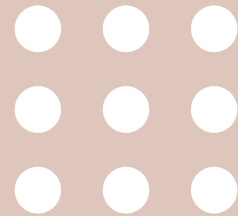


PUBLISHED SINCE 1973

Previously Under UGC Care List

ISSN: 0974-7249



INDIAN JOURNAL OF CRIMINOLOGY

VOLUME 53(2)

2025

www.lsc70.in
<https://nludelh.ac.in>
www.indianjournalofcriminology.in



INDIAN JOURNAL OF CRIMINOLOGY

Volume 53(2)
2025



INDIAN JOURNAL OF CRIMINOLOGY

The Indian Journal of Criminology is a joint publication of Indian Society of Criminology (ISC) and Centre for Criminology and Victimology, National Law University, Delhi. The journal is published bi-annually (January and July). The scope of Journal covers all aspects of Criminology, Criminological Sciences (Criminal Biology, Psychology, Sociology, Penology, Social Work and ICT applications), Subsidiary Sciences (Forensic Science, Forensic Medicine, Judicial Psychology,) and Victimology. Empirical research based papers in the broader domain of criminal justice administration are specially encouraged. Comparative studies from international contributors focusing on the substantive and applied aspect of criminology and criminal justice are highly solicited. We also welcome papers from the University Department/institutions, Correctional Services, Social Welfare Organisation, Forensic Sciences Laboratories etc.

Instructions for Authors

1. All Manuscripts and other communications relating to the Journal should be submitted through email in word format, at indianjournalofcriminology@gmail.com
2. Each article should be accompanied by an abstract of about 100 words (15 to 20 typed lines)
3. A declaration, to the effect that each article has not been submitted elsewhere, must be signed by all authors and should accompany the article.
4. Articles submitted to the Indian Journal of Criminology should be type written and double spaced on an A4 size Bond paper. The matter should be typed on one side of the paper only, with a wide margin. The length of an article is 15 typed pages. Symbols, formulae and equations must be written clearly and with great care. Excessive lengthy tables and graphs should be avoided.
5. References are to be written according to the abridged Harvard Method, by giving the author's name and date of publication in the text, for example (Panakal, 1973). The list of References should be at the end of the paper and in alphabetical order of authors in the following form:

Panakal, J.J. (1973). An Agenda for Criminology
Indian Journal of Criminology, 1(1). 1-5.
6. Authors will be supplied a softcopy of their article(s) on request. Request is to be sent to indianjournalofcriminology@gmail.com
7. The journal is available to subscribe by paying an annual subscription as listed under

Individual	:	INR 500/- per year
Institutional	:	INR 1100/- per year
Foreign	:	US\$80/- per year

(A sum of INR 100 should be included for postal charges in India and US\$5 for Air Mail for international postal charge)

To procure the copies of the journal please contact:

Editor
Indian Journal of Criminology
National Law University, Delhi
Sector-14, Dwarka, New Delhi-110078
www.nludelhi.ac.in, +91 011 28035818
Email: indianjournalofcriminology@gmail.com

The Indian Journal of Criminology

Editor

Prof. G.S. Bajpai

Vice-Chancellor, National Law University, Delhi

Managing Editor

Dr. Priya Rai

University Librarian, National Law University, Delhi

Dr. K. Paramasivan

HOD, Department of Criminology and Police Administration, JHA Agarsen College, Chennai

Prof. K. Chockalingam

Founding Head of the Department of Criminology,
University of Madras, Chennai
Former Vice Chancellor,
Manonmaniam Sundaranar University, Tirunelveli,
India

Prof. Ian Loader

Professor of Criminology
University of Oxford, UK

Prof. Zbigniew Lasocik

Professor of Legal Sciences and Criminology
University of Warsaw, Poland

Prof. N. Prabha Unnithan

Director, Centre for the Study of Crime
and Justice, Department of Sociology.
Colorado State University

Prof. N.K. Chakrabarty

Former Vice-Chancellor
W.B. NUJS, Kolkata

Prof. Purvi Pokhariyal

Dean, National Forensic Science University
Delhi, India

Dr. Suman Dash Bhattamishra

Assistant Professor of Law
National Law University, Odisha

Mr. Emilio C. Viano

President
International Society of Criminology, USA

Prof. Jianhong Liu

University of Macau, Macau, China

Dr. G.K. Goswami, IPS

Director (UPSIFS), Uttar Pradesh

Prof. Arvind Tiwari

Dean, School of Law, Rights and Constitutional
Governance
Tata Institute of Sciences, Mumbai, India

Prof. Madhava Soma Sundram

M.S. University, Tirunelveli, India

Prof. Nikos Passas

Professor of Criminology & Criminal Justice
College of Social Sciences and Humanities
Northeastern University, Boston, USA

Contents

Articles

- Premature Release, Vocational Skills, and Workforce Outcomes:
A Gujarat Prison Study 1
KLN Rao, Reena Sharma & Akshat Mehta
- Wrongful Prosecution of Marginalised Communities:
A Constitutional Perspective 9
A. R. Masoodi, Abhishek Mourya & Aditi Sharma
- Transplanting Non-Monetary Bail To The Indian Criminal Justice
System: A Comparative Analysis 24
Priyadarshi Jha & Harsh Amrit
- Exploring the Factors Behind Honour Killings of Women:
A Bibliometric and Scoping Analysis 45
Monika Agarwal & Kalpna Sharma
- Environmental DNA (eDNA) As An Investigative Aid in Missing-
Person and Water-borne Crime Investigations: A Comparative
Analysis And Proposed Operational Pilot Framework For India and
The UK 66
Aditi Jha & Abhilash Sapre
- Cyber Sextortion Trends & Legal Frameworks: Australia, UK, USA,
& India 90
Pravesh Shekhar & Sheetal Arora
- From Cells To Crisis: The Dynamics of Prison Overpopulation 125
Vinay Juneja, Saurav Joshi & Saujanya Sarkar

Book Review

- Anger of a Man : Insanity of a Woman by Aryahi Srivastava 144
Published by Whitesman
Prof. Balraj Chauhan and Deepshikha Trivedi
- Roni Rosenberg, Act and Omission in Criminal Law: 149
Autonomy, Morality and Applications to Euthanasia
G.S. Bajpai and Ankit Kaushik

PREMATURE RELEASE, VOCATIONAL SKILLS AND WORKFORCE OUTCOMES: A STUDY OF GUJARAT PRISONS

KLN Rao*, Reena Sharma** and Akshat Mehta***

ABSTRACT

Post-release, ex-prisoners face employment barriers, stigma, and weak support hindering reintegration. This Gujarat study surveyed 430 prematurely released prisoners to assess Samarth Forensic CBT intervention and vocational training's workforce impact. Findings: Training improves employability to 83.7% post-release, with Gujarat's 16.5% skilled employment suggesting that jobs help cut recidivism (Table 1). Samarth: Breaking Barriers enhances outcomes via forensic CBT and skills (Sharma 2019). Recommendations: Scale Samarth statewide, align training with market needs, establish Reintegration Cells, "Ban the Box" hiring, PPP quotas. Track 12-month post-release outcomes to reduce repeat offending and strengthen evidence-based premature release policy in Gujarat.

KEYWORDS : Rehabilitation, reintegration, recidivism, vocational skills, premature release, Gujarat prisons

Introduction

A successful criminal justice system must balance punishment with rehabilitation and reintegration. In Gujarat prisons, this is balanced by the programs that tackle the root causes of criminal behavior through psychological support, vocational skills, and post-release planning (Suman et al., 2023). For this study, rehabilitation covers in-prison interventions like Samarth: Breaking Barriers that prepare prisoners for life outside.

Ex-prisoners require the practical support to rebuild their lives and reintegration is the after release (Santos et al., 2024). Recidivism occurs because of reoffending

of the previously incarcerated individual which is typically measured by subsequent arrest, conviction, or incarceration (National Crime Records Bureau, 2021). Treatment readiness, shaped by personal motivation and prison environment, determines who actually benefits (Day et al., 2009).

India faces acute post-release challenges. Despite Model Prison Manual 2016 and state policies, implementation varies widely, worsening regional gaps. Ex-prisoners confront job scarcity, weak support systems, and social stigma, leaving criminogenic needs unaddressed and driving reoffending (Murty, 2012; Sharma, 2019).

* DGP of Crime Investigations Department (CID and Crime & Railways Gujarat & DGP Prisons & Correctional Administrations, Gujarat, India.

**Founder | Forensic Psychologist & Criminologist, The Mind Practice, Ahmedabad, Gujarat, India

***Professor, School of Police Science & Security Studies, National Forensic Sciences University, Gandhinagar, Gujarat, India

Long-term follow-up studies remain scarce. Few examine whether prison interventions yield sustained societal reintegration or just temporary fixes (Santosh Mathew, 2021). With prison populations rising (NCRB, 2021) and released prisoners' vulnerabilities, employment stability beyond recidivism metrics demands scrutiny (Shoham & Haviv, 2024).

This study surveyed 430 prematurely released prisoners from Gujarat (aged 30–84) to examine whether vocational skills acquired during incarceration translate into sustainable post-release employment. Many respondents had participated in Samarth: Breaking Barriers (Sharma, 2019)—a structured prison-based intervention integrating vocational exposure with cognitive and behavioral therapeutic components—or in other prison skill development initiatives prior to release on grounds of good conduct. The findings highlight prevailing workforce participation patterns, gaps in existing prison skill programs, and critical policy implications relevant to the implementation of the Model Prisons Act, 2023. Drawing on the 430-participant survey data (Table 1), the paper analyses structural barriers to employment in Gujarat, evaluates outcomes associated with the Samarth intervention, and recommends market-aligned vocational training, the establishment of Reintegration Cells, and the adoption of “Ban the Box” hiring practices as measures to enhance employment stability and reduce recidivism.

Historical and Legal Context

Evolution of Prisoners' Rehabilitation in India

India shifted from colonial punishment (Prison Act 1894) to reformatory models post-1950 Constitution. Mulla Committee (1983) and Model Prisons Act (2023) link premature release to vocational skills, but State variations limit impact (Choudhary 2024).

Current Prison System Barriers :

Prison barriers (NCRB 2022):

- 131% occupancy, 76% undertrials
- 1 psychologist/23k inmates
- Stigma prevents access to skilled jobs (Gupta 2021)
- No parole/halfway houses

Legal & Policy Framework

India's Probation of Offenders Act (1958) offers probation alternatives, yet courts favor incarceration due to monitoring gaps (Mehta, 2021). The Juvenile Justice Act (2015) focuses on youth rehabilitation but misses a centralized system for reintegration (Choudhary, 2024). Gujarat premature release policies address this gap by providing vocational linkage opportunities.

According to the Legal Services Authorities Act, 1987, prisoners without financial resources are provided free legal aid, covering parole and post-release matters. NALSA's targeted rehabilitation schemes, like the 2015 Poverty Alleviation Program, aim to assist former inmates in finding employment and social benefits (Varghese & Raghavan, 2019).

The Prisoners Act, 1900, and Transfer of Prisoners Act, 1950, also include rehabilitation provisions, to the prisoners to serve sentences near their families and providing for the transfer of mentally ill inmates to appropriate psychiatric facilities (Mudgal & Pandey, 2023).

Despite these legal frameworks and clear guidelines, India's focus stays on imprisonment over rehabilitation. No statutes mandate long-term reintegration support employment, housing, mental health or post-release supervision, leaving wide State variations (Sharma, 2019). Treatment readiness research shows structured follow-up is essential to cut recidivism (Day et al., 2009; Sharma & Mehta, 2024).

Several government and NGO-led initiatives aim to support prisoner rehabilitation and reintegration in Gujarat, though their implementation and reach vary. Building on this context, the authors conducted empirical testing of premature release outcomes in addition to vocational skills, which forms the basis of this study.

Samarth : Breaking Barriers A Forensic CBT Therapeutic intervention

Samarth: Breaking Barriers (Sharma, 2019; 2020a)

Gujarat's forensic CBT program combines psychological support, preparedness to reintegrate with society with practical tools, market-relevant vocational skills to aid premature release. Samarth intervention and center at Gujarat central prisons addresses

criminogenic needs across violent/non-violent offenders, linking therapy to employment (Sharma & Mehta, 2024). Examining 430 ex-prisoners (many Samarth completers), this study reveals: 16.5% skilled employment (Table 1), which is a significant improvement over national averages. The evaluation indicates that participants experience decreased recidivism and better pro-social reintegration when stigma barriers are removed.

Empirical Evidence: Survey Data on Post-Release Employment Among Former Prisoners

Methodology

This study surveyed 430 Gujarat ex-prisoners aged 30-84 who received premature release within the past 5 years due to good conduct, rehabilitation, or vocational training. Many had completed Samarth: Breaking Barriers (Sharma, 2019) or other prison skills programs. Structured surveys assessed post-release employment status, job type, and skill utilization, with descriptive statistics mapping occupational distribution (Table 1)

Discussion

Key Findings

Of 430 ex-prisoners surveyed, 83.7% secured employment post-release: 28.8% agriculture (n=124), 20.9% unskilled labor (n=90), 16.5% skilled labor (n=71), 7.7% self-employed (n=33), 6% service industry (n=26), 3.7% professional/technical (n=16). Additionally, 9.8% remained unemployed

(n=42) and 6.5% retired (n=28).

The 16.5% skilled employment rate demonstrates vocational training effectiveness despite stigma barriers.

Figure 1

Occupational distribution of participants in the study, showing the percentage of individuals in each category

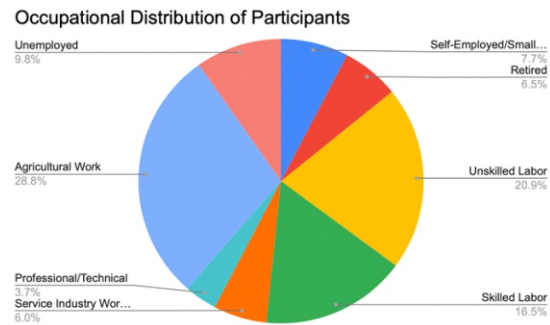


Table 1

Distribution of Participants by Occupation Category

Occupation Category	Number of Participants
Agricultural Work	124
Unskilled Labor	90
Skilled Labor	71
Unemployed	42
Self-Employed/Small Business Owners	33
Retired from their work	28
Service Industry Worker	26
Professional/Technical Work	16

The evidence supports that a more structured and tailored program to the criminogenic needs and risk factors will add to a more effective rehabilitation program. Interventions that combine vocational training, psychological

support, criminal thinking and Behavior change and life skills development are important and consistent to reduce recidivism and improve reintegration outcomes (IJIP, 2023; Day et al., 2009; Sharma 2019). Nonetheless, the efficacy of these initiatives is predicated upon sufficient resources, sustained financial support, and assistance following release. The timing and quality of employment are particularly critical early and stable employment after release fosters pro-social ties and reduces financial stress, both of which are protective against reoffending (Visher et al., 2011; Sampson & Laub, 1993; Uggen, 2000).

Evidence from the international best practices suggests that multi-component rehabilitation programs those integrating education, vocational training, substance abuse treatment, and mental health care yield better outcomes than single-focus interventions. Lower recidivism rates are linked to participation in multiple, sustained programs, and that the duration and intensity of program participation also is significant (Yearwood, 2020; Graffam et al., 2014). It is important to focus on the challenges faced by the Indian prisons, rehabilitation practices and personnel from the Indian context, to address the resource disparities across States, and a lack of standardized reintegration frameworks, as these acts as restrictions and collectively limit the reach and impact of rehabilitation efforts (Choudhary, 2024; Ministry of Home Affairs, 2016).

The treatment readiness literature (Day et al., 2009) further highlights the importance of assessing and enhancing an individual's motivation and preparedness for intervention. Programs using readiness assessment and motivational enhancement are more effective at engaging participants and creating lasting behavioral change. It is important for violent or high-risk offenders, who may need individualized strategies to boost involvement and decrease the dropout from the program.

Policy implications from this study is evident and an urgent need for:

- Standardized, enforceable reintegration frameworks at the National level.
 - Increased investment in rehabilitation infrastructure, including mental health and substance abuse services.
 - Rehabilitation efforts focusing on agriculture diversified vocational training
 - Expansion of legal aid and documentation support for released prisoners.
 - Development of structured post-release monitoring systems, such as parole and halfway houses.
 - Subsistence allowance for ex-prisoners to cope up with harsh realities and time till they get some employment.
 - Campaign to address the issue of Stigmatizing Behavior by public vis-à-vis ex-prisoners.
- Public-private partnerships and employer incentives to facilitate the hiring of former prisoners.
 - Integration of treatment readiness assessment into rehabilitation programming.

Limitation

Self-reported employment data risks recall bias and social desirability. Contacting ex-prisoners proved difficult due to changing phone numbers. Future longitudinal studies with exit interviews will strengthen long-term tracking.

Policy Recommendations & Implementation

1. Scale Samarth: Breaking Barriers statewide (Sharma, 2019) linking forensic CBT to certified vocational training.
2. Mandate PPP/CSR hiring quotas and Ban-the-Box laws (Sampson & Laub, 1993).
3. Establish Reintegration Cells for documentation support, labour-market mapping, and industry partnerships.
4. Convert Model Prison Manual (2016)/Model Prisons Act (2023) into SOPs tying premature release to skills certification.
5. Track 12-24 month outcomes via probation/NGOs (Shoham & Haviv, 2024).

REFERENCES

1. Abeling-Judge, D. (2020). Social opportunities and controls: Revisiting the desistance effect of employment. *Deviant Behavior*, 42(9), 1177–1193.
2. All India Jail Manual Committee. (1960). Report on the Model Prison Manual. Government of India.
3. Australian Law Reform Commission. (2017). Pathways to justice—Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples (ALRC Report 133).
4. Bhardwaj, H. (2019). Jurisprudence of prison reforms. *Journal of the Indian Law Institute*, 22, 2262–2272.
5. Bushway, S., & Apel, R. (2012). A signaling perspective on employment-based reentry programming. *Criminology & Public Policy*, 11(1), 21–50.
6. Choudhary, S. (2024). Analysis of imprisonment and recidivism with reference to Indian laws. *International Journal for Research in Applied Science and Engineering Technology*, 12(3), 60563.
7. Day, A., Howells, K., Casey, S., Ward, T., Chambers, J. C., & Birgden, A. (2009). Assessing treatment readiness in violent offenders. *Journal of Interpersonal Violence*, 24(4), 618–635.
8. Farrall, S. (2005). On the existential aspects of desistance from crime. *Symbolic Interaction*, 28(3), 367–386.
9. Graffam, J., Shinkfield, A., Lavelle, B., & McPherson, W. (2004). Variables affecting successful reintegration as perceived by offenders and professionals. *Journal of Offender Rehabilitation*, 40(1–2), 147–171.
10. Gupta, K. (2021). Reintegration challenges for former prisoners. *Journal of Social Policy*, 45(4), 567–584.
11. India Justice Report 2025. (2025). India Justice Report: Ranking states on the capacity of police, judiciary, prisons, and legal aid.
12. Kaushik, A., & Sharma, N. (2017). Human rights of prisoners: A case study of Sampurnanad Open Prison, Sanganer, Rajasthan. *The International Journal of Political Science*, 3(1).
13. Kumar, S. (2024). Prison dynamics: Understanding their dual purpose of rehabilitation and punishment through rehabilitation and poena in the Indian context. *International Journal of Research Publication and Reviews*, 5, 4450–4453.
14. Mehta, S. (2021). Judicial attitudes towards probation in India. *Indian Journal of Criminology*, 49(2), 112–124.
15. Ministry of Home Affairs. (2016). Model Prison Manual. Government of India.
16. Mudgal, A., & Pandey, N. (2023). Research paper on role of judiciary in providing

- better environment to prisoners. *International Journal for Multidisciplinary Research*, 5(4). <https://doi.org/10.36948/ijfmr.2023.v05i04.4576>
17. Mulla Committee Report. (1983). Report of the All-India Committee on Jail Reforms (1980–83). Government of India.
 18. Murty, K. (2012). The dynamics of recidivism in Andhra Pradesh. *Sociological Bulletin*, 61(3), 450–464.
 19. National Crime Records Bureau. (2021). Prison Statistics India 2021. Ministry of Home Affairs, Government of India.
 20. National Crime Records Bureau. (2022). Prison Statistics India 2022. Ministry of Home Affairs, Government of India.
 21. Patel, S. R. (2022). Challenges in prison rehabilitation programs. *Social Justice Journal*, 35(3), 112–130.
 22. People’s Union for Civil Liberties. (n.d.). Home. <https://pucl.org/>
 23. Rao, N. (2021). Implementation of rehabilitative programs in Indian prisons. *Criminal Justice Review*, 48(2), 201–218.
 24. Reckless, W. C. (1952). Jail Administration in India: Report of the United Nations Expert. Government of India.
 25. Repouliou, A. (2016). Mental health and psychological well-being of prisoners in Europe and Africa. European Union.
 26. Roy, D. (2018). Overcrowding in Indian prisons: Causes and consequences. *Policy Studies Journal*, 46(4), 785–800.
 27. Sampson, R. J., & Laub, J. H. (1993). *Crime in the making: Pathways and turning points through life*. Harvard University Press.
 28. Santos, A., Cavalcante, F., Silva, R., & De Lima, H. (2024). Education and work in the prison system: The importance of social reintegration programs in prisons. *Contribuciones a las Ciencias Sociales*, 17(2), 85. <https://doi.org/10.55905/revconv.17n.2-085>
 29. Santhosh, R., & Mathew, E. (2021). Social reintegration of released prisoners: An empirical analysis from two Indian states. *International Annals of Criminology*, 59, 200–222. <https://doi.org/10.1017/cri.2021.18>
 30. Sharma, A. (2015). *Reform and rehabilitation: Indian penal system*. Routledge.
 31. Sharma, R. (2019a). “Samarth - Breaking Barriers” therapeutic intervention program rationale and effectiveness in Sabarmati Central Prison, Ahmedabad, Gujarat. *Indian Police Journal*, 66(4), 170–179.
 32. Sharma, R. (2019b). Criminogenic needs of the offenders: A systematic review. *Administrative Development*, 6(2), 189–206.

33. Sharma, R. (2020a). Samarth: Breaking Barriers—A forensic cognitive behavioral therapy and positive criminology-based program. Unpublished manuscript.
34. Sharma, R. (2020b). Samarth: Suicide prevention and mental health initiatives in Gujarat prisons. Unpublished manuscript.
35. Sharma, R., & Mehta, A. (2024). Treatment readiness in violent offenders: The impact of evidence-based psychological methods in correctional facilities. *Indian Journal of Criminology*, 52(2), 84-94.
36. Shoham, E., & Haviv, N. (2024). There is more to it than recidivism: Outcome scores among released prisoners who participated in prison-based “Employment World” programmes. *International Annals of Criminology*, 62(1), 79–103. <https://doi.org/10.1017/cri.2024.9>
37. Singh, A. (2018). Rehabilitative justice in India: Legal reforms in the prison system. *Indian Journal of Criminology*, 54(2), 123–145.
38. Singh, A. (2019). Combating stigma and supporting reintegration. *Human Rights Quarterly*, 41(2), 293–312.
39. Suman, O., Sigdel, N., S, R., Teja, B., & T. K., R. (2023). The effectiveness of rehabilitations in prisons and the criminal justice system. *The International Journal of Indian Psychology*, 11(3), 894–899. <https://doi.org/10.25215/1103.084>
40. Uggen, C. (2000). Work as a turning point in the life course of criminals: A duration model of age, employment, and recidivism. *American Sociological Review*, 65(4), 529–546. <https://doi.org/10.2307/2657381>
41. United Nations. (2015). United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
42. Varghese, J., & Raghavan, V. (2019). Restoration of released prisoners to society: Issues, challenges and further ways; insights from Kerala, India. *International Annals of Criminology*, 57, 61–74. <https://doi.org/10.1017/cri.2020.5>
43. Visher, C., Debus, S., & Yahner, J. (2005). Employment after prison: A longitudinal study of releasees in three states. Urban Institute.
44. Visher, C. A., Debus-Sherrill, S., & Yahner, J. (2011). Employment after prison: A longitudinal study of former prisoners. *Justice Quarterly*, 28(5), 698–718. <https://doi.org/10.1080/07418825.2010.535553>
45. Visher, C. A., & Travis, J. (2011). Life on the outside: Returning home after incarceration. *The Prison Journal*, 91(3, Suppl), 102S–119S. <https://doi.org/10.1177/0032885511415228>
46. Western, B. (2006). Punishment and inequality in America. Russell Sage Foundation.
47. WHO Europe. (2003). Moscow declaration: Prison health as part of public health. World Health Organization.

Wrongful Prosecution of Marginalised Communities: A Constitutional Perspective

A. R. Masoodi*, Abhishek Mourya** and Aditi Sharma***

ABSTRACT

Wrongful prosecution is a significant breach of the constitutional guarantees and one of the systemic failures of the criminal justice apparatus. The arbitrary arrests, years of pre-trial detention and eventual acquittal after years of imprisonment disproportionately affect the marginalised communities in India, who include Scheduled Castes, Scheduled Tribes, religious minorities, migrant workers, the urban poor and political dissenters. Based on the National Crime Records Bureau (NCRB) Prison Statistics India 2022, approximately 75.8 per cent of the entire prison population comprises of under trial prisoners meaning that most of the people detained have not been found guilty of any crime. In this under trial population, Scheduled Castes form approximately 21.2 per cent, Scheduled Tribes 11.5 per cent and Muslims 18.3 per cent that are considerably higher than the proportion of Scheduled Castes, Scheduled Tribes and Muslims in the general population. Moreover, NCRB statistics of special laws indicate disturbingly low conviction rates of between 2-3 per cent of the Unlawful Activities (Prevention) Act (UAPA) despite the long jail term due to strict bail conditions. This article critically analyzes wrongful prosecution as a structural and institutional phenomenon and not an aberration using the constitutional jurisprudence, criminology theory, NCRB statistics and available scholarly literature. It contends that mistakenly prosecuted persons will compromise the presumption of innocence, equality before law, and the right to life and personal liberty of Articles 14 and 21 of the Constitution of India. The paper brings to the fore the punitive nature of the criminal process itself to the marginalised population and the requirement of systematic reforms such as prosecutorial accountability, bail reform, compensation systems and data-driven oversight.

KEYWORDS : Wrongful prosecution, marginalised communities, criminal justice system, constitutional law, undertrials, India

Introduction

Criminal justice system within a constitutional democracy is based on its

legitimacy by observing fairness, legality and due process. In India, the practical aspects of criminal prosecution, however, indicate a shocking contrast

* Former Sr. Judge, Allahabad High Court, Lucknow Bench

**PhD Scholar (Law), University of Delhi

***LLM Student, OPJ Indal Global University

between the constitutional ideals and the daily activities. Wrongful prosecution, consisting of people being prosecuted without proper evidence or even going against the safeguards of the procedure, has become a constant but insufficiently examined issue. Although wrongful prosecution is experienced by people of all social classes, marginalised communities experience the impacts of this phenomenon more than others. Certain groups of people are facing increased surveillance, selective enforcement, and detention owing to structural inequalities based on caste, religion, poverty, and political vulnerability. To them, the criminal process will be itself punishment regardless of whether they will be acquitted or not. The Constitution of India ensures equality before law (Article 14), freedom from arbitrary state action (Article 19) and the right to life and personal liberty (Article 21). These guarantees have been extended to procedural fairness, dignity, and access to justice by judicial interpretation. Nevertheless, according to the available empirical data, most of the prisoners detained before trial, including those who belong to a marginalised community, make up almost three-fourths of the prison population in India (NCRB, 2022). This paper discusses the issue of wrongful prosecution as a constitutional and criminological matter. It has a case that wrongful prosecution is not only caused by

personal lack of foresight, or incompetence in the investigation and prosecution but rather is an institutional consequence of institutional bias, over-criminalisation, and lax accountability systems. The article aims at predicting wrongful prosecution as an urgent social justice and human rights challenge by examining constitutional doctrine, statistical facts, and literature on the subject.

2. Conceptual Framework: Understanding Wrongful Prosecution

Wrongful prosecution is the beginning and the progression of criminal proceedings without reasonable legal support or the misuse or abuse of state authority. In comparison to wrongful conviction, which leads to a false verdict by the court to determine the defendant as guilty, wrongful prosecution involves the whole criminal process, including arrest and investigation up to the lengthy trial, regardless of the ultimate result. According to the Supreme Court, it has always been the case that any denial of freedom should be reasonable, fair and just as required in Article 21 of the Constitution (*Maneka Gandhi v. Union of India*, 1978). Without reasonable suspicion, weak or falsified evidence, coerced confessions, and refusal to provide timely bail are the key attributes of wrongful prosecution, and they disproportionately feature in the marginalised communities. In *Hussainara Khatoon v. State of Bihar*

(1979), the Court accepted that long pre-trial detention infringed the right to a speedy trial by stating that depriving a criminal of adjudication is in itself a punishment. This issue was confirmed in the case of *Arnesh Kumar v. State of Bihar* (2014) the Court issued a warning about regular arrests and the importance of following statutory safeguards. The principle that bail is the rule and jail the exception and innocence by presumption were upheld in the case of *Sanjay Chandra v. CBI* (2012). Further, in *Rudul Sah v. State of Bihar* (1983) judicial acknowledgment of compensation for illegal detention underscores the

constitutional consequences of wrongful prosecution. Criminological scholarship supports this judicial reasoning, arguing that the criminal justice system often functions as a mechanism of social control over marginalised populations rather than as a neutral adjudicatory institution (Chambliss, 1979). Feeley's thesis that "the process is the punishment" is particularly relevant in the Indian context, where prolonged trials and pre-trial detention inflict severe social and economic harm on the accused (Feeley, 1992). Wrongful prosecution must therefore be understood as a systemic constitutional failure rather than an isolated legal anomaly.

Table 1: Key Features of Wrongful Prosecution and Their Criminological Implications

Stage of Criminal Process	Manifestation of Wrongful Prosecution	Criminological Implication
Arrest	Arrest without reasonable suspicion or probable cause	Reflects over-policing and stereotyping of marginalised communities
Investigation	Fabrication, suppression, or selective use of evidence	Indicates investigative bias and institutional pressure to secure cases
Custodial Phase	Coerced confessions and custodial abuse	Violates bodily integrity; reinforces power asymmetry between State and accused
Bail Stage	Denial or delay of bail, especially under special laws	Converts pre-trial detention into de facto punishment
Trial	Prolonged pre-trial detention and procedural delays	Supports Feeley's thesis that "the process is the punishment"

Legal Representation	Inadequate or delayed access to legal aid	Demonstrates inequality of arms and systemic disadvantage
Outcome	Acquittal after prolonged incarceration	Reveals punitive nature of prosecution despite absence of guilt

3. Review of Literature

The academic interest in the issue of wrongful prosecution in India is generally incomplete and tends to be buried within the wider debate of undertrials, police misconduct, or reform of the prisons. However, a number of literary works help understand the phenomenon.

The bias of class and caste in policing was pointed out by the early criminological research (Baxi, 1980). It was observed by researchers that poverty and social marginalisation can contribute to the high rate of arrest and detention. These findings have been supported by other researchers, proving that the Dalits, Adivasis, and religious minorities are overrepresented victims of the criminal justice system (Teltumbde, 2018). Systemic delays, non-existence of bail, and legal assistance have always been found in empirical studies of undertrial inmates (NHRC, 2019). It has been contended by scholars that pre-trial detention is some version of preventive punishment especially in special laws that have strict bail conditions (*Hussainara Khatoon v. State of Bihar*, 1979). Critical legal theorists have conducted studies of the abuse of special laws like the Unlawful Activities (Prevention) Act (UAPA) and

found that there were low conviction rates and extended imprisonment (Agnes, 2020). According to these studies, the law of national security is usually used as an instrument of political and social control. The wrongful prosecution is considered in international literature on human rights to have contravened the presumption of innocence, and the right to an effective remedy (ICCPR, Articles 9 and 14). Comparative analysis indicates that even jurisdictions, like the UK and Canada, have legislative systems of compensating against wrongful prosecution, a model, which is definitely lacking in India (Roberts, 2018). In spite of this accumulation of literature, it can nonetheless be stated that there is a lack of integrative studies incorporating constitutional jurisprudence, criminological theory, and empirical data. This paper attempts to close this gap by contextualising wrongful prosecution in the constitutional context of India as well as predicting that such a prosecution has a disproportionate effect on marginalised groups. Professor G.S. Bajpai has argued that the refusal to award compensation for the wrongful convictions in the Akshardham bomb blast case “left many of us confused about the role of the courts.”

He raises the relevant question of whether the court “*abdicated its responsibility of being the custodian of the rights of the most vulnerable, especially those who have been victims of wrongful convictions, irrespective of precedents and provisions.*”

4. Objectives of the Study

The following objectives will guide the current study:

1. To examine the concept of wrongful prosecution within the Indian criminal justice system
2. To analyse the constitutional implications of wrongful prosecution, particularly under Articles 14 and 21
3. To assess the disproportionate impact of wrongful prosecution on marginalised communities
4. To examine empirical data on undertrials, acquittals, and conviction rates
5. To evaluate judicial responses and existing legal remedies
6. To propose reform-oriented measures to address wrongful prosecution

5. Research Methodology

The research methodology used in the study consists of a doctrinal and empirical research, which is grounded on secondary sources. The constitutional provisions, statutory frameworks and the key judicial rulings are examined in order to investigate due process, equality before

the law, presumption of innocence, and personal liberty. The NCRB Crime in India and Prison Statistics India data is empirically analysed with the aim of identifying arrest, pre-trial detention, acquittal, and conviction patterns to reveal structural inequalities and the imbalance of disproportionate wrongful prosecution on disadvantaged groups. The research lacks first-hand fieldwork and is constrained because of the lack of disaggregated data on religion and caste in the prosecution outcomes.

6. Constitutional Framework and Judicial Interpretation

6.1 Article 21 and Due Process

Article 21 of the Constitution of India ascertains that no individual would be denied life or personal liberty without due process of law. The judicial interpretation has gone an extra mile in guaranteeing that such a procedure be just, fair, and reasonable and thus has added substantive due process in Indian constitutional law (*Maneka Gandhi v. Union of India*, 1978). The reform has made Article 21 a focal protection against caprice of the state in the criminal justice system. Direct violation to these constitutional requirements is wrongful prosecution in the form of arbitrary arrests, lengthy pre-trial detention, and systematic delays of the procedures. The Supreme Court has severally pointed out that taking away of liberty without due process is a serious constitutional error. In *Hussainara Khatoon v. State of Bihar* (1979), the court noted that the right to a speedy trial should

be denied in the case of long jail imprisonment of the under-trial prisoners. This court issue is supported by empirical data: in 2022, Prison Statistics India revealed that the number of undertrial inmates amounts to about 75.8 per cent of the entire prison population, which means that the deprivation of liberty most often does not require the conviction to take place (NCRB, 2022). The Court's warning against routine arrests in *Arnesh Kumar v. State of Bihar* (2014) further underscores the constitutional imperative to restrict the coercive power of arrest.

Similar protections are available in comparative constitutional jurisprudence. The United States Supreme Court has ruled that excessive pre-trial detention without reasonable reasons is a breach of the substantive due process (*United States v. Salerno, 1987*), and the European Court of Human Rights has always maintained that the violation of the right to liberty of the person in relation to pre-trial detention is excessive under the Article 5 in the European Convention on Human Rights (*Kalashnikov v. Russia, 2002*). These comparative strategies uphold the Indian judicial emphasis on procedural fairness and proportionality in Article 21.

6.2 Presumption of Innocence

Such a position as presumption of innocence is one of the basic principles of the criminal jurisprudence and recognised human right in accordance with the international law, especially,

Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR, 1966). This principle has always been recognized as being a part and parcel of a fair criminal process by the Indian courts. In *Sanjay Chandra v. CBI* (2012), the Supreme Court reaffirmed that the presumption of innocence must guide decisions on bail, reiterating that pre-trial detention should not be used as a form of punishment. But the practice of this principle is eroded, as we find by empirical facts, to a great extent. According to NCRB statistics, a significant percentage of under trial cases are later exonerated especially the cases prosecuted in special statutes with harsh bail conditions. The conviction rate under the law like the Unlawful Activities (Prevention) Act recorded at approximately 23 per cent indicates that people are often being denied their liberty after the lack of strong evidence to churn conviction (NCRB, 2022). This type of trend is successful in turning the presumption of innocence upside down, especially in the case of marginalised accused.

Comparative constitutional jurisprudence provides educational contrasts. In *R v. Oakes (1986)* The Supreme Court of Canada stated that any restriction upon the presumption of innocence ought to meet the requirements of the Canadian Charter of Rights and Freedoms, which are strict proportionality. In the same vein, the UK Supreme Court has also stressed that there should be exceptional reasons as to why pre-trial detention should be

prolonged, because otherwise the presumption of innocence may be undermined (*R v. Crown Court at Manchester*, 2014).

