings worse. But climate change will make it worse because the most vulnerable countries are also the ones with high debt burden. Every climate change disaster takes these countries to greater indebtedness as they borrow to survive and rebuild. These same countries are then stamped with poor credit ratings, which make their cost of borrowing and capital even higher.

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[7]Nationally Determined Contributions (NDCs) are climate action plans that countries submit to the United Nations Framework Convention on Climate Change (UNFCCC) to reduce greenhouse gas emissions and adapt to climate change.

[8]The 1.5°C goal is considered a "defense line" to prevent the irreversible and disastrous effects of climate change that would occur if the average temperature increases by 2°C above pre-industrial levels.

[9]'Beyond Climate Finance: Climate Ambition in the Global South Requires Financial System Reforms' (DownToEarth, 09 June 2023) <https://www.cseindia.org/beyond-climate-finance-climate-ambition-in-the-global-south-requires-financial-system-reforms-11753>

Today, the most vulnerable countries, which also need funding for climate mitigation, have a crushingly high debt burden—the money they pay in annual interest is as high as 16 per cent of their governmental revenue (2023). So, we can no longer talk about small changes, or about short-changing the poor.

What is even more worrying is that the world is running out of carbon space and time to fix the problem. Currently, we release about 36.44 gigatons (Gt) of CO_2 every year into the atmosphere from fossil fuel burning and cement manufacture. The IPCC says we need to budget our carbon emissions based on the planet's processing abilities to keep the average global temperature rise to 1.5°C above pre-industrial levels—the guard rail of keeping the world from catastrophic climate impacts. As per its estimate provided in 2018, the world needs to cut emissions by 45-50 per cent compared to the 2010 levels by 2030, and by 2050 turn carbon net-zero—emit only what can be "soaked up" by natural sinks like forests or oceans or what can be "cleaned" through still-experimental technologies, like carbon capture and storage.[10]

The AR6 stated that starting 2020 the world would be left with a total carbon budget of 400 Gt CO_2 for all times to come. This means that once we cross this threshold, whenever we cross it, we are headed to a temperature rise of more than 1.5°C. At current rates of emissions, the world will exhaust this budget by 2030 and this when there is still a massive unmet energy and development need for millions. This is the most inconvenient of questions.[11]

Climate change is an existential threat. We know that now. It is time we acted with this knowledge, in the interests of all. If we accept the need for transformative action, then the opportunity of real change opens — to invest today in the economies of the poorest countries so that they can grow without pollution. Take for instance, the energy needs of the poorest in the world, who are without basic infrastructure of electricity to power their homes or to cook their food and millions of women still use biomass to cook their food, which adds to their health burden as these stoves are extremely polluting. The lack of clean cooking energy is a denial of the basic human rights of all.

The way ahead would be to use clean renewables to meet the needs of these households, that are still outside the fossil fuel energy system. But for this the world must recognise that the cost of renewable energy is still beyond the affordability of the poor in the world; and this is why concessional finance is critical.

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[10]IPCC, 2018: Summary for Policymakers. In: "Global Warming of 1.5°C", Intergovermental Panel on Climate Change. <https://www.ipcc.ch/sr15/>

[11]Sunita Narain and Avantika Goswami, 'The Numbers Behind Climate Change' (DownToEarth, 27 October 2021) <https://www.cseindia.org/the-numbers-behind-climate-change-11033>

Again, we know that air pollution is a threat to our health as our right to life is not possible without the right to breathe. If we invest in clean fuel, we can address issues of local air pollution and also combat climate change. If we reinvent the way we drive – so that we can move people in bicycles, by walking and by taking a bus or metro and not in cars – we can make our streets more safe and we can fight climate change.

In India, our cities today are so polluted that we have jeopardised our fundamental right to blue skies and clear lungs. We know that the cause of this pollution is the poor combustion — from the burning of biomass in the cook stoves of poor women to the cars that drive our cities and the coal that is used to generate energy for industries and electricity. We know that this cost to our health is unacceptable; we must clean up the air of our cities. We also know that this is the co-benefit opportunity; what we do to improve local air pollution will also combat climate change. This is where the local meets the global.