6.3 Equality before Law (Article 14)

Article 14 secures equality before the law and equal protection of the law without arbitrary and discriminatory action of the state. This constitutional requirement is not met by selective prosecution and differentiation of accused individuals on the basis of caste, religion and socio-economic status. According to the NCRB statistics, there is a constant over-representation of the marginalised communities within the under-trial category: Scheduled Castes form around 21.2 per cent, Scheduled Tribes 11.5 per cent, and Muslims 18.3 per cent of the under-trial population which are disproportionate to their representation in the general population (NCRB, 2022).

(*State of West Bengal v. Anwar Ali Sarkar*, 1952). When criminal law is enforced selectively, it entrenches structural inequality rather than delivering equal justice.

Comparative constitutional jurisprudence supports this interpretation. The South African Constitutional Court, in *S v. Makwanyane* (1995), underscored that equality and dignity must inform all aspects of criminal justice administration. Similarly, the European Court of Human Rights has condemned discriminatory enforcement of criminal law as incompatible with equal protection guarantees (*D.H. v. Czech Republic*, 2007). Wrongful prosecution, viewed through this constitutional and comparative lens, thus emerges not merely as a procedural lapse but as a systemic violation of equality, liberty, and dignity, demanding sustained judicial and institutional reform.

Table 2 : Comparative Constitutional Safeguards against Wrongful Prosecution (India–UK–Canada–US)

Aspect	India	United Kingdom	Canada	United States
Constitutional / Legal Basis	Articles 14 and 21, Constitution of India	Human Rights Act 1998; ECHR (Arts. 5 &6)	Canadian Charter of Rights and Freedoms (ss. 7 & 11(d))	U.S. Constitution, Fifth & Fourteenth Amendments
Due Process / Fair Procedure	Procedure must be just, fair, and reasonable (<i>Maneka Gandhi v. Union of India</i> 1978)	Fair trial and liberty safeguards under ECHR (<i>Kalashnikov v. Russia</i> , applied in UK jurisprudence)	Fundamental justice and proportionality (<i>R v. Oakes</i> 1986)	Substantive due process under Fourteenth Amendment (<i>United States v. Salerno</i> , 1987)

Aspect	India	United Kingdom	Canada	United States
Constitutional / Legal Basis	Articles 14 and 21, Constitution of India	Human Rights Act 1998; ECHR (Arts. 5 &6)	Canadian Charter of Rights and Freedoms (ss. 7 & 11(d))	U.S. Constitution, Fifth & Fourteenth Amendments
Due Process / Fair Procedure	Procedure must be just, fair, and reasonable (<i>Maneka Gandhi v. Union of India</i> 1978)	Fair trial and liberty safeguards under ECHR (<i>Kalashnikov v. Russia</i> applied in UK jurisprudence)	Fundamental justice and proportionality (<i>R v. Oakes</i> 1986)	Substantive due process under Fourteenth Amendment (<i>United States v. Salerno</i> 1987)
Presumption of Innocence	Recognised judicially; bail is the rule (<i>Sanjay Chandra v. CBI</i> 2012)	Statutory and human-rights protection; strict limits on pretrial detention	Explicit constitutional guarantee (s. 11(d) Charter)	Constitutional presumption; burden on State
Limits on Arrest & Detention	Judicial safeguards against arbitrary arrest (<i>Arnesh Kumar v. State of Bihar</i> , 2014)	Pre-trial detention must be exceptional and justified	Detention must satisfy proportionality and necessity	Preventive detention permitted only in limited circumstances
Compensation for Wrongful Prosecution / Detention	Judicially awarded on case-by-case basis (<i>Rudul Sah v. State of Bihar</i> , 1983); no statutory regime	Statutory compensation under Criminal Justice Act	Statutory compensation mechanisms available	Federal and state-level compensation statutes
Approach to Prolonged Pre Trial Detention	Recognised as constitutional violation (<i>Hussainara Khatoon</i> , 1979)	Excessive detention violates Article 5 ECHR	Strict scrutiny under Charter rights	Subject to due process review
Underlying Judicial	Rights-based but limited by	Strong human rights-oriented	Proportionality based	Balancing state interest and

7. Empirical Evidence and Statistical Analysis

7.1 Under trial Prison Population

According to NCRB Prison Statistics India 2022, under trials constitute **75.8%** of India's prison population.

Table: Social Composition of Under trial Prisoners in India (2018–2022)

Category	2018 (%)	2019 (%)	2020 (%)	2021 (%)	2022 (%)
Scheduled Castes (SC)	20.7	20.9	20.8	21.0	20.9
Scheduled Tribes (ST)	10.9	10.5	10.4	09.8	09.2
Muslims	19.6	18.7	19.5	17.9	19.3
Others	48.8	49.3	49.3	51.3	50.6

Source: National Crime Records Bureau, *Prison Statistics India* (2018–2022)

The five-year data shows that there has been a long-standing and unequal presence of Scheduled Castes, Scheduled Tribes, and Muslims in the under trial population in the prisons. Although there are slight variations in the yearly trends, the general trend has been constant throughout the years, thus showing that these differences are not random. When measured against their shares in population, the over-representation of these communities indicates systemic problems of over-policing, socio-economic susceptibility, and limited access to effective legal counseling, and disparities in the enforcement of arrest and bail policies. These trends remain consistent over a five-year period, which contributes to the case that marginalised communities are disproportionately impacted by wrongful prosecution and extended pre-trial incarceration in India criminal justice.

7.2. Acquittal Rate of Prisoners in India

According to the five-year trend, it is evident that Scheduled Castes, Scheduled Tribes, and Muslims have been in a steady overrepresentation among acquitted prisoners compared to their proportion in the general population. Even though the number of the Others category is still the largest category, the proportion of marginalised communities as people acquitted is large and has remained the same over time. This trend reflects not only institutional discrimination at the levels of arrest and detention but also the decision-making of the prosecutor. The situation when the marginalised groups are arrested and prosecuted disproportionately and regularly not guilty indicates that they are frequently criminalised unnecessarily in the first place. These tendencies support the idea that wrongful prosecution is an injustice of structure that achieves

continuous excess deprivation of liberty and social stigma and the necessity of the immediate change in policing, bail adjudication, and prosecutor discretion. Not all years of NCRB release fully disaggregated acquittal by social categories.

7.3 Conviction Rates: Trend and Implications

Conviction rates give a significant measure of how effective and fair criminal prosecution is. When comparing the conviction rates between Indian Penal Code (IPC) and special criminal laws, it is evident that there exist considerable differences, thus introducing the issue of over-prosecution and extended pre-trial custody but with no adjudicative results.

Table: Conviction Rates under Selected Laws in India (2018–2022)

Law	2018 (%)	2019 (%)	2020 (%)	2021 (%)	2022 (%)
IPC (overall)	27.59	25.95	14.90	24.18	29.62
UAPA	2.46	1.74	6.05	3.82	1.55
Sedition(s.124A IPC)	15.4	3.3	33.3	0.0	0.0
NDPS Act	14.3	48.78	26.94	29.99	35.29

Source: National Crime Records Bureau, *Crime in India* Reports (2018–2022)

Prosecution is punitive in nature as the conviction rates are low and imprisoned period long. The disparity between high rate of IPC conviction and the low rate of convictions on special laws demonstrate that the special laws are actually preventive detentions. The length of the prison sentences in the weak conviction are disproportionately applied to the marginalised population that raises grave constitutional concerns regarding equality, individual freedom and due process in Articles 14 and 21.

8. Impact of Wrongful Prosecution on Marginalised Communities

8.1 Economic Impact

Wrongful prosecution subjects the accused and their families to serious and in most cases irreparable economic impacts. Detention before trial and arrest often lead to loss of jobs, livelihoods and household savings as a result of continued legal aid. The Supreme Court has recognized that loss of personal liberty has ensuing socio-economic effects and especially its impact is felt by those who are reliant on the daily wages. State of Bihar, 1979). The lack of employment and social safety among persons in the informal sector makes people vulnerable, as these constitute a large percentage of under trial prisoners. According to the National Human Rights Commission (NHRC) Report on under

trial Prisoners (2019), there are a great number of under trials who are losing their main source of income during their stay in custody, and this results in families falling into debts and intergenerational poverty. It is also hard to reintegrate into the labour market even after being acquitted because work history and social suspicion has been broken. In *Rudul Sah v. the State of Bihar* (1983), judicial recognition of the compensation due to unlawful detention. The economic damages of false prosecution are emphasized, but these types of remedies are rare and ineffective. It is said that Prof. Bajpai developed the idea of wrongful prosecution in the Indian scenario. According to his report of the Babloo Chauhan case, the law commission in its 277th report had suggested amendments to the laws that would assist the wrongly prosecuted victims. His report in *Karan v. State* additionally gave the notion of a Victim Impact Report and the manner in which compensation is calculated and awarded in case of breach of section 357 of the Cr.P.C. *Sunil Tyagi v. State* in the third case. In his report, presented useful recommendations concerning proclaimed offenders, the issue of issuing process and attaching property.

8.2 Social Stigma

Wrongful prosecution is also a source of long term social stigma that can never be corrected by legal acquittal. Criminal charges of offences of serious criminal or security natures frequently result in social alienation, loss of community confidence,

and failure of family bonds. The Supreme Court has realised that the right to life as provided by Article 21 also incorporates the right to dignity (*Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981*). But the miscarriage of justice in the process of prosecuting wrong people negates this right since a permanent stigma is put on the accused. Sociology and criminology can prove that, in caste-based and communally stratified groups of people, criminal charges strengthen the already existing bias against Dalits, Adivases, and religious minorities (Teltumbde, 2018). The NHRC (2019) also mentions that even after being acquitted, acquitted persons tend to experience discrimination when it comes to housing, employment, and social participation, which shows the lack of effectiveness of the acquittal as a restorative process.

8.3 Psychological Trauma

The psychological effect of false prosecution is extensive and long-term. The long periods spent in prison, the risk of not knowing the results of the trial, and the exposure to incarceration violence are some of the factors that lead to anxiety, depression, and post-traumatic stress disorder in undertrial prisoners (NHRC, 2019). Mental suffering has been recognized by the Supreme Court as an aspect of unlawful detention in that the illegitimate deprivation of liberty brings psychological injury that cannot be remedied by the mere fact of release (*Bhim Singh v. State of Jammu & Kashmir, 1985*). Empirical research mentioned by the

NHRC demonstrates that the lack of mental health services in the prisons has a disproportionate impact on the marginalised inmates, which worsens the impact of trauma and hinders integration upon release into the community. The mental health being considered part of the right to life (*Common Cause v. Union of India, 2018*) also underlines the constitutional argument that the loss of physical liberty is not the sole violation of prosecution but also includes the psychological well-being and human dignity.

9. Criminological Explanation: Structural Bias and Over-Policing

Critical criminology does not find wrongful prosecution in the small mistakes or in the personal misconducts, but in the systematic form of organisation of power in criminal justice. Among the main explanations is the fact that, for the marginalised neighbourhoods, over-policing takes place, i.e. the routine surveillance, the preventive arrests, the regular stop-and-search, tend to target disproportionately the community of caste, religion, poverty, or political vulnerability. This type of spatial concentration of policing raises the chances of an arrest regardless of the real offending trends (Chambliss, 1979).

Intimately connected with over-policing is stereotyping of some people as criminals by nature. Colonially based historical constructs of the idea of criminality, supported by social prejudice, still impact the modern law enforcement practices.

Dalits, Adivasis, Muslims, and urban poor groups are often seen as risk groups, and the evidentiary threshold of arrest and prosecution is lower (Baxi, 1980; Teltumbde, 2018).

Political pressure and focus on targets are also the factors in wrongful prosecution, where undercover services are driven to prove their speed especially in matters of national security and societal peace, or strained relationships. This has a tendency to lead to rushed investigations, use of poor evidence and extended custody under harsh laws. This cycle is sustained by the lack of proper accountability systems such as. Wrongful prosecution is, thus, a type of structural violence, in which institutional practices cause harm to marginalised groups of people but are formally legal.

10. Judicial Responses and Their Limitations

The Indian courts have recognised the constitutional injury of unlawful imprisonment and unjust prosecution, which is mainly billed by compensation in extraordinary circumstances. In *Rudul Sah v. State of Bihar (1983)* the Supreme Court identified the monetary compensation as a public law redress on illegitimate imprisonment and stated that the absence of monetary compensation would not be sufficient to rectify the infringement of individual liberty. The same acknowledgement of the state responsibility was repeated in *Bhim Singh v. State of Jammu & Kashmir (1985)*. Nevertheless, these judicial interferences are occasional and case-based, and not

systemic. Awarding compensation occurs at the discretion of the judiciary and in most cases, the compensation is awarded after years of litigation and there is no standardized method of awarding compensation. More importantly, India does not have a detailed statutory system of prosecuting wrongly that includes compensation, rehabilitation, psychological assistance and institutional responsibility. The lack of such a construct constrains the transformative nature of judicial redress to permit wrongful prosecution to be accepted as a structural issue as opposed to a systemic constitutional failure.

11. Recommendations and Reform Measures

1. Wrongful prosecution needs structural and rights-based reforms to the criminal justice system. To begin with, accountability by the prosecutors should be institutionalised by adopting independent review mechanisms which could investigate cases that result in prolonged pre-trial custody and subsequent acquittal. These mechanisms are expected to evaluate investigative and prosecutorial actions and prescribe corrective measures to cases of prosecutions that are observed to be either arbitrary or careless.
2. Second, the amendment of bail is necessary as it is the rule to guarantee the constitutionality of the principle that bail is the rule and jail is the exception. Courts must be very strict in the application of the arrest rule and denying of bail must have sway by outstanding reasons especially in marginalised defendants and special laws that have limiting bail conditions.
3. Third, India needs to have a complete statutory compensatory and rehabilitative system in place concerning victims of wrongful prosecution. It should not just compensate in monetary terms, but also provide legal assistance, psychological counselling and means of social and economic reintegration.
4. Fourth, more data disclosure is required by obliging collated information on arrests, prosecution, detention, and acquittal by caste, religion, gender, and socio-economic standing. This kind of data is essential in evidence-based reform and institutional accountability.
5. Lastly, the legal aid systems need to be empowered to assure the early access to the effective legal representation at the arrest and remand stage, therefore, minimizing the chances of wrongful prosecution and extended detention.

12. Conclusion

Miscarriage of justice against the marginalised groups is an ultimate constitutional failure and the expression of structural injustice being inculcated into the criminal justice system. It weakens the rule of law, undermines the level of confidence to the legal institutions and further entails social and economic exclusion cycles. The Supreme Court has repeatedly believed that Article 21 of the Constitution has been abused by depriving individuals of personal liberty without justification, fair and reasonable procedure. *Union of India, 1978*). However, as it was realised in *Hussainara Khatoon v. State of Bihar (1979)*, indefinite pre-trial detention still remains punishment without trial. The fact that

acquittal was after years of imprisonment does not reverse the economic cost, the social stigma and psychological trauma that the criminal process caused and this has been factored in the judicial compensation given under exceptional circumstances (*Rudul Sah v. State of Bihar, 1983*). The challenge of wrongful prosecution as a problem must be dealt with through reforms on a systemic level based on constitutional morality, accountability, and human dignity. It is only through such reforms that the criminal justice system can cease to be oppressive and become a service of justice, equality and substantive due process as per the constitutional dictates of the criminal justice system.

REFERENCES

1. Agnes, F. (2020). *Law, justice and gender: Family law and constitutional provisions in India*. Oxford University Press.
2. G S Bajpai, Sidharth Dahiya(2024).*Wrongful Conviction*.Bloomsbury Publication
3. Baxi, U. (1980). *The crisis of the Indian legal system*. Vikas Publishing House.
4. Chambliss, W. J. (1979). *Law, order and power*. Addison-Wesley.
5. Feeley, M. M. (1992). *The process is the punishment: Handling cases in a lower criminal court*. Russell Sage Foundation.
6. International Covenant on Civil and Political Rights. (1966). *United Nations General Assembly Resolution 2200A (XXI)*, Articles 9 and 14.
7. National Crime Records Bureau. (2022). *Prison statistics India 2022*. Ministry of Home Affairs, Government of India.
8. National Human Rights Commission. (2019). *Report on undertrial prisoners in India*. Government of India.
9. Roberts, J. V. (2018). *Compensating the wrongfully convicted*. Oxford University Press.
10. Teltumbde, A. (2018). *Republic of caste: Thinking equality in the time of neoliberal Hindutva*. Navayana.
11. Prof (Dr.) G.S. Bajpai(2017). *On Wrongful Incarceration: Default in Payment of Fine, Suspension of Sentence*. National Law University Delhi

Cases Cited

1. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
2. *Bhim Singh v. State of Jammu & Kashmir*, (1985) 4 SCC 677.
3. *Common Cause v. Union of India*, (2018) 5 SCC 1.
4. *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
5. *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 532.
6. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
7. *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.
8. *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.

TRANSPLANTING NON-MONETARY BAIL TO THE INDIAN CRIMINAL JUSTICE SYSTEM: A COMPARATIVE ANALYSIS

Priyadarshi Jha* and Harsh Amrit,**

ABSTRACT

The concept of non-monetary bail suggests that payment of money is not necessary for the purpose of grant of bail. When an accused is granted bail, conditions are typically imposed to ensure their presence during legal proceedings. Usually, accused persons deposit a court-determined monetary amount and provide sureties. Section 484 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (S. 440 of the Code of Criminal Procedure, 1973) emphasizes that the bail amount should not be excessive. Setting an excessively high bail amount effectively undermines the right to obtain bail and, therefore impinges on the presumption of innocence implied under Article 21 of the Constitution of India. Accused persons who are not well off become victims of such a legal fix, consequently, giving rise to an increase in the number of under-trial prisoners. Thus, in order to remedy such a situation the concept of non-monetary bail is evolved in various jurisdictions. This paper evaluates the concept of non-monetary bail by undertaking a comparative study. It also recommends certain amendments to Section 484, BNSS to incorporate the requirement of 'affordability inquiry', wherein the court would be fastened with the responsibility to check, whether or not, the accused is in condition to pay the bail money. Furthermore, this paper also suggests that, in order to satisfy the legal mandate of the requirement of payment of money, in addition to the non-monetary conditions that are necessary in securing the presence of the accused, some nominal amount of bail money could be imposed.

KEYWORDS : Affordability Inquiry, Excessive Bail amount, Indigence, Money, Non-monetary bail etc.

EXCESSIVE BAIL AMOUNT AND ITS RAMIFICATIONS

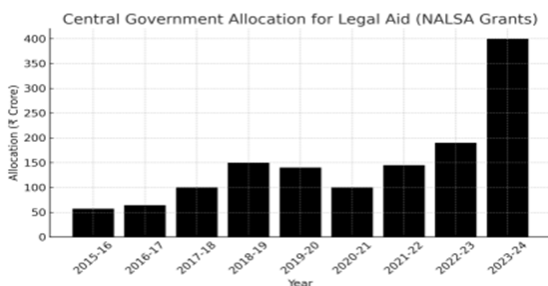
The Supreme Court has, through a catena of judgments, weighed in the favor of the rule that, “jail is an exception, and bail is a rule”. This approach has been taken in line with the Article 21 of the Constitution,

which provides for Right to Life and Liberty and is said to ‘embody a constitutional value of supreme importance in a democratic society’. The approach of ‘bail not jail’ aligns with the idea of liberty of an individual, as provided under Art 21.

* Doctoral Candidate, National Law University, Delhi.2.

** Doctoral Candidate, Dharmashastra National Law University, Jabalpur, Madhya Pradesh.

One of the major drawbacks that Indian Bail Jurisprudence suffers from is what can be termed as '*Property Oriented Approach towards Bail*'. A bail bond denotes a specific amount of money presented by an individual to guarantee the fulfilment of a legal obligation. In this case, the accused persons deposit a certain amount of money to secure their freedom while they await trial. If the accused fails to appear, then he is considered to have jumped the bail and the money deposited is forfeited. The new Criminal Codes, particularly the *Bhartiya Nagrik Suraksha Sanhita*, even after undergoing a major overhaul, continues to carry the bygone idea from the Nineteenth Century: that an adequate monetary security is necessary to ensure the appearance of the accused. This is also in a way a reflection of the blind obsession that follows rules and rituals canonized by the out-dated Anglo-Saxon jurisprudence. Though free legal aid is a right enshrined in the Constitution itself, this very approach towards bail, more often than not, leads to the harrowing instances of poor and indigent languishing in prisons, even after bail is granted, on the account that they are unable to fulfil the monetary conditions.

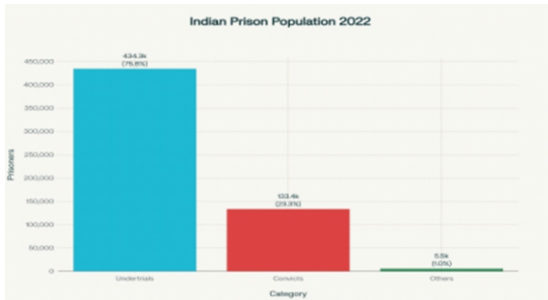


The problem is aggravated by the fact that an undertrial often loses their ability to earn a living, which creates further financial strain and can push the entire family into poverty. This situation led the Supreme Court to comment that, such instances, “*constitute an affront to the dignity of man and it is surprising, indeed shocking to the conscience of mankind, that such a situation should prevail in any civilized society. What meaning has the rule of law if the poor are allowed to languish in jails without the slightest justification as if they are the castaways of the society?*”

The ability to pay for cash bail often determines whether someone will be granted pre-trial bail or not. This creates a disparity for those who are financially well-off who can buy their freedom, while the poor cannot. This raises the question of *whether relying on cash bail is fair or if it perpetuates discrimination?*

A thorough understanding of the situation can be made by taking a look at the statistical data available concerning the under trials. As per the 2022 NCRB report, the data reveals that undertrial inmates total 434,302, representing 75.8% of the prison population. In contrast, convicts make up only 23.3% of the total prisoners, an increase of 8.6% since 2021. This increase has led to an increase in the total number of prisoners to an extent that the occupancy rate of prisons is at staggering 131.4%. Further, studies and reports made in the past few years, reveal that the bulk of this under-trial population is formed of the marginalized communities, most of which

are underprivileged, who have access neither to knowledge nor have resources.



As mentioned in Section 484 Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter, BNSS), which corresponds to Section 440 of Cr.P.C, 1973, it prohibits excessive bail; but does not specify what constitutes *excessive*. It is trite that presumption of innocence is a preeminent requirement that must be maintained in the administration of justice in criminal cases. It must be asserted that at the stage of investigation, even the investigative authorities are not sure as to the guilt of the accused and, the investigation might even result in filing of a closure report. Thus, if a person is not allowed to avail the legal facility of bail due to his financial inability, then such a person would be impelled to undergo continued incarceration, not because of his guilt, but due to his financial inaffluency.

The act of detaining accused persons before the trial, can negatively affect their ability to have a fair trial and put them in a disadvantageous position. It can hinder their ability to prepare a proper defence, limit their access to legal counsel, make it difficult to locate witnesses, and create a spectacle of guilt. All these factors work against a detained accused in the

courtroom, making it harder for him to mount a successful defence.

Using financial status as a means of determining whether someone is likely to appear in court or commit future crimes is not appropriate. This is because having money does not necessarily prevent someone from fleeing or committing further crimes, and those who prioritize escaping legal consequences may still do so regardless of their financial situation. Relying solely on financial status to determine release guarantees that only those who are poor or indigent will be kept detained while those financially privileged will be released. This approach ignores the risks of flight and future dangerous behaviour, which can occur regardless of a person's financial status. The current system of pre-trial detention for the accused is evidently problematic. It creates unfairness for the accused and does not adequately ensure safety for the community.

The National Legal Services Authority, in its report submitted to the Supreme Court, highlighted that around 5000 undertrial prisoners languished in jail, despite grant of bail. One of the primary reasons for such a situation highlighted in the report, was their inability to fulfil the mentioned conditions.

By examining the different interests of the state and the individual, two primary purposes of bail can be inferred. Bail serves as a means of reconciling the conflicting interests between these parties. The state has institutional and societal interests in ensuring that the accused

appears in court and preventing any potential dangerous behaviour that might occur if the accused were released.

Being released before trial helps people prepare for their legal case, maintain their reputation in the community, and avoid limitations before being found guilty. For those accused of a crime, the right to bail means either the right to be released before trial or the right to bail that they can afford.

The apex court in the matter of *The High Court of Judicature for Rajasthan v. The State of Rajasthan and Anr.* held that-

“Right to apply for bail is an individual right implicit in Articles 14, 19 and 21 of the Constitution. The right of an accused, an undertrial prisoner or a convicted person awaiting appeal court's verdict to seek bail on suspension of sentence is recognized in Sections 439, 438 and 389 of the 1973 Code.”

Thus a bail amount which is excessive in nature and disproportionate to what circumstances of the case and capacity of the individual warrants, would be violative of Art. 14, 19 and 21.

2. NON-MONETARY BAIL: A COMPARATIVE ANALYSIS

2.1 United States of America

The Manhattan Bail Project, which started in October 1961 and was led by the Vera Institute, aimed to address significant injustices of the money bail system and find practical alternatives. The project sought to determine whether factors other than accused financial resources could ensure

their appearance in court. Specifically, the project aimed to answer whether defendants who couldn't afford to pay bail money would show up for their trial if released on non-monetary terms.

Based on an initial investigation, it was discovered that community ties had a noteworthy impact on guaranteeing the presence of the accused in court. Bail bondsmen frequently employed comparable standards to determine the individuals for whom they would furnish bail. Indicators such as the accused's stability of residence, employment history, family ties in the local area, and past criminal record were considered as factors to determine the probability of their attendance in future legal proceedings

The fundamental concept posited that individuals who possessed robust community ties were less likely to abscond, given the potential loss of their employment, familial relationships, and social networks, in contrast to the prospect of enduring legal retribution if convicted. The aforementioned persons were classified as low-risk and were granted release without the requirement of payment of bail bond, a procedure commonly referred to as release on recognizance (ROR). This form of release was predicated on the supposition that defendants possessing sufficient community connections could be relied upon to appear in court without the necessity of monetary payment.

The Vera project randomly divided a group of accused persons into experimental and

control groups. The experimental group was evaluated to determine the extent of their connections within their community. The information was verified by contacting their family, friends, and employers. The recommendations based on this evaluation were then presented to the judges responsible for setting bail.

Starting in 1961, the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary initiated an inquiry into potential reform that could be passed as legislation. As the data was collected and analyzed, particular emphasis was placed on the Manhattan Bail Project's outcomes. By 1963, several pieces of legislation were formulated to address significant flaws in the federal bail system. The Senate drafted an all-inclusive bail reform bill in 1964, which was then revised the following year. The House passed a similar proposal. Ultimately, in September 1966, the Federal Bail Reform Act (FBRA) was established.

The FBRA created a presumption in favour of granting release on non-financial conditions, both before a trial and during the appeals process. The FBRA specifically mentions that Individuals accused of a crime, with the exception of those facing capital punishment, are entitled to be granted release on their own recognizance or upon the execution of an unsecured appearance bond at their initial appearance before a judicial officer. While not expressly prohibited, the imposition of a financial bond was deemed a less desirable option among the alternatives

for granting release. To achieve the aforesaid objective, two core principles were established

Firstly, a person's financial circumstances should not be used as a basis for denying pre-trial release, and *secondly*, the risk of the defendant not showing up for trial should be the only factor taken into account when making decisions about bail.

While the FBRA preferred non-monetary ways of release, it also set up a hierarchy of requirements to ensure that the accused would show up in court if ROR release wasn't considered acceptable. The court was under an obligation to select the condition that would impose the least amount of restriction from the available options, while still ensuring that the accused would reasonably appear for trial. The objective of this approach was to customize pre-trial release in accordance with the distinct circumstances of individual defendants.

2.1 States in the U.S.A

The federal pre-trial agency for the District of Columbia conducted a survey and the report describes how the practice of cash bail is unjust to low-income communities, with severe consequences for them and their families. In addition, the report emphasises how the use of surety bonds for profit weakens the judicial system. The report includes perspectives from city residents who have interacted with the city's pre-trial justice system, practitioners from pre-trial service agencies, as well as both prosecuting and defence attorneys.

While, in Washington, DC, nearly 88% of accused are released from custody without having to post a bond. In the rare instances where judges do set financial obligations (approximately 4% of cases), they are almost always cash bonds. In contrast to other systems, commercial bondsmen who have a pecuniary incentive to ensure a defendant's presence are unnecessary. Over the past five years, an average of 88% of released defendants have appeared at all court dates and remained free of detention while awaiting trial. On average, between 12 and 15 percent of defendants are detained by law during case adjudication. After a thorough due process hearing, these defendants are either deemed too dangerous for release or have met specific statutory requirements for detention. In contrast, 85 percent of released defendants remained free without revocation or supervision while their cases were pending.

As of March 2021, a trio of states have eliminated cash bail for the majority of offences, while one state has fully eradicated cash bail as of January 2023. In 2014, New Jersey implemented legislative changes that were subsequently enforced on January 1, 2017. In order to safeguard the well-being of the general public and guarantee the presence of the defendant in court, a point based mechanism is currently employed to assess all accused individuals. This system is utilized to ascertain whether the accused should be granted release from detention, detained until the trial, or subjected to alternative measures such as house arrest, electronic

surveillance, or, in rare instances, monetary bail. Alaska implemented a similar reform in the year 2016, which was subsequently enforced in 2018. In the beginning of 2020, the state of New York implemented a comparable policy change.

The California Supreme Court ruled in March 2021 that individuals cannot be detained solely because they cannot afford to pay cash bonds. In *Re Kenneth Humphry case* the Supreme Court of California speaking via Cuéllar, J held that-

“The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. Other conditions of release - such as electronic monitoring, regular check-ins with a pre-trial case manager, community housing or shelter, and drug and alcohol treatment - can in many cases protect public and victim safety as well as assure the arrestee's appearance at trial. What we hold is that where a financial condition is nonetheless necessary, the court must consider the arrestee's ability to pay the stated amount of bail - and may not effectively detain the arrestee “solely because” the arrestee “lacked the resources” to post bail.”

Illinois became the first state to completely abolish monetary bail in February 2021 (effective January 2023).

2.2. of the United Kingdom

Section 4 of the Bail Act of 1976 in the United Kingdom delineates the idea of unconditional bail. This section explains that, with certain exception, an individual who has been granted bail shall be released without any accompanying stipulations. Nevertheless, the court has the authority to impose conditions even in those cases, if it is persuaded that they are essential to guarantee the defendant's presence in court, to forestall the accused from perpetrating an offense, or to protect the well-being or security of another person.

Exceptions to the standard rule of unconditional release of a person granted bail are provided for under Section 4(4) of the Bail Act of 1976 . What is thus clear is that the general norm is, for certain non-serious offences, to unconditionally enlarge the accused on bail. Further, even in the said aforesaid type of cases, if the situation warrants imposition of certain conditions, it is clear by the reading of the act, that they are mostly non-monetary in nature which shall be necessary to ensure accused presence. The non-monetary conditions that could be imposed if in situation warrants so, includes,-

- 1) The court has the authority to impose conditions aimed at preventing the accused from engaging in criminal activity during his release on bail.
- 2) Bail conditions by the court which serve the purpose of safeguarding the safety and well-being of victims.
- 3) The court retains the authority to impose additional conditions by an order

to limit accused person's movement or activity, or ask the accused to not to visit the places which are near the vicinity of the victim's residence or, report to the police station or, to surrender passport or travel documents.

It is noteworthy that in the event of the court's imposition of conditions, said conditions must be reasonable and commensurate with the specific circumstances of the case. The court is required to assess the individual's capacity to adhere to the prescribed conditions and the probability of the conditions achieving their desired objectives.

2.3. of the South Africa

Section 35(1)(f) of the South African Constitution protects the right to bail. It pertains to individuals who have been arrested, detained, or accused. It reads as-

“f. to be released from detention if the interests of justice permit, subject to reasonable conditions”.

Regarding bail applications, courts have considerable discretion. To determine whether or not to grant bail, however, courts must carefully weigh the interests of society, the accused, and any victims involved. This delicate balancing act is required to ensure justice is served.

Judges are required by law to consider whether the accused can afford to pay the bond amount. Under the law in South Africa, judges are required to conduct an affordability inquiry based on the financial resources of the accused. These requirements may suggest that even

financially disadvantaged individuals will not encounter any barriers when attempting to exercise this privilege.

This inquiry is required to take into consideration non-monetary bail conditions or to set bail amounts that are appropriate for the accused's situation. The Judicial Inspectorate of Prisons Annual Report in South Africa has highlighted this issue, indicating that the inability to afford bail is a major contributor to prison overcrowding, which is exacerbated by the tendency of courts to set excessively high bail amounts. The report suggests that bail should not be confused with a fine for an offence, and that excessive bail amounts pose difficulties for the poor and disadvantaged, thereby undermining justice. The inequality inherited from the apartheid and colonial eras will continue to exist unless the criminal justice system makes a concerted effort to investigate accused persons' capacity to pay bail money.

Section 63A of the Criminal Procedure Act provides additional relief for accused who cannot afford bail. In accordance with this section, an accused person who has been granted bail but cannot pay may be released with a warning by the prison's warden. This, however, is contingent upon the prison population reaching such proportions as to pose an imminent and material threat to the human dignity, physical health, or safety of a defendant. It could be argued that section 63A provides bail-indigent defendants with recourse. The limitation is that the prison warden's discretion can only be invoked when

prisons are congested; therefore, there is no reprieve for the accused when prisons are not overcrowded.

The case of *S v Pineiro* demonstrated that alternative methods could be considered to ensure that accused individuals attend their trial after being released on bail. Even though the applicants in this case were considered to have a high risk of absconding, the appeals judge found methods to deal with the issue without keeping them in detention. They were granted bail on the condition that they report daily to a police station, surrender their passports, and do not leave certain areas without notifying the police. This strategy demonstrates that detention should be the last resort and that courts should consider alternative means of safeguarding the accused's presence. This position is consistent with section 35(1)(f) of the Constitution, which states that anyone arrested for purportedly committing a crime has the right to be released if the interests of justice permit, subject to reasonable conditions.

3. BAIL IN INDIAN LEGAL SETUP

A bare perusal of form Form No. 29, BNSS provided at the end of the Sanhita (Form no. 45, CrPC, 1973), which relates to bond and bail bond, would show that payment of certain money is a pre-requisite to avail the grant of bail. Besides this the usage of terms *bail*, *executing a bond without sureties*, *personal bond with or without sureties*, *on bail instead of the personal bond with or without sureties*, *released on bail or on his own bond*, further muddles

the water as to what is the correct connotation with respect to term *bail and personal bond*. The issue was clarified in the matter of *Moti Ram v. State of Madhya Pradesh*. The facts of the case were that petitioner, a Mason, was granted by the Apex Court, under the condition, “*to the satisfaction of Chief Judicial Magistrate*”, as no details were provided by the court in the bail order. The Magistrate set a surety in the sum of Rupees Ten Thousand, back in the 1970s. Though the Petitioner was somehow able to arrange for a surety, it was rejected on the ground that it didn't belong to the same district as petitioner. Justice V.R Krishna Iyer, expressing the dismal and distressing condition regarding bail observed that,-

“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread,” lampooned Anatole France. The reality of this caricature of equal justice under the law, whereby the poor are priced out of their liberty in the justice market, is the grievance of the petitioner.”

The case also raises questions over whether setting conditions like surety being from the same place, disproportionately affects the individuals from economically disadvantaged backgrounds. Adding a geographic limitation further undermines the situation of the poor and undermines the principles of fairness in the criminal justice system. Justice Iyer in the case also observed that-

“If mason and millionaire were treated alike, egregious inequality is an inevitability. Likewise, geographic allergy at the judicial level makes mockery of equal protection of the laws within the territory of India. India is one and not a conglomeration of districts, untouchably apart.”

The issues before the Supreme Court of India were, in the aforesaid matter, are as follows

First, under the Code of Criminal Procedure, can the court release an individual held for a non-bailable offence, either as an undertrial or as a convict who has appealed or sought special leave, on their own bond without sureties?

Secondly, What criteria should the court use to determine the amount of bail if it decides to grant bail with sureties? *Thirdly*, does the court have the authority to reject a surety who resides in a separate district or state?

The first issue is relevant for our discussion. Hence, with respect to the first issue Justice V. R Krishna Iyer opined that-

“Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that bail covers both-release on one's own bond, with or without sureties.”

Thus, what is clear at this juncture after perusal of the judgement of *Moti Ram* is that bail means release on *personal bond with or without surety*. Also it was

highlighted by Justice Krishna Iyer that the court cannot insist for production of a local surety.

Further, we may also refer to the two sections of the BNSS which take into account the plight of under-trial prisoners. Section 478 of the BNSS 2023 Code, (which corresponds to Section 436 of the CrPC, 1973) relates to the cases in which bail could be sought as a matter of right (i.e. Bailable offences). The relevant provision is extracted hereinafter-

“Provided that such of cer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided

Explanation- Where a person is unable to give bail within a week of the date of his arrest; it shall be a suf cient ground for the of cer or the Court to presume that he is an indigent person for the purposes of this proviso”

And Section 479 of BNSS (corresponds to Section 436A of the 1973); simply states that where a person has undergone one third of the maximum sentence provided, except for offences where death penalty is one of the punishments, then such a person shall be released on bail by the court on his personal bond with or without sureties. These two sections explicitly relax the requirement of surety and the judge is free to enlarge the accused on personal bond. It

is noteworthy that still the requirement of payment of money is there under personal bond.

What is thus clear is that, even if the judge chooses to release a person on personal bond (dispensing with the requirement of surety), even then the requirement of payment of money is there and a person who is not affluent enough to pay the required money will languish in jail. What is thus sought to be argued here is even when an accused person makes out a case for himself for grant of bail, he is not able to avail such benefit solely due to the fact that he is financially incapable of paying such an amount. What level of confidence would such individuals place in our Criminal Justice System? Would the incarcerated individuals not harbour feelings of frustration and resentment towards the justice system that detains them for extended periods due to their financial inability?

President Lyndon Johnson's speech while the FBRA bill was passed implied that affluent defendants can purchase their freedom by paying bail, whereas poor defendants remain incarcerated for extended periods of time prior to trial because they cannot afford bail. Their continued incarceration has nothing to do with their guilt, likelihood of flight, or the imposition of a sentence, it is exclusively due to their lack of financial resources.

As mentioned above Section 484, BNSS, 2023 (analogous to Section 440 of the CrPC, 1973) prescribes that bail amount should not be excessive and it must be fixed

keeping in mind the circumstance of the case. It has been repeatedly held by the Supreme Court that excessive fixation of bail amounts leads to denial of the right of bail. In *Munish Bhasin and Others v. State (Government of NCT of Delhi)* and Another Supreme Court opined that-

“10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and ef cacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.”

In the case of *Sandeep Jain v. National Capital Territory of Delhi* Supreme Court held that-

“We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to

languish in jail for more than 10 months now, is suf cient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs 2 lakhs?.... But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police.”

Afore-cited judgements evince the casual approach of the courts in fixing the bail amount, having no regard whatsoever of the circumstances of the individual which incessantly contributes to the pool of under-trial prisoners.

Talking of recognisance, Supreme Court of India in *Satender Kumar Antil v. C.B.I* referred to a judgement of Canada Supreme Court which discussed the concept of recognisance in the following words-

“It is not necessary to impose cash bail on accused persons if they or their sureties have reasonably recoverable assets and are able to pledge those assets to the satisfaction of the

court. A recognizance is functionally equivalent to cash bail and has the same coercive effect. Cash bail should be relied on only in exceptional circumstances in which release on a recognizance with sureties is unavailable. When cash bail is ordered, the amount must not be set so high that it effectively amounts to a detention order, which means that the amount should be no higher than necessary to satisfy the concern that would otherwise warrant detention and proportionate to the means of the accused and the circumstances of the case. The judge is under a positive obligation to inquire into the ability of the accused to pay. They must not be imposed to change an accused person's behaviour or to punish an accused person. Where a bail review is requested, courts must follow the bail review process set out in R. v. St-Cloud

Even though the judgement of *Satender Antil* talks about the idea of recognisance, it fails to have a deeper engagement with the it in detail, with a view to check the feasibility of non-monetary bail and, whether or not, the idea of non-monetary bail should be imported to India to de-clog the prisons and to effect respite to poor under-trial prisoners,

Reiterating its decision, in earlier judgments, the Supreme Court, in the case of *Guddan @ Roop Narayan*, addressed the concerns over laying down severely onerous conditions for Bail. The Court highlighted that the conditions of bail cannot be onerous and harsh to an extent, that it renders the provision of the legislature and the opportunity of the accused to enjoy bail, in cases where he/she would have been granted bail in the general scheme of things, be rendered ineffective. The Court went on to the extent of asking the question that whether, those persons who are unable to comply with the excessive conditions shall languish in the jails forever?.

The Court noted that,

“To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.”

We may here have a look at the *suo motu* case of *In Re Policy Strategy for Grant of Bail* herein the Supreme Court has made concerted effort to decongest the prison by devising various ways which may help the under-trial prisoner to secure bail. In its recent order the court referred to the report of NALSA wherein it was found that there are around 5000 accused persons who are in jail despite the grant of bail.

Further it was observed by the NALSA, that among other reasons, the chief reason due to which there is a rise in the number of

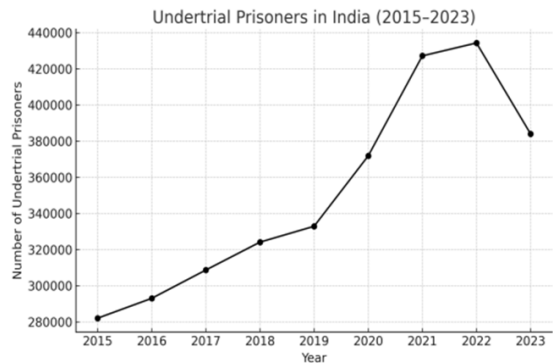
under-trial detainees is the inability to pay the bail amount. It was further suggested in the report of NALSA, that it intends to create a master data wherein all the relevant details as to non-release and the steps taken by the State and district legal services authority to obtain the release of the accused will be provided. Further, a reference to the National Information Centre's e-prison software was made, wherein the jail authorities will be required to update the date of grant of bail and then, if after a passage of 7 days from such a date, the accused is not out of jail, then this would be flagged and an email would be sent to the legal services authority, thus enabling the legal services authority to find out the reasons as to why the person concerned is not out on bail.

These were some of the steps which were taken by NALSA and the government. We may also have a look at the directions issued by the Supreme Court in its order. It was specifically held in direction number 6 that-

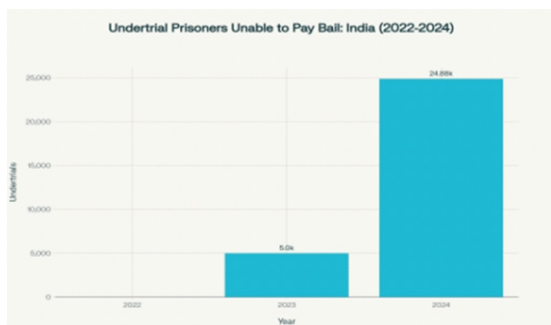
"...6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation."

Keeping all these considerations concerning the indigent person and the inability to furnish the required amount and in meeting the onerous conditions for bail, the Supreme Court has often set aside

such conditions stipulated by the lower courts. This has been done to balance the personal liberty under Article 21 and public interest. In the case of *Ashok Sandeep Singh v. State of Uttar Pradesh*, the petitioner, an office clerk, was unable to furnish the surety in the amount of Rs 10 lakhs, as directed by the Additional Chief Judicial Magistrate. The Apex Court set aside the condition. Similarly, in case of *Guddan*, the surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each, as laid down by the High Court was set aside.



Indubitably, these steps would contribute in lessening the number of under-trial prisoners and remedying the issue of continued incarceration. The palpable effect of the said order was visible in the next year—as it helped in *identification* of such inaffluent prisoners—where there was a sudden increase in the number of detainees who were not unable to secure bail due to their inability to pay the bail amount fixed.



This step, indubitably, bolstered the identification mechanism of the jail authorities, however, no effort is given by the courts to see whether fixing of money, which in most of the cases is disproportionate, is the most appropriate way to secure the presence of the accused at the trial. In order to remedy the situation, it requires a rather deeper push to reform the criminal justice system, where the District Judiciary, at the time of considering bail application, is vested with the power to an affordability inquiry in relation to the capacity of the accused to pay the bail amount.

4. TRANSPLANTING NON-MONETARY BAIL IN INDIAN JURISPRUDENCE

As mentioned above payment of money is a pre-requisite for availing the grant of bail. It is a truism that only those conditions must be imposed that are necessary in the interests of justice. It is trite that presence could be secured not necessarily by imposing the requirement of payment of money but also by imposing such conditions which are just and fair according to the circumstances of the case.

In *Hussainara Khatoon v. Secretary of*

Bihar, the whole evolution of the law of bail in the U.S was discussed so as to accentuate the position that there is a need to recognise non-monetary bail. However, we do not find any provision in the BNSS, 2023, which may ameliorate the legal fix cited above. In so far the non-bailable cases are concerned there is no provision that envisages release on non-monetary conditions. As discussed above by the perusal of various judgements, that there is unabated and indiscriminate imposition of excessive bail amount which is in derogation with not only Section 484 BNSS, 2023 (Correspond Section 440 of the CrPC, 1973) but also with the various guidelines of the Supreme Court of India. For example we may refer to the case of *Moti Ram* wherein the accused (in 1978) who was a Mason was required to pay a sum Rs. 10,000 as bail amount, which was palpably unfair.

Indubitably, the suo motu reference of *In re policy for grant of bail* does take into consideration the plight of the indigent under-trial prisoners, but it comes only at the stage, where after passage of some time, the accused fails to furnish the bail amount. Thus, what is suggested is that Section 440 of the Code (corresponding to Section 484 BNSS) must be suitably amended to provide for affordability inquiry as provided in the Criminal Procedure Act of South Africa. It shall be the duty of the Court (*which includes the District Judiciary the first point of contact in the Criminal Justice System*) to assess as to whether or not, the person has the financial capacity to pay the bail amount.

This *new* provision would bind the presiding officer of the court to look into the affordability of the accused and presence of such a provision would bind the court to legally apply its mind to the matter at hand and, thus supply reasons as to why a sum of money was imposed as bail amount.

As mentioned above payment of money is a pre-requisite for the availing of grant of bail then, a nominal amount like Rs. 100 or 200 could be imposed by the judge in order to fulfil the requirement of the provision relating to bail and thus further non-monetary condition could be imposed. What is thus sought to be argued here is that if we read Section 480 of the BNSS (or 437(3) Section of the Code), where '*any other condition could be imposed by the court in the interest of justice*', Section 483 of BNSS (Section 439(2) of CrPC, 1973) and Section 484 of BNSS, then it is possible for a judge to stipulate non-monetary conditions for bail by ordering payment of nominal money for bail amount.

Thus, what is required is that if there is an accused whose financial condition is not well then, the appropriate step is to impose such non-monetary condition which will ensure the presence of the accused during the trial, in consonance with the model which is discussed above.

The Judge before stipulating conditions, which are of non-monetary in nature, must bear following circumstances in mind as discussed in the judgement of *Hussainara Khatoon v. Secretary of Bihar*-

"4. It is high time that our Parliament realises that risk of

monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pre-trial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our courts in regard to pre-trial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond.

In order to determine, whether the accused is likely to flee, the Court should consider various factors related to the accused ties to the community, including: how long they have lived in the community, their employment status, work history, and financial situation, their family relationships and connections, their reputation, character, and financial situation, their criminal record, including any prior release on bail, whether there are trustworthy community members who can vouch for their reliability, the nature of the crime they are charged with, the likelihood of conviction, and the expected sentence, as

they relate to the risk of not showing up for trial, and any other factors that may indicate the accused ties to the community or their likelihood of intentionally failing to appear in court.

Thus, it is possible that the bail system is implemented in the way as mentioned above, even under the current law, it would alleviate the difficulties faced by the poor and assist them in obtaining pre-trial release from imprisonment. Thus, if the court decides that, apart from the standard conditions of the bail bond as required Section 480 BNSS and Section 483 BNSS, non-monetary conditions for bail release are necessary, they may include, conditions such as requirements for the defendant to report to the police station, limitations on the accused's travel; and/or any other suitable conditions that aim to ensure the accused's appearance in court and adherence to the conditions of the bail bond.

CONCLUSION

Bail is a necessary means, in criminal jurisprudence of any country, to ensure that people are not unjustly detained before a trial. But, placing solely monetary conditions for bail creates an unjust system for those with low or no financial means, leading to a prolonged incarceration. This idea not just violates the principle of '*jail is an exception*', but also violates the sanctity of Article 21 of the Constitution.

The experience of other countries and jurisdictions in this regard, leads to the conclusion that the non-monetary bail system aids in bridging the socio-economic

inequalities that exist within a society by removing any form of financial roadblocks for an indigent person. Considering the situation of India, where the scenario is already aggravated, the implementation of a non-monetary bail system would be a beneficial step.

Thus, the proper way to approach any bail matter should be

Step 1- As demonstrated above *bond* implies mandatory payment of money then the court must engage in an *affordability Inquiry* of the accused and see whether he can pay the fixed amount or not. If yes, then usual conditions as mentioned in Section 480 BNSS could be imposed.

Step 2- If it is found that the person concerned is not financially capable to pay the requisite money, then an inquiry must be launched to find out whether the accused has deep rooted connection with the society, whether he is employed, whether there are trustworthy community members who can vouch for his reliability. Then, if he satisfies the aforesaid requirements, then such person must be enlarged on bail with non-monetary conditions that may include measures as harsh as surrendering of passport and travel documents.

Step-3- True it is that, in Indian legal setup, meaning of personal bond implies payment of certain amount of money that is stipulated by the court, thus if such a person has no wherewithal to pay the requisite money, then some nominal amount of money could be imposed in order to fulfil the legal mandate. Along

with this other non-monetary conditions could be imposed.

By implementing these steps, India can create a more just and effective bail system

that upholds the principles of fairness and diminishes the socio-economic disparities embedded in the current monetary bail system.

REFERENCES

1. Amnesty International India. (2017). *Justice under trial: Study of pre-trial detention in India*.
https://www.amnesty.nl/content/uploads/2017/07/UT_Final.pdf?x79902
2. Ashok Sandeep Singh v. State of Uttar Pradesh, SLP (CrI.) No. 3314/2024.
3. Bail Act. (1976). s. 4(4).
4. Bail Act. (1976). s. 4.
5. Bail Reform Act. (1966). 18 USC § 3146(a).
6. Bhandari, V. (2013). Inconsistent and unclear: Supreme Court of India on bail. *NUJS Law Review*, 3.
<http://docs.manupatra.in/newslines/articles/Upload/9BCB8218-602C-465B-BA6E-923199D550FF.pdf>
7. Bharatiya Nagarik Suraksha Sanhita, 2023, Form No. 29, Code of Criminal Procedure, 1973. Form No. 45.
8. Bharatiya Nagarik Suraksha Sanhita, 2023, s. 430, (earlier, Code of Criminal Procedure, 1973, s. 389).
9. Bharatiya Nagarik Suraksha Sanhita, 2023, s. 478, Code of Criminal Procedure, 1973, s. 436.
10. Bharatiya Nagarik Suraksha Sanhita, 2023, s. 479, Code of Criminal Procedure, 1973, s. 436A.
11. Bharatiya Nagarik Suraksha Sanhita, 2023, s. 480, Code of Criminal Procedure, 1973, s. 437(3).
12. Code of Criminal Procedure. (1898).
13. Code of Criminal Procedure. (1973). (Act 2 of 1974).
14. Constitution of India. (1950). Art. 39A.
15. Constitution of the Republic of South Africa. (1996).
16. Constitution of the United States of America. (1787). Amend. XIV.
17. Criminal Procedure Act. (1977). s. 60(2B) (South Africa).
18. Equal Justice Initiative. (2018, January 17). *Alaska becomes the latest state to enact bail reform*. <https://eji.org/news/alaska-enacts-bail-reform/>
19. Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (SC).

20. Guddan @Roop Narayan v. State of Rajasthan, 2023 SCC OnLine SC 1242.
21. High Court of Judicature for Rajasthan v. State of Rajasthan & Anr., LL 2021 SC 523.
22. Hussainara Khatoon v. State of Bihar, 1979 SCR (3) 532.
23. In Re Policy Strategy for Grant of Bail, SMWP (Criminal) No. 4/2021.
24. Jain, M. (2016). Our bail system suffers from a property-oriented approach. *Practical Lawyer*, 59–60.
25. Johnson, L. B. (1966, June 22). *Remarks at the signing of the Bail Reform Act of 1966*. The American Presidency Project.
<https://www.presidency.ucsb.edu/documents/remarks-the-signing-the-bail-reform-act-1966>
26. Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773.
27. McElroy, J. E. (2011). Introduction to the Manhattan Bail Project. *Federal Sentencing Reporter*, 24(1), 8. <https://doi.org/10.1525/fsr.2011.24.1.8>
28. Mokoena, U. C., & Lubaale, E. C. (2019). Decolonising prisons in South Africa: The need for effective bail affordability inquiries. *South African Crime Quarterly*, 66. <http://dx.doi.org/10.17159/2413-3108/2018/i66a5634>
29. Moti Ram v. State of Madhya Pradesh, (1978) 4 SCC 47.
30. Munish Bhasin & Others v. State (Govt. of NCT of Delhi) & Anr., (2009) 4 SCC 45.
31. Myers, C. L. J. v. Her Majesty the Queen, 2019 SCC 18 (Canada).
32. National Crime Records Bureau. (2016). *Prison Statistics India 2015*. Ministry of Home Affairs, Government of India.
33. National Crime Records Bureau. (2017). *Prison Statistics India 2016*. Ministry of Home Affairs, Government of India.
34. National Crime Records Bureau. (2018). *Prison Statistics India 2017*. Ministry of Home Affairs, Government of India.
35. National Crime Records Bureau. (2019). *Prison Statistics India 2018*. Ministry of Home Affairs, Government of India.
36. National Crime Records Bureau. (2020). *Prison Statistics India 2019*. Ministry of Home Affairs, Government of India.
37. National Crime Records Bureau. (2021). *Prison Statistics India 2020*. Ministry of Home Affairs, Government of India.

38. National Crime Records Bureau. (2022). *Prison Statistics India 2021*. Ministry of Home Affairs, Government of India.
39. National Crime Records Bureau. (2023). *Prison statistics in India*. https://www.ncrb.gov.in/uploads/nationalcrimerecords%20bureau/custom/psi_yearwise_2022/1701613297PSI2022ason01122023.pdf
40. National Crime Records Bureau. (2023). *Prison Statistics India 2022*. Ministry of Home Affairs, Government of India.
41. National Crime Records Bureau. (2024). *Prison Statistics India 2023*. Ministry of Home Affairs, Government of India.
42. New York Senate Research Service – Task Force on Critical Problems. (1958). *Accused and unconvinced: A brief on bail practices*. <https://www.ojp.gov/pdffiles1/Digitization/46590NCJRS.pdf>
43. Pretrial Services Agency for the District of Columbia. Kennedy, S. (n.d.). *Freedom and money – Bail in America*. <https://www.psa.gov/?q=node/97>
44. R v. St-Cloud, [2015] 2 SCR 328 (Canada).
45. Re Kenneth Humphrey, 482 P.3d 1008 (Cal. 2021).
46. Reimel, D. III. (2019). Algorithms & instruments: The effective elimination of New Jersey's cash bail system and its replacement. *Penn State Law Review*, 124, 193.
47. Rice, J. R. (2022, March 8). Bail reform's underappreciated new element: Non-monetary conditions have the ability to pave the way in emerging adult justice. *New York Law Journal*. <https://www.law.com/newyorklawjournal/2022/03/08/bail-reforms-underappreciated-new-element-non-monetary-conditions-have-the-ability-to-pave-the-way-in-emerging-adult-justice/>
48. S v. Pineiro, 1992 (1) SACR 577 (NM) (South Africa).
49. Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66.
50. Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.
51. Satender Kumar Antil v. C.B.I., 2022 SCC OnLine SC 825.
52. Schwinn, S. (2022, January 27). The bail bond system and rule of law. *American Bar Association*. https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-3/the-bail-bond-system-and-rule-of-law/
53. Veena Sethi v. State of Bihar, (1982) 2 SCC 583.

54. Vera Institute of Justice. (2011). Fair treatment for the indigent: The Manhattan Bail Project. *Federal Sentencing Reporter*, 24, 10–12.
55. The Bhartiya Nagarik Suraksha Sanhita, 2023, however, clarifies certain definitional uncertainties, in a similar manner as noticed and clarified by Justice Krishna Iyer (as he was the) in the case of Moti Ram v. State of Madhya Pradesh, (AIR 1978 SC 1594) in the following manner:]
 - “(b) “bail” means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond;
 - (d) “bail bond” means an undertaking for release with surety;
 - (e) “bond” means a personal bond or an undertaking for release without surety;”

EXPLORING THE FACTORS BEHIND HONOUR KILLINGS OF WOMEN: A BIBLIOMETRIC AND SCOPING ANALYSIS

Monika Agarwal* and Kalpna Sharma**

ABSTRACT

The objective of the study is to perform a systematic literature review to identify the factors leading to "Women-based honour killing". The study synthesises the literature between the years 1995 and 2024. 178 articles on women-based honour-killing were identified from 503 articles on honour killing in the Scopus database. The articles were subjected to a citation analysis to examine the most cited journals, countries, and authors. Honour killing is still receiving acknowledgement, as indicated by the number of citations the author has received. The findings of the research show that major factors driving honour killing are religion, casteism, and ethnicity; politics and violence within the family; patriarchal society; socio-cultural norms; financial dif culties and benefits; and demographic factors. The study may help the government, NGOs, practitioners, and research scholars better understand the primary issues surrounding "honour killing" and develop e ffective strategies to address it.

KEYWORDS : Honour-killing, family, patriarchy, women, violence

Introduction

Female honour killing is a type of femicide in which family members kill a woman in her family because they disagree with her social or sexual behaviour (Mayeda and Vijaykumar, 2016). 'The term "honour killing" refers to the murder of a female because the perpetrator (or family) believes the victim has brought shame or dishonour to the family and community through infidelity or other socially and culturally unacceptable behaviours (Bhatia et al., 2024; Hadidi et al., 2001; Nasrullah et al., 2009). Premarital sex and

marital infidelity are the two most common crimes involving the alleged misappropriation of female sexuality that result in honour killings. Interacting with individuals of different faiths, going through divorce or separation, being sexually assaulted, or even indulging in seemingly innocent behaviour such as flirting, are all prohibited because they may be interpreted as harming family honour. These murders may be the most visible manifestation of a much larger problem that includes forced marriages, forced abortions, rape, and other types of both mental and physical abuse (Al-

* Associate Professor, Jagan Institute of Management Studies, Delhi, monikaagg85@gmail.com

** Assistant Professor (Selection Grade) Law Centre-II, Faculty of Law, University of Delhi,
dr.kalpanasharma8@gmail.com

Hassan, 2021). The concept of family honour is based on social standing, cultural beliefs, and institutional structures; as a result, women are stigmatised for the family's reputation, which encourages honour killings and provides a moral justification for killing a woman (Meeto and Mirza, 2007).

Honour killings are regularly committed with no punishments for the perpetrators, the victims are typically buried in unmarked graves, and signs of their presence are generally erased. Outside of a single family member or group, no one knows what happened in the majority of honour killings, which have often been faked to appear as suicides or accidents. As a result, there is currently no information available on this heinous, underreported issue. However, a decade ago, the United Nations Population Fund (UNPFA, 2000) estimated 5,000 'honour' killings annually. Honour killings are prevalent all across the world, with Asia having the greatest prevalence, followed by the Middle East and South Asia (Sneha et al., 2020). According to the research, honour killings among immigrant populations have occurred in France, Germany, the United Kingdom, Egypt, Jordan, Lebanon, Morocco, Pakistan, the Syrian Arab Republic, Turkey, Yemen, and other Mediterranean and Persian Gulf countries. The media from many nations, local human rights advocates, and various publicised stories of honour killings have all contributed to increasing public awareness of this issue. Furthermore, as mentioned in the current study, the

number of published papers on the topic has increased.

Thus, the purpose of this systematic review is to present a critical synthesis of the scholarly literature on honour killings. This study presents several general and methodological observations to summarise and interpret data, identify knowledge gaps, and suggest opportunities for knowledge advancement and interventions. In terms of substantive concerns, the review is organised around the main reasons for honour killings as well as suggested solutions for decreasing and eliminating them. The primary objective of this study is to provide the current state of research on honour killing, with the following questions guiding its scope:

RQ1: What are the current publication and citation trends in honour killing literature in terms of time, journals, authors, affiliated countries and country of study?

RQ2: What are the major factors contributing to instances of honour killing?

This study can help scholars enhance their understanding of honour killing and associated practices. Furthermore, it can help to shape societal and government policies aimed at lowering the incidence of honour killings. The study identifies religion, casteism and ethnicity, family violence, patriarchal society, sociocultural norms, financial conditions, and demographic factors as the six major causes of honour killings.

2. Research Methodology

The study employs both qualitative and quantitative methodologies to synthesise the literature from 1995 to 2024. First, 503 research publications from the international database Scopus were found that contained the keywords "honor killing" OR "honor-killing" OR "honour killing" OR "honour-killing" or "Honour based violence" OR "honour-based violence" in the articles' titles, abstracts, and keywords. Additionally, the English language, journal, article, review and conference paper limit types were used. According to Dobrescu et al. (2021), restricting the search criteria to English-language papers appears to have no effect on systematic reviews. Thus, considering this search criteria, it yielded 347 articles. Quantitative and qualitative analysis of each research article was performed using VOS viewer, R studio, and Nvivo to study the research objectives, theoretical background, variables, findings, and contribution to the related literature. Review papers and irrelevant papers unrelated to female-based honour killing (169) were removed from a total of 347 research articles, leaving 178 research articles selected based on the strongest theoretical foundation and maximum literature contribution in the literature of women's honour killing (Figure 1). Second, each of these 178 articles was subjected to a quantitative and qualitative examination using citation analysis and content analysis to study the issues in the field of honour killing over the last two decades, specifically between 1995 and 2024.

Furthermore, Microsoft Excel was used to create Tables 2, 3, and 4, which provide a list of the top influencing authors, journals, and countries in terms of documents and citations, in descending order. Finally, Table IV presents the list of the 20 most frequently cited documents related to the honour killing problem as of 30 Jan 2025. We used citation analysis, one of the most popular and widely recognised methods for identifying scholarly effects. The research's significance can be approximately inferred from the number of citations it receives (Peng & Zhou, 2006).

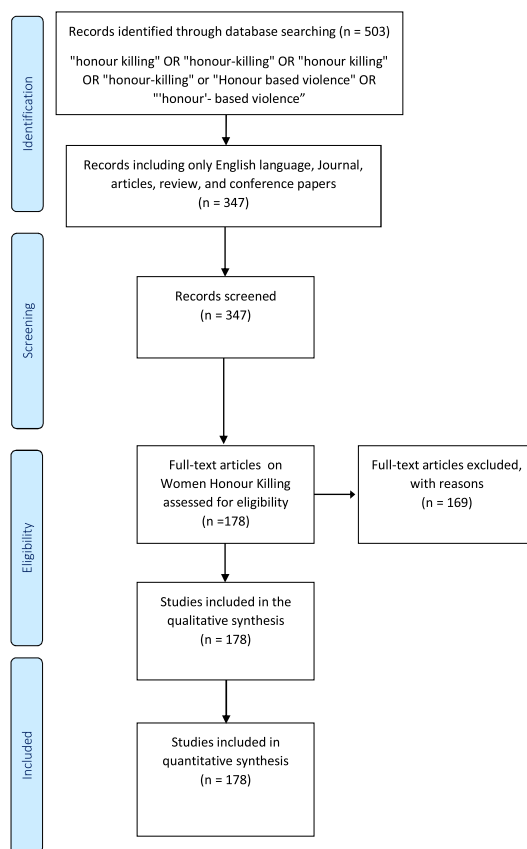


Figure 1: PRISMA Flow Diagram
Source: Authors own compilations

3. Findings

Table 1 presents a summary of general statistics on honour killing publications. It shows that the 178 publications analysed are dispersed across 134 journals. Based on our dataset, 320 authors, affiliated with and spread across 40 countries, have published articles on honour killing. 53.37% ($n = 95/178$) of the articles are related to single-author publications, whereas 46.62% of the articles ($n = 83/178$) are published by two or more authors. Further, our initial objective was to explore the maturity of the research domain in honour killings (Figure 2). Therefore, we first analysed the total

number of articles published each year. Statistical analysis of the number of articles published per year provides insight into the domain's maturity and its exploration by researchers (Rey-Martí, Ribeiro-Soriano, & Palacios-Marqués, 2016). Figure 2 presents the number of articles published per year. Figure 2 shows the maturity of the domain of the total 503 articles, as well as the 178 selected most relevant articles. Research in this domain has grown in awareness since 2007 and increased exponentially year by year. Figure 2 shows that research into honour killing has increased since 2007.

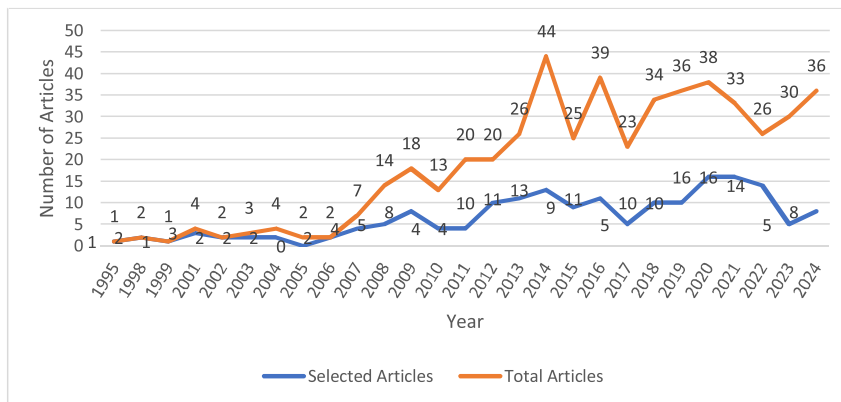


Figure 2: Trends of Articles on honour-killing

Table 1: Summary Statistics of Women's Honour killing research

Description	Results
Main Information About the Records	
Timespan	1995:2024
Sources (Journals, Books, Etc)	134
Documents	178
Annual Growth Rate %	7.43
Document Average Age	9.67
Average Citations Per Doc	19.97
References	6997

Document Contents	
Keywords Plus (Id)	610
Author's Keywords (De)	468
Authors	
Authors	315
Authors Of Single-Authored Docs	87
Authors Collaboration	
Single-authored docs	95
Co-Authors per Doc	1.99
International co-authorship	14.04

3.1 Citation analysis

Tables 1, 2, 3, and 4 represent the interesting results obtained after applying citation analysis to 178 research articles. According to the analysis, the most influential authors, journals, and countries in terms of citations are Gill A.K., Archives of Women's Mental Health, and the United Kingdom (Tables 2, 3, and 4). The author "Gill A.K.", the journal "Journal of Interpersonal Violence", and the country "United Kingdom" have articulated the most documents on honour killing (Tables 2, 3, and 4). As per Table 5, the highly cited research paper authored by Douki et al. (2003), "Violence against women in Arab and Islamic countries" states honour killing as a religious defence, supported by specific passages from the Koran, that men who abuse their wives are abiding by God's commands. They further stated that a realistic interpretation of the Koran reveals that honour killings are more a product of society than faith.

The Second most cited paper, "Culture of Honour, Culture of Change: A Feminist Analysis of Honour Killings in Rural Turkey" by Sev'er & Yurdakul (2001),

states that honour killings are on a continuum of patriarchal patterns of violence against women and discusses conflict orientations in understanding violence against women. They suggested that breaking the cycle of violence against women, emphasising the personal, social, structural, and global links, could result in positive change in society.

Werbner's (2007) "Veiled Interventions in Pure Space: Honour, Shame, and Embodied Struggles Among Muslims in Britain and France" is the third most cited title. The paper contends that in the context of modernity, they may come to be loaded with secondary symbolic meanings, and the publicity surrounding symbolic practices of sexual intimacy is often highly politicised, for both Muslims and Europeans, leading to irresolvable problems. By developing an effective human rights approach to honour killings, it could be possible to move away from the 'gender trap' of cultural relativism within the liberal democratic discourse on multiculturalism. The fourth most cited paper is titled "Islam, Gender, and Immigrant Integration: Boundary

Drawing in Discourses on Honour Killing in the Netherlands and Germany,” and its authors are “Korteweg and Yurdakul” (2009). This study reinforces existing bright boundaries inscribed in the intersection of ethnicity, national origin, religion, and gender, or a strong sense of us versus them, between immigrants from Muslim and Turkish backgrounds and the majority population.

The fifth most cited research study is by Meeto V. and Mirza H.S. (2007) and is titled “There is nothing 'honourable' about honour killings: Gender, violence, and the limits of multiculturalism.” Women who are victims of honour killings are invisible within the cultural

relativism of the British multicultural discourse and the private/public divide that characterises the domestic violence discourse. They claimed that because ethnicized women have become highly visible, they are now contained and constructed in the public consciousness within a discourse of fear and risk posed by the presence of the Muslim alien 'other'. Faqir (2001) authored "Intrafamily Femicide in Defence of Honour: The Case of Jordan", the sixth highly cited study. He investigated the role of rumours, social values, and other dynamics in the normalisation of honour killing in Jordan. He asserted that a comprehensive programme of socio-legal and political reform is necessary to change the current discriminatory culture.