Then we must remember that the monsoon is our true finance minister. In this age of climate change we will have to rework the way we manage our water so that we can harvest every drop of rainwater and become waste-wise and take our sewage and recycle it so that we can turn it back into water.

India has a huge treasure trove of wisdom of water harvesting — every ecological region of the country had developed its own method of capturing rain so that it could be used for the coming drought period. Rain is decentralised and so is the demand for water. So, we must capture rain when and where it falls. In a climate risked world, India's water management wisdom is the way to the future. We know that today, when it rains it pours; we go from crying for water because of scarcity to crying because of too much water and floods that add to destruction. We need then to scale up our work to invest in water systems and to make them durable, not just to withstand another rain, but another deluge. We need to speed up our work, because climate change will make sure that we have more rain, but in fewer rainy days.

We must also minimise our use of water to become more efficient with every drop. This means doing everything from investing in water efficient irrigation, household appliances and changing diets so that the crops we eat are water prudent.

This is our future agenda: to ensure that growth is equitable and that the poor across the world are not denied their right to development in this new energy future.

Climate change is our biggest challenge yet as a human race. It is nature's way of telling us that enough is enough. It is her revenge. We must learn to tread lightly on earth. It is our Planet – our only home – and we can and must protect it for us and future generations. If we accept the human rights challenge of climate change, we will work towards securing a just, equitable and sustainable world.

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Civic Governance and Human Rights: India's Commitments and Challenges of Compliance

Syed Akbaruddin* and Shivangi Pandey**

Abstract

India's human rights journey, since independence, has drawn both from its civilisational heritage and the spirit of universal values that are embedded in the Indian constitution. Judicial pronouncements have breathed fresh life and opened new vistas of interpretation, especially in terms of Article 21 related to the Right to Life. Legislative action has expanded opportunities for civic engagement by reducing the voting age from 21 to 18 years, and providing constitutional status to local self-government bodies. The establishment of a host of statutory bodies to oversee the functioning of state agencies has ensured that the foundational wherewithal for fulfilling human rights obligations is in place. Paradoxically, India's primary challenges lie not in an overbearing state machinery, but in inadequate state capacity. The notion that rights are best achieved by circumscribing state authority and providing free space to individuals tends to overlook the need for essential state capacity as a prerequisite for abiding by the constitutional framework and democratic foundations. In developing societies for human rights to flourish, state action is a necessity. It enables the enforcement of judicial decisions and the implementation of legislative action. It is not a lack of commitment but a lack of capability that accounts for the uneven implementation of human rights in India. Given its strong human rights foundations, India needs rapid development to enhance capacities for enforcement and implementation of the robust constitutional human rights obligations and impressive legislative edifice it has put in place.

Keywords: state capacity, constitution, civic engagement, capability, compliance.

1. Introduction

India is 'sui generis' in the global human rights landscape. There is no comparable effort of democratic governance in history to ensure human dignity by upholding human

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rights of such a populous expanse of humanity. Nevertheless in India, as elsewhere too, the transition from abstract principles to tangible rights is mediated through legislation, interpreted by judicial authorities and implemented through governance frameworks. The complexities of these processes have resulted in universal rights acquiring a distinctive flavour and, at times, their uneven application across India's vast geography.

2. Constitutional Embedding of Human Rights and Civic Engagement

The notion of human rights in independent India draws sustenance from the constitution which came into force on 26 January 1950. This foundational document builds on India's civilisational ethos of "'*Om' Sarve Bhavantu Sukhinah*", or welfare of all, and provides the framework required for good governance of the Indian republic.

The Constituent Assembly, the platform for formulating the constitution, was composed of members well-versed with the legal frameworks of democracies. They drew insights from multiple sources, like the Government of India Act, 1935, Irish Constitution, US Bill of Rights, and the Weimar Constitution, etc. Even as the Constituent Assembly was framing India's constitution, the Universal Declaration of Human Rights (UDHR) was being negotiated. It was adopted on 10 December 1948, by the United Nations General Assembly. Its globalist ethos, to which the Indian delegate Mrs Hansa Mehta (also a member of the Constituent Assembly) actively contributed, was that human rights are inherent, inalienable, and applicable to all human beings. Building upon such aspirations, the framers of the Indian constitution assessed best practices before adopting them in forms that suited India best.

Not content with establishing principles of "Justice, Liberty, Equality and Fraternity", the framers of the constitution detailed the state's obligations to provide "citizens with an undiluted assurance that the Rule of Law will protect their rights and liberties against any invasion by the State".[1]

The chapter on Fundamental Rights in Part III is informed by the philosophical approach set in the UDHR. It contains a slew of individual freedoms to be enjoyed without intrusion by the state, its agencies and officials. The major provisions encapsulate the ideals of the Right to Equality under Articles 14-18, Right to Freedom (Articles 19-22), Right against Exploitation (Articles 23-24), Right to Freedom of Religion (Articles 25-28), Cultural and Educational rights (Articles 29-30), and Right to Constitutional Remedies (Article 32). These provisions ensured that not only would

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[1]Justice K.S. Puttaswamy and Anr.vUnion of India [2017] 10 SCC 1 [137]

new laws which violate these injunctions be unacceptable but previously enacted laws violative of these rights, were void.

The framers also placed certain obligations on the state. These were pursued through the Directive Principles of State Policy under Part IV. They "set forth the humanitarian socialist precepts that were the aims of the Indian social revolution".[2] The "instruments of instructions" to create a welfare state (Article 38) addressed issues such as right to livelihood, ownership and control of material resources of the community (Article 39), empowering weaker sections of society under Article 40, Article 43, Article 47 and Article 48, charging the state to create effective provisions securing the Right to work, to education and to public assistance (Article41), free legal aid (Article 39 A).

The most radical departure that the constitution ushered in was universal adult franchise (Article 326). It made 173 million people above the age of 21 eligible to vote in the first national elections in 1951, when life expectancy in India was just 32 years. Notwithstanding that 85 per cent were unable to read or write and most had never voted before, 44.87 per cent of the electorate participated in what was then the largest number to have participated in an election.[3]

At its inception, independent India plugged into the globalist ethos of human rights and embedded into its constitution not only individual freedoms but a role for civic governance.

3. Expansion of Rights and Civic Governance

"The life of a written Constitution–like the life of law–is not logic (or draftsmanship), but experience".[4] In India, the judiciary has added, in considerable measure, to the experience. The Supreme Court's distinctive interpretations have ensured that the growing number of citizens with their additional requirements are accommodated within the broader terminology of human rights and are enabled with more opportunities for civic governance.

The Supreme Court has accepted the requirement of expansion of fundamental rights, in the context of "bringing in every government-based authority under its sweep". A significant proportion of expansion of human rights protection in India, is in the light

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[2]Kesavananda Bharati Sripadagalvaru and others v State of Kerala [1973] 4 SCC 225
[3]Mira Patel, 'From 1951-2019: How India Voted in Lok Sabha Elections' The Indian Express (New Delhi, 30 April 2024) <https://indianexpress.com/article/research/from-1951-2024-how-india-voted-in-lok-sabha-elections-9296827/>accessed 4 August2024.
[4]Fali S. Nariman, *You Must Know Your Constitution.* (Hay House, 2023) 11.

of the interpretations made by the Supreme Court, to increase the scope of Article 21 of the Constitution, which guarantees the right to life.

The judiciary has read into the right to life an array of other rights such as the right to fresh air and water, the right to health and healthcare, the right to education, the

right to food, the right to housing, the right to a clean environment protection from environmental degradation, right of the workers to health and medical aid, and right against custodial violence, etc. The Supreme Court has also widened provisions like Article 32 of the Indian Constitution under the realm of Article 21, adding that the right to constitutional remedies encapsulated the right to attain compensation in cases of violation of fundamental rights, including cases of illegal detention.