Table 2: Influence of Authors

Author	Documents	Author	Citations
Gill A.K.	8	Gill A.K.	251
Kamal A.	4	Belhajd A.	241
Chesler P.	4	Bouasker A.	241
Begikhani N.	3	Douki S.	241
Idriss M.M.	3	Ghachem A.	241
Kamal A.	3	Nacef F.	241
Freilich J.D.	3	Chesler P.	196
Hayes B.E.	3	Yurdakul G.	186
Korteweg A.	2	Sev'er A.	186
Niaz U.	2	Werbner P.	167

Table 3: Influence of Journals

Journals	Documents	h_index	Journals	Citations	h_index
Journal of Interpersonal Violence	10	127	Archives of Women's Mental Health	354	89
Women's Studies International Forum	8	71	Women's Studies International Forum	263	71
Middle East Quarterly	4	19	Middle East	196	19

Journal Of Gender Studies	4	49	Violence Against Women	186	114
Journal of forensic and Legal medicine	4	58	Theory, Culture and Society	167	129
International Journal of Gynaecology and Obstetrics	3	119	Ethnic and Racial Studies	153	118
Violence Against Women	3	114	Journal of Interpersonal Violence	151	127
Journal of International Women's Studies	3	30	Third Word Quarterly	116	105
International Journal of Gynaecology and Obstetrics	3	119	European Journal of Women's Studies	98	55
Archives of Women's Mental Health	2	89	Journal of Gender Studies	78	49

Table 4: Influence of Author's Countries

Country	Documents	Country	Citations
United Kingdom	43	United Kingdom	1062
United States	34	United States	771
Turkey	18	Canada	390
Pakistan	16	Tunisia	241
India	15	Turkey	232
Canada	10	Pakistan	218
Australia	7	Germany	125
Germany	6	Sweden	107
Sweden	6	Jordan	56
Jordan	5	Palestine	50

Table 5: Top 20 Research studies related to Women based Honour Killing

S.No.	Title	Authors	Source title	Year	Citation Count	Country of study
1	“Violence against women in Arab and Islamic countries”	Douki S.; Nacef F.; Belhadj A.; Bouasker A.; Ghachem R.	Archives of Women's Mental Health	2003	241	Egypt, Palestine, Israel and Tunisia
2	“Culture of honour, culture	Sev'er A.; Yurdakul G.	Violence Against	2001	186	Turkey

S.No.	Title	Authors	Source title	Year	Citation Count	Country of study
	of change: A feminist analysis of honour killings in rural Turkey”		Woman			
3	“Veiled Interventions in Pure Space: Honour, Shame and Embodied Struggles among Muslims in Britain and France”	Werbner P.	Theory, Culture & Society	2007	167	United Kingdom & France
4	“Islam, gender, and immigrant integration: Boundary drawing in discourses on honour killing in the Netherlands and Germany”	Korteweg A.; Yurdakul G.	Ethnic and Racial Studies	2009	153	Netherland and Germany
5	““There is nothing 'honourable' about honour killings": Gender, violence and the limits of multiculturalism ”	Meetoo V.; Mirza H.S.	Women's Studies International Forum	2007	138	United Kingdom
6	“Intrafamily femicide in defence of honour: The case of Jordan”	Faqir F.	Third World Quarterly	2001	116	Jordan
7	“Violence against women in South Asian countries”	Niaz U.	Archives of Women's Mental	2003	113	based on Pakistan, Bangladesh, India, Sri

S.No.	Title	Authors	Source title	Year	Citation Count	Country of study
			Health			Lanka, Nepal, Thailand, Malaysia, Indonesia, Philippines and Japan etc paper not available
8	“Worldwide trends in honour killings”	Chesler P.	Middle East Quarterly	2010	89	
9	“The forced marriage debate and the British state”	Wilson A.	Race and Class	2007	80	United Kingdom
10	“Honour killing attitudes amongst adolescents in Amman, Jordan”	Eisner M.; Ghuneim L.	Aggressive Behavior	2013	72	Jordan
11	“Outsourcing patriarchy: Feminist encounters, transnational mediations and the crime of honour killings”	Grewal I.	International Feminist Journal of Politics	2013	69	India, Europe United States
12	“Interrogating cultural narratives about 'honour'- based violence”	Gill A.K.; Brah A.	European Journal of Women's Studies	2014	68	-
13	“Hymen reconstruction: Ethical and legal issues”	Cook R.J.; Dickens B.M.	International Journal of Gynecology and Obstetrics	2009	65	United States & Canada
14	“Are honour killings simply domestic violence?”	Chesler P.	Middle East Quarterly	2009	64	Turkey

S.No.	Title	Authors	Source title	Year	Citation Count	Country of study
15	“Exploring the context of women's sexuality in Eastern Turkey”	Ilkcaracan P.	Reproductive Health Matters	1998	62	Netherland, Germany, Britain
16	“Gender equality and immigrant integration: Honour killing and forced marriage debates in the Netherlands, Germany, and Britain”	Yurdakul G.; Korteweg A.C.	Women's Studies International Forum	2013	60	United Kingdom
17	“The personal is patrilineal: Namus as sovereignty”	King D.E.	Identities	2008	60	Middle Eastern, and Central and South Asian cultures
18	“Honour killings and the quest for justice in black and minority ethnic communities in the United Kingdom”	Gill A.	Criminal Justice Policy Review	2009	58	United Kingdom
19	“The epidemiological patterns of honour killing of women in Pakistan”	Nasrullah M.; Haqqi S.; Cummings K.J.	European Journal of Public Health	2009	55	Pakistan
20	“The crusade over the bodies of women”	Sonya F.	Patterns of Prejudice	2009	54	-

3.2 Research Trends

After doing the content analysis of the 178 research papers using NVivo, the major keywords that appeared in the word cloud are shown in Figure 3. The most frequent keywords are honour, killing, violence, social crimes, community, homicides, religion, Islamic, sexuality, politics, tradition, immigrant, punishment, Muslim, women, legislation, control, domestic, laws, norms, rights, marriage, minority, adultery, etc. Table 6 shows that the majority of women-based honour studies are qualitative studies (143) based on past cases, interviews, fictions, etc, whereas there are 26 quantitative studies and 6 mixed studies. Table 7 shows that there are more than 50 papers that have talked about Muslim communities (including Islam, Arab, Kurdish and immigrant Muslim communities). However, 106 papers don't specify any community or religion. Table 8 shows that the maximum number of studies are based on women's honour killing cases in the United Kingdom (25), Pakistan (22), India (18) and Turkey (19), which indicates well-documented and reported cases of honour killings in South Asian and European contexts. Thus, keyword and qualitative analysis of the honour killing articles show that the cases related to Muslim and minority women have been given major attention (Table 7 & Table 8). There are 85 publications focusing on Muslim groups, including

Muslim, Kurdish, Arab, and Turkish, while 56 papers discuss non-Muslim populations. This indicates that Muslims and Islamic communities are more likely to commit honour killings due to societal reconstruction that views women's social status and sexuality as a source of "potential stress" or "potential threat" to family honour (Doğan, 2011). The origin of honour killings can be traced back to pre-Islamic and tribal cultures (Langah & Umrani, 2022). Researchers have studied the major issues that promote honour killing practices in the following context:

Table 6. Type of Study

Type of study	No of Papers
Qualitative studies (Narrative/Descriptive/Cases/Narrative/Fiction/Interview)	146
Quantitative Studies (Survey/Cases)	26
Mixed study	7

Table 7. Type of Religion/Communities/Group studied

Category / Community Group	Subjects	Total Number of Papers
Muslim / Islamic Communities	Muslim (42) or Islam (13)	55
Arab & Middle Eastern Communities	Arab (11), Palestinian (1), Kurdish (12), Persian (1), Turkish (1), Middle Eastern women (2), Bedouins (1)	29
South Asian Communities	South Asian (4), Pashtuns (1), Sikh (7), Hindu (11), Dalit (2)	25
Migrant / Ethnic/Diaspora Communities	Immigrant families (11), Migrant women (6), Refugees (1), Diaspora community (1), Ethnic groups (5),	24
Religious Minorities (Non-Muslim)	Christians (10), Jewish (3), Druze (4), Yazidis (1), Buddhism (2), Confucian (3), Roman Catholics (1), Atheists (1)	25
Other Regional Communities	White (2), European (1), Maltese (1), Americans (1), Caucasians (1), Chinese (1),	7
Gender / Social Identity Groups	Disabled women (1), Anti -LGBTQ (1), Minority communities (1), Tribal community (2)	5
Non-Muslim		4
Unspecified	“Not mentioned”, cases	84

Table 8. Country

Region	Muslim Majority Countries	Non-Muslim Majority Countries	Total
South Asia	Pakistan (22), Afghanistan (1) South Asian Countries (5), Malaysia (1)	India (18), Nepal (1)	48
Middle East & Western Asia	Turkey (19), Jordan (9), Palestine (5), Iraq (7), Iran (3), Kuwait (1), Syria (1), Yemen (1)	Israel (4), Middle East (4)	54

Eastern Mediterranean & Arab Region	Tunisia (2), Egypt (1)	Eastern Mediterranean Region (1), Arab (3)	7
Europe		United Kingdom (25), Germany (6), Sweden (5), Italy (3), Netherlands (1), Spain (1), Denmark (1) European countries (2)	44
North America		United States (8), Canada (5)	13
East Asia		China (1)	1
Western countries			1
Not specified			34

3.2.1 Religion, Casteism, and Ethnicity

Honour killing is a form of violence against women that is rooted in casteism, ethnicity, national origin, or various religions such as Islam, which are complex and intertwined issues portrayed as homogeneous, unitary, and/or historical forces. For many people, religion serves as a source of identity, community, and culture. An increase in support for honour killings is predicted by social factors like mosque attendance, religious fundamentalism, and a lack of protection for women's rights in minority communities (Beller et al., 2021; Elakkary et al., 2014). Religious beliefs frequently support a sort of social stratification known as casteism, which is especially prominent in South Asia and is practised in several societies. Further, there is also increasing violence unleashed by upper-caste families against individuals seeking inter-caste love or marriage. Another aspect of identification that can be used to excuse prejudice and violence is racialised ethnicity, for example, anti-Blackness and brownness (Shroff, 2021). In many regions of the world, ethnic disputes have

consistently been a source of tension and violence. Honour killings can be used to keep people in line, keep ethnic groups apart, and punish people who cross those lines. Since honour killings are frequently used to impose restrictions on women's behaviours and decisions based on caste, religion, or ethnicity, a multifaceted approach is required to address such concerns. To advance human rights and put an end to the practice of honour killings, governments, civil society organisations, and religious leaders must all play a part to create a society that is more just and equal. This includes challenging cultural practices and beliefs that encourage discrimination and violence, offering support and protection to those who have been the victims of honour killings, and holding perpetrators accountable for their actions.

3.2.2 Politics and Violence within the Family

Politics of sexuality and embodiment, of honour and shame that parents continue to seek to maintain control over their

children's sexual and reproductive behaviours and choices and punish them violently if they transgress and are felt to compromise family 'honour'. When it comes to chastity, women are frequently considered the keepers of family honour, abstaining from premarital or extramarital affairs and adhering to norms set by traditions and societies. The family views a love affair as a form of rebellion and relies on the woman to uphold the family's honour. People frequently view violence as a means of restoring the family's respect and status, believing that the woman's actions have harmed them. Honour killings are frequently justified by the perpetrator's belief that they are upholding traditional values and preserving the family's honour. However, these justifications are not legitimate, and honour killings are a violation of human rights. Women have the right to choose their partners and to live their lives without fear of violence or retribution. As a result, it's imperative to address the underlying causes of family politics, violence, and discrimination in order to create a comprehensive approach that includes promoting gender equality, challenging violent behaviour, and providing support and safety to women who are vulnerable to abuse.

3.3.3 Patriarchal Society

Women-based honour killing is a crime that is deeply rooted in patriarchal societies. A patriarchal social structure is one in which men dominate and try to control women, which exacerbates gender-based violence (Ne'eman-Haviv, 2021).

Women are generally seen as inferior to men and as the property of their families in patriarchal cultures, where they are required to conform to traditional gender stereotypes, such as submission to men. Among other things, women's self-interest, freedom of expression, and sexual freedom are considered threats to the patriarchal system. Another aspect of the patriarchal society that leads to heat-of-passion crimes, such as honour killings, is the idea of male honour, which is the product of mature male sexual aggressiveness subject to intensification by external threats to paternal certainty (AlQahtani et al., 2023). The patriarchal society commits these homicides, or more accurately, brutal murders, to satisfy its ego. To address the issue of honour killings, patriarchal customs and beliefs must be addressed. To minimise the frequency of honour killings, the government and social organisations must implement educational and awareness campaigns that challenge patriarchal systems, traditional gender roles, and promote gender equality.

3.3.4. Socio-cultural Norms

Socio-cultural norms are the unwritten rules that govern behaviour in a particular society or culture. These norms can vary widely between different cultures and societies and can have a significant impact on the attitudes and behaviours of individuals within those societies. Socio-cultural norms, as well as social factors such as low social status and rapid modernisation, are commonly associated with the popular representations of Honour-based violence (HBV) (Dayan, 2021; Gibbs et al., 2019; Patel & Gadit,

2008). Certain sociological structures and community traits create barriers to internalising new cultural norms and change. The feudal mindsets of people like the 'Khap Panchayats' force couples who have entered intra-gotra marriages to return to the community fold, even to the point of forcing the couples to live as siblings (Bharadwaj, 2012). The murder of many of these married couples is already history. The khap panchayats, therefore, see them as brothers and sisters based on their gotra affinity. Even in many cultures, women are required to follow particular social norms, such as dressing modestly, and any divergence from these norms is viewed as a threat to the family's honour. Additionally, the discourse conceals any connections between male violence committed by immigrants or non-immigrants by offering a cultural explanation for the murder.

3.2.5 Financial Difficulties and Benefits

Another one of the reasons associated with honour killing has been associated with financial reasons, like an easier way to maintain intergenerational wealth and poverty in terms of femicide in defence of family honour around the world (Gibbs et al., 2019). For instance, families tend to benefit financially and increase intergenerational wealth concentration by preventing wealth escape through cousin marriage, which is further linked to parent-offspring conflict. The phenomenon further encourages the emergence of an honour culture and honour-based violence as mechanisms for policing marriage choices among offspring

(Olympia et al., 2024). Additionally, certain studies, such as Gibbs et al. (2019) and Lokot (2021), have linked honour killings to poverty, suggesting that women who borrow money are perceived as burdens by their families, which damages their honour and increases the risk of honour killing. Further, the traditional gender roles and power relations in families and communities may be threatened by women's increased financial independence. If a woman seeks employment or educational opportunities, it can be interpreted as a challenge to the patriarchal society, resulting in honour killing.

3.2.6 Demographic Factors

Demographic factors refer to the characteristics of a population, including age, gender, ethnicity, religion, and socioeconomic status, and shape people's attitudes and beliefs about the phenomenon of honour killing (Shaikh et al., 2010). The main demographic variables contributing to honour killings are having less education, living in a rural region, being older adults, having joint or extended families, and personality characteristics of conscientiousness, agreeableness, openness, and having mental and personality disorders (Huda & Kamal, 2022; Ne'Eman, 2020). Perhaps the most important demographic factor contributing to honour killings is gender. Women are the main victims of honour killings, and they are frequently murdered for defying social and cultural norms. Age also plays a role in honour killings, especially in cases of child marriages. In

many cultures, child marriages are considered a way to protect the family's honour, especially in cases where a girl's virginity is seen as a valuable commodity. Girls who strive to avoid or reject child marriages frequently run the risk of being killed. Eisner & Ghuneim (2013) found that honour killing is stronger amongst male adolescents and adolescents from low-education backgrounds. The above studies reveal demographic variables that play a significant role in shaping individuals' opinions and beliefs about the phenomenon of honour killing.

4. Conclusion

The paper summarises the work done in the field of honour killing. According to this systematic review, honour killings continue to occur across various regions, particularly in the Middle East and Western Asia (54 papers, Table 8), as well as in countries - Pakistan (22) and Turkey (19). Although affiliated countries, the United Kingdom (43), the United States (34), Turkey (18), and Pakistan (16) publish the most papers. Further, as per Table 5, the highly cited article "Violence against women in Arab and Islamic countries" in the field of honour killing published in the year 2003 is authored by "Douki S.; Nacef F.; Belhadj A.; Bouasker A. & Ghachem R.". These papers draw attention to the current reality that honour killings are carried out in the name of religion, ethnicity, pride, and status, and the combination of family patterns which has become more diverse in recent years (Triandis, 2000). Further, the current research on honour killing has primarily

identified six prevailing issues for honour killing: religion, casteism and ethnicity; family politics and violence; patriarchal society; socio-cultural norms; financial difficulties and personal requirements; and demographic variables. In many communities, diverse social representations of femicide, as well as geography and ethnicity in social representations, serve psychological purposes and lend more legitimacy to femicide (Coymak, 2020). Honour killings are the result of the contrast between Muslim/Islamic and Western ideals based on culture and ethnic background (Shier & Shor, 2016). Additionally, demographics play a crucial role in shaping people's attitudes and beliefs about honour killings, including factors such as residing in rural areas, being older adults, or belonging to a joint or extended family. Other than this, the prevailing ideology of honour, a stimulus to honour killing, as well as gender biases, abuse, and corruption in the police force, a weak judicial system, and legal loopholes in the present legislative system are the determining factors of unabated incidents of killing under the pretext of honour (Hadi, 2020). Given the aforementioned issues, we should prioritise addressing the social stigma of honour killing to alleviate the suffering of women. The current review has also noted a recent increase in the number of studies on honour killing. Recent initiatives have facilitated a wider address to the issue and potential increased study of honour killings in several countries. However, to enhance women's status and put an end to

the practice of honour killing, it will require a determined effort on numerous fronts and undoubtedly more concerted local efforts.

5. Recommendations and Future Scope of the Study

The authors' citation count indicates that the research topic is still receiving attention, and research in this area is expanding. The study may provide valuable insights to the government, NGOs, social policymakers, and research scholars to understand the primary factors driving honour killings. Citation analysis has revealed current and historic research patterns and trends in the field of honour killing. The current study also facilitates the researchers in locating information about the impact of the research articles cited in the study. The study will help future researchers by providing a thorough analysis of honour killing studies. Thus, the study indicated that the cases related to Muslims (85) have been given major attention, and there are fewer studies related to non-Muslim communities (Table 7 & Table 8). Non-Muslim and developed nations should be investigated further in terms of honour killing cases. To identify and document HBV cases, a definition that is non-culturalized, unbiased, and inclusive is required. It is a prerequisite for the establishment of a true democracy, along with freedom of religion, access to legitimate fundamental and legal rights, gender equality, tolerance for homosexuals, and freedom of dissent. To effectively prevent honour killings,

immigration and minority law enforcement and religious authorities must all be involved in education, prevention, and prosecution initiatives (Chesler, 2010). The governments of different countries must act quickly and decisively to plug legal loopholes to halt the most consistent, abhorrent, and heinous violence from going unpunished. To end caste prejudice, endogamy, and the stigmatisation of Muslim, Islamic, Dalit, ethnic, and other minority communities, persistent targeted efforts are needed to promote inter-caste marriage, promote equality mechanisms, and restrict immigration policies. Therefore, states must empower women to advocate for themselves in order to bring about significant societal reforms and eradicate honour-based violence (Gill A.K., 2013). Women's conditions cannot be transformed unless they achieve economic independence, improved access to education, increased political engagement, and a deeper understanding of socioeconomic and political issues (Hadi, 2020). Therefore, the government and social policymakers may establish human rights training courses for women and a public awareness campaign against crimes committed in the name of honour to reduce the frequency of honour killings. There is a need for more diverse, empirical, and cross-cultural research to capture the broader patterns and drivers of honour-based violence, avoid cultural bias, and inform more inclusive interventions.

Summary Tables

Table 9: Critical Findings

This systematic review of the research literature indicates that honour killings continue to occur in many countries, particularly in the eastern Mediterranean region, Pakistan, the Arab world, Jordan, and Turkey. The United States (30), the United Kingdom (23), Turkey (21), and India (18) have published the most of papers. The highly cited article “Culture of Honour, Culture of Change: A Feminist Analysis of Honour Killings in Rural Turkey” in the field of honour killing published in the year 2001 is authored by “Sev'er A. & Yurdakul P.” The current research in honour killing has primarily identified six prevailing issues for honour killing: religion, casteism and ethnicity, family politics and violence, patriarchal society, socio-cultural norms, financial difficulties and personal requirements, and demographic variables as key factors for honour killing.

Table 10 : Implication

The study will help future researchers by offering a thorough analysis of honour killing studies. The study could be of great help to the government, non-governmental organisations (NGOs), social policymakers, and researchers in understanding the major issues provoking honour killings so as to formulate effective policies to mitigate the rate of honour killing

REFERENCES

1. Al-Hassan, A. A. (2021). Impact of Provocation Doctrine in the Crimes of Honour between Retention and Annulment: A Comparative Study of Arab Criminal Legislation. *Women & Criminal Justice*, 33(1), 46-77.
2. AlQahtani, S. M., Almutairi, D. S., BinAqeel, E. A., Almutairi, R. A., Al-Qahtani, R. D., & Menezes, R. G. (2023, January). Honour killings in the eastern Mediterranean region: a narrative review. In *Healthcare* (Vol. 11, No. 1, p. 74). Multidisciplinary Digital Publishing Institute.
3. Beller, J., Kröger, C., & Hosser, D. (2021). Disentangling honour-based violence and religion: The differential influence of individual and social religious practices and fundamentalism on support for honour killings in a cross-national sample of Muslims. *Journal of interpersonal violence*, 36(19-20), 9770-9789.
4. Bharadwaj, S. B. (2012). Myth and reality of the khap panchayats: A historical analysis of the panchayat and khap panchayat. *Studies in History*, 28(1), 43-67.
5. Bhatia, A., Lokot, M., Kenny, L., Mathpati, M., & Cislighi, B. (2024). Honour, violence, and children: A systematic scoping review of global evidence. *Child Abuse & Neglect*, 151, 106642.
6. Campbell, O. L., Padilla-Iglesias, C., Fiorio, G., & Mace, R. (2024). Genetic markers of cousin marriage and honour cultures. *Evolution and Human Behavior*, 45(6), 106636.
7. Chesler, P. (2010). Worldwide trends in honour killings. *Middle east quarterly*.
8. Çoymak, A. (2020). Functions of social representations in honour violence: The “Other East” as responsible. *Social justice research*, 33(3), 284-307.
9. Dayan, H. (2021). Female honour killing: the role of low socio-economic status and rapid modernization. *Journal of interpersonal violence*, 36(19-20), NP10393-NP10410.
10. Dobrescu, A. I., Nussbaumer-Streit, B., Klerings, I., Wagner, G., Persad, E., Sommer, I., & Gartlehner, G. (2021). Restricting evidence syntheses of interventions to English-language publications is a viable methodological shortcut for most medical topics: a systematic review. *Journal of Clinical Epidemiology*, 137, 209-217.
11. Doğan, R. (2011). Is honour killing a “Muslim phenomenon”? Textual interpretations and cultural representations. *Journal of Muslim minority affairs*, 31(3), 423-440.
12. Eisner, M., & Ghuneim, L. (2013). Honour killing attitudes amongst adolescents in Amman, Jordan. *Aggressive behavior*, 39(5), 405-417.

13. Elakkary, S., Franke, B., Shokri, D., Hartwig, S., Tsokos, M., & Püschel, K. (2014). Honour crimes: Review and proposed definition. *Forensic science, medicine, and pathology*, *10*, 76-82.
14. Faqir, F. (2001). Intrafamily femicide in defence of honour: the case of Jordan. *Third world quarterly*, *22*(1), 65-82.
15. Gibbs, A., Said, N., Corboz, J., & Jewkes, R. (2019). Factors associated with 'honour killing' in Afghanistan and the occupied Palestinian Territories: Two cross-sectional studies. *PLoS One*, *14*(8), e0219125.
16. Gill, A. K. (2013). Feminist reflections on researching so-called 'honour'killings. *Feminist legal studies*, *21*, 241-261.
17. Hadidi, M. M., Kulwicki, A., & Jahshan, H. (2001). A review of 16 cases of honour killings in Jordan in 1995. *International journal of legal medicine*, *114*, 357-359.
18. Hadi, A. (2020). 'Honour' Killings in Misogynistic Society: A Feminist Perspective. *Academic Journal of Interdisciplinary Studies*, *9*(3).
19. Huda, S., & Kamal, A. (2022). Assessing demographics-based differences in attitude toward honour killings. *Journal of interpersonal violence*, *37*(5-6), NP3224-NP3241.
20. Korteweg, A., & Yurdakul, G. (2009). Islam, gender, and immigrant integration: Boundary drawing in discourses on honour killing in the Netherlands and Germany. *Ethnic and Racial Studies*, *32*(2), 218-238.
21. Langah, N. T., & Umrani, S. (2022). Gender, Sexuality and Representation in Pakistani Literature: Qandeel Baloch as a Victim of Honour Killing. *Journal of International Women's Studies*, *24*(6), 13.
22. Lokot, M. (2021, March). Secrets, gender norms and honour: Examining tensions in everyday secret-keeping and secret-breaking practices among Syrian refugees. In *Women's Studies International Forum* (Vol. 85, p. 102455). Pergamon.
23. Mayeda, D. T., & Vijaykumar, R. (2016). A Review of the Literature on Honour-based Violence. *Sociology Compass*, *10*(5), 353-363.
24. Meeto, V., & Mirza, H. S. (2007, May). "There is nothing 'honourable' about honour killings": Gender, violence and the limits of multiculturalism. In *Women's Studies International Forum* (Vol. 30, No. 3, pp. 187-200). Pergamon.
25. Nasrullah, M., Haqqi, S., & Cummings, K. J. (2009). The epidemiological patterns of honour killing of women in Pakistan. *European Journal of Public Health*, *19*(2), 193-197.

26. Ne'eman-Haviv, V. (2021). Israeli Arabs' acculturation patterns and attitudes toward honour killings. *International Journal of Intercultural Relations*, 85, 104-111.
27. Ne'Eman Haviv, V. (2020). Personal elements in culture-based violence? The case of honour killing—a brief report. *The Journal of Forensic Psychiatry & Psychology*, 31(5), 807-813.
28. Patel, S., & Gadit, A. M. (2008). Karo-Kari: a form of honour killing in Pakistan. *Transcultural psychiatry*, 45(4), 683-694.
29. Peng, M. W., & Zhou, J. Q. (2006). Most cited articles and authors in global strategy research. *Journal of International Management*, 12(4), 490-508.
30. Sev'er, A., & Yurdakul, G. (2001). Culture of honour, culture of change: A feminist analysis of honour killings in rural Turkey. *Violence against women*, 7(9), 964-998.
31. Shaikh, M. A., Shaikh, I. A., Kamal, A., & Masood, S. (2010). Attitudes About Honour Killing Among Men And Women—Perspective From Islamabad. *Journal of Ayub Medical College Abbottabad*, 22(3), 38-41.
32. Shier, A., & Shor, E. (2016). “Shades of Foreign Evil” “Honour Killings” and “Family Murders” in the Canadian Press. *Violence Against Women*, 22(10), 1163-1188.
33. Shroff, S. (2021). bold women, bad assets: honour, property and techno-promiscuities. *Feminist Review*, 128(1), 62-78.
34. Sneha, S., Sarathi, S., Kumar, P. S., R., Rajesh., Chander. U., & Jagdish K. (2020). Perspective on the Immorality of Honour Killings-A Review Article. *Medico-Legal Update*, 20(1).
35. Triandis, H. C. (2000). Culture and conflict. *International journal of psychology*, 35(2), 145-152.
36. UNFPA (United Nations Population Fund) (2000). The state of the world population: Chapter 3 ending violence against women and girls. http://www.unfpa.org/swp/2000/english/press_kit/summary.html Walby, Syl
37. Werbner, P. (2007). Veiled interventions in pure space: Honour, shame and embodied struggles among Muslims in Britain and France. *Theory, culture & society*, 24(2), 161-186.

ENVIRONMENTAL DNA (EDNA) AS AN INVESTIGATIVE AID IN MISSING-PERSON AND WATER-BORNE CRIME INVESTIGATIONS: A COMPARATIVE ANALYSIS AND PROPOSED OPERATIONAL PILOT FRAMEWORK FOR INDIA AND UK

Abhilash Sapre* and Aditi Jha**

ABSTRACT

This study explores the use of environmental DNA (eDNA) as a tool for investigating missing persons and crimes related to water. It compares practices in India and the United Kingdom. eDNA is the genetic material that living organisms release into their surroundings, providing useful insights that can aid in refining search locations and directing investigative resources effectively. The UK adopts a validation-first, governance-focused methodology, while India is rapidly enhancing its forensic capabilities, presenting both new opportunities and challenges. This scenario underscores the importance of establishing standards, maintaining chain-of-custody protocols, and ensuring privacy safeguards. Examples from ecological assessments, wildlife forensics, and human-specific applications reveal various advantages and drawbacks of eDNA use. A notable limitation is its current challenge in consistently generating comprehensive short tandem repeat (STR) profiles from environmental samples. The paper suggests an operational plan for phased adoption in India, which includes pilot projects, inter-laboratory validation, judicial training, and strong data governance to assure scientific rigor, legal admissibility, and ethical compliance.

KEYWORDS : Environmental DNA, Forensic Science, Missing Persons, Water-borne Crime, UK-India Comparison, Operational Pilots, Privacy Safeguards, Chain-of-custody, STR Profiles, Investigative Intelligence

Introduction

Edmond Locard, a French criminologist from the early twentieth century, was one of the first to advocate for the need of investigating trace materials like dust and dirt in forensic science. Locard proposed that every contact between two items left a trace of each on the other, implying that transfer between the two was unavoidable (Allwood, Fierer and Dunn,

2020). He wrote, “*For the microscopic debris that cover our clothes and bodies are the mute witnesses, sure and faithful, of all our movements and of all our encounters*” (Locard, 1930). For most of the history of forensic science, dust was examined by experts who specialized in specific soil biota components such as soil fauna, pollen, or fungal spores. Those organisms, or parts of organisms, were

* Assistant Professor of Law at the Gujarat National Law University.

** Final-Year Law Student at Symbiosis Law School, Hyderabad

usually recognized with a microscope or magnifying glass. Morphological identification using microscopy remained the principal form of analysis. Bisbing (1989), a scientist from McCrone Associates, Chicago, IL, claimed that dust gathers everywhere and represents the disintegration of the various components of our environment 60 years later (Allwood, Fierer and Dunn, 2020).

Missing-person and water-borne disappearance investigations are among the most difficult and resource-intensive aspects of policing. People frequently go missing in rivers, estuaries, ponds, and urban drains, and traditional search procedures, dive teams, line searches, sonar, and tip-based leads, can take days or weeks and yet fail to discover remains or key evidence (Simkin, 2020). The human repercussions (family anguish, unresolved cases) are matched by high operational expenses and frequently wasted investigator hours, resulting in an urgent need for tools that may swiftly restrict search areas with a small field footprint.

The technique of identifying biological material that organisms continuously release into the air, water, or soil is known as environmental DNA (eDNA). It has developed into a useful ecological monitoring tool and is currently being investigated for forensic applications. The majority of published work is still exploratory, small-scale, or ecology-driven rather than intended for criminal investigations, despite laboratory and pilot studies showing that human

mitochondrial eDNA can be detected in aquatic environments under specific conditions and that detection windows vary dramatically with temperature, flow, and microbial activity (Antony Dass et al., 2025). Crucially, under real-world circumstances, it is still rare to recover nuclear STR profiles that are suitable for individual identification from environmental water. As a result, eDNA currently works best as an investigative indicator (to prioritize where and when to search) rather than as stand-alone identity evidence (Antony Dass et al., 2022).

Although the potential value of human eDNA has been repeatedly proposed, there is little systematic validation, little operational case literature demonstrating how eDNA alters investigative outcomes, and little agreement on laboratory standards or reporting thresholds for police use. This technical gap clearly results in a gap in the literature and policy. Concerns regarding consent, data retention, and the possibility of unintentional identification if environmental sampling is used purposefully for human detection are also brought up by the frequent discovery of "human bycatch", incidental human genomic fragments, by environmental sequencing projects" (Whitmore et al., 2023).

The stakes and the policy agenda are sharpened by a comparative UK-India viewpoint. The forensic science regulatory environment in the UK is becoming more and more codified. The Crown Prosecution Service's expert evidence guidelines (Expert Guidance on Disclosure, Unused

Material and Case Management, 2023) and the Forensic Science Regulator's validation guidelines establish explicit standards for method validation, reporting, and disclosure prior to the use of innovative techniques in court. In contrast, India is rapidly modernizing its forensic system (PIB, 2025). This includes building NFSU campuses, expanding CFSUs, and authorizing new National Forensic Data Center capabilities. This presents both an opportunity and a risk - while powerful new laboratory capacity could enable advanced methods like eDNA, adoption could outpace safeguards if corresponding procedural standards (validated methods, accredited labs, and clear rules on privacy and chain-of-custody) are not met. Therefore, a comparative desk study enables us to pose useful, policy-relevant issues, such as how governance lessons may be used in both systems and what responsible, phased adoption of eDNA might look like in each.

Forensic Background: eDNA Science and Potential Forensic Uses

The genetic record that life leaves behind in the environment, including skin cells, hair, saliva, mucus, and other biological pieces that wash into water, adhere to soil, or float in the air, is known as environmental DNA, or eDNA. Scientists take small physical samples (a few litres of water, a swab of dust, or air filters), concentrate the DNA, and then test for target sequences. In forensics, the fundamental promise is the same as in ecology, but with a different goal; to use such traces as investigative intelligence

about human presence, time, or movement at a scene. In ecology, this enables researchers to state that 'this species was here' without actually seeing or capturing the organism.

eDNA stands at a special nexus between criminalistics and ecology in the forensic context. Forensic eDNA applications have to deal with stricter evidential standards, traceability, and contamination control, whereas ecological studies frequently concentrate on species detection to monitor biodiversity - (Schadewell and Adams, 2021). The basic ideas are still the same: biological material released into the environment can be collected, removed, and examined. However, forensic use necessitates additional requirements, such as stringent laboratory quality assurance, documented sampling procedures, and exact chain-of-custody protocols to guarantee that results are repeatable and admissible in court. In order to determine when an organism was present and how far DNA may have travelled, temporal persistence studies and environmental degradation modelling are essential, as the ecological literature points out - (Schadewell and Adams, 2021). Because of their extreme sensitivity, eDNA techniques can identify human material that is invisible to conventional crime scene analysis, which could lead to new leads in cases where other evidence has been lost or deteriorated.

There are two main, complementary categories of laboratory techniques. Targeted detection is the first, and quantitative polymerase chain reaction

(qPCR) is most frequently used (Langlois et al., 2021). Simply put, qPCR functions similarly to a highly specialized DNA photocopier: you give it the precise 'sentence' in the DNA you are looking for (a genetic marker), and if it exists, it searches the sample for it and creates millions of copies. The machine measures the amount of DNA as it's being copied, which allows it to determine how much of the original DNA was there to begin with. Because each cell has several mitochondria, the goal for forensic eDNA is frequently a human mitochondrial marker, which is a brief segment of DNA from the mitochondria. This increases the likelihood of discovering something in samples that are small or deteriorated.

The second method is metabarcoding, which is essentially taking a group photo of every DNA molecule in a sample and then using software to determine who is in it. Metabarcoding uses a 'universal' DNA barcode, which is a section of DNA that is common to many organisms but somewhat variable in each species, to simultaneously capture and sort a full community of genetic evidence rather than searching for a single marker. In forensic situations, it may unintentionally detect human DNA as part of a larger survey, frequently referred to as 'human bycatch' (Whitmore et al., 2023). In an ecological context, this can identify dozens of species in a single sample.

Forensic labs still use *Short Tandem Repeat* (STR) typing, which is the same technique used for regular crime scene DNA, when investigators want individual

identification. Since environmental samples are typically more contaminated and tainted with DNA from several sources, recovering STR profiles from environmental water is far more difficult than from new biological evidence. That is why qPCR and metabarcoding are more often used for presence/absence and recency information, rather than for proving identity in court. Metabarcoding has been shown to be useful for indicating the likelihood or abundance of presence rather than for precise human identification. It has also been shown that species such as pond-breeding newts can be detected without direct observation and that the number of sequence reads may reflect relative eDNA concentration (Harper et al., 2018).

One of the primary practical questions for research is how long human eDNA survives and may be found in water. Human mitochondrial signals disappear quickly, within hours to a few days, in warm, flowing water with a lot of microbial activity. In contrast, they can last for weeks in cold, still water with fewer microbes (He et al., 2015). Filtration volume, filter pore size, and rapid preservation all have a significant impact on detection probability. While bigger quantities and finer filtration increase sensitivity, but field logistics constrain what police can realistically collect (Li et al., 2018). Several recent lab-based spiking investigations quantify these impacts and provide cautious operational values for modelling possible search timeframes.

From a forensic-practice standpoint, the most promising and realistic applications of eDNA are investigative and triage rather than courtroom-evidence replacement. In missing-person or waterborne disappearance cases, eDNA can (a) indicate whether human biological material has recently passed a location, (b) help prioritize search transects along a river, and (c) provide corroborative temporal information (this reach shows a recent mitochondrial signal, narrow search here first) (Antony Dass et al., 2025). When supplied as probabilistic, corroborative intelligence (rather than conclusive identification), eDNA can reduce search expenses and focus scarce dive/sonar resources, resulting in a direct social impact for families and improved police efficiency. Reviews and applied-forensic commentaries emphasize framing eDNA results in this manner until more robust STR-recovery techniques are verified (Novroski, 2023).

The existence of specific boundaries together with associated dangers needs to stay visible at all times. The hydrodynamic process allows DNA molecules to move through long distances beginning from their initial starting point. A positive test result does not guarantee that the DNA will remain in the local area. The presence of environmental contaminants from sample collection equipment and boats and human activities before sampling can produce incorrect test results. The sequencing process generates human genetic material which enters the system through unintentional data acquisition. The storage of unprocessed human DNA data creates

privacy risks because it could lead to unauthorized disclosure. The acceptance of new scientific evidence by courts and prosecutors depends on their verification of established methods. The current applications of eDNA fulfill operational requirements yet they operate independently from proof systems. The scientific community together with ethicists have established these boundaries through their research. The authors support multiple validation stages and they recommend complete reporting standards and they advocate for strict data management systems. Scientific evidence demonstrates that eDNA functions as an investigative tool instead of providing rapid species identification results. The method produces its most accurate results when investigators apply it to reduce uncertainty by locating specific search locations and time periods. The method requires exact laboratory procedures and qualified experts to read results and suitable data management systems to gain court acceptance as evidence. The established framework defines scientific limits which will guide all policy and operational recommendations throughout this paper.

Case Studies

Real investigations show how natural signs transform into strong evidence through actual cases. Forensic ecologist Professor Patricia Wiltshire demonstrates in her memoir *Traces* how environmental evidence including pollen and plant pieces and soil becomes essential for crime scene

investigation(Wiltshire, 2019). The victim's wooded location revealed to her the presence of plants which seemed out of place. She performed full soil and plant tests to confirm that the suspect's items exactly matched evidence found at the crime scene. The evidence from nature proved that it always tells the truth which led to solving a previously unsolved case.

The Soham murders investigation by Wiltshire stands as an outstanding example of her work. The pollen evidence from the suspect's clothing and vehicle led her to identify the permanent disposal site of the two murdered children. The evidence allowed her to reconstruct the sequence of events that occurred during the tragedy(Soham murders: Ian Huntley's press interviews alerted police, 2022). The combination of pollen evidence from victim clothing and an ornamental brick led investigators to identify a specific house which solved a 30-year-old cold case had gone unsolved. The cases show that forensic ecology produces location-based evidence through its methods when DNA evidence and witness statements become unavailable (Haines, 2012).

While environmental DNA (eDNA) helps detect species in the wild, another important use of DNA analysis is in wildlife forensics. A strong example is the DNA taken from illegal ivory products. By comparing these DNA traces to a database of wild elephant families, researchers can identify the origin of the ivory. This could uncover global trafficking routes (Strickland, 2022). This non-invasive method helped conservation researchers

track supply chains and improve anti-trafficking efforts.

Another case took place during the COVID-19 pandemic; researchers successfully sampled viral RNA fragments in wastewater days before public cases were confirmed, offering an early warning system for outbreaks, turning eDNA into a community health sentinel rather than a crime scene detective(COVID-19 wastewater, no date).

Fantinato and colleagues exhibited a practical, multi-matrix human-eDNA process in an office complex designed to simulate real-world investigations into who utilised a space and when. The researchers examined high-touch areas (light switches, door handles), collected air and HVAC/dust, and compared the STR/mRNA data to reference profiles from 55 known residents—(Fantinato et al., 2023). Surface swabs indicated current users, but dust and air supplied a 'occupancy history' that revealed contributors missing by any single matrix. Critically, integrating surface plus air plus dust improves inference about activity zones and chronology, providing an evidence-based method to triage rooms in scenarios such as a recently vacated drug lab or safehouse with few apparent clues. The team's follow-up research emphasises that human eDNA retrieved from routinely touched items, air, and dust can be used as an investigative tool to detect and contextualise human presence, and that combining matrices decreases transfer/contamination ambiguity when compared to single matrix sampling.

Tamar Barkay pioneered an early kind of eDNA sampling by collecting sediment (mud) from various water bodies, including an inland reservoir, a brackish bayou, and a saltwater swamp, and extracting direct environmental DNA in the lab (Smith, 2024). This method allowed researchers to assess the broad microbial diversity present, including organisms that couldn't be cultured traditionally, laying the groundwork for modern eDNA techniques. In a landmark 2003 work led by Eske Willerslev, researchers retrieved eDNA from a minuscule teaspoon of sand in a New Zealand cave, revealing DNA from a long-extinct bird (the moa) and demonstrating the viability of retrieving ancient eDNA. This case showed how genetic remnants from long-extinct species can remain in sediments for millennia (Willerslev et al., 2003). Pierre Taberlet and his team reached another milestone by using water sampling to find invasive bullfrogs in aquatic environments. They did this without needing to see or catch the animals. This technology made it easier to locate hard-to-find species in water and sped up the use of eDNA in conservation biology (Nicholls, 2008).

Take another example, large-scale biomonitoring. Wastewater monitoring, which was widely used during the COVID-19 pandemic, turns sewer systems into large-scale sample networks to find viruses like SARS-CoV-2. Although this method is often used to collect environmental RNA (eRNA), it follows the same principles. In addition to disease

monitoring, eRNA profiles can show ecosystem health since stressed species produce different proteins compared to healthy ones. This model shows how current infrastructure can be changed to enable fast, non-invasive monitoring at the population level. It may have uses in public health, biosecurity, and forensic intelligence (Weiss, 2021).

Yet, despite these successes, gaps remain. There is still a need for documented real-world investigations in missing-person or water-borne cases that use eDNA to establish search priorities or define time frames. Furthermore, procedures lack standardization. Chain-of-custody rules, contamination controls, and strong validation are still being developed. In many cases, biological results are still probabilistic and not individually identifiable.

Comparative Analysis - Forensic Ecology and eDNA in UK and India

The comparative analysis is divided into three parts for better understanding to foster conversation.

Part A- Legal and Governance Landscape

When it comes to forensic science regulations, the United Kingdom leads the way. The Forensic Science Regulator (FSR) provides clear guidelines on method validation, quality management, and reporting for forensic services. This is now backed by legal authority and a formal Code of Practice (New Code of Practice Introduced for Criminal Investigations, no date). In practice, this means that before

a new technique, like any eDNA workflow that claims to have investigative or evidential value, is used by police or presented in court, it must be validated to FSR standards. It also needs to be documented so that investigators, prosecutors, and judges understand its strengths and limitations. This focus on checking things before using them and clear reporting is key to how the UK manages to combine innovation with reliable evidence.

The Crown Prosecution Service (Expert Evidence, 2023) and related UK guidelines advise caution when presenting new scientific evidence. Prosecutors and expert witnesses must explain validation data, its limits, and the importance of the evidence in a way that a court can understand. In short, the UK approach prioritises method validation, transparent reporting, and court review before a methodology transition from research use to ordinary acceptable evidence. That regulatory position is significant since eDNA technologies (even when analytically sensitive) create concerns such as degradation dynamics, hydrodynamic transport, contamination risk, and statistical interpretation that must be quantified for court use.

The Court of Appeal's ruling in *R v Dlugosz & Ors [2013] EWCA Crim 2* and related guidelines to prosecutors provide a practical illustration of how the UK system aims to make sophisticated science accessible to fact-finders. The Court of Appeal praised the use of a written presentation describing the fundamental

science of DNA for juries, pointing out the obvious benefit of giving such material so that jurors may understand the scientific evidence they are required to consider. In response to these and other concerns, the Royal Society created a plain-language DNA primer for courts, which experts and prosecuting authorities are urged to use (or amend in collaboration with defence experts) to aid juries, subject, of course, to court clearance. Framing complex genetic evidence in this way typifies the UK's validator-and-transparency approach; it is not enough for procedures to exist; their workings must be conveyed in an accessible, standardized form so judges may objectively assess dependability and weight.

India is modernising its forensic infrastructure and has demonstrated political determination to increase capacity. In recent years, the government has approved a significant forensic-modernization program (new CFSLs, lab upgrades, and the establishment of a National Forensic Data Centre), and the National Forensic Sciences University (NFSU) has grown to support education, research, and training pipelines (NFSU Campuses, no date). These institutional investments open up significant opportunities to obtain modern molecular instruments, train workers, and decrease long-standing backlogs.

Although, India's governance environment is still in transition. Multiple government notices and independent assessments have revealed deficiencies in uniform quality assurance across all state

labs; issues noted in various settings include insufficient contamination-control measures, staffing shortages, and varying accreditation status. The acquisition of molecular equipment and sequencing machines will not address the present operational and governance problems which require immediate solution. The Indian criminal practice requires immediate financial support to build operational systems and accreditation frameworks and train personnel and develop evidence handling and privacy protection legislation. The growing capacity of India shows promise but its confirmation process requires development at the same time as technological advancements.

Why is this important for eDNA? The two jurisdictions have access to the same scientific evidence. The sensitivity of eDNA depends on environmental conditions and storage conditions and physical handling during transportation and storage. The two nations have different capabilities to convert research data into court-admissible evidence. The UK validator-first method provides a straightforward method to start implementation. The system validation process begins in laboratories before it proceeds to operational testing. The system progresses through evidence acceptance stages which begin with restricted evidence until it reaches complete court approval for admission. The Indian government operates through a current strategic plan which focuses on developing decentralized forensic

capabilities (Online Bureau, 2025). India needs to establish a deliberate connection between new tool acquisitions and validation templates and accreditation standards and chain-of-custody regulations to prevent new technologies from exceeding safety measures. The responsible use of eDNA needs this method to achieve its correct implementation.

Part B- Operational Capacity, Case Precedents and Readiness to Use EDNA

Operationalising eDNA is as much a logistics and metadata issue as it is a biochemical one. Unlike a swab from a body or a cartridge from a gun, environmental samples necessitate judgements about where, when, and how much to collect, which directly influence what the lab ultimately sees. Practical factors such as filter particle size, litres filtered, number of repetitions, preservatives utilised, and time between collection and extraction all have a significant impact on detection likelihood; these are not minor but critical considerations. As a result, any operational protocol must regard sampling as part of the evidential chain, with timestamped GPS locations, photographic transects, chain-of-custody records for each bottle, and instant field blanks and negative controls as normal. Without uniform metadata and contamination controls, two labs that analyse 'the same' river sample may generate results that are not meaningfully comparable. Recent methodological studies that quantify particle-size association and decay kinetics provide concrete parameter ranges that can be

turned into SOPs; nevertheless, these SOPs must be locally validated (various rivers, tides, and monsoon impacts) before being used operationally.

Laboratory readiness is more than just owning sequencers; it also includes validated workflows, inter-laboratory competency testing, and open performance indicators. For a police force to consider an eDNA result actionable, labs must publish (or make available to oversight bodies) validation packages that include limits of detection (LOD), false-positive/false-negative estimates, reproducibility across technicians and instruments, and the effect of inhibitors found in environmental matrices. Accreditation organisations anticipate these criteria for any new technology, a notion enforced by the UK's Forensic Science Regulator. To ensure '*consistent, reproducible, valid and reliable results that are compatible with the results of other practitioners*', inter-lab ring trials are required to confirm that an eDNA positive in one lab translates to the same in another (Forensic Science Regulator, 2023). To achieve this shared knowledge, financed, multi-site validation studies using standard performance tables (LOD, sensitivity, specificity, and repeatability) and mock-case samples must be blind-tested.

Legal and evidential readiness will depend on how eDNA results are communicated, not just how they are generated. The UK case law on DNA has frequently demonstrated that courts are wary of

probabilistic or poorly stated scientific assertions (see *R v Doheny [1996] EWCA Crim 728* and the lengthy line of cases scrutinising statistical evidence), while *R v Dlugosz [2013] EWCA Crim 2* stresses the importance of plain-language primers for juries when science is difficult. That precedent establishes a helpful norm for eDNA; forensic reports must include concise summaries, clearly specified restrictions, and, when applicable, decision rules used in the investigation (for example, what Ct threshold was considered 'detectable' and how many replicates were agreed upon). When environmental signals are probabilistic and transportation models include uncertainty, experts must employ language that judges can understand. For example, 'this sample provides moderate support for recent human biological input within the sampled reach' is more defensible than categorical claims. Training judges, prosecutors, and defence teams with standard primers (as recommended after Dlugosz) will be just as vital as lab validation in ensuring reliable court use.

Ethics, privacy, and data governance are not minor issues. They will shape public acceptance and legal permission. In recent years, research has shown that environmental sequencing often collects human genetic 'bycatch', frequently at sensitive trait levels' (Whitmore et al., 2023). This fact poses data protection concerns under regimes such as the UK GDPR (personal genetic data are clearly sensitive), as well as policy considerations

concerning storage, access, and secondary use(Data (Use and Access) Act factsheet: UK GDPR and DPA, 2025). Practical precautions could include automatic redaction of human readings prior to data sharing, severe limits on raw read retention with human content, restricted-access logs for any human-derived sequences, and an approvals process for the use of environmental materials in criminal investigations. Policy documents and expert assessments now expressly suggest treating human eDNA with the same gravity as other genomic data; governance must be built into pilots, not retrofitted afterwards.

There are operational examples outside of direct human-eDNA casework that demonstrate how to put environmental genetics into reality, as well as key lessons from where it has gone right and wrong. Wildlife-forensic projects (such as DNA provenance of ivory seizures as discussed earlier) shows how genetic mapping, meticulous provenance databases, and collaboration between scientists and law enforcement may transform molecular traces into usable intelligence for prosecution and policy. In a landmark study, scientists tracked the sources of 28 big ivory seizures, some weighing more than six metric tonnes, back to only two primary poaching areas in Africa since 2006(Wasser et al., 2015). Using microsatellite DNA mapping and a total of 1,350 reference samples, they were able to determine the source populations with remarkable accuracy - frequently within a few hundred kilometres. This allowed law

enforcement to target specific places, such as the Selous-Niassa environment for savanna elephants and the Tridom-Dzanga Sangha area for forest elephants, thereby breaking organised trafficking networks. The technique, which was approved by CITES in 2013, has accelerated seizure analysis, allowing for near-real-time monitoring and response to poaching pressures.

Wastewater surveillance for SARS-CoV-2 demonstrated the public-health benefits of large-scale environmental genetic monitoring, including the requirement for uniform sample cadence and centralised data dashboards to analyse temporal trends. Forensic genetic genealogy (FGG), also known as Investigative Genetic Genealogy (IGG) is not eDNA, but it is instructive; quick investigative successes resulted in societal benefits, but they also sparked arguments about privacy, consent, and cross-border governance. These areas convey a common lesson; operational adoption is successful when science, transparent governance, cross-agency workflows, and public communication are designed from the start. The California Golden State Killer case serves as an excellent example for this investigation. The police submitted DNA evidence from the murder crime scene to a public genealogy database for forensic analysis. The database search showed that the killer had unknown distant relatives who investigators failed to identify (Tillmar et al.,2021). The investigation team built detailed family trees to locate the person of interest. The investigators used age

information and location data and other details to identify Joseph James DeAngelo as their target. The DNA evidence which had been thrown away proved to be the key evidence that linked him to his criminal activities. The groundbreaking discovery solved all the unsolved murders and assaults which had remained unresolved for decades. Standard police investigation techniques together with DNA evidence allowed investigators to resolve cases which appeared unsolvable. Human eDNA for criminal work needs documented pilot studies and privacy-focused design processes and shared validation repositories and simple reporting templates for prosecutors.

Part C- Bridging Doctrine and Practice: India's Legal Foundations and an Operational Roadmap for EDNA in Policing

The Indian police force needs to apply existing laws and operational procedures to use human environmental DNA (eDNA) for its core functions. The collection of essential intelligence for trials becomes impossible because investigators require proper legal authorization to obtain eDNA evidence. The technique becomes dismissed as speculative science because investigators do not have established methods to apply it. In India, the admissibility of scientific evidence rests chiefly on Section 45 of the Indian Evidence Act, 1872 (now Section 39 of the Bharatiya Sakshya Adhinyam (BSA) 2023), which permits expert opinions to assist the court in matters of science. The Supreme Court has underlined that such

views are only valid when they are issued by qualified experts using established and tested techniques (*State of H.P. v. Jai Lal & Ors.*, (1999) 7 SCC 280). For eDNA, the expert must demonstrate that all steps, from water sampling to bioinformatic analysis, follow published, peer-reviewed methods.

The Code of Criminal Procedure of 1973 (now known as the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023) requires that evidence be collected in accordance with strict chain-of-custody regulations. The search and seizure provisions demand that every transfer of evidence be documented, witnessed, and verifiable. Courts have rejected otherwise pertinent forensic material on several occasions due to breaks in this chain. The consequence for eDNA is clear: each sample must have its own history, including GPS position, timestamps, seal integrity, and the names of each handler.

Privacy is the third legal pillar. The right to privacy, recognized as a fundamental right in the Puttaswamy decision, requires a necessity-proportionality-purpose limitation test for any state activity that violates it. Because human eDNA sampling in public waterways may include genetic traces from uninvolved individuals, investigators must show that the collection is necessary for a specific case, proportionate to its goals, and used strictly for that purpose. The lack of a specific forensic DNA database law in India emphasizes the importance of explicit, case-bound regulation when handling eDNA.

Indian courts have historically been cautious of novel forensic techniques, as seen by decisions that limited the use of narco-analysis and polygraph testing. This judicial temperament implies that, in its early Indian trip, eDNA will be more defensible as investigative intelligence, to guide searches, narrow grids, or prioritise resources, than as direct proof of guilt. The existing framework serves to stop evidence from getting needlessly thrown away. The system shows eDNA as an additional tool which supports traditional evidence collection methods.

The legal framework of forensic science in India exists because of multiple court decisions which emphasize both scientific accuracy and constitutional compliance. The Supreme Court delivered its landmark decision in *Selvi v. State of Karnataka* AIR 2010 SC 1974 which stands as a significant case. The Supreme Court established specific boundaries which limit how scientific methods can be applied during criminal investigations. The court established that forced tests including narco-analysis and polygraphs violate two essential rights which protect citizens from self-incrimination (Article 20(3)) and privacy (Article 21) violations. The Indian judiciary shows reserve about adopting new forensic technologies through this legal case. The case provides sequential instructions which show eDNA functions independently from standard methods used to detect invasive species.

The 2025 case of *Kattavellai v. State of Tamil Nadu* Criminal Appeal No. The research conducted by 1672 of 2019

established that all forensic work requires proper procedures to be followed. The Supreme Court of India established nationwide guidelines for DNA and biological sample collection and storage procedures through this case (Joshi, 2025). The court ruled that DNA evidence requires absolute protection through a strict chain of custody to prevent contamination and tampering. The process of collecting environmental samples for eDNA evidence analysis needs particular testing procedures. The process safeguards evidence from contamination while making them suitable for legal presentation in court. Your research paper will demonstrate full understanding of eDNA placement in Indian legal frameworks through analysis of these two established cases. The research investigates constitutional rights together with evidence management systems.

India needs to establish controlled environment pilot programs which will help develop eDNA into an reliable monitoring system. The country needs to adopt UK forensic validation methods through modifications which fulfill Indian standards (USFWS, 2023).

- i. The sampling procedure requires three 1-liter surface water samples from each site in sterile bottles with one field blank sample. The team needs to handle all samples through the use of single-use gloves. The filters contain pores which measure 0.45 μm in diameter.
- ii. The system requires users to document GPS coordinates together

- with date and time information and weather data and water flow rates and personnel identification details.
- iii. Tamper-evident seals must be used in chain-of-custody procedures for protection purposes. The system requires users to document all transfer events through the process of creating signed records.
 - iv. The laboratory needs to follow ISO/IEC 17025 standards for all processing operations but must document all required deviations along with their corresponding explanations.
 - v. The bioinformatics analysis needs human-specific primers that have been validated for use while setting the Ct value to 35 or below for detection and requiring at least two positive results from three replicate samples.
 - vi. The system uses three reporting tiers to present results which include "Limited" and "Moderate" and "Strong" levels of support. The report includes a section that explains alternative explanations for results including drift and contamination effects.

The hydrodynamic control system requires researchers to collect samples from both upstream and downstream areas to determine the source location.

The implementation of eDNA practices within current legal systems will enhance both court and investigative agency

acceptance of this technology in India. The pilot program will establish trust in institutions through its implementation of specific documentation procedures and privacy protection measures and defined collection protocols. The Indian government uses eDNA technology in the same way as the UK does to improve search efforts instead of establishing legal frameworks. The existing foundation enables scientific advancement to integrate seamlessly with existing legal systems.

Policy and Operational Recommendations for Human EDNA in Forensic Practice

Multiple sequential actions need to occur to achieve this vision. Scientific validation needs to serve as the fundamental base instead of existing as an optional requirement. Every pilot program needs to receive support from established scientific research. The research needs to establish specific detection thresholds while evaluating both incorrect positive results and incorrect negative results and study how environmental elements impact DNA stability and transport systems. The validation packages require separate evaluation through documented processes to achieve institutional transparency and consistency. Research conducted in 2025 demonstrated that water velocity and filter types and microbial activity levels determine the accuracy of detection results. Scientists need to validate the process before they can apply this technology in real-world situations.

Standard Operating Procedures (SOPs) which detail all procedures from field

sampling to contamination control and laboratory processing need to be established for obtaining dependable results. Standard operating procedures require defined procedures for metadata collection. The collection process requires GPS coordinates for sample sites and time-based documentation of sample handling and storage procedures and controlled negative and positive samples and standardized preservation techniques. The protocol needs to use nationwide standardized procedures but remain flexible for different environmental settings between UK rivers and Indian monsoon waters. The system produces matching results which defend legal rights during all stages of court proceedings.

The current method of forensic result presentation requires a complete overhaul. The identification results need to appear together with probability-based findings in forensic reports. The report needs to show all detection thresholds by using qPCR Ct values and minimum read counts. The reporting format follows all legal requirements which courts need to perform their procedures. The courts require scientists to present complex evidence through basic language which jurors and judges can understand. The court case *R v Dlugosz* along with other judicial guidance supports using basic explanations for forensic science topics.

Environmental sequencing generates human genetic fragments as unwanted data so organizations need to establish robust privacy systems and data management frameworks. The storage of

unprocessed human DNA sequences needs to be restricted while authorized personnel should access the data and all data retrievals need to be tracked and human DNA reads should be automatically removed before sharing data. The safety measures we implemented follow the same genomic data protection standards which GDPR and other data privacy regulations have established. The execution of environmental science protocols protects personal rights through its ability to stop unauthorized entry.

The deployment of eDNA for forensic casework needs evidence that shows its operational readiness. A systematic method needs to be created which will transform scientific eDNA discoveries into functional operational procedures for achieving successful forensic work results. The research field of dissemination and implementation (D&I) focuses on evidence-based methods to enhance outcomes. The field of D&I science differs from basic research dissemination because it focuses on actual implementation of new approaches. Research findings distributed through press releases and peer-reviewed publications do not guarantee that new methods will get implemented in real-world settings (Tabak et al., 2012).

The field offers vital techniques to manage the complex multiple-step process of conducting eDNA-based forensic investigations. The field connects to multiple professional fields which include agriculture and medicine and public health and organizational behavior and political science. The different fields

demonstrate their ability to implement new methods which generate advantages for particular groups of people. The D&I concept matches exactly with the forensic application of eDNA. The process requires multiple stages of the socio-ecological framework which includes people and organizations and policy structures under oversight agency supervision. The complete method implementation requires this comprehensive approach to verify that all elements within the forensic system are prepared to use and participate in the new approach.

The operational pilot program serves as the primary research center which performs all D&I scientific investigations. The operational pilot program functions as an initial testing phase which evaluates new concepts and procedures and technologies before their deployment at a larger scale (Malsam, 2025). The programs serve as operational field tests which assess practicality and identify potential problems and improve methods through user feedback (Everything you Need to Know About Pilot Programs, 2022). The main objective of a pilot program is to decrease both financial expenses and operational risks which occur during complete system deployment. The system allows researchers to test its operational performance through actual field conditions.

The pilot program functions as an essential tool which helps organizations handle risks and acquire knowledge. A small-scale test enables organizations to detect

unanticipated problems which organizations can resolve before devoting major resources to new projects. The new forensic technology programs need complete focus on following procedures exactly because any mistake during evidence handling will damage program trustworthiness and threaten legal outcomes. A pilot program achieves success through its ability to detect and resolve problems rather than achieving flawless execution. The pilot program serves as a vital tool for learning and process improvement because it helps identify and resolve problems.

Operational pilot programs function as connectors between scientific research and practical field implementation. The pilots need to establish connections between field investigators and certified laboratories and oversight bodies to develop solutions for particular case types. The pilots need to focus on two particular cases which include drowning investigations and plastic debris detection in border waterways because eDNA shows potential for these investigations. The evaluation process needs to assess both scientific performance metrics including detection accuracy and lab result consistency and investigative benefits which include search optimization and time reduction and suspect identification. The evaluation process should use both successful and unsuccessful results to develop the following version of the protocol.

Laboratories need to participate in interlaboratory ring trials to verify their ability to produce dependable test results.

The blind proficiency testing program sends mock-case samples to accredited forensic labs for evaluating their ability to perform SOPs and produce results and reports. The ring trials create trust in shared validation standards which determine the requirements for accreditation.

The evidence becomes useless when courts fail to understand its meaning even when science and governance rules are strictly followed. The training programs for judges and investigators should provide basic materials which explain eDNA principles and boundaries and analysis procedures. Defense experts need to participate actively throughout the development process for these materials. Active education methods enable proper evaluation of forensic reports because they prevent dismissal due to misinterpretation. The evaluation of evidence becomes possible through complete comprehension of its intended meaning. *R v Dlugosz* confirmed and built on the principles set in *R v Ashley Thomas*. It stated that expert opinions on complex DNA evidence can be accepted even if there is no statistical match probability. This is true as long as the opinion is based on sound science and its subjective aspects are clearly explained to the jury.

Finally, governance among agencies and public communication should guide eDNA implementation from the beginning. A steering committee with forensic scientists, ethicists, law enforcement, and civil society members must oversee pilot projects, evaluate results, and make policy

recommendations. Trust will be established, privacy safeguards will be explained, and responsible handling of sensitive genetic tools will be modelled through public briefings, educational websites, and community consultations.

The Investigative Promise of EDNA for Defined Forensic Case Types

1. Case Type 1: Recent Drowning Investigations

1.1 Scientific Foundation for Aquatic EDNA

Ecological monitoring, which has long been used to ascertain the existence of species without direct physical observation, is the source of the use of eDNA in aquatic environments (Simplyforensic, 2024). This non-invasive monitoring method gathers water samples and amplifies the genetic material - such as excrement, skin cells, or bodily fluids - that organisms release into the environment (eDNA Overview, 2024). The method's suitability for species detection in a range of aquatic habitats has been demonstrated by its successful use in monitoring invasive species and detecting marine mammals (USFWS, 2023). The methodological basis for altering eDNA to identify human genetic material in a forensic setting, such as when there are human remains in water or recent drownings, is this ecological foundation.

1.2 The Persistence and Degradation of Human eDNA in Water

Any aquatic forensic investigation must comprehend the window of time that DNA

is detectable and forensically valuable. An essential temporal framework for such studies is established by a basic investigation of human eDNA breakdown rates in water under controlled laboratory conditions (Antony Dass et al., 2022).

When researchers used a human-specific qPCR test that targets mitochondrial DNA, they found that human eDNA from blood could be detected for up to 11 days in ambient water and up to 35 days in distilled water. While this discovery is promising for showing how long human genetic material can last, the fate of nuclear DNA has the most important practical effects. The study found that the time frame for recovering usable nuclear DNA (short tandem repeat or STR profiles), which is the best method for identifying individuals, was greatly shortened to just 24 hours in ambient water. The half-life of eDNA in environmental water was found to be about 9.86 hours. There was a 90% drop in concentration after only 24 hours.

The significant difference in detectability between nuclear and mitochondrial DNA is important for individual identity. However, nuclear DNA degrades quickly. This creates a key time limit for forensic investigations. The finding that STR profiles cannot be recovered from ambient water after 24 hours shows that the main use of eDNA in these cases is highly time-sensitive. This needs a basic change in operational priorities for any pilot program. In this situation, success is measured not by a slow, multi-day investigation but by a quick response

ability. Skilled investigators gather samples within hours of a reported incident.

1.3 Practical Insights for Operational Pilots

A pilot program for drowning investigations needs careful planning to test and confirm quick response methods. This involves addressing the practical challenges of sending investigators and equipment to remote water sites. The program would look at how effective different collecting methods are. This includes using a Niskin bottle or a pump system. It will also consider preservation measures to ensure sample integrity (Exploration Tools: Environmental DNA: NOAA Office of Ocean Exploration and Research, no date). The main goal is to confirm a method that can consistently deliver a good sample to a certified lab within the crucial 24-hour period for nuclear DNA recovery. This will increase the chances of getting a specific STR profile.

2. Case Type 2: Tracing Remains on Border-Stream Plastic

2.1 The Scientific Basis for EDNA on Surfaces

The idea behind eDNA forensics comes from Edmond Locard's principle that *'every contact leaves a trace'* (Smith, 2024). In essence, eDNA uses Locard's idea for the twenty-first century. Recent studies have shown that we can collect human eDNA from various surfaces, such as contact surfaces, air, and dust, especially indoors (Simplyforensic, 2024). This allows

forensic experts to collect genetic material that people unknowingly leave behind. This method adds to traditional sources of evidence and offers a clearer picture of who was in a specific location and when. The ability to gather human DNA from air particles introduces a new, non-invasive way to collect biological evidence when standard touch DNA is not available or reliable.

2.2 Linking DNA to Specific Objects

The study by LeClair and his team (2025) showed that eDNA methods can detect turtle DNA in plastic and fabric materials for six months after a single hour of exposure. The research demonstrates that eDNA methods successfully detect genetic material which plastic waste contains in border waterways. The research shows that DNA stays present on these surfaces for long durations. Scientists require the research findings to study debris which exists after long periods of time. Scientists today study eDNA metabarcoding as a method to track marine pollutants which enter the environment through microplastics. Scientists can study genetic material and its plastic substrate together in single environmental samples through biodiversity monitoring using this technique.

The field needs two essential elements for operational success which consist of provenance analysis and contextual data evaluation. The length of time eDNA stays on surfaces does not ensure that the DNA source comes from the collection location. Research shows that eDNA travels long

distances because predators carry it and physical elements including wind and water currents and human activities that release sewage and ballast water. A plastic object which floats through border streams carries DNA from people who have never been to the recovery site. The separation of DNA that exists naturally in the environment from DNA that has been transported becomes a challenging task. The operational pilot program requires methods to detect genetic material while dealing with different dispersal factors. The program needs to perform complex operations to distinguish between these two separate situations. The research requires a full sampling plan which includes environmental controls from water and soil samples and analytical methods that use ecological and hydrological data.

2.3 Practical Insights for Operational Pilots

The pilot program for plastic litter remains tracing would develop scientific methods to retrieve border stream plastics and other items (Lewis et al., 2024). The program would evaluate multiple swabbing techniques and filtering systems to develop established protocols which protect samples from both investigator exposure and environmental contamination. The pilot program must solve the problem of processing complicated DNA profiles which appear on surfaces that have been shared or contaminated. The pilot program will give field personnel their own collection tools together with particular

collection procedures based on their work responsibilities.

Conclusion

Environmental DNA (eDNA) functions as a new investigative tool which merges ecological studies with forensic science capabilities. The investigative method shows promise to enhance both missing-person investigations and water-based criminal cases. The lack of complete STR profile recovery from environmental samples prevents eDNA from serving as independent evidence for legal purposes. The main advantage of eDNA lies in its ability to generate operational intelligence. The technique enables investigators to focus their search efforts on specific areas and allocate resources effectively while providing immediate evidence of human presence becomes available. The United Kingdom demonstrates a successful method for implementing new technologies through its validation-first approach which follows governance principles. The expanding forensic infrastructure in India brings forward new opportunities yet it creates security threats for the nation. Organizations need to create procedural protection systems which match their new technology implementations. Organizations can connect scientific innovation to police work through eDNA by developing complete Standard Operating Procedures (SOPs) and keeping established protocols and reporting standards in place.

The process of eDNA advancement from scientific research to standard forensic

application needs specific methods for implementation. The successful implementation of eDNA requires agencies to perform operational tests and validate results between laboratories and train judges and establish data protection protocols. The success of eDNA implementation requires agencies to collaborate while keeping the public informed about all stages of development and creating ethical guidelines at the beginning. The addition of eDNA to forensic tools would create an additional investigative capability which would enhance investigation speed and victim recovery and judicial process delivery. The technology allows forensic scientists to identify human evidence in spaces which were un reachable through standard forensic examination methods. The method enables investigators to detect human evidence which exists outside visible range when they examine spaces that scientists previously thought were inaccessible. Research activities should concentrate on recording operational examples by monitoring performance data and creating regulatory frameworks for various legal systems. The method defends eDNA technology against scientific and social obstacles.

BIBLIOGRAPHY

- 1 Allwood, J.S., Fierer, N. and Dunn, R.R. (2020) 'The future of environmental DNA in forensic science', *Applied and Environmental Microbiology*, 86(2). Available at: <https://doi.org/10.1128/AEM.01504-19;WGROU:STRING:PUBLICATION>.
- 2 Antony Dass, M. et al. (2022) 'Assessing the use of environmental DNA (eDNA) as a tool in the detection of human DNA in water', *Journal of Forensic Sciences*, 67(6), p. 2299. Available at: <https://doi.org/10.1111/1556-4029.15124>.
- 3 Antony Dass, M. et al. (2025) 'A preliminary study on detecting human DNA in aquatic environments: Potential of eDNA in forensics', *Forensic Science International: Genetics*, 74, p. 103155. Available at: <https://doi.org/10.1016/J.FSIGEN.2024.103155>.
- 4 COVID-19 wastewater (no date) WHO Health Emergencies Programme. Available at: <https://data.who.int/dashboards/covid19/wastewater> (Accessed: 12 August 2025).
- 5 Data (Use and Access) Act factsheet: UK GDPR and DPA(2025) GOV.UK. Available at: <https://www.gov.uk/government/publications/data-use-and-access-act-2025-factsheets/data-use-and-access-act-factsheet-uk-gdpr-and-dpa> (Accessed: 13 August 2025).
- 6 eDNA Overview (2024) Siren. Available at: <https://siren.fort.usgs.gov/static-page/draft-resource-manager-s-edna-toolbox> (Accessed: 13 August 2025).
- 7 Everything you Need to Know About Pilot Programs (2022) JMark Systems. Available at: <https://www.jmarksystems.com/blog/everything-you-need-to-know-about-pilot-programs> (Accessed: 13 August 2025).
- 8 Expert Evidence (2023) The Crown Prosecution Service. Available at: <https://www.cps.gov.uk/legal-guidance/expert-evidence> (Accessed: 12 August 2025).
- 9 Expert Guidance on Disclosure, Unused Material and Case Management (2023) The Crown Prosecution Service. Available at: <https://www.cps.gov.uk/legal-guidance/expert-guidance-disclosure-unused-material-and-case-management> (Accessed: 11 August 2025).
- 10 Exploration Tools: Environmental DNA: NOAA Office of Ocean Exploration and Research (no date) Ocean Exploration. Available at: <https://oceanexplorer.noaa.gov/technology/edna/edna.html> (Accessed: 13 August 2025).
- 11 Fantinato, C. et al. (2023) 'The invisible witness: air and dust as DNA evidence of human occupancy in indoor premises', *Scientific Reports*, 13(1), pp. 1–16. Available at: <https://doi.org/10.1038/S41598-023-46151-7>; SUBJ META=114,1647,631;KWRD=BIOLOGICAL+TECHNIQUES,COMPUTATIONAL+BIOLOGY+AN D+BIOINFORMATICS.
- 12 Forensic Science Regulator (2023) 'Forensic Science Regulator Code of Practice',

- Codes of Practice: FSA-MTP-101 - Friction Ridge Detail: Comparison, (March), pp. 158–167.
- 13 Haines, S. (2012) Plant expert Patricia Wiltshire helping police catch killers - BBC News, BBC News. Available at: <https://www.bbc.com/news/uk-england-humber-19115272> (Accessed: 12 August 2025).
- 14 Harper, L.R. et al. (2018) ‘Needle in a haystack? A comparison of eDNA metabarcoding and targeted qPCR for detection of the great crested newt (*Triturus cristatus*)’, *Ecology and Evolution*, 8(12), p. 6330. Available at: <https://doi.org/10.1002/ECE3.4013>.
- 15 He, X. et al. (2015) ‘Persistence of mitochondrial DNA markers as fecal indicators in water environments’, *Science of the Total Environment*, 533, pp. 383–390. Available at: <https://doi.org/10.1016/J.SCITOTENV.2015.06.119>.
- 16 Joshi, C. (2025) Transforming Criminal Justice: Supreme Court’s Landmark DNA Evidence Guidelines in *Kattavellai vs State of Tamil Nadu*, Bhatt & Joshi Associates. Available at: <https://bhattandjoshiassociates.com/transforming-criminal-justice-supreme-courts-landmark-dna-evidence-guidelines-in-kattavellai-vs-state-of-tamil-nadu/> (Accessed: 13 August 2025).
- 17 Langlois, V.S. et al. (2021) ‘The need for robust qPCR-based eDNA detection assays in environmental monitoring and species inventories’, *Environmental DNA*, 3(3), pp. 519–527. Available at: <https://doi.org/10.1002/EDN3.164;JOURNAL:JOURNAL:26374943>.
- 18 LeClair, G.D., Chatfield, M.W.H. and Kinnison, M.T. (2025) ‘Environmental DNA as a tool for detecting illegal wildlife trade’, *Forensic Science International*, 370, p. 112446. Available at: <https://doi.org/10.1016/J.FORSCIINT.2025.112446>.
- 19 Lewis, M. et al. (2024) ‘The forensic potential of environmental DNA (eDNA) in freshwater wildlife crime investigations: From research to application’, *Science & Justice*, 64(4), pp. 443–454. Available at: <https://doi.org/10.1016/J.SCIJUS.2024.06.003>.
- 20 Li, J. et al. (2018) ‘The effect of filtration method on the efficiency of environmental DNA capture and quantification via metabarcoding’, *Molecular Ecology Resources*, 18(5), pp. 1102–1114. Available at: <https://doi.org/10.1111/1755-0998.12899>.
- 21 Locard, E. (1930) ‘The Analysis of Dust Traces. Part I’, *The American Journal of Police Science*, 1(3), pp. 276–298. Available at: <https://doi.org/10.2307/1147154>.
- 22 Malsam, W. (2025) Pilot Project: Meaning, Benefits and Example, Project Manager. Available at: <https://www.projectmanager.com/blog/pilot-project> (Accessed: 13 August 2025).
- 23 New Code of Practice Introduced for Criminal Investigations (no date) CYFor Forensics Digital Evidence. Available at: <https://cyfor.co.uk/new-statutory-code-of-practice-introduced-for-criminal-investigations/> (Accessed: 12 August 2025).

- 24 NFSU Campuses (no date) NFSU. Available at: <https://nfsu.ac.in/campus> (Accessed: 12 August 2025).
- 25 Nicholls, H. (2008) Water retains DNA memory of hidden species, Chemistry World. Available at: <https://www.chemistryworld.com/news/water-retains-dna-memory-of-hidden-species/3004280.article> (Accessed: 13 August 2025).
- 26 Novroski, N.M.M. (2023) ‘Environmental DNA: Forensic Friend or Foe?’, <https://home.liebertpub.com/forensic>, 3(2), pp. 35–37. Available at: <https://doi.org/10.1089/FORENSIC.2023.0009>.
- 27 Online Bureau (2025) Amit Shah Unveils ₹2080 Cr Plan to Modernize Forensics, Mobile Vans in Every District, New NFSU Campuses, ETGovernment. Available at: <https://government.economictimes.indiatimes.com/news/governance/amit-shah-introduces-2080-cr-forensic-modernization-plan-mobile-vans-new-labs-for-justice/121560323> (Accessed: 12 August 2025).
- 28 PIB (2025) EXPANSION OF FORENSIC SCIENCE LABORATORIES, Ministry of Home Affairs. Available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2110804> (Accessed: 11 August 2025).
- 29 Schadewell, Y. and Adams, C.I.M. (2021) ‘Forensics Meets Ecology – Environmental DNA Offers New Capabilities for Marine Ecosystem and Fisheries Research’, *Frontiers in Marine Science*, 8, p. 668822. Available at: <https://doi.org/10.3389/FMARS.2021.668822/XML>.
- 30 Simkin, K.P. and E. (2020) Jawbone found on Umina Beach in 2020 could be linked to father-son drowning more than 80 years ago, ABC Central. Available at: <https://www.abc.net.au/news/2023-04-22/central-coast-umina-beach-jawbone-mystery-nsw-police/102246320> (Accessed: 11 August 2025).
- 31 Simplyforensic (2024) Airborne DNA And Its Potentials as a eDNA Source - Simplyforensic, Simply Forensic. Available at: <https://simplyforensic.com/airborne-dna-revolutionizing-forensic-investigations-with-edna/> (Accessed: 13 August 2025).
- 32 Smith, P.A. (2024) Environmental DNA Is Everywhere. Scientists Are Gathering It All., Undark. Available at: <https://undark.org/2024/02/12/edna-explainer/> (Accessed: 13 August 2025).
- 33 Soham murders: Ian Huntley’s press interviews alerted police (2022) BBC. Available at: <https://www.bbc.com/news/uk-england-cambridgeshire-62335807> (Accessed: 12 August 2025).
- 34 Strickland, A. (2022) Tracing DNA of related elephants reveals illegal ivory trafficking networks, *Journal of African Elephants*. Available at: <https://www.africanelephantjournal.com/tracing-dna-of-related-elephants-reveals-illegal-ivory-trafficking-networks/> (Accessed: 12 August 2025).