Many of these outcomes were achieved utilising the mechanism of Public Interest Litigation (PIL). The concept is a borrowed structure from USA, and is an expansion of the notion of class action perfected under the Indian realm. It has been established as an instrument of civic participation on behalf of the vulnerable sections, and there have been a spate of cases like the right of a speedy trial, directives on custodial violence, broad guidelines for rape victims, bonded labour, employment of children in hazardous industries, etc. The list is long. The PILs are now established as an instrumental form of civic activism with impressive results.

Legislative action has enhanced youth participation in Indian democracy. The Constitution (Sixty-first Amendment) Act, 1989, reduced the voting age from 21 to 18 years. It added nearly 50 million new voters, 7 per cent of the total population or 13.5 per cent of the voting age population.[5] This leap of faith ushered in a younger cohort of Indians into a civic embrace as stakeholders in the well-being of the country.

Parliament also expanded the remit of civic governance and enhanced the intersection with the fulfilment of economic and social rights. The 73rd and 74th Constitution Amendment Act, 1992, bestowed an imprimatur on local self-governing bodies — namely Panchayati Raj Institutions (PRIs) and urban municipal entities. It increased to 18 the subjects that urban local bodies are responsible for, and listed 29 subjects allocated to PRIs. These encompass key areas including provision of drinking water, sanitation, roads, healthcare, electrification, primary and secondary schools. It added new provisions for devolution of funds from the union and state governments. Successive Central Finance Commissions have increased grants to local government

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[5]Apoorva Lal, 'Political Consequences of Lowering The Voting Age: Evidence From India's 61st Amendment' (7 June2021) <https://apoorvalal.github.io/files/papers/youthFranchise.pdf>accessed 25 August 2024.

bodies – from Rs 1.3 billions by the 10th Finance Commission to Rs 4.36 billions by the 15th Finance Commission. In fact, grants now cover more than 95 per cent of resources of PRIs;[6] 75 per cent of the resources of municipalities; and 35 per cent of resources of municipal corporations.[7]

Empowerment of women and their civic engagement in PRIs is a substantive gain. Close to 45.6 per cent of representatives are women.[8] Several studies indicate a positive correlation between increased women's participation and improved outcomes of local governance, especially in prioritising socio-economic rights such as education, drinking water and health. Hence, the gains are both in terms of efficiency and equity.

Parliament also expanded human rights oversight by establishing several statutory bodies including the National Commission for Women, 1992, National Human Rights Commission, 1993,National Commission for Minorities, 1993, National Commission for Protection of Child Rights, 2007 and the National Green Tribunal, 2010. These are institutional safeguards to preserve the rule of law, fill in gaps or lacunae in legislative enactments, and enforce the requirements for fulfilling human rights commitments.

4. Avenues for Civic Engagement on Human Rights

Civic participation by petitioning governments before legislation can, at times, be more effective than post-facto agitation or seeking judicial recourse. India's civic engagement framework provides transparent opportunities for citizens to participate in the pre-legislative phase. This path was chalked out in the pre-legislative consultation policy (PLCP). Since 2014, the PLCP requires every Department/Ministry to publish proposed legislation for public feedback. India's open government data (OGD) platform, data.gov.in, is used to put data sets in the public domain and seek responses. Such processes provide opportunities to highlight issues at an early stage of law-making so that concerns, including human rights issues, are examined and addressed. A case in point is the recent decision to have further consultations on the draft Broadcasting Services (Regulation) Bill following suggestions from stakeholders. The draft was placed in the public domain on 10 November 2023, and the opportunity to submit comments was extended till 15 October 2024.

Public mobilisation in pursuit of specific rights is often the last resort in democratic frameworks to counter perceived injustices against basic rights. India has had its share of such large-scale efforts. The India Against Corruption Movement led to the Lokpal

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[6]Reserve Bank of India, Finances of Panchayat Raj Institutions (2024, p 14).
[7]Reserve Bank of India, Report on Municipal Finances (2022, p 6).
[8]Reserve Bank of India, *supra* note 19, at 34

and LokAyuktas Act of 2013. The agitation following the Nirbhaya rape case led to the passage of Criminal Law (Amendment) Act, known as the Anti-Rape Act, which made changes to the law in 2013.

At times, civic mobilisation is necessary even for the enforcement of judicial decisions. One of the most widely applauded decisions of the Supreme Court in *Vishaka v. State of Rajasthan* was legislated more than a decade afterwards. The Sexual Harassment of Women at Workplace, (Prevention, Prohibition and Redressal) Act, 2013, was passed because of the pressure on the government to take action in the wake of the heinous Nirbhaya rape in Delhi.

The 2020-21 protests by agrarian groups is an example of how Indian citizens successfully agitated and rolled back legislation. Also, the nationwide protests by the transport sector against Section 106 (2) of the newly enacted *"Bharatiya Nyaya Sanhita"* covering the hit and run provision, eventually led the government to put it on hold.

5. Limited State Capacity

Often news headlines frame human rights violations as evidence of a decline in Indian commitment to global and constitutional goals. Lack of compliance is seen as reflective of a lack of commitment. This need not always be so. In India, the paradoxical factor which impedes compliance with human rights requirements, despite the impetus provided by judicial and legislative initiatives, is limited "state capacity". Some term this as "state capability" or the "state's ability to effectively design, implement, and deliver what is promised to its citizens." Simply put, 'the ability of a government to get things done.'[9]

Realisation of rights cannot be divorced from the abilities of the state— executive, legislature and judiciary. The legislature's ability to hold the executive accountable, the judiciary's monitoring of executive action to redress violations and the ability of the executive to have announced decisions implemented and enforced, all play a role. Weak executive capacity is likely to lead to judicial rulings and parliamentary legislation remaining only on paper. This usually results in the possibility of selective enforcement.

India currently has 16 public employees per 1,000 people. This number is way lower than China (57), US (77), Brazil (111), and Norway (159).[10] Contrary to the perception

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[9]TV Somanathan and Gulzar Natarajan, State Capability in India, (OUP, 1st edn, 2022) viii
[10]Kartik Muralidharan, Accelerating India's Development, (Penguin, 1st edn, 2024) 8

that the executive in India is bloated, it is actually strained and constrained. At times, it is flailing in the face of the growing responsibilities it is charged with. The same situation prevails in many key areas linked with fulfilment of human rights of Indians.

5.1 Judiciary

Recent statistics reveal that there are 82,984 cases pending in the Supreme Court, 8,22,0641(original) cases pending in District and lower Courts of India, and 1,59,7240

(writ petitions) in the High Courts.[11] It is estimated that 58 per cent of cases are pending in district/subordinate courts for more than two years.[12]

Such pendency translates into 1,34,805 undertrial prisoners, still languishing in jails, with 11,448 undertrial prisoners who have spent 5 years in jail.[13] It impedes the fulfilment of the right to speedy trial provision under Article 21 of the Constitution and Article 9(3) of International Covenant on Civil and Political Rights (ICCPR). The low number of judges, at least partially, accounts for this situation. According to a response in 2023 in the Rajya Sabha, India has approximately 21 judges per million population,[14] in contrast with USA (107 judges) and UK (51 judges).

5.2 Police

Indian police are overburdened. The sanctioned strength is 196.88 police per hundred thousand of population, when the United Nations has recommended the ideal of 222 police per hundred thousand persons.[15] Also, only 2.141 million of the total police forces in the country constitute the State Police Forces as the others are not used for community policing but for other tasks including VIP protection and armed responses to contingent situations.

In a 2019 report, it was found that the average spending on the police was around 2.96 per cent of state budgets in 2014-2015, and 2.85 per cent in the 2017-2018. This leads

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[11]National Judicial Data Grid, 'Pending cases', <https://njdg.ecourts.gov.in/njdg_v3/>accessed 25 August 2024. The statistics here do not represent the cases of appeals, execution etc.

[12]How India Lives, 'The Case of Missing Judges' Livemint (New Delhi, 26 April 2016) <https://www.livemint.com/Politics/RKFcGxy8QLXRLgrFRYWAoN/The-numerical-deficit-in-Indian-courts-Chief-Justice-is-plea.html> accessed 25 August, 2024.

[13]Press Information Bureau, 'Undertrial Prisoners' (Ministry of Home Affairs, 6 February 2024) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003162> accessed 3 September 2024.