- 35 Tabak, R.G. et al. (2012) 'Bridging Research and Practice: Models for Dissemination and Implementation Research', *American journal of preventive medicine*, 43(3), p. 337. Available at: <https://doi.org/10.1016/J.AMEPRE.2012.05.024>.
- 36 Tillmar, A. et al. (2021) 'Getting the conclusive lead with investigative genetic genealogy – A successful case study of a 16 year old double murder in Sweden', *Forensic Science International: Genetics*, 53(May). Available at: <https://doi.org/10.1016/j.fsigen.2021.102525>.
- 37 USFWS (2023) 'Environmental DNA (eDNA) - Best Management Practices for Project Planning, Deployment, and Application', pp. 1–126.
- 38 Wasser, S.K. et al. (2015) 'Genetic assignment of large seizures of elephant ivory reveals Africa's major poaching hotspots', *Science*, 349(6243), pp. 84–87. Available at: <https://doi.org/10.1126/science.aaa2457>.
- 39 Weiss, M. (2021) *In the Tales Told by Sewage, Public Health and Privacy Collide, Undark*. Available at: <https://undark.org/2021/04/21/covid-19-data-down-the-drain/> (Accessed: 13 August 2025).
- 39 Whitmore, L. et al. (2023) 'Inadvertent human genomic bycatch and intentional capture raise beneficial applications and ethical concerns with environmental DNA', *Nature Ecology & Evolution* 2023 7:6, 7(6), pp. 873–888. Available at: <https://doi.org/10.1038/s41559-023-02056-2>.
- 40 Willerslev, E. et al. (2003) 'Diverse plant and animal genetic records from holocene and pleistocene sediments', *Science*, 300(5620), pp. 791–795. Available at: https://doi.org/10.1126/SCIENCE.1084114/SUPPL_FILE/WILLERSLEV.SOM.PDF.
- 41 Wiltshire, P. (2019) 'Traces: The Memoir of a Leading Forensic Scientist and Criminal Investigator', *Bonnier Books UK* [Preprint]

CYBER SEXTORTION TRENDS & LEGAL FRAMEWORKS: A STUDY ON AUSTRALIA, UK, US & INDIA

Pravesh Shekhar* and Sheetal Arora**

ABSTRACT

The developments in technology which is being twirled out are giving rise to how cyber crime operates. Regrettably, online predators have begun to target naïve people according to the same despicable way of life in the form of cyber sextortion asking for money, sexual acts or explicit materials. In today's high-tech world where everyone is using a mobile phone, for exchange of incriminating pictures and videos on WhatsApp, SnapChat etc., most beach lovers also don't report their smartphones in the FIR or file an FIR as they do not want to part with their cell phones but this approach ensures underreporting of such crimes — cyber sextortion. Consequently, official statistics regarding cyber sextortion cases are notably hesitant of registration in Australia, the United Kingdom, the United States (A, UK, US), and particularly India, where the impact of this underreported crime is intense. The understanding of cyber sextortion, its distinctions from other forms of cybercrime, and the reasons it needs special attention are all conceptually vague. There are a number of internationally recognised and renowned organisations, but still, there is a great deal of variation in how they are defined and understood. The response mechanism also has a significant flaw that causes victims of sextortion to get delayed immediate relief. The article based on secondary in depth analysis discusses — the legal frameworks and trends surrounding cyber sextortion in the Australia, UK, US & India and also explicates the concepts of cyberspace, cybercrime, and cyber sextortion. Additionally, it offers recommendations derived from analysis of prevailing trends and governing laws to combat this insidious phenomenon.

KEYWORDS : Cybercrime; Cyber Sextortion; Law; Trends

Introduction

Without first understanding the core concept of cyberspace, any discussion of cyber sextortion would be incomplete - and unfair to the credibility of the study. The term 'cyberspace' was introduced by 'William Gibson' in his 1984 book

'*Neuromancer*'. Presently, cyberspace spans the globe, serving as a platform for diverse activities, including communication, social networking, commerce, education, cybersecurity, innovation, research, and entertainment. A variety of advanced tools and gadgets have emerged

* Rashtriya Raksha University/pravesh.shekhar@rru.ac.in

** Sardar Patel University of Police Security and Criminal Justice/sheetalmakhija@policeuniversity.ac.in

as a result of technological advancement, profoundly altering the contemporary digital terrain. These include cutting-edge handheld devices, augmented reality (AR) glasses, and specialised hacking instruments such as the LAN Turtle, USB Rubber Ducky, Malduino, Bash Bunny, and Wi-Fi Pineapple. The increasing powers of cyber-physical manipulation are further shown by devices such as Flipper Zero, Pwnagotchi, SIM Farms, SIM Boxes, Proxmark3, Payment Card Skimmers, and others. Furthermore, tools that expose changing dangers in hardware-level security include the ChipWhisperer and Hardware Wallet Cloners. Together, these technologies are transforming connection and convenience while also presenting significant cybersecurity and digital governance challenges. These gadgets have evolved from being utilitarian to becoming a component of a vast digital universe that links everything. It started off as just the internet and has since developed into cyberspace, which provides a wide range of quick, wonderful, and outstanding experiences. However, this isn't only a locale for business, education, entertainment or networking. As time goes on, the internet is increasingly becoming more dangerous due to various crimes, such as identity theft, hacking, online grooming, phishing, and, perhaps the most alarming, cyber sextortion. The digital world has changed significantly as a result of recent developments in artificial intelligence, especially in the field of generative AI. The

borders of control are no longer distinct; sophisticated AI systems may produce very lifelike material with just a cue, often making it difficult to distinguish between reality and fiction. Even the developers and specialists of these technologies are unsure of the entire scope of AI's potential or the amount to which it may go against moral and ethical standards, which is even more worrisome. Artificial Intelligence begins to develop its own thinking process, with still negligible global rule and control, minimal monitoring, and no proper oversight. It's like something growing like an orphan child – smart and powerful but directionless and dangerous. One recent case shocks the world – A New Zealand Member of Parliament, Laura McClure showed her own nude image (deepfake) in the floor of parliament, and said it is fully fake – generated by Artificial Intelligence, only using just few prompts. Just imagine, if such high-profile person not e-safe, what about others? What about teenagers? What about women? They don't need to come physically near anyone – only need photos, public social media account, and knowledge of AI tools, and they can destroy life. And still, laws are not fully prepared. Privacy is broken. Copyrights are misused. And victims are suffering in silence, shame, and fear.

The Wall Three-Category Classification

The development of the internet and the emergence of cyberspace, conventional crimes have undergone a changeover that has adapted them to the digital world. This change brought to light the pressing

necessity to comprehend and categorise cybercrime. The "*Wall Three-Category Classification*", one of the first and most significant frameworks that established the groundwork for systematically conceptualising and researching cybercrime, was developed by David Wall in response to this. However, the classifications are — '*cyber-enabled*' and '*cyber-dependent*' — have gained widespread recognition among scholars, academicians and policymakers. "*Cyber-Dependent*" crimes are those that have evolved in response to technological advancements and are heavily reliant on the digital environment, such as hacking, ransomware attacks, or hacktivism. "*Cyber-Enabled*" crimes, on the other hand, are traditional crimes that existed before the development of technology but have been simplified or facilitated by it. Cyberspace enables white-collar crime, drug trafficking, internet harassment, terrorism, and other criminal activity.

According to David Wall, there are three primary categories of cyber offences. First, "*offences using the computer*" refers to crimes like fraud, piracy, and theft in which the computer is used as a tool. Second, "*offences in the computer*" refers to offences that include offensive or unlawful material, such as pornography, online hate speech, or harassment. Third, "*offences against the computer*" refer to assaults that damage the system's functionality, such as hacking, cracking, or DoS (*Denial of Service*), and DDoS (*Distributed Denial of Service*) attacks.

Government Initiatives for Cybersecurity Enhancement in India

"*The next world war may not be fought on the battlefield, but in the bytes and codes of cyberspace.*" Yes, It is rightly said as in today's hyper-connected globe, cybersecurity is not just important — it is absolutely essential and forms the backbone of national security. It safeguards a nation's digital borders just as effectively as military forces protect its physical boundaries. While cybercrime has long occurred on a regional and individual level, taking the shape of data breaches, online scams, and other petty cybercrimes, the actual strategic significance of cybercrime becomes apparent during periods of worldwide instability, wartime, or geopolitical tension. India needs a strong and proactive cybersecurity approach, and this is a national need of the hour, not simply a policy issue. Given the aftermath of a sombre period in India's recent times, this urgency makes sense. India launched a targeted attack known as "Operation Sindoor" against terrorist hideouts in Pakistan after the horrific terrorist assault on Indian territory in '*Pahalgam, Jammu & Kashmir*'. Retaliation was not confined to the physical world, even if the mission's accomplishment was a military one. What followed was a silent yet aggressive invasion through cyberspace — a different kind of warfare, one without bullets but equally destructive. Allegedly, Pakistan initiated concerted cyberattacks in an effort to penetrate India's digital defences using a variety of techniques. These

included attempts to destabilise governance by taking advantage of digital vulnerabilities, sextortion attempts that weaponised personal data to cause social and psychological havoc, cyber-blackmail campaigns targeted at important individuals, and honey-trap scams that targeted defence and intelligence personnel. The conflict has grown beyond land and air to include data networks, mobile displays, and digital infrastructures, as this episode starkly reminded us. Cyber-warfare defies national borders and is already a reality. *These are several initiatives launched by the Government of India in the domain of cyberspace aimed at handling cybercrime and providing support:*

(i) **Information Technology Act, 2000 (IT Act):** The Information Technology Act of 2000 was India's primary response against cybercrime in the contemporary age. It was first introduced in response to a resolution passed by the UN General Assembly on January 30, 1997. In addition to establishing a standard Law on Electronic Commerce (cyber), this resolution encouraged other countries to consider it when establishing or revising their cyber legal systems. The objective was to establish uniform standards for the use of electronic communication and record-keeping methods in place of paper in various nations. India followed, and it complied with and established the IT Act to tackle

the growing threat of cybercrime and to provide legal validity to digital transactions. The Act promotes e-governance by offering electronic contracts, signatures, and documents legal validity via digital filing and record-keeping. The IT Act identifies — cybercrimes such as identity theft, hacking, and a variety of other offenses that may fall within the scope of cyberspace. The Act outlines varying degrees of punishment for different acts, with certain crimes, such as cyberterrorism, carrying potential penalties of life in prison (Section 66F). In additional circumstances, including as offences involving protected systems, it stipulates a maximum sentence of 10 years in jail (Section 70). For some violations, such as publishing or transmitting pornographic material (Section 67) or electronic information that contains sexually explicit activities (Section 67A), it also imposes monetary penalties of up to ₹10 lakh.

(ii) **The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021:** The Government of India framed "The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" under the IT Act, 2000 to fight cybercrime which primarily targets abuse of certain digital platforms. These regulations came into effect on May 26, 2021,

and substituted the previous standards of 2011. To maintain responsibility and user safety, they want to control digital news portals, OTT (*over the top*) platforms, and social media. Among the key components are a '*Chief Compliance Officer (CCO)*', a Nodal Officer for 24-hour cooperation with law enforcement, and a Grievance Officer who must address complaints within 24 hours and respond to them within 15 days. If there is any information that undermines a person's dignity, particularly if it concerns women, social media should remove it within 24 hours of receiving a complaint. It is also critical for there to be a monthly tally of complaints received and actions taken. Digital news portals come under a three-tier regulation — 'government oversight through the Ministry of Information and Broadcasting', followed by 'self regulation' and then finally, a 'Self Regulating Council headed by a retired judge of the high court or other expert'. These guidelines enhance protections against cyber criminal activity, encourage responsible digital behaviour, and ensure the rights of our users.

- (iii) **Digital Personal Data Protection Act (DPDP), 2023:** In pursuance of the Government of India's policy regarding the need to secure cyber space and information within it, 'the DPDP Act', 2023 was enacted

on August 11, 2023. This Act focuses on safeguarding digital personal data and omits '*section 43A*' of the '*IT Act*' (protection of sensitive personal data), 2000 and the 2011 rules on sensitive personal data. It is based on the draft released in 2022 and was shaped through public consultation. By enhancing individual privacy and ensuring the responsible use of personal data, the '*DPDP Act*' seeks to hold digital platforms accountable for data abuse. It represents a significant advancement in India's act against cybercrime and was announced and deployed by the '*Government of India (GoI)*'.

- (iv) **The Bharatiya Nyaya Sanhita (BNS), 2023:** As part of the efforts of '*GoI*' to modernise criminal laws and address emerging and evolving threats, the '*BNS, 2023*' introduces. It includes specific provisions related to cyber offences and the inclusion of the terminology '*cybercrime*' for the first time, and includes it in section 111 (*organised crime*) of the BNS. Several sections directly or indirectly cover crimes committed through digital means. These are Section 294 (sale of obscene objects, including in digital form), Section 77 (voyeurism), and Section 78 (stalking, including cyber-stalking), Sections 111 (offence of organised crime) and 112 (offence for petty organised crime), Section 319C(1) it is for cheating by personation

through any electronic device or with use of electronic signature or any other information technology method and for dishonestly receiving stolen property knowing or having reason to believe the same to be stolen property, etc. Section, if a person destroys any unlawful document without lawful authority he shall be punished with imprisonment for life or with imprisonment which may extend up to ten years under section 336(1). This is the part of the government's approach to fight cybercrime as part of general criminal law and to make sure digital crimes are treated as severe in reality as crimes committed offline.

- (v) **Indian Cyber Crime Coordination Centre (I4C):** A coordination centre set up by the Ministry of Home Affairs to curb all forms of cybercrime on a pan-India scale. It helps law enforcement agencies work together more effectively and strengthens the overall response to cyber threats. The I4C has seven key parts: the '*National Cybercrime Threat Analytics Unit (TAU)*', which analyses cyber threats; the '*National Cybercrime Reporting Portal*' (www.cybercrime.gov.in), which allows citizens to report cybercrimes online; the Platform for '*Joint Cyber Crime Investigation Team (JCCT)*', which supports collaboration between agencies on complex cases; the '*National*

Cybercrime Forensic Laboratory (NCFL)' and its Ecosystem, which provide expert technical support and evidence analysis; the '*National Cybercrime Training Centre (NCTC)*' (www.cytrain.ncrb.gov.in), which trains police and investigators in cybercrime handling; the '*National Cybercrime Ecosystem Management Unit (NCEMU)*', which monitors trends and developments; and the '*National Cyber Crime Research and Innovation Centre*', which promotes research and innovative solutions to fight cybercrime.

- (vi) **Report and Check Suspect:** The Central Government of India has introduced a new feature titled as '*Report and Check Suspect*' on (<https://cybercrime.gov.in>). Citizens can access on this facility '*Suspect Search*' to search the cyber criminals already under Mahila E-hut through I4C's vast internal data repository of Cyber Criminals.
- (vii) **e-FIR:** The e-FIR: With e-FIR, the police aims to use technology for sort of making reporting crime easier for anyone who wants to report it. The system is engineered to bypass local geography and governmental delay, so that criminal victims are able to report incidents quickly and accurately no matter where they are. In addition, with the introduction of e-FIR system to file FIR online its accessibility and convenience to the masses has become very easy. By

leveraging digital platforms, e-FIR minimises the need for physical presence at police stations, thereby reducing delays and administrative burdens.

(viii) **e-Zero FIR:** Delhi Police and Indian Cybercrime Coordination Centre (I4C), Ministry of Home Affairs (MHA) have worked together to put in place a process for registration of cases in accordance with the new provisions of Section 173 (1) and 1(ii) of *Bhartiya Nagrik Suraksha Sanhita (BNSS)*. This process of issuing FIRs electronically irrespective of territorial jurisdiction (e-Zero FIR) will initially start in Delhi as a pilot. Subsequently it will be extended to other States and UTs. The e-Crime Police Station of Delhi has been notified for the registration of e-FIRs and transferring them to jurisdictional police stations in Cybercrime complaints of a specified nature reported on NCRP.

(ix) **Computer Emergency Response Team (CERT-In):** The Indian Computer Emergency Response Team, has developed an inclusive Cyber Crisis Management Plan to mitigate the impact of cyberattacks and fraud. This plan is intended for adoption and implementation by all State and Central Government Ministries, Departments, associated organizations, and critical sectors, ensuring a coordinated response to cyber threats. The Information Technology Act, 2000, designated

CERT-In (Indian Computer Emergency Response Team) as the national agency for handling cyber security issues. Its main role is to collect, analyse, and share information about cyber threats. It issues alerts and warnings about possible cyber-attacks, helps manage emergencies, and coordinates responses to cyber incidents. CERT-In also provides guidelines, advisories, and reports to promote safe cyber practices. It plays a key role in improving the country's cyber security and ensuring timely response to digital threats.

(x) **Cyber Fraud Mitigation Centre (CFMC):** CFMC has been established at Indian cybercrime Coordination Centre (I4C) in New Delhi with representatives of major banks, Financial Intermediaries, Payment Aggregators, Telecom Service Providers, IT Intermediaries and States/UTs Law Enforcement Agencies (LEAs). They will work together for immediate action and seamless cooperation to tackle online financial crimes. CFMC will serve as an example of "Cooperative Federalism" in law enforcement.

(xi) **Samanvay Platform (Joint Cybercrime Investigation Facilitation System):** The platform is a web-based module that will act as a one stop portal for data repository of cybercrime, data sharing, crime mapping, data

analytics, cooperation and coordination platform for Law Enforcement Agencies across the country.

(xii) Cyber Commandos Program:

Under this program a special wing of trained 'Cyber Commandos' in States/UTs and Central Police Organizations (CPOs) will be established to counter threats of cyber security landscape in the country. Trained Cyber Commandos will assist States/UTs and Central Agencies in securing the digital space.

(xiii) Cyber Crime Prevention against Women and Children (CCPWC):

The Ministry of Home Affairs has provided financial assistance under the 'CCPWC' Scheme, to the States/UTs for their capacity building such as setting up of cyber forensic-cum-training laboratories, hiring of junior cyber consultants and training of LEAs' personnel, public prosecutors and judicial officers.

(xiv) Sahyog Portal: 'Sahyog Portal' has been launched to expedite the process of sending notices to IT intermediaries by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the IT Act, 2000 to facilitate the removal or disabling of access to any information, data or communication link being used to commit an unlawful act.

(xv) Digital Payment Security: Initiatives by GOI, RBI, and NPCI:

In order to reinforce the security of digital transactions, various initiatives have been taken by the Government, Reserve Bank of India (RBI) and National Payments Corporation of India (NPCI) from time to time. RBI has issued Master Directions on Digital Payment Security Controls in February, 2021 to combat web and mobile app threats. These guidelines mandate the banks to implement a common minimum standards of security controls for various payment channels like internet, mobile banking, card payment etc. RBI has also launched an Artificial Intelligence (AI) based tool 'MuleHunter' for identification of money mule and advised the banks and financial institutions for its uses. Similarly, NPCI has also implemented device binding between customer mobile number and the device, two factor authentication through PIN, daily transaction limit, limits and curbs on use cases etc to secure UPI transactions. NPCI also provides a fraud monitoring solution to all the banks to generate alerts and decline transactions by using AI/ML based models. RBI and Banks have also been taking up awareness campaigns through short SMS, radio campaign, publicity on prevention of 'cybercrime' etc.

(xvi) **Digital Threat Report 2024:** India releases first-ever Digital Threat Report 2024 to strengthen cybersecurity in BFSI sector: MeitY Secretary S. Krishnan highlights urgency for a common cyber framework to secure India's financial backbone as he announces release of Digital Threat Report 2024. Report Highlights Industry wide security holes and evolving cyber threats, leading BFSI companies to respond defensively. Report is designed to help financial institutions keep ahead of adversaries as they shift tactics and adapt to new risks while neutralising existing cyber threats over the long term.

(xvii) **AI for All:** The Government of India has launched the AI For All program, a self-learning online initiative aimed at raising public awareness about Artificial Intelligence. The program is intended to take the mystery out of AI for people from all walks of life, such as students, workers, stay-at-home parents and seniors. Its objective is engage society with a 'Digital First Mindset'. The course is divided into two parts (AI Aware and AI Appreciate) and lasts about four hours. These are interactive sections that offer cool tasks and tests to illustrate the AI topics to make users acquire badges if it solves the test. Users can take the tests as many times as they want,

and share their badges on social media. With this program, the government wants AI to be accessible and teach people about its consequences and potential for the future.

(xviii) **National Electronic Governance Division (NeGD):** Established in 2009, the National e-Governance Division (NeGD), a building block in government efforts to harness technology remains. The NeGD's role as a technical and advisory support for Ministries/ Departments in Centre & States government had led to an evolution of governance dynamics. By being the cornerstone, NeGD has been the driving force behind the digital governance tide in India. The key focus are is: support to government, technical assistance, training & development, and impact assessment.

Conceptual Framework

The '*conceptual framework*' is about the various aspects regarding the understanding and extent of sextortion. It helps in identifying the key elements. This framework serves as a foundation to analyse the patterns, the effectiveness, and the mechanisms of sextortion in both national and international contexts.

(i) **Cyberspace:** Cyberspace is an ethereal realm formed through the interconnection of computers, Internet-enabled devices, servers, routers, and other elements

constituting the Internet's infrastructure.

- (ii) **Cybercrime:** Cybercrime is the use of a computer to support illegal activity, such as identity theft, fraud, the distribution of child pornography and intellectual property, and invasion of privacy. Its importance has increased due to the computer's essential function in business, entertainment, and government functions, primarily through the Internet.
- (iii) **Sextortion:** "Sextortion" refers to the act of forcing individuals into providing money, sexual acts, or other forms of favour by leveraging the danger of publicly sharing their intimate photos, videos, texts, or other media either on the Internet or within closed social circles. *The following are the typologies of sextortion as identified by Mr Yashasvi Yadav (IPS of cer of 2000 Batch, Currently serving as Special Inspector General of Police, Maharashtra Cyber Department):*
 - (a) **Cyber Sextortion 1.0:** Women were heavily targeted by ex-partners who wanted to do harm by publishing private photos of them as "revenge porn" during the infancy stage of cyber sextortion, often known as the first generation. The criminals typically used blunt instruments, relying on simple recording technology to capture this most personal of acts. There is,

however this gross conduct which still exists even now, examining its magnitude shows the gravity of cyber-sextortion and the urgency of having effective preventive methods as well as recourse from such practices.

- (b) **Cyber Sextortion 2.0:** Male con artists created false profiles of gorgeous girls (Cyber Grooming), and a make-believe world was created using technological tools including voice modulation programs, which changed male voice into female voice during VOIP talks. Sexting through WhatsApp and subsequent naked video calls were used to lure victims into a honey trap. Money mule bank accounts—Fake documentation was used to create bank accounts, subsequently used to demand ransom. Currently, programs for screen recording, video editing, and morphing also appear.
- (c) **Cyber Sextortion 3.0:** At this point, the male extortionists trained attractive girls to serve as their bait for luring unsuspecting victims into their traps. This was a revolutionary move that elevated sextortion to the status of a group of organised criminals. Money mule bank accounts were replaced with cryptocurrency wallets, which provided a greater degree of secrecy and impunity.

- (d) **Cyber Sextortion 4.0** : An infancy, fresh, fatal, breakthrough phase in which the woman does not have to be lured or girls don't have to be involved at all for honey trap. Digital exploitation has taken a quantum leap, 'Deep-fake' and 'Deep-Nude' technologies have ensured that irrespective of whether the victim had engaged in any online sexting or talk, or sexual talk and misconduct online – these new developments sometimes turn your worst fears into reality.
- (e) **Cyber Sextortion 5.0**: A new pattern has evolved in which the victim is lured into the predator's trap after the girl makes initial contact with him. After exchanging some intimate photos with the victim, the female abruptly cuts off communication. The victim receives a call from a man a few days later. He claims that the female he used to chat with was actually his sister, who was only driven to suicide by him. Then, he said that he would contact the police and file an FIR. As a result, the perpetrator gradually intimidates the victim and makes demands for cash and other items.
- (iv) **Federal Bureau of Investigation (FBI, United States of America)**: According to a high-ranking official from the esteemed Federal Bureau of Investigation, colloquially referred to as the '*FBI*,' Sextortion is a grave criminal offence that transpires when a perpetrator employs the tactic of coercing their victim into providing sexually explicit images, sexual favours, or monetary compensation by threatening to disclose their private and sensitive material.
- (v) **Department of Justice (DoJ, United States of America)** : Sextortion A disgusting form of sexual exploitation that involves threatening or coercing someone into sending explicit images/videos (usually through technology). The offenders usually use the victim's own collection of sexually suggestive media and threaten to spread it publicly unless they comply. This odious behaviour causes grave humiliations to the victim, invading her body and mind for a long period of time. The '*United States Attorney's Office for the Southern District of Indiana*' has recognised the severity of this crime and actively prosecutes those who engage in this reprehensible activity.
- (vi) **The United Nations Children's Fund (UNICEF)**: According to the United Nations Children's Fund (*UNICEF*) 2019 report, sextortion is a pernicious form of exploitation wherein children are manipulated or threatened into creating and sharing sexual content. The perpetrators use fear of exposure to coerce their victims, often resulting in long-term emotional and psychological trauma. This insidious practice is a

violation of a child's fundamental rights and can have devastating consequences on their well-being and development.

- (vii) **The European Union Agency for Law Enforcement Cooperation (EUROPOL):** Cyber sextortion is defined as the online coercion and extortion of children but notes that the unqualified use of this term – an amalgam of '*sexual*' and '*extortion*' can be problematic, as it can promote reductionist thinking, and can also lead to the development of ambiguous and sometimes paradoxical concepts.
 - (viii) **National Crime Agency (NCA, United Kingdom):** The United Kingdom's National Crime Agency (2021) describes Cyber sextortion as "a sort of webcam blackmail when offenders befriend victims digitally by creating a fictitious identity and persuade them to conduct sexual acts in front of their webcams.
 - (ix) **The National Institute of Justice (NIJ, USA):** Cyber Sextortion is an online attack on victim systems, for example through ransomware, in which a person or a group of people demand sexual images, sexual favours, or other things of value In exchange for stopping the attack.
 - (x) **Royal Canadian Mounted Police (RCMP, Canada):** Sextortion is an online crime that is affecting youth across Canada, particularly those between the ages of 14-24.
- Sextortion can affect anyone no matter their gender, sexual identity or orientation. Everyone has a responsibility to protect youth and encourage them to speak out if they are being targeted. Being able to recognise sextortion is the first step.
 - (xi) **Australian Centre to Counter Child Exploitation:** Sexual extortion, also known as sextortion, is a form of online blackmail where someone tricks or coerces you into sending sexual images of yourself and then threatens to share the images unless you comply with their demands. Usually, these demands are for more images, payment or sexual favours.
 - (xii) **An Garda Síochána (Ireland's National Police and Security Service):** Sextortion is a form of cyber extortion which involves a threat or blackmail of having intimate information, images or clips shared without consent. The threat or blackmail may be to get the victim to do or refrain from doing something, or the threat or blackmail may be purely for money or financial gain.
 - (xiii) **National Cyber Security Centre (NCSC, United Kingdom):** Sextortion is a blackmailing method in which victims are blackmailed with pictures and video material showing them performing sexual acts (masturbation) and/or naked. The term "sextortion" is composed of "sex" and "extortion".

- (xiv) **eSafety Commissioner (Australia):** Cyber sextortion, as eloquently defined by the eSafety Commissioner in Australia, is an egregious act of blackmail wherein an individual threatens to disseminate compromising photographs or videos unless their demands are met. The victim's reputation and privacy are taken hostage, presenting immense risks. With digital communication and social media so widespread, the dangers posed by such hijackings are now ever more apparent. We must do everything we can to spread the word and proactively protect ourselves from becoming victims of this pernicious practice.
- (xv) **Indian Cybercrime Coordination Centre (I4C):** Online Sextortion is a form of blackmail in which the perpetrator threatens to reveal intimate images, videos or information about an individual if that person not provided him with images of sexual acts, sexually explicit material, or money.

Trends in internet usage, cyber sextortion, and statistical insights

The boundless nature of cyberspace has broken down the walls of time, space, and distance, ushering in a new age of global interconnectedness and communication. This digital space has created a new social setting where individuals may interact digitally in a variety of innovative and imaginative ways. Simultaneously, the unrestricted form of the internet provides

humanity with an unprecedented degree of connectivity, creating both flawless opportunities and unique problems.

- (i) **Telecom Regulatory Authority of India (TRAI):** As per the Telecom Regulatory Authority of India (TRAI), the number of telephone (Wired & Wireless) subscriptions in India was 1166.93 million at the end of March 2022. Out of the total subscriptions, the share of rural subscriptions is 519.82 million. In India in January 2022, there were 658.0 million Internet users and 467.0 million social media users. The combined number of wired and wireless telephone subscriptions in India reached 1166.93 million after March 2022. Rural subscriptions, which accounted for an astounding 519.82 million subscribers, are responsible for a significant percentage of this enormous amount. India's incredible digital domain was further strengthened in January 2022 when the country's internet user base surged to 658.0 million. In addition to these behaviours, 467.0 million individuals were active on social media networks which highlights the increasing pervasiveness of social networking in today's society. However, India already has become – and will continue to be as it employs and extends its technical infrastructure (Telecom Regulatory Authority of India 2011) – more of a global digital player.

- (ii) **Registered Cybercrime in India:** As evident from the data in Figure CS01, we can see that there is a substantial increase in the registered incidences of cybercrimes across states and union territories. In the eight-year period from 2014 to 2022, cases jumped from 9,622 to 65,893, a total increase of 56,271. This indicates a positive trend in the cases reported under total cybercrimes.
- (iii) **Internet User in India:** Figure CS02 show a constant rise in internet users in India. According to the projections, this figure is expected to climb to 900 million by 2025. Notably, from 2018 to 2022, there was a considerable growth of 438 million internet users. An interesting aspect is that individuals residing in rural India are more active social media users than the urban population.
- (iv) **Publication/ transmission of obscene / sexually explicit act in electronic form (under section 67 of IT Act)":** According to the '*Crime in India Report 2022*', published by the '*National Crime Records Bureau (NCRB)*', a total of 9,651 cases were registered under Section 67 of the IT Act, 2000, which deals with the publication or transmission of obscene material in electronic form. Out of the total of 3,097 crimes, approximately 32 percent were registered under the more serious provisions of Sections 67A and 67B, respectively.
- (v) **Computer Emergency Response Team (CERT-In):** According to the Computer Emergency Response Team (CERT-In), there were an alarming 11.5 million cyberattacks in the nation in 2021. These assaults posed a severe risk to the security of the country since they targeted government agencies, businesses, and vital infrastructure. Furthermore, organizations found it increasingly difficult to solve the severe cybersecurity skills gap in the nation.
- (vi) **Minister of State For Electronics and Information Technology (Shri Rajeev Chandrasekhar):** During answering a question in the Lok Sabha on 20.07.2022, the Minister of State for Electronics and Information Technology, Shri Rajeev Chandrasekhar, said that Computer Emergency Response Team (CERT-In) has reported that a total number of 14,02,809 & 6,74,021 cyber security incidents are observed during the year 2021 & 2022 (up to June) respectively (Indian Parliament, 2022).
- (vii) **Australian Cybercrime Online Reporting Network (ACORN):** In the inaugural year of its implementation in 2015, the Australian Cybercrime Online Reporting Network (ACORN) received reports of 39,491 incidents of cybercrime, as per the findings of ACORN in 2016. More recently, in a span of merely one month, over

3,500 individuals apprised law enforcement authorities about suspected incidents of cybercrime, according to statements made by Australian Federal Police (AFP).

(viii) Cybercrime in England: An Analysis of Police Reports:

Using police reports from England and Wales served as a primary means of gathering data related to online crime statistics. In light of the accumulated evidence, it was determined that a significant proportion, approximately 22 percent, of all reported online crimes in the specified year represented incidents of cyber-based harassment and stalking. Moreover, it was observed that 12 percent of the documented infractions were indicative of child sex offenses, an egregious and disturbing category of crimes that demand the utmost attention and vigilance from law enforcement agencies. Further analysis of the data exposed that 44 percent of the reported online offenses were linked to blackmail, a criminal activity that involves threats or coercion to extract money or other valuables from individuals or entities. In addition, a significant majority of 59 percent of the reported infractions were associated with the dissemination of obscene and indecent publications.

(ix) INTERPOL Sextortion Report: Spike in cybercrime predicted for

Africa: New INTERPOL report (2025). Online scams, ransomware, business email compromise and digital sextortion are the most common standard cyberthreats. Sixty per cent of African member countries recorded an increase in digital sextortion cases – where cybercriminals threaten to distribute intimate images if a victim does not comply with their demands. The images can be real — voluntarily shared, or gathered through coercion or deception — and they can also be the product of AI.

(x) National Crime Agency (UK): The 'NCA's Child Exploitation and Online Protection (CEOP) Command Safety Centre' recorded 380 reports of 'sextortion' in 2024. Police forces referred an average of 117 cases in the first five months of last year involving children who have got caught up in 'sextortion'. But crimes of Child Sexual Abuse are under-reported, and the number could be higher.

(xi) Australian Centre to Counter Child Exploitation (ACCCE): In the first half of 2024, the ACCCE received 560 reports of sextortion as an average of 93 per month, compared to its monthly average in the full year of 2023 of about 300.

(xii) The National Center for Missing & Exploited Children (NCMEC): The NCMEC is not-for-profit corporation established in 1984 by

Act of Congress United States. In the last year alone, NCMEC has been receiving nearly 100 reports of financial sextortion per day. These are more than tragic statistics: they're the faces of real kids in crisis. Since 2021, at least 36 boys can be identified as having died by suicide as a result of being victimised by sextortion according to information obtained ECOMP-SDMQ by the national Centre for Missing and Exploited Children (NCMEC).

II. Legal Materials and Methods

The concept behind Sextortion is "*Quid Pro Quo*", which means "*A favour or advantage given or expected in exchange for something*," and many other countries have few legislations against sextortion, such as:

- (i) **The Philippines Anti-Rape Law of 1997:** This law defines rape as the commission of sexual assault through the use of force, force or through the abuse of authority or influence. In particular, it includes within its purview rape committed by flagrant abuse of power, where the perpetrator takes advantage of their official position or authority to compel the victim into sexual acts against their will. This is not a statute that defines what 'sextortion' entails, but it makes clear if someone rapes or abuses their power, generally that's part of what sextortion involves.
- (ii) **Tanzania: The Sexual Offence Special Provision Act of 1998:** Another important statute of the law section that deal with sexual abuse cases now is In Tanzania, Sexual offenses arise Overview formalise the penal code process. The Act's prohibitions of the abuse of power by those in authority are fundamentally important aspects of the Act. The law criminalises anyone who uses their official position or place of authority to acquire sexual favours, and subjects anybody found guilty to stiff penalties. This clause underscores the importance of accountability for those who would abuse power and authority, and notes the devastating effects that sexual coercion and exploitation have on victims. It also lists provisions that establish special courts for cases under sexual crimes and to keep the victims' identity, privacy and confidentiality.
- (iii) **A Bill of Law Chile:** In 2019, Chile introduced a bill of law criminalising the urging of sexual favours by public officials. The offence applies to any public official who abuses their position to urge or obtain sexual favours in exchange for performing or not performing any act that falls under their responsibility. This crime is penalised by imprisonment, forbidding holding any public office, and a fine.
- (iv) **A Bill of Law Peru:** A draft law was submitted in November 2021 to Peru

for an act to increase the penalties for public officials who requested or received an illicit benefit in sexual form or by sexual acts. According to Bill of Law n° 678-2021, if the undue advantage obtained is sexual or has a sexual nature the penalty for corruption involving public servant could increase by up to one third from the maximum prison term applicable. The legislation would not apply in private-sector sextortion cases.