[14]Arjun Ram Meghwal, 'Number of Judges Per Million Population' (Lok Sabha Questions, 9 February 2024) <https://sansad.in/getFile/loksabhaquestions/annex/1715/AU1335.pdf?source=pqals> accessed 3 September 2024.

[15]Bureau of Police Research and Development, 'Data on Police Organisations', (1 January, 2023) <https://bprd.nic.in/page/data_on_police_organization_dopo> accessed 3 September 2024.

to an overall expense of 0.3 per cent of GDP which is lesser than the US (0.6 per cent) and European Union (0.9 per cent).[16] As a result, police authorities often struggle to fulfil basic duties.

5.3 Local Administration

Currently, 35 per cent of posts in India's municipal corporations are vacant, with vacancy statistics of 41 per cent posts among municipalities and 58 per cent in town panchayats. Mega cities like Bengaluru, Mumbai and Hyderabad have only 317, 938

and 586 city workers respectively, for every hundred thousand population. These statistics are a far cry from the state of cities like New York (5,906) and London (2,936).[17] Since local bodies are responsible for rights-based welfare schemes, their weaknesses affect their ability to deliver public services.

These statistics negate the generalisation that the inefficiencies of the Indian state are due to its large staff. In India, we have the necessary institutions, and a lot of the requisite laws. However, shortcomings in terms of capacity, capability, personnel, and tools is what is hindering full compliance with our human rights commitments in key areas.

6. Whenceforth?

The gap between aspirations and capabilities is a mounting challenge for India and for many other developing countries. Yet, it has not deterred the quest to meet major socio-economic rights. India has universalised many schemes, like the Integrated Child Development Scheme (ICDS). The mid-day meal scheme, which now falls under the *Pradhan Mantri Poshan Shakti Nirman* (PM Poshan) with the objective of providing 120 million children one daily hot meal, is the "world's largest school food programme".

More recently, major transformative programmes such as the *Swachh Bharat Abhiyan* and *Jal Jeevan Mission* have been successfully implemented. The *Pradhan Mantri Garib Kalyan Anna Yojana* (PMGKAY), which aims to provide free foodgrains to

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[16]BPRD, 'Data on Police Organisations', (1 January2019). <https://bprd.nic.in/page/dopo> accessed 3 September 2024.

[17]The Hindu, 'Staff Shortage, Financial Dependency Plague Local Governance in India' The Hindu (Chennai, 4 November 2023) <https://www.thehindu.com/data/staff-shortage-financial-dependency-plague-local-governance-data/article67485676.ece> accessed 4 September 2024.

about 81.35 crore beneficiaries, for five years starting from 1 January2024,[18]engenders hope that amidst the vagaries of India's uneven development, key rights such as the right to food remain available to the many whose survival is at stake.

Demonstrably, state capabilities when carefully designed and vigorously monitored are proving effective in the provision of essential socio-economic rights. The foundational wherewithal for the preservation, protection and promotion of all human rights is already in place. The critical challenge is to strengthen, on a large enough scale, the tools required in areas such as the judiciary, basic law and order and local self-governance. They impact directly upon fulfilment of other key rights and our human rights situation, in general. The many initiatives at capacity-building need to focus on the shortcomings in these important spheres too. It is time to hasten the enhancement of capabilities in these areas in the manner we are addressing the fulfilment of basic needs and socio-economic rights through targeted programmes. Our collective well-being requires that such vital jurisdictions are also paid attention too.

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[18]Government of India, 'Pradhan Mantri Garib Kalyan Yojana',<https://www.india.gov.in/spotlight/pradhan-mantri-garib-kalyan-package-pmgkp> accessed 4 September 2024.

सर्वे भवन्तु सुखिनः
सर्वे सन्तु निरामयाः ।
सर्वे भद्राणि पश्यन्तु
मा कश्चिद्दुःखभाग्भवेत् ।

"May All be Prosperous and Happy,
May All be Free from Illness.
May All See what is Auspicious,
May no one Suffer."

सर्वे
भवन्तु सुखिनः

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