- (v) **Argentina's Criminal Code:** In Argentina's laws, sexual abuse covers more than just physical force. It includes situations like using power or authority to pressure someone into sexual acts, even in workplaces or official settings. Most courts in Argentina don't need the victim to resist to prove they didn't consent physically.
- (vi) **The Olimpia Act of Mexico:** The "*Olimpia Act*" or "*Digital Violence Act*" was issued as an Executive Order by the government of Mexico City. This legislation modifies a few sections of the Women's Access to a Violence-Free Life Law and the Mexico City Criminal Code. It includes clauses that address technological violence against women, characterising it as any action that compromises their integrity, dignity, privacy, freedom, or private lives. This covers all activities that cause non-material damages to women and/or their

families, as well as psychological, physical, economic, or sexual harm in both public and private contexts. Examples of these behaviours include sending private data without permission, disseminating hate speech and misleading information, and harassing, threatening, and insulting others.

Legal Dimensions of Cyber Sextortion: India & AUKUS

Cyber Sextortion has evolved as a growing concern in countries across the globe, and several nations have responded by developing legal frameworks to tackle this issue. Among these nations, Australia, the United Kingdom, the United States of America, collectively known as AUKUS, and India have taken significant steps to combat cyber sextortion.

Addressing the Menace of Cyber Sextortion in Australia: An Overview of Applicable Laws

- (i) **Crimes Amendment (Intimate Images) Act 2017 No 29:** This Act majorly talks about illegal sexual activities to amend the Crimes Act 1900 by introducing new statutes concerning the unauthorised recording and sharing of private images. It aims to make it unlawful to capture or distribute intimate images without consent, seeking to protect individuals' privacy and dignity.
- (ii) **Part 3, Division 15C: Recording and Distributing Intimate Images - 91N Definitions (1):** This Section

describes The term "distribute" in this Division. It refers to distributing, providing, displaying, transmitting, or informing someone else about anything or enabling someone else to view or obtain it, whether in person or by electronic, digital, or any other means (NSW Legislation, 1902).

- (iii) **91P Record Intimate Image without Consent:** This section outlines the legal prohibiting against intentionally capturing a private image of an individual without their express consent. This includes capturing a picture when the person hasn't agreed to it or if you're not sure whether they agreed. A person who violates this legislation faces a fine of up to 100 penalty units, a maximum 3-year prison sentence, or both. The case cannot go forward if the accused is under 16 without the approval of the Director of Public Prosecutions.
- (iv) **91Q Distribute intimate image without consent:** A person has committed a crime if they distribute a private photo of another person without that person's consent, knowing that the other person didn't consent or didn't care if they did. The penalty may possess a fine of up to 100 penalty units, a maximum sentence of three years in jail, or both. Any legal action against the individual sharing the photograph must have the approval of the Director of Public

Prosecutions if the individual is under 16 years old.

(v) **91R Threaten To Record Or Distribute Intimate Image:**

Threatening someone with the idea of taking or sharing intimate photos of them without their consent is illegal. It's still unlawful whether you make this threat overtly or covertly and whether or not the images are real. You risk fines, up to three years in prison, or both if you threaten someone with this to frighten them. Whether or not the victim is terrified is irrelevant; the threat is sufficient in and of itself to qualify as an offence. If a minor is charged with this offence, the Director of Public Prosecution must provide their consent for the case to move forward.

Addressing the Menace of Cyber Sextortion in United Kingdom: An Overview of Applicable Laws

- (i) **Obscene Publications Act of 1959 (OPA):** A key moment in contemporary regulation was the Obscene Publications Act of 1959 (OPA), which attempted to control a variety of items, including pornography. Among other things, this regulation aimed to regulate access to such content.
- (ii) **Criminal Justice and Courts Act of 2015:** Two new regulations about pornography were embedded in the '*Criminal Justice and Courts Act of 2015*'. It is against the law to distribute private sexual images and

recordings without authorisation (*Section 33*). The other statute, referred to as *Section 37*, includes portrayals of rape in the definition of severe pornography. These steps were taken to help counteract dangerous internet behaviour and to address concerns such as "*revenge porn*".

Addressing the Menace of Cyber Sextortion in United States: An Overview of Applicable Laws

- (i) **S 2C:14-9 (Invasion of Privacy, Degree of Crime; Defences, Privileges):** The first state in the US to pass legislation outlawing revenge porn, sextortion, and pornography was New Jersey. According to the Criminal Code, it is unlawful to display any picture or other copy of another individual whose privates are visible or who is having copulation with someone else without that person's permission, even if you are aware that he is not allowed to do so.
- (ii) **18 U.S.C. (United States Code) & 2251: Sexual Exploitation of Children (Production of Child Pornography):** Sharing graphic photos of minors engaging in sexual act over email or a computer is prohibited by Title 18 of the United States Code, Section 2252. There are several years of prison sentences for breaking this statute.
- (iii) **Uniform Civil Remedies for Unauthorised Disclosure of Intimate Images Act:** The first states to outlaw sextortion were Arkansas and Utah. Their laws forbade anybody from putting the victim's possessions or reputation in jeopardy to force the victim into engaging in sexual actions. Various incidents were prosecuted as felonies in these jurisdictions. The Uniform Law Commission approved the "*Uniform Civil Remedies for Unauthorised Disclosure of Intimate Images Act*" in 2018 to provide an equitable and practical remedy. There are currently no federal laws that deal with sextortion explicitly.
- (iv) **Crimes Code (18 Pa.C.S.) - Sexual Extortion Act Of Nov. 27, 2019, P.L. 691, No. 100:** The state of Pennsylvania in the USA recently criminalised "sexual extortion" but it is broader than the definition of sextortion above. According to Act n° 100 of 2019, sextortion is: "a person commits the offence of sexual extortion if the person knowingly or intentionally by any means of fraud, force or threat, including by the use of position or authority; compels a complainant [including] through holding out, withholding or threatening to withhold service, employment, position or other things" causing him/her to engage in sexual conduct and/or simulate sexual act and/or be in a condition of nudity under compulsion". Theoretically, this law applies to sextortion cases in the private sector.

- (v) **Stop Hacks and Improve Electronic Data Security Act (SHIELD ACT):** HR 2896, also known as the Stopping Harmful Image Exploitation and Limiting Distribution Act, was introduced by lawmakers in the year 2019. (or "SHIELD Act"). It established a new federal criminal offence related to sextortion, which was only recently introduced in 2019.

Addressing the Menace of Cyber Sextortion in India: An Overview of Applicable Laws

- (i) **Section 11(IV) of POCSO (The Protection of Children from Sexual Offences Act) of 2012:** This Section talks about the Sexual harassment of a child that occurs when someone with sexual intentions repeatedly or continuously follows, watches, or communicates with a child, either in person or through electronic, digital, or any other ways.
- (ii) **Section 11(V) of POCSO (The Protection of Children from Sexual Offences Act) of 2012:** Sexual harassment is the act of threatening to display actual or fictitious photos or films of a child's corporal parts or their engagement in sexual activity on any kind of media, including electronic, film, or digital platforms.
- (iii) **Section 13 of POCSO (The Protection of Children from Sexual Offences Act) of 2012: Use of child for pornographic purposes:** A significant offense is committed by

anybody who abuses a child for sexual gratification in any form of media, including TV shows, online advertisements, printed materials, and other technological formats. Indecent or obscene displays of children are instances of this, as are depictions of a child's genital organs or a child participating in actual or simulated sexual activity. If discovered guilty of this action, one will face legal repercussions as it is caught to be utilising a child for pornographic grounds (Protection of Children from Sexual Offences Act, 2012, S 13).

- (iv) **Section 67 of IT ACT (The Information Technology Act) of 2000: Punishment for publishing or transmitting obscene material in electronic form:** If someone publishes or distributes any content online that is sexually explicit, obscenely designed or created to pique curiosity, or has the potential to corrupt or influence others, they may be penalised to up to three years in prison and a fine of up to five lakh rupees upon their first conviction. A penalty of up to 10 lakh rupees and a maximum of five years in jail are possible penalties for second or consecutive infringements.
- (v) **Section 67B (b) of IT ACT (The Information Technology Act) of 2000: Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form:** It is against the

law for anybody to produce, distribute, search for, download, promote, trade, or circulate electronic content that depicts minors or children in an obscene or sexually improper way.

- (vi) **Section 67B (c) of IT ACT (The Information Technology Act) of 2000: Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form:** Whoever propagates, coaxes, or coerces minors into an online connection with one or more children to engage in sexually explicit behaviour or in a manner that may offend a reasonable adult using a computer resource.
- (vii) **Prevention of Corruption (Amendment) Act, 2018:** Gratification encompasses more than just obtaining money or physical rewards. It implicates finding satisfaction and fulfillment in different aspects of life beyond material possessions.

III. Result and Discussion

This section reports on findings relating to comprehension of the concept cyber sextortion, and specifically where this is found to be interpreted ambiguously. It also discusses the extension of the phenomenon, victimological aspects, existing legal measures and punitive provisions within already established systems.

- (i) **Ambiguity of the term "Cyber Sextortion":** Cyber Sextortion is being defined by varied organisation(s) such as --National Crime Agency (NCA), Federal Bureau of Investigation (FBI), The National Institute of Justice (NIJ), eSafety Commissioner, Australian Centre to Counter Child Exploitation (ACCCE), Royal Canadian Mounted Police (RCMP), An Garda Síochána (Ireland's National Police and Security Service), National Cyber Security Centre (NCSC) and Indian Cybercrime Coordination 16 Western UP: Trends. Nonetheless, considerable variation in the definition and interpretation of sextortion also persists within jurisdictions. The absence of a clear definition constitutes the most important initial obstacle for an effective identification, reporting and dealing with this crime. This definitional variation impacts not only legal standing but also data gathering, collaboration across borders, victim advocacy and promulgation. Sextortion is often conflated with other forms of cyber-harm or understood as a subset of online sexual exploitation, resulting in fractured responses. Both the NCA and the FBI concentrate on webcam blackmail, specifically featuring the moment when victims are led into sharing images. Although it is consistent with many

real-life incidents, this would exclude other types of digital extortion, such as those related to compromised content, camera surveillance. Hidden camera, stolen images, deepfake technology or CGI demon monic faces generated sexual media using AI. Interpol, Europol and the eSafety Commissioner have a wider definition, recognising that sextortion is not just about self-exposure via webcam but can also be about force, hacking and non-consensual sharing.

- (ii) **Nuances in Institutional Understanding of Cyber Sextortion:** One of the fundamental differences that arises with regards to definition is given by EUROPOL, which discourages the use of cyber sextortion as a heterogeneous and general concept because it suggested that this term could simplify or compress various forms of sexual cybercrime. This indicates a more legalistic and nuanced application of the concept than some others, who classify sextortion as blackmail or coercion without reference to particular types of exploitation. The National Institute of Justice (NIJ) conceptually combines ransomware attacks and system invasion as part of cyber sextortion which emphasises a technological dimension wherein sextortion is not just a socially engineered behavior

but a "digital crime" in which offenders exploit poor cybersecurity safeguards. This is in contrast with An Garda Síochána (the national police service of Ireland) and the RCMP, which describe sextortion in a generalised manner as cyber extortion (with the latter focused on its impact upon young people).

- (iii) **Victimology: Who is Affected?:** There is a marked difference in how victims are categorised by agencies. The focus on children as victims of this crime in the FBI, ACCCE and RCMP definitions, narrows their meaning to underage and youth-centric. Though it is more often than not the case that young people are specifically targeted, this does not narrow down the potential victims: indeed adult victims – among women and LGTB+ but also other disadvantaged groups – also suffer sextortion. Unlike the former, INTERPOL, Europol and the Indian Cybercrime Coordination Center (I4C) have a broader vision in this regard, not restricting anything to an age limit. Europol's careful approach to nomenclature also reinforces the view that sextortion is not confined to any single demographic group. The NCSC (the UK's National Cyber Security Centre) and An Garda Síochána also stress that anyone is a potential victim, whatever their age or gender.
- (iv) **Modes of Sextortion: Limited vs.**

Expansive Definitions: The FBI and NCA definitions focus on webcam blackmail, unconsciously implying that the requirement for victim involvement is to occur in real time. That doesn't account for instances in which private images are stolen through hacking, revenge porn, deepfake manipulation or spy-cam recordings. INTERPOL, Europol and the eSafety Commissioner by comparison acknowledge a broader spectrum of coercion, including threats to reveal already secured content. Indian Cybercrime Coordination Centre (I4C) specifically defines sextortion as a threat with electronic media, making it technology-agnostic and applicable to many types of digital abuse. (Cyberattacks and Ransomware are a method of sextortion) Differences The NIJ distinguishes itself by incorporating "cyberattacks" and "ransomware" as means of committing sextortion, expanding the conventional definition. Where other agencies continue to progress the state of art in psychological manipulation, NIJ recognises technical modus operandi is an essential element given the level of competence that cyber criminals now demonstrate.

- (v) **Level of Detail and Legal Precision:** The Degree of Detail and Legal Precision: These definitions

differ in their legal and theoretical specificity. Caution against oversimplifying "sextortion" as a crime Europol's observation that it is important not to simplify the concept of "sextortion" (as a crime) deserves attention, when authorities often mix sextortion with other cyber crimes without making distinctions at the legal level. Clear, operationally useful definitions are provided by the National Cyber Security Centre (NCSC) and An Garda Síochána that can fit with law enforcement policies. Both the FBI's and the NCA definitions are functionally shallow for they concentrate on what the victim did (or did not do) instead of how this criminality worked out or why this was an illegal process. NIJ's ransomware viewpoint, Europol's requirements for granularity and I4C's coverage of fiscal extortion further enrich the landscape.

- (vi) **Variability in Focus:** Some agencies, e.g., FBI or NCA, narrow down the focus to webcam blackmail whilst INTERPOL or Europol acknowledge a broader range such as hacking and covert recordings.
- (vii) **Age Limitations vs. Inclusivity:** Youth-related focus vs. Inclusive scope: Sextortion is defined by the FBI, ACCCE, and RCMP through a lens which focuses on child victims specifically with technology as an extension to this approach; whereas INTERPOL, Europol, and I4C are

inclusive in their definition of sextortion grounded in technologies.

- (viii) **Divergent Views on Motives:** Sextortion is often viewed as a means to obtain more explicit content (FBI, NCA, ACCCE), while others recognise financial extortion and broader coercion tactics (Europol, INTERPOL, An Garda Síochána, I4C).
- (ix) **Legal and Conceptual Clarity:** Europol, NIJ, and I4C provide legally precise definitions that include cybersecurity aspects, while FBI and NCA's definitions remain narrower and lack legal context.
- (x) **Recognition of Modern Threats:** NIJ's inclusion of ransomware attacks and digital extortion highlights a more technologically advanced understanding of sextortion, which is missing in several other definitions.
- (xi) **Legal Recognition of Sextortion in Australia:** There were no specific law in Australia that exclusively governed the offence of Cyber Sextortion. However, different laws and their part covered the scope of cyber sextortion either explicitly or implicitly. Crimes Amendment (Intimate Images) Act 2017 No 29 has relevant provisions under Part 3 Division 15C, to be more precise under various sub sections of Section 91 such as 91N, 91P, 91Q, 91R, are some relevant legislation for offence of cyber sextortion.

Legally, Also, **non-consensual distribution of intimate images** is addressed under **section 221BD of the Western Australia Criminal Code**. Additionally, the **Criminal Law Amendment (Intimate Images) Act 2018** strengthens protections against the unauthorized sharing of intimate content. However, individuals **cannot be charged** under this law for distributing their own intimate images. Penalties for violating these laws are significant. If prosecuted in a **District Court**, offenders face **up to 3 years imprisonment**, whereas cases tried in the **Magistrates Court** carry a **maximum penalty of 18 months imprisonment and a \$18,000 fine**. For support, **youth under 25** can access help via phone or online chat at **1800 55 1800**, while **adults over 18** can contact '*Lifeline at 13-11-14*' through call, text, or chat services. Victims are encouraged to report cases directly to the *ACCCE*, which offers specialised support and investigative resources.

- (xii) **United Kingdom:** There were no specific law in United Kingdom that exclusively governs the offence of Cyber Sextortion. However, there exists many court made laws i.e., well established precedents that outlined the basic principles involved. There are also various other laws that govern the scope of cyber sextortion either explicitly or

implicitly. Obscene Publications Act of 1959, Section 33 & 37 of Criminal Justice and Courts Act of 2015, and SHIELD Act of 2019, are some relevant legislation for offence of cyber sextortion.

(xiii) **United States:** The crime of cyber sextortion is not specifically governed by any law in the United States. However, there are numerous court-made laws—that is, well-recognised precedents—that specify the underlying principles at action. The extent of cyber sextortion is governed by numerous other laws, either explicitly or implicitly, according to 2C:14–9. Privacy invasion, level of criminal activity; defences, rights, The Uniform Civil Remedies for Unauthorised Disclosure of Intimate Images Act, 18 U.S.C. (United States Code) & 2251- Sexual Exploitation of Children (Production of Child Pornography), and SHIELD Act of 2019 are a few pertinent pieces of law regarding the crime of cyber sextortion.

(xiv) **India:** There were no specific law in India that exclusively governs the offence of Cyber Sextortion. However, there exists many court made laws i.e., well established precedents that outlined the basic principles involved. There are also various other laws that govern the scope of cyber sextortion either explicitly or implicitly. Section 11 and 13 of POCSO Act 2012, Section

67 and 67B of IT Act 2000, are some of the legal provisions governing the provision regarding cyber sextortion. Some landmark judgement regarding Cyber Sextortion are Ranjit Udeshi Vs State of Maharashtra (Ranjit D. Udeshi vs State Of Maharashtra, 1964), Aveek Sarkar Vs State of West Bengal ("Aveek Sarkar & Anr vs State Of West Bengal And Anr," n.d.), West Bengal Vs Animesh Boxi and Ors (The State Of West Bengal vs Animesh Boxi @ Ani Boxi @ Ani Bakshi, 2018).

IV. Conclusion

Cyber sextortion is a rapidly expanding cybercrime that is not limited to a single place and does not have a solitary structure in which many cyber criminals work together as a gang to simultaneously strike internet websites through multiple channels and lure the innocent. There are no direct regulations against cyber sextortion in any of the nations chosen for this study. Nonetheless, many such regulations exist to prohibit cyber sextortion, they are insufficient but India attempted to take a step in this regard by the Prevention of Corruption (Amendment) Act of 2018, which determined that the term "gratification" in the bribery crime was not limited to monetary satisfaction or gratifications estimable in money. On the other hand in the house of representatives, USA, Miss Clark tried to amend title 18, United States Code, to create offences for the interstate coercion of sexual acts, sexual contact, or

sexually explicit visual depictions, and for other purposes. This Bill was tabled on July 13, 2016; unfortunately, it received no votes, and was not passed, its provisions may have become law if they had been incorporated into another bill (H.R.5749 - 114th Congress (2015-2016): Interstate Sextortion Prevention Act, n.d.). In terms of good developments, INTERPOL is striving to combat the menace of cyber sextortion. Under the tagline *#YouMayBeNext*, the campaign focused on cyber sextortion, ransomware, and Distributed Denial of Service (DDoS) assaults, and was sponsored by 75 INTERPOL member countries and 21 public or private entities (Asia: Sextortion Ring Dismantled by Police, n.d.). All the social media where photos and videos can be easily uploaded are very less regulated, and this is a matter if a person uploads an objectionable photo or video of someone on that social media. The company would, at most, block his account. But legally, no case can be registered. Nowadays, young are enticed by any anonymous individual online for sexual favours; youth are not resisting it due to many reasons such as loneliness and excess use of social media without any supervision of the parents and only because of this many youth and even minors broadcasts their personal informations on social media. Most of the social media accounts are accessible for all and this is the easiest access way for the offender to get the photos videos for morphing and deep fake.

Global Legal Framework of Sextortion:
Several countries, including the USA,

Canada, and Australia, have integrated sextortion-related crimes within their legal systems, either by enacting specific laws or incorporating them under cybercrime, extortion, or sexual exploitation statutes. This ensures that offenders can be prosecuted even in the absence of a dedicated sextortion law. Many countries have set up mechanisms that provide for the victims assistance such as hotlines, legal aid, and counselling. Australia has 24/7 helplines to report, the UK has the Revenge Porn Helpline and in the US there is federal assistance from places such as the FBI, NIJ. This strategy is beneficial in increasing the protection of victims and reporting. Many countries including the USA and Canada have implemented sophisticated cyber forensic teams and cross-jurisdictional mechanisms for tracing criminals. The FBI's Cyber Squads, Internet Crime Complaint Center (IC3), and Cyber Action Team provide quick responses to online sexual exploitation matters. Severe punishments in varying jurisdictions act as effective deterrents." In the United States (e.g., Pennsylvania), sextortion of a minor is punishable with up to 7 years in prison and federal extortion charges involving child exploitation can carry a maximum sentence of 40 years. Canada also has strong sentencing that can carry up to 5 years imprisonment for distribution of non-consensual images. Other global law enforcement organizations include INTERPOL, Europol and Cyber Legal Attachés based with the USA providing cross border investigative support against

cyber-enabled crimes. International cooperation is also crucial in the fight against criminals who act across borders.

In many cases such as this, sextortion entails suffering caused by internationally mobile perpetrators operating across borders using VPNs and anonymous interfaces, which pose major barriers to their prosecution. Despite the robust cybercrime laws in the UK and Canada, cross-border enforcement has been difficult to implement, which resulted a low conviction rate. Sentencing also varies significantly. In the case of Australia, penalties for intimate image abuse are subject to a less severe maximum-penalty limit of 3 years imprisonment (rather than 5-40 years in the USA). Moreover, the UK's Section 33 Criminal Justice Act 2015 sets a maximum of just 2 years imprisonment and may not be an adequate deterrent. The majority of legal regimes concentrate on addressing the guilty after the commission's of crime - not in dealing with how to stop sextortion.' There is a dearth of preventive education and public awareness campaigns, as well as from the government – including measures for protection.

V. Suggestion

As you cannot win a war without weapons, don't expect to optimally combat the spread of cyber sextortion without an equally tough arsenal of cyber sextortion prevention statutes. The UN hosts international cybercrime fighting summits (sponsored by governments like

Australia, Canada, Japan, Norway, UK and the US etc) in order to deal with this so called problem. The greatest thing to come out of this issue is having cyber sextortion brought to the fore as a real problem despite the fact that its devastation may not be "immediately" visible such as more common forms of cybercrime. Nevertheless, more must be done to promote awareness of this issue, and governments across the globe must be persuaded to create and implement effective legislation that addresses cyber sextortion.

What is clear then, is that some sort of internationally agreed and widely-accepted definition of cyber sextortion would be a good thing, because as we have seen, if there isn't already one in place there can be different interpretations around the world. It is a serious problem and demands the attention of international politicians, lawyers and cybercrime experts because this legal uncertainty obstructs effective enforcement against crime, cross-border cooperation and protection of victims. The government should also take the lead in informing potential complainants on how and where they could file a complaint in internet sextortion cases,¹ and that whatever information or evidence they would have given will be handled with confidentiality. And in doing so, it should emphasise access to immediate relief and support systems to protect and assist victims as quickly as possible.

To bridge the gap between the public and

cyber law enforcement, the government may accept the concept of '*Digital Community Officers (DCO)*', which is patterned after a successful model deployed in the Netherlands. These officers

would connect directly with online communities, promote awareness of cyberthreats like sextortion, help victims file complaints, and foster trust by ensuring the system is helpful and responsive.

REFERENCES

1. "2 Lakh Cyber Attacks On India's Power System During Op Sindoor: Minister." n.d. NDTV. Accessed July 7, 2025. <https://www.ndtv.com/india-news/2-lakh-cyber-attacks-on-indias-power-system-during-operation-sindoor-minister-8653484>.
2. "2024 New Jersey Revised Statutes: Title 2C - The New Jersey Code of Criminal Justice: Section 2C:14-9 - Invasion of Privacy, Degree of Crime; Defenses, Privileges." n.d. Justia Law. Accessed July 9, 2025. <https://law.justia.com/codes/new-jersey/title-2c/section-2c-14-9/>.
3. "Act of Nov. 27, 2019, P.L. 691, No. 100 Cl. 18 - Crimes Code (18 PA.C.S.) - Sexual Extortion." n.d. <https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2019/0/0100..HTM?31>.
4. Alvarez, Ron. 2021. "Cyber Enabled Crime vs. Cyber Dependent Crime." IP PROBE - Blog. September 2, 2021. <https://ipprobe.global/2021/09/02/cyber-enabled-crime-vs-cyber-dependent-crime/>.
5. "Bharatiya Nyaya Sanhita, 2023." 2023. <http://hdl.handle.net/123456789/20062>.
6. Biblioteca del Congreso Nacional. 1874. "Ley Chile - Código Penal 12-NOV-1874 Ministerio De Justicia - Biblioteca del Congreso Nacional." November 12, 1874. <https://www.bcn.cl/leychile>.
7. Broadhurst, R. 2016. "Cybercrime in Australia," 221-35. https://doi.org/10.1007/978-3-319-55747-2_15.
8. Bussell, and Jennifer. 2023. "Cyberspace." In Encyclopedia Britannica.
9. capsnetdroff. 2025. "Cyber Warfare: Dual Operational Fronts in Contemporary India-Pakistan Conflicts." CAPS India. May 20, 2025. <https://capsindia.org/cyber-warfare-dual-operational-fronts-in-contemporary-india-pakistan-conflicts/>.
10. "Chapter 7.110 RCW: Uniform Civil Remedies For Unauthorized Disclosure of Intimate Images Act." n.d. Leg.Wa.Gov. Accessed July 9, 2025. <https://app.leg.wa.gov/RCW/default.aspx?cite=7.110>.
11. "ChipWhisperer: An Open Source Platform For Side Channel Security Testing." n.d. Packetlabs. Accessed July 4, 2025. <https://www.packetlabs.net/posts/chipwhisperer-an-open-source-platform-for-side-channel-security-testing>.
12. "Citizen's Guide To U.S. Federal Law On Child Pornography." 2015. Justice.Gov. May 26, 2015. <https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-child-pornography>.
13. "Crimes Act 1900 - SECT 91P Record Intimate Image without Consent." n.d. Edu.Au. Accessed July 9, 2025.

- https://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s91p.html.
14. "Crimes Act 1900 - SECT 91Q Distribute Intimate Image without Consent." n.d. Edu.Au. Accessed July 9, 2025. https://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s91q.html.
 15. "Crimes Act 1900 - SECT 91R Threaten to Record or Distribute Intimate Image." n.d. Edu.Au. Accessed July 9, 2025. https://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s91r.html.
 16. "Crimes Amendment (Intimate Images) Act No. 29, 2017 (NSW)." 2017. Assented to June 27, 2017. <https://legislation.nsw.gov.au/view/pdf/asmade/act-2017-29>.
 17. Dennis, and Michael Aaron. 2025. "Cybercrime." In Encyclopedia Britannica.
 18. "Dealing with Sexual Extortion." n.d. ESafety Commissioner. Accessed July 9, 2025. <https://www.esafety.gov.au/key-topics/image-based-abuse/deal-with-sex-tortion>.
 19. "Digital Payment Transactions Surge With Over 18,000 Crore Transactions in 2024-25." n.d. Gov.In. Accessed July 8, 2025. <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2110405>.
 20. "Digital Sexual Violence Against Women in Mexico: Role of the Olimpia Law in Transforming Underlying Gender Norms." 2024. ALIGN. <https://www.alignplatform.org/sites/default/files/2024-10/align-mexico-digitalsexualviolence-execsummary-eng-digital.pdf>.
 21. "FAQs RA 8353: An Act Expanding the Definition of the Crime of Rape and Reclassifying the Same as Crime Against Persons." n.d. Gov.Ph. Accessed July 9, 2025. <https://pcw.gov.ph/faq-ra-8353-an-act-expanding-the-definition-of-crime-and-rape/>.
 22. Federal Bureau of Investigation. 2015. "What Is Sextortion?" July 7, 2015. <https://www.fbi.gov/video-repository/what-is-sex-tortion/view>.
 23. Federal Bureau of Investigation, U.S. Department of Justice. Sextortion: Recognize, Prevent, Protect. Accessed July 7, 2025. <https://www.justice.gov/usao-edmi/media/1092016/dl?inline=>.
 24. Gibson, Christine. 2024. "What Is Digital Skimming? Your Guide to Staying Safe While Shopping Online." Mastercard.Com. November 2, 2024. <https://newsroom.mastercard.com/news/perspectives/2024/what-is-digital-skimming-your-guide-to-staying-safe-while-shopping-online/>.
 25. "Government Taking Measures to Strengthen National Preparedness Against Cybersecurity Threats." n.d. Gov.In. Accessed July 8, 2025. <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2115416>.

26. Government of India. The Information Technology Act, 2000. Act No. 21 of 2000. New Delhi: Ministry of Law, Justice and Company Affairs. Accessed July 9, 2025. https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf.
27. Government of India. The Prevention of Corruption (Amendment) Act, 2018. No. 16 of 2018. Accessed July 9, 2025. <https://www.dvac.tn.gov.in/pdf/RTI/PC%20Act%20Amendment%202018.pdf>.
28. Government of India. The Protection of Children from Sexual Offences Act, 2012. Act No. 32 of 2012. Accessed July 9, 2025. <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf>.
29. Gordon, Sarah, and Richard Ford. "On the definition and classification of cybercrime." *Journal in Computer Virology* 2 (2006): 13–20.
30. Hak. n.d. "Bash Bunny." Hak5. Accessed July 4, 2025. <https://shop.hak5.org/products/bash-bunny>.
31. Hak. n.d. "LAN Turtle." Hak5. Accessed July 4, 2025. <https://shop.hak5.org/products/lan-turtle>.
32. Hak. n.d. "USB Rubber Ducky." Hak5. Accessed July 4, 2025. <https://shop.hak5.org/products/usb-rubber-ducky>.
33. "India Launches First Digital Threat Report 2024 to Support Cybersecurity in the Banking, Financial Services and Insurance (BFSI) Sector." n.d. Gov.In. Accessed July 8, 2025. <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2119801>.
34. "Indian Cybercrime Coordination Centre." n.d. National Informatics Center. Accessed July 8, 2025. <https://i4c.mha.gov.in/>.
35. Kaspersky. 2023. "What Is a Hardware Wallet & How Does It Work?" September 22, 2023. <https://www.kaspersky.com/resource-center/definitions/what-is-a-hardware-wallet>.
36. KANTAR. Internet in India 2022. New Delhi: IAMAI, April 2023. https://www.iamai.in/sites/default/files/research/Internet%20in%20India%202022_Print%20version.pdf.
37. "LAN Turtle." Hak5. Accessed July 4, 2025. <https://shop.hak5.org/products/lan-turtle>.
38. Lutkevich, Ben. 2022. "Wi-Fi Pineapple." Search Security. TechTarget. October 14, 2022. <https://www.techtarget.com/searchsecurity/definition/Wi-Fi-Pineapple>.
39. Lutkevich, Ben. 2023. "Flipper Zero Explained: What to Know about the Viral Hacker Tool." WhatIs. TechTarget. March 2, 2023.

- <https://www.techtarget.com/whatis/feature/Flipper-Zero-explained-What-to-know-about-the-viral-hacker-tool>.
40. Mallikarjuna, Basetty, and Pushpalatha Chittamsetty. 2024. "Generative Artificial Intelligence: Fundamentals and Evolution." In *Studies in Computational Intelligence*, 3–17. Singapore: Springer Nature Singapore.
 41. Miró Llinares, Fernando, and Shane D. Johnson. "Cybercrime and place: Applying environmental criminology to crimes in cyberspace." (2018).
 42. Mondal, Himel, Manas Ranjan Sahoo, and Shaikat Mondal. 2022. "Characteristics of Cyber Sextortion in India: Content Analysis of Online Newspapers Published in 2019–2021." *Journal of Psychosexual Health* 4 (3): 171–77. <https://doi.org/10.1177/26318318221096755>.
 43. "National Cyber Security Centre. Sextortion Emails: How to Protect Yourself." n.d. Gov.Uk. Accessed July 9, 2025. <https://www.ncsc.gov.uk/guidance/sextortion-scams-how-to-protect-yourself>.
 44. National Informatics Center. n.d. "Cyber Crime Portal." Gov.In. Accessed July 8, 2025. https://cybercrime.gov.in/webform/suspect_search_repository.aspx.
 45. "New INTERPOL report warns of sharp rise in cybercrime in Africa." n.d. Interpol.Int. Retrieved June 28, 2025. <https://www.interpol.int/News-and-Events/News/2025/New-INTERPOL-report-warns-of-sharp-rise-in-cybercrime-in-Africa>.
 46. "New Zealand MP Exposes Deepfake Threat By Displaying AI-Generated Nude Image Of Herself In Parliament." n.d. NDTV. Accessed July 4, 2025. <https://www.ndtv.com/world-news/new-zealand-mp-exposes-deepfake-threat-by-displaying-ai-generated-nude-image-of-herself-in-parliament-8591350>.
 47. NCMEC. 2025. "NCMEC Releases New Data: 2024 in Numbers." National Center for Missing & Exploited Children. Retrieved June 28, 2025. <http://www.missingkids.org/content/ncmec/en/blog/2025/ncmec-releases-new-data-2024-in-numbers.html>.
 48. Paritosh. 2024. "Hacked Reality: How Cybercriminals Can Hijack Your World Through AR and VR!" *Antaeus AR*. September 5, 2024. <https://medium.com/antaeus-ar/hacked-reality-how-cybercriminals-can-hijack-your-world-through-ar-and-vr-aa5823ca97d6>.
 49. Participation, Expert. 1978. "Obscene Publications Act 1959." <https://www.legislation.gov.uk/ukpga/Eliz2/7-8/66/section/2>.
 50. Phillips, Kirsty, Julia C. Davidson, Ruby R. Farr, Christine Burkhardt, Stefano Caneppele, and Mary P. Aiken. 2022. "Conceptualizing Cybercrime: Definitions,

- Typologies and Taxonomies.” *Forensic Sciences* 2 (2): 379–98.
<https://doi.org/10.3390/forensicsci2020028>.
51. "Press Information Bureau." n.d. Gov.In. Accessed July 8, 2025.
<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2112323>.
 52. "Press Information Bureau." n.d. Gov.In. Accessed July 8, 2025.
<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2110359>.
 53. "Press Information Bureau." n.d. Gov.In. Accessed July 8, 2025.
<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1962238>.
 54. "Proxmark - versatile standard tool." n.d. ProSec GmbH. Accessed July 4, 2025.
<https://www.prosec-networks.com/en/blog/proxmark-vielseitiges-standardwerkzeug/>.
 55. "Ranking Needs for Fighting Digital Abuse: Sextortion, Swatting, Doxing, Cyberstalking and Nonconsensual Pornography." n.d. National Institute of Justice. Accessed July 9, 2025. <https://nij.ojp.gov/topics/articles/ranking-needs-fighting-digital-abuse-sex-tortion-swatting-doxing-cyberstalking>.
 56. "RBI Master Direction on Digital Payment Security Controls – Everything You Need to Know." 2025. DoveRunner. March 19, 2025.
<https://doverunner.com/blogs/everything-you-need-to-know-rbi-digital-payment-security-controls/>.
 57. "Sextortion." n.d. Gov.Au. Accessed July 9, 2025.
<https://www.acce.gov.au/sextortionhelp>.
 58. "Sextortion." n.d. Garda. Accessed July 9, 2025.
<https://www.garda.ie/en/crime/sexual-crime/sextortion-advice-if-you-are-a-victim.html>.
 59. "Sextortion." n.d. RCMP. Accessed July 9, 2025.
<https://rcmp.ca/en/youth/sextortion>.
 60. "Sextortion." cms-user. 2025. Gov.Uk. May 1, 2025.
<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/kidnap-and-extortion/sextortion>.
 61. "Smart Policing Initiatives." n.d. Gov.In. Accessed July 8, 2025.
<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2115168>.
 62. Special Correspondent. 2022. "US Cybersecurity Provider SentinelOne Opens India Office in Bengaluru." *The Hindu*. June 15, 2022.
<https://www.thehindu.com/business/Industry/us-cybersecurity-provider-sentinelone-opens-india-office-in-bengaluru/article65529464.ece>.

63. Stefan. 2022. "MalDuinos Explained." Spacehuhn Blog. May 2, 2022. <https://blog.spacehuhn.com/malduino>.
64. "Telecom Subscriptions Reports." n.d. Gov.In. Accessed July 9, 2025. <https://www.trai.gov.in/release-publication/reports/telecom-subscriptions-reports>.
65. "The Digital Personal Data Protection Act, 2023." Ministry of Law and Justice. August 11, 2023. <https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf>.
66. "The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021." n.d. PRS Legislative Research. Accessed July 7, 2025. <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>.
67. "The Information Technology Act, 2000." 2000. *The Indian Journal of Public Administration* 46(3): 417–55. <https://doi.org/10.1177/0019556120000313>.
68. The United Republic of Tanzania. *The Sexual Offences Special Provisions Act, 1998*. https://clr.africanchildforum.org/Legislation%20Per%20Country/Tanzania/tanzania_sexualoffences_1998_en.pdf.
69. "Transparency International Knowledge Hub." n.d. Accessed July 8, 2025. <https://knowledgehub.transparency.org/helpdesk/criminalising-sextortion-challenges-and-alternatives>.
70. UNICEF East Asia and Pacific Regional Office. 2020. *What Works to Prevent Online and Offline Child Sexual Exploitation and Abuse?* Bangkok: UNICEF. <https://www.unicef.org/eap/media/4706/file/what%20works.pdf>.
71. "Union Home Minister Shri Amit Shah Says MHA's Indian Cybercrime Coordination Centre (I4C) Has Introduced the New e-Zero FIR Initiative to Nab Any Criminal with Unprecedented Speed." n.d. Gov.In. Accessed July 8, 2025. <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2129715>.
72. "Union Home Minister and Minister of Cooperation, Shri Amit Shah Addresses First Foundation Day Celebrations of I4C as the Chief Guest at Vigyan Bhavan in New Delhi, Launches Major Initiatives for Prevention of Cyber Crime." n.d. Gov.In. Accessed July 8, 2025. <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2053438>.
73. "Union Home Minister and Minister of Cooperation, Shri Amit Shah to Address First Foundation Day Celebration of I4C and Launch Key Initiatives for Prevention of Cybercrime in New Delhi Tomorrow." n.d. Gov.In. Accessed July 8, 2025. <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=2053193>.

74. "Utah and Arkansas First States to Enact Legislation Criminalizing Cyber-Sexual Extortion ('Sextortion')." n.d. Legalmomentum.Org. Accessed July 9, 2025. <https://www.legalmomentum.org/press/utah-and-arkansas-first-states-enact-legislation-criminalizing-cyber-sexual-extortion->.
75. Yadav, Yashasvi. 2022. "India Becoming 'Sextortion' Capital of the World?" Times of India. March 9, 2022. <https://timesofindia.indiatimes.com/blogs/voices/india-becoming-sextortion-capital-of-the-world/>.

FROM CELLS TO CRISIS: THE DYNAMICS OF PRISON OVERPOPULATION

Vinay Juneja*, Saurav Joshi** and Saujanya Sarkar***

ABSTRACT

Prison overcrowding has remained one of the most pressing concerns within the Indian criminal justice system. Despite considerable advancements in the judiciary and the enactment of progressive legal provisions, their effective implementation remains limited. The problem is most visibly reflected in the issue of prison accommodation and the disproportionately high number of undertrial prisoners. The actual capacity of the prison is 439,119, whereas the prisons are overpopulated by 530,333 prisoners, out of which more than 389,910 are undertrial prisoners. Alongside this, lack of adequate legal representation, systemic inefficiencies in judicial administration, and failure to implement statutory provisions further aggravate the crisis.

The consequences of overcrowding are far-reaching: deterioration of inmates' mental health, mistreatment of prisoners, shortage of medical professionals—as highlighted in the India Justice Report 2025, which records that across 1,330 prisons in the country, only 69 posts for medical experts existed, but in reality, just 25 were appointed, resulting in one medical professional per 22,929 inmates—and repeated violations of basic human rights of prisoners.

With special reference to Tihar Jail, the research identifies additional challenges unique to India's largest prison complex: shortage of security staff leading to inadequate prisoner protection, development of a parallel underground economy by criminal groups, severe accommodation deficits (with the inmate population recorded at 20,077 against a sanctioned capacity of 10,026 as per Central Jail NCT Delhi data), the functioning of Tihar as a “safe house” for repeat offenders, and a deep dive into the analysis of how socioeconomics and education affect their chances of ending up in jail.

This paper critically examines these causes and consequences of prison overcrowding in India, with a focused case study on Tihar Jail, while also addressing the larger human rights challenges arising from the current state of prison administration.

* Assistant Professor (Law) and Course Director PG-MBA at Maharashtra National Law University, Mumbai (MNLU Mumbai)

** Student BA.LLB at VIPS-TC.

*** Student BA.LLB at VIPS-TC.

Introduction

“Prisons should be correctional homes, not breeding grounds for more crime.” – Justice A.N. Mulla Committee in All-India Committee on Jail Reforms (1980–83). Prisons in India during the colonial era were governed by the Prison Act of 1894, which primarily viewed prisons as institutions of punishment and confinement. One of the prominent examples is the Cellular Jail, located on the remote island of Andaman and Nicobar, also referred to as Kala Pani or Black Water. The jail was mainly used for capturing and punishing the Indian freedom fighters, leading to brutal living conditions and immense suffering.

However, a significant change was observed in the Indian prison system in the post-independence era through various reports and recommendations; some of the prominent ones were the reports of the A. N. Mulla committee. At the same time, Justice Krishna Iyer, *State of Rajasthan v. Balchand @ Baliay*, highlighted principle that “*bail is the rule and incarceration is the exception.*” Later on, the Justice Krishna Iyer Committee in 1987 emphasized the idea of converting prisons into correctional homes with the principle of reformation, rehabilitation, and reintegration, to replace retribution with correction and provide inmates with education, vocational training, medical care, and psychological support so that they can be better citizens and play a crucial role in the development of society.

But in reality, the practical implementation of these principles is hampered due

to exhaustion and overburdening of the judicial system of India, leading to overcrowding in the prisons. The reasons are slow functioning of the judiciary, failure to implement the available statutory provisions, lack of legal representation of undertrial prisoners, and the number of judges in proportion to the number of cases.

Prison overcrowding has far-reaching consequences. First of all, it violates the idea of human rights, and prisoners have to compromise with dignity, privacy, proper medical care, and basic living conditions, which are enshrined under Article 21 of the Indian Constitution and the human rights standard. It also leads to grave health implications, like the spread of communicable diseases. Limited allocation of medical staff leads to worsening of the health care facility, which further cripples the psychological well-being of prisoners, ultimately hampering the reformatory function of prisons. Instead of serving as correctional homes, prisons become warehouses for inmates, leaving little scope for rehabilitation or vocational training.

Tihar Jail, being Asia's largest prison complex, is also the victim of prison overcrowding, as per Central Jail NCT Delhi data. The jail, rather than acting as a correctional home, developed into a breeding ground for an organised crime network, a hawala system operated by the inmates, and gang rivalries within the prison walls. It ultimately leads to security lapses due to the shortage of prison staff compared to the inmate population. The

burden of overcrowding falls disproportionately on economically weaker and marginalised groups who often languish in jail for petty offences simply because they cannot afford legal aid or bail.

Methodology

The methodology espoused in this paper is primarily qualitative, relying on an in-depth review of secondary data derived from government publications, official reports and other credible institutional sources, thereby providing a foundational understanding of prison administration, reform measures, and systemic challenges. Accompanying this, the research employs a case study approach focused on Tihar Jail. Through the case study, the paper analyzes administrative structures, specific practices, reform initiatives, and ground-level realities within Tihar. Together, the qualitative review & case study approach allows for a comprehensive, contextualized and nuanced prison examination management and reforms.

Prison Congestion: Causes

Prison overcrowding in India has become a significant and persistent challenge within the country's criminal justice system, highlighting underlying structural and administrative issues. Although various initiatives have been proposed by administrative bodies to modernise and enhance the prison system, the tangible improvements are still lacking. The primary factors contributing to this ineffectiveness include

Undertrial prisoners: The prison statistics of India 2023 evaluated the 2023 data, which shows a minor drop in the number of undertrial prisoners as compared to 2022, which showed the highest percentage of undertrial prisoners, 75.8%, and the latest available data of 2023 shows it to be 73.5%. The ups and downs in the percentage of undertrial prisoners have been analyzed in the report, and it never showed the drop of this percentage below 69% if we analyze the past 5 years' data:

Table 1: Percentage of Undertrial Prisoners in the Last Five Years

Year	No. of inmates	Occupancy	No of undertrial prisoners	Undertrial percentage
2019	478600	403739	330,487	69.1
2020	488511	414033	372,848	76.1
2021	554034	425609	427,165	77.1
2022	573220	436266	434,302	75.8
2023	530333	439119	389,910	73.5

Source: Prison Statistics India

The data shows that the rise in the number of undertrial prisoners is not a new issue. Overcrowding is a major and ongoing problem in the justice arrangement. This exacerbates the difficulties faced by captives and underscores urgent need for reform.

Accommodation issue

In the prison context, the term 'accommodation' refers to the physical and organisational arrangement provided to the prisoners by the prison authority, which includes providing them with basic living space with access to clean toilets, bathing areas, ventilation and daylight access, kitchens and dining areas, healthcare rooms, recreational space and yards.

The data from the prison statistics reports clearly highlights that the issue of accommodation in Indian prisons lies at the heart of India's prison overcrowding crisis, where the government, as well as the prison management, has failed to bring the infrastructural development required for the prison to keep up with the increasing crime rate and population of India. The Prison Statistics report of 2023 also includes the accommodation issue of Indian prisons at different levels, where various jails are functioning over the prescribed occupancy rate. The cumulative occupancy rate of all the 152 central jails is 120.7%. Similarly, the total occupancy rates of the 436 district jails are 136.6%. The data clearly shows that the prison overcrowding has been directly a consequence of lack of accommodation

development made by the government at different levels.

Lack of a legal representative

In developing countries like India, with such a massive population under the margin of poverty, access to justice is a hard task to achieve. Most of the undertrial population do not get proper legal representation during the court proceedings, as they do not have the resources, connections, and money to afford a lawyer to put forth their side of the story. As per the *Prison Statistics* (2023), a total of 530,333 prisoners were confined as of 31st December 2023, in various jails across the country.

The Prison Statistics Report of 2023 shows a drop in the release of undertrial prisoners from 1,548,143 in 2022 to 1,535,182 in 2023, a decrease of 0.8%. Additionally, 19,766 undertrial prisoners were released after acquittal on appeal to higher courts. Similarly, under section 436A of the CrPC (479 of BNSS), 656 undertrial prisoners were released on bail in 2023 after serving half of their maximum sentence. The data clearly indicates that the slow functioning of the judiciary, insufficient legal aid representatives, and incompetent judges at the lower courts are significant factors contributing to the high number of undertrial prisoners.

Education and poverty:

As per NCRB Data, the prisoners who had an education level below class X, prisoners with no education, and those up to class X but below graduation comprised more

than 85% of the total population of prisoners. Thus, it reflects the correlation between the level of education and incarceration. Individuals with less or limited education directly hamper stable employment, which contributes to commission and involvement in criminal acts. Moreover, their educational deprivation cramped their chances of obtaining a good legal representative and raising awareness about their own legal rights.

Lack of Judges and Slow Functioning of the Judiciary

One of the most prominent and critical factors contributing to prison overcrowding in India is the acute shortage of judges and the consequent slow pace of judicial proceedings. The Indian judiciary, despite being one of the largest in the world, continues to struggle under an enormous backlog of cases. According to the Indian justice report, both the higher and subordinate judiciary continue to operate far below sanctioned strength. As of January 2025, there were 21,285 sitting judges across all levels of courts, serving a population of 1.4 billion people. The data translate into a ratio of merely 15 judges for every million population, even though the Indian Law Commission (1987) report strongly recommended having at least 50 judges per million population.

At high courts, the sanctioned strength of the judges has actually declined over the years from 1,136 to 1,122 judges, ultimately hindering the proper

functioning of the courts. The issue of vacancies is very persistent in 16 of the 25 high courts functioning in India. The issue of a lack of judges is also very common in subordinate courts, which mainly handle the bulk of criminal trials and undertrial cases. In the subordinate courts, out of 25,771 sanctioned judgeships, only 20,478 are occupied, which is a shortage of more than 5000 judges that ultimately affects the idea of speedy trial and justice and contributes to prison overcrowding. The vacancy rates of judges throughout the state have remained stubbornly around 21–22 per cent since 2018–19, with some states even recording steep increases.

Non-Utilisation of the Prison Budget

One of the prominent issues that causes prison overcrowding is often overlooked in India; that is, the non-utilisation of the allocated budget by the government for the infrastructural development of the prisons at different levels. The prison statistic report of 2023 reveals that despite an allocated budget of ₹10,035.6 crore for prison development across the country in FY 2023–24, only ₹8,834.6 crore (88%) was actually utilised to construct and develop the accommodation capacity of the prison within India. The gap between allocation and utilisation is more visible, especially in the aspect of infrastructure.

Consequences of prison overcrowding

The consequences of prison overcrowding are far graver and more dangerous than we can imagine. Where, due to prison overcrowding, the prisoners have to face issues related to health and hygiene, mental

and physical health, violation of human rights, and staff shortages to deal with prison overcrowding.

Human Rights Violations of the Prisoners:

Prison overcrowding has emerged as one of the prominent and serious means of human rights violations of prisoners. Several universal human rights instruments and international standards set minimum legal and humanitarian requirements for the treatment of persons deprived of liberty, including instruments such as the UDHR, the ICCPR, and the Nelson Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners). The instruments together embody clear and widely recognised norms that ultimately promote the idea that confinement must not amount to inhuman or degrading treatment, but the basic needs and desires of the prisoners must be fulfilled, which includes basic health and hygiene, protection of the vulnerable groups, and providing them with access to justice.

The gravest consequences of prison overcrowding are erosion of the right to fair trial and right to personal liberty, both of which are recognized as fundamental human rights. At the international level, the principles find several expressions under article 9(1) and (3) of ICCPR, which was ratified by India in 1979, explicitly prohibiting the arbitrary arrest and detention of an individual. Article 9 of UDHR and the Nelson Mandela Rules also echo the obligation that the pre-trial detention needs to be a measure of last

recourse, thus, must be utilised once necessary and for the shortest possible duration. Overcrowding of prisons shifts the focus from reformation of the prisoners towards fulfilling their basic needs, such as sleeping areas and food requirements, which ultimately increases the risk of recidivism and contravenes the rehabilitative purpose that international standards require.

Health and Hygiene:

The inadequate space in prisons directly hampers the health and hygiene in prisons. With an occupancy rate of 120.8%, the allocation of proper spaces for prisoners is always being questioned, as is the shortage of toilets and bathrooms, cleaning staff, sanitation for both women and men, and water facilities, leading to poor sanitation and related diseases. According to the report of the NHRC, which is more concerned about prison conditions, inadequate spaces in the prisons, transmission of diseases due to insanitation, lack of clean water, lack of cleanliness in kitchens, and the overall condition of prisons that are being hampered due to overcrowding. The report also recommended urgent upgrading of the infrastructure. This problem is addressed by the Model Prison Manual (2016) under the rights of prisoners: "*Right to the Basic Minimum Needs*"

However, the fulfilment of these rights remains largely untapped due to administrative lapses and a shortage of prison staff. It is pertinent to mention here that for women, this problem is very

serious when it comes to their menstrual health and hygiene. According to the data, the majority of women prisoners are aged 18-30 years (13,310 out of 23,157 female inmates), followed by 30-50 years (7,947 inmates). The data clearly shows that the young women between the ages of 18 and 30 years are more prone to having an active menstrual cycle.

Thus, the overcrowding affects the living conditions, violates human rights, and affects the hygiene of the prisoners. A hygiene crisis is the byproduct of administrative lapses and inadequate spaces for the inmates within the prison.

Mental and Physical Health:

The inadequate infrastructure, unhygienic environment, and bad living conditions of the prisons affect the prisoners both mentally and physically. According to the NCRB data, “the major causes of death of prisoners are heart problems (514), lung-related ailments (276), liver-related ailments (102), cancer (90), tuberculosis (TB) (86), kidney problems (76), brain haemorrhage (55) and drug/alcohol withdrawal (39)”, due to overcrowding conditions speeding up the blow-out of both transmissible diseases, like tuberculosis, diarrhoea & skin disease, as well as nontransmissible diseases, like cardiovascular diseases and lung problems.

Mental health is a grave problem in prisons, as the toxic environment among the overcrowded people is very hard to counter. To evaluate this, we can see the data of NCRB's Prison Statistics India

2023, 9,095 inmates were reported as mentally ill out of a total of 530,333 inmates, out of which 58.2% (5,293) were undertrials. The number of undertrial prisoners clearly shows the psychological impact on them due to prolonged pre-trial detention, which impact is mainly caused by uncertainty about the judicial delays and bail delays, which shall be the major reasons for this uncertainty. The impact on mental health can also be evaluated through the number of suicides reported in the data. In the prison, 96 out of 150 deaths were caused by suicide in the prisons. This shows the incompetence on behalf of the prison authorities in not providing the proper medical staff to the prisoners. Section 31(2) of Mental Healthcare 2017 Act, mandates the training of prison medicinal staff so as to deliver the elementary and reserve medical care. The actual implication of this is not matched in the prison.

These conditions collectively violate the right to life and personal liberty of a person under Article 21. Also, in the case of *Carles Sobhraj v. Superintendent of police* stated right to life embraces human living condition under Article 21 in prisons. Therefore, overcrowding, shortage of medical staff, and poor infrastructure affect the mental and physical health of the prisoners.

CHALLENGES OF PRISON OVERCROWDING

The prominent challenges that are faced in prison development are mentioned below:

Judicial delays and backlog of cases:

One of the most persistent challenges in India is the slow functioning of the judiciary and the long trail of pending cases in the system. The prison overcrowding is an outcome of judicial delays and judicial backlogs, and this systemic congestion has cascading effects across the entire criminal justice system, from prolonged pre-trial detention and prison overcrowding to erosion of public faith in the judiciary. Despite the guarantee put forward under Article 21 of the Constitution in the landmark judgement of Hussainara Khatoon vs. State of Bihar, it empowered the idea of a speedy trial as a fundamental right of every citizen.

Even in the Supreme Court in the year 2023, a bench of 34 judges presided over an estimated 70,000 cases, reflecting the overwhelming backlog of judicial caseload. According to the prison statistic report of 2023, a total of 12,623 convicts were released after the acquittal on appeal from the higher courts. The picture is quite similar for undertrial prisoners, where a total of 53,291 undertrial prisoners were released based on acquittal on the first instance, and 19,766 undertrial prisoners were released after the acquittal on appeal. A total of 656 undertrial prisoners were released under Section 436A of the CrPC during 2023. The data clearly highlights the slow functioning of the judiciary, and the lack of appointment of judges also digs the grave of undertrial cases deeper. The report also highlights the idea that both the convicted and the undertrial prisoners

were released from prison based on the acquittal passed by the court on the appeal made, which clearly shows that the judgements passed by the lower courts are erroneous in nature, and it ultimately puts the burden on the higher courts.

At the high court level, State of U.P. archives almost 4,50,000 cases awaiting across decade, trailed by Maharashtra (almost 1,70,000) and State of M.P. (1.4 lakh), which ultimately limit the legal aid, and where delayed justice becomes the norm rather than the exception. Furthermore, the judicial delays also affect the functioning of the prison administration by imposing structural challenges. It creates a bottleneck that traps inmates in custody long after they are eligible for release.

Caste and Illiteracy

The challenges that are continuously seen in the prisons are caste-based and educational background-based. Based on caste, Data shows that collectively the percentage of SCs, STs, and OBCs in jail is more than 64%, amounting to more than half of the prison inhabitants. In many prison manuals across the country, the segregation of work based on their caste was mentioned, and this segregation has been raised as an issue recently in the Supreme Court in case of Sukanya Shantha v. Union of India, which prohibited caste-based labor segregation. Chief Justice Chandrachud observed, "No group is born as a scavenger class." Although the implementation of this ruling is still difficult due to overcrowding, staff

shortages, and the rigid mindset of the prisoners. The mindset of inmates is deeply ingrained with the thought of discrimination. These factors violate the Articles 14 and 15 in prison, as stated in judgement *Sunil Batra v. Delhi Administration*, that prisoners retain their fundamental rights even behind bars.

Staff shortage to deal with prison overcrowding:

One of the most urgent but less-addressed aspects of the prison crisis is the perpetual lack of prison officials to oversee and guard prisoners. The sanctioned strength of jail staff was 94,458, whereas the actual strength was 63,490 as of 31st December, 2023, because vacancies could not be filled up. The prison being run at a figure of 120 per cent of its sanctioned capacity, the staff-inmate ratio has turned perilously askew, leading to declining living standards, jeopardised safety, and gross breaches of both administrative effectiveness and human rights norms. Overcrowding in prisons has significantly burdened the workload of available staff, who are expected to perform multiple tasks beyond their designated roles. In most states, the prisoner-staff ratio is so skewed that one prison officer is left to oversee several hundred prisoners, way over the internationally accepted ratios prescribed by the UN under the Nelson Mandela Rules, which demand an adequate number of well-trained personnel to provide order and humane treatment.

The Model Prison Manual suggests staff-to-prisoner ratio of one correctional officer

per 200 prisoners. As of 2022, the national average ratio is only one officer per 699 prisoners. For the country to meet the suggested benchmark, the country needs 2,866 correctional officers, but it has only 820. On top of that, the medical staff situation in prisons is also pathetic. Sandwiched amongst 2012-22, certified strength of medical practitioners rose up to 1,290 (from erstwhile 1,052), but the actual practicing number of doctors went up only from 618 to 740, leaving a vacancy rate of approximately 41%. The Model Prison Manual establishes a suggested ratio of 300 prisoners per doctor, but by 2022, the average in the country was 775 prisoners per doctor, underscoring the continued difficulties in providing healthcare within the prison systems.

The lack of trained prison personnel, coupled with persistent overcrowding, has seriously eroded the welfare and reformatory role of Indian prisons. With few staff members, most institutions function only to contain, dropping their reforming role. Vocational and educational programmes, key to reintegration, are regularly put on hold as teachers and welfare officials are diverted to custodial duties.

Non-fulfilment of the Model Prison Manual, 2016, and lack of up-to-date data:

Despite the framework laid down under the Model Prison Manual 2016, the ground level of implementation is still missing out. The NCRB's data showed a very different picture on the ground level, even though the framework of the model prison manual was

laid down in 2016. Despite the fact that several states have adopted the Modern Prison Manual 2016, the number of inmates, undertrials, inadequate infrastructure, lack of education, vocational training, shortage of budget, shortage of staff, and rights of prisoners are still missing out in an actual sense. Most of the state's prisons still follow an outdated jail manual, and overall culture and day-to-day life are still guided by the Prison Act, 1894. Main causes of non-fulfilment are overcrowding, lack of accountability in the system, and the unchanged mindset of inmates.

Thus, the data of the NHRC and prison statistics in India clearly show the ineffectiveness of any standards of the Modern Prison Manual 2016. Work segregation, unhygienic conditions, inadequate infrastructure, lack of education and vocational training, and mental health issues are still persistent issues in the prison.

Case study of Tihar jail through the lens of the Central Jail Report of 2022 by the Government of NCT of Delhi

Tihar Central Jail, situated in New Delhi, the capital of India, is recognized as Asia's largest prison complex. This facility comprises sixteen central jails, along with a district jail located in Rohini. Notably, among the central jails, jails 6 and 16 are designated specifically as women's facilities. According to the prison statistical report for 2023, the total accommodation capacity of the entire complex is 10,026 inmates, which includes the district jail in Rohini.

The history of the prison can be traced back to the year 1937. Until 1966, managerial regulator of Jails of Delhi was Punjab Government, and it got shifted to Delhi Administration (in 1966). Whereas later, in 1988, the drafting and enforcement of the Delhi Jail Manual empowered the Delhi administration to regulate the prison.

Table: Evolution- Delhi Prisons (Tihar Jail)

1958	Central Jail was custom-built at Tihar per certified capacity of 1273 inmates.
1990	District Jail raised up to Central Jail & got nominated as Central Jail.
1996	Central Jail 5 was commissioned per a certified strength- 750 inmates for keeping adolescent inmates.
2000	Central Jail 6 was custom-built exclusively with a view to house 400 women inmates.

2008	Building of the Mandoli Jail Complex with a view to accommodation approximately 35k inmates began around May, 2008. The specified date of accomplishment being December 2014.
2017	Jail 15, High Security Jail, began around March 2017. The sanctioned size of it being 248 internees. In July of 2017, Central Jail 16, women's prison bearing strength of 492 internees, inaugurated. Whereas during September, 2017, Central Jail-12 began via a sanctioned size with 980 internees. Far ahead during October, 2017, Central Jail-11 began its operations bearing a sanctioned size per 700 internees.

In present day, Tihar and Mandoli complexes collectively make the prison system one of the largest correctional homes, reflecting the evolution of Delhi's penal infrastructure from a single colonial-era jail to a network of sixteen central and district prisons. Despite these expansions, overcrowding, staff shortages, health care facilities, and accommodation issues remain prominent and unsolved issues. The trajectory of Tihar thus illustrates the continual struggle between expansion and congestion—a microcosm of the broader challenges confronting India's prison system.

Tihar Jail has been selected as a focal point for this paper due to its representation of the larger issues and ills besetting the prison system in India. It is one of the largest prison complexes in South Asia, hosting several central and women's jails under one unified administrative support. The unique framework in itself makes

Tihar Jail the very model in which some of the most critical challenges, such as overcrowding, shortages of personnel, inadequate infrastructure, and violations of human rights, can be examined. Tihar Jail also provides great insight into the successes and the systemic problems in penal institutions around the country.

Accommodation Issues Causing Prison Overcrowding in the Tihar Jail

The case study on the Tihar jail is mainly based on the Central Jail Report of 2022 by the Government of NCT of Delhi and the prison statistic report of 2023. Tihar Jail is the largest prison complex in South Asia, with 14 central jails and 2 women's jails, having a total capacity of 10026 prisoners. Yet the accommodation and prison overcrowding issue is very prominent, where, according to the prison statistic report of 2023, the total inmate population is 20077, which is double the accommodation capacity of the prison.

Further, in 2021, the habitation of prisons certified size being 182.47%, while during 2022, an occupancy of 184.49% was observed, and in the year 2023, the occupancy rate is around 200.2%. The data clearly shows a trend that the capacity of the prison is always half of the total accommodation of the prison population, and the deficit between the accommodation capacity and prison population is increasing yearly, which is ultimately leading to prison overcrowding.

According to the Prison Statistic report of 2023, Tihar has 14 centralised jails with a capacity of 9346, whereas the inmate population is around 19362 prisoners, which makes the occupancy rate of the central prison 207.2, which is double the accommodation capacity. The picture is no different in the women's central jails of Tihar, where the available capacity of the prison is 680, and the inmate population is 715, that is, an occupancy rate of 105.1.

The data reveals significant concerns regarding the population of undertrial prisoners, many of whom are incarcerated for extended periods that often exceed the potential penalties for their alleged offences. Additionally, many undertrial prisoners face substantial challenges in securing legal representation. Economic and social barriers often prevent them from obtaining adequate advocacy, which undermines their access to free and fair justice. This lack of support further exacerbates their plight within the judicial system.

Prisoner profile, Demographic, and Age-wise:

The concern of overcrowding is prominent in the Tihar jail too; the population of prisoners in different categories can help us to evaluate the actual reason behind the overcrowding. According to Central Jail NCT data, the total number of prisoners is 18,497, of which undertrial prisoners were 16,759 (90.51%) of the total prisoners as of 31/12/2022. So the large chunk of total prisoners were the undertrials. The reason for this is mainly the judicial delays, demography, lack of legal awareness, and education of the prisoners.

The demographic details of prisoners, including their education, occupation, and income, hold enormous value in evaluating the reasons they end up in jail. According to the report, more than 61% have an education below class X, and more than 25% constitute the illiterate population. The report clearly mentioned that “*the lesser the literacy, the more the crime seems to be a trend.*” The overcrowding here relates to the level of education they have, as inmates are not able to obtain legal counsel and are unaware of their own legal rights.

Repeat Offenders:

The repeater offenders, who end up in jail, are the big issue and contribute to the overcrowding and also show the systematic failure in the system. As per the data from the Tihar jail data by NCT Delhi as of 31 December, 2022, around 32% of the offenders in the prison are repeaters or habitual offenders during the year 2022. If

we deep dive into the data, we can analyse that the number of undertrials admitted during the year 2022 is 60,467, out of which repeater undertrials are 19,677. This leaves a deep remark on the prison administration and the offenders who were released by the court after completing their punishment, and even after that, they committed the offence and again ended up in jail, showing the lack of reformatory nature of the prison and ending the objective of jails or correctional homes.

Extortion Racket and Parallel Economy in the Tihar Jail

An exposé investigation on Tihar Jail reveals systemic corruption, as the jail functions not only as a detention zone but also as a hub of organised crime. Reports and petitions filed before the Delhi High Court also state that Tihar has become a den of extortion where there seems to be a jail economy running between prisoners and staff. It is evident that these official landlines, CCTV blind spots, and rackets of smuggled phones are used for criminal activities.

One high-profile case was that of businessman Mohit Kumar Goyal, who told the Delhi High Court in a petition he filed on being released from prison that while he was jailed in 2024, he had to pay ₹15 lakh as "protection money" to jail officials and the mob. The extortion was carried out with family-to-family bank transfers that were part of the prison racket and rewarded paying inmates with privileges at the expense of their

counterparts (such as extra phone and video call time) and punished the non-paying through threats or abuse.

Global Responses to Prison Overcrowding:

Several countries have successfully implemented reforms to address issue of prison overcrowding by means of alternative punitive strategies, rehabilitative frameworks, and judicial efficiency measures. In the United Kingdom, the country dealt with this issue by institutionalising community sanctions, probation, and electronic monitoring (GPS/radio-frequency tags) for low-risk and short-sentence offenders. Norway reduced the burden by implementing a rehabilitation-centric correctional model that prioritises education, psychological support, and humane living conditions, resulting in one of the lowest recidivism rates globally. The USA countered the issue through sentencing reforms and early-release mechanisms for non-violent offenders. Japan maintains low incarceration rates through swift judicial processes and robust community-based reintegration supported by volunteer probation systems.

By taking notes from these countries, India can adopt the measures of alternative sentencing, rehabilitation-orientated correctional practices, efficient pretrial processes, technological monitoring tools, and community-supported reintegration programs to reduce the burden of overcrowding.

WAY FORWARD TO REDUCE PRISON OVERCROWDING:

Infrastructural Development

1. **Capacity Expansion: Construction and Renovation of Prisons Based on Occupancy Rates and Inmate Demographics-** The prison administration, as well as the government, is required to study the empirical data available to study the occupancy and demographic distribution of the prison population, rather than the uniform construction of prisons. Renovation of old structures is equally essential to comply with the Model Prison Manual, 2016, and international compliances such as the Nelson Mandela Rules, as these measures will not only reduce prison overcrowding but will also help in protecting and restoring the dignity and safety of inmates living in substandard conditions.
2. **Digital Infrastructure and Technological Integration & Use of Video Hearings and Virtual Bail Hearings: Institutionalisation** An easy and cost-effective way to tackle the overcrowding is the institutionalisation of video conferencing for judicial proceedings, particularly for remand and bail hearings. The use of virtual hearings will reduce judicial delays, as well as reduce the logistical burden of transporting prisoners to and from court, and lower the security risks associated with physical movement.
3. **Implementation of a Real-Time Digital Prison Management System:** To counter prison overcrowding, a centralised digital prison management database must be created, as it will ultimately ensure real-time tracking of prisoners' case progress, bail eligibility, parole status, and rehabilitation records. One such prominent step taken by the government will be the *e-Prisons Project* initiated by the National Informatics Centre, but its uniform implementation remains limited. A comprehensive digital management system infused in the infrastructure would promote transparency, accountability, and data-driven decision-making in prison administration.
4. **Human Resource Infrastructure: Gender-Sensitive Infrastructure and Recruitment-** One of the prominent issues that goes under the radar when discussing prison overcrowding is the lack of infrastructure for female inmates. To address this issue, the government should provide women with skill training and financial support to help them start their own businesses and empower them.
5. **Staff Strength Enhancement and Professional Training:** The chronic shortage of trained prison staff in the prison system in proportion to the inmates, ultimately hampers the rehabilitation efforts. To overcome, the government is required to conduct mass recruitment of specialized personnel to provide mental health

support, address trauma, and facilitate vocational training that equips inmates for post-release reintegration.

6. **Budgetary Infrastructure and Fiscal Transparency & Ensuring Full Utilization of Allocated Budgets:** To properly utilize the budget, the government is required to adopt a monitoring system that can ensure proper utilization of the allocated funds and adopt a performance-based funding mechanism, linking fund disbursement to measurable outcomes such as infrastructure expansion and inmate welfare. At the same time, the government is required to conduct timely expenditure audits and should publicly disclose the financial data, thereby enhancing accountability mechanism.

Implementation Reforms:

1. **Judicial Strengthening and Legal Aid Expansion:** A major contributor to overcrowding prisons is the delay in trial proceedings, causing an overload on the judicial system. The issue can be resolved by appointing more well-trained judges and magistrates in the lower courts. Simultaneously developing and strengthening the free legal aid services via NALSA can ensure that undertrials are adequately represented at every stage of the process.
2. **Non-Custodial Sentencing and Alternatives to Imprisonment:** One

effective way to resolve the issue of overcrowding in prisons is to utilize non-custodial and alternative sentencing. Petty offenses or minor offenses account for a significant number of undertrial prisoners. Petty offenses such as minor theft, public misconduct, trespass, etc., can be curtailed with community-based sanctions. These measures are recognized in the Probation Act 1958, Model Prison Manual 2016, and Tokyo Rules 1990 as constructive non-custodial approaches, thereby directly reducing the overcrowding in prisons and help in achieving the rehabilitation and reformation.

3. **Rehabilitation and Reintegration Programs:** One of the essential components of reformatory prisons is rehabilitation and reintegration programs. As the idea is clearly reflected in the Model Prison Manual 2016 and the Nelson Mandela rules, incarceration or imprisonment aims to reform offenders and make them capable enough to sustain their lives after release. In India, due to the overcrowding, it becomes hard to rehabilitate prisoners.

Attitudinal/Behavioral Change:

1. **Gender Sensitization and Human-Centric Approach:** Due to overcrowding, gender sensitization, especially in terms of women, highlights the lack of basic facilities for them, highlighting the gravity of the issue. Facilities like poor menstrual

hygiene, limited access to female doctors or staff, absence of gender-specific staff such as the maternity wards, childcare staff, etc., and lack of gender sensitization training among male and female prison staff.

2. **Public and Community Engagement:** The main motto of the reformatory theory of punishment is the rehabilitation of prisoners rather than to make them commit any other crime. Due to overcrowding, the absence of a proper rehabilitation facility in the prison, and the dehumanizing treatment, the resentment and recidivism increase upon release because of the ill treatment by society towards them.

Conclusion

As Nelson Mandela aptly noted, *“No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”* This reminder underscores the urgency of reform and this eternal observation serves as a global directive, reminding all that the veracity of any society is indistinguishably allied to the state of its carceral systems.

With a view to move beyond the engrained penal cycles, the community must espouse a reformatory dream of criminal justice that stabilizes responsibility with consideration,

deterrence with reintegration, and execution with fairness. This alteration rests on several interconnected primacies. Systemic Equity forms the essential substance of any evocative restructuring. Access to justice cannot endure its dependency on economic standing. Intensifying the accessibility of capable and well-resourced legal assistance is vital to safeguard that marginalized & economically deprived people are not unduly ensnared within the criminal justice arrangement. Effective representation precautions the principle of parity and equality before law and thwarts protracted confinement ensuing from obliviousness of legal civil rights or the failure to steer composite judicial measures. Procedural proficiency is correspondingly critical. Investigation delays, experimental trial, and judgement often leads to undertrials flagging in custody for eons, sometimes even for time surpassing the maximum sentence for the supposed crime. Rationalization of jurisdictional progressions via amplified court capacity, scientific amalgamation, and case-management restructurings can meaningfully diminish this backlog. Rapid, fair and impartial adjudication not only supports the right to speedy trial rather also augments public faith in the justice arrangement.

Restorative replacements bids a broad-minded progressive pathway away from overreliance on confinement, predominantly for non-violent & first-time lawbreakers. Community service, probation, conciliation, and rehabilitative justice apparatuses accentuate accountability, victim compensation, and social recuperation rather than retribution. Such similar tactics reduces prison congestion, lower recidivism rates & recognizes that rehabilitation is often the most operative tool for long-term civic safety. Furthermore, Citizen-centric infrastructure demands for reimagining of correctional spaces. Prison reformatories must develop from places of mere incarceration into surroundings that supports reform as well as personal growth. A correctional arrangement that ranks human progress eventually serves not just inmates but civilization at large.

Meaningful change requires a coordinated approach that addresses both systemic and operational gaps. Expanding legal aid, accelerating judicial processes, adopting alternatives to incarceration, and investing in modern correctional facilities are essential steps toward sustainable improvement. Ultimately, reducing overcrowding has not been not merely

an administrative necessity rather a moral and constitutional imperative too: the measure of a justice system lies not merely in punishing crime but in upholding the dignity and rights of every individual within its care. Through sustained political will and informed policy interventions, India can move toward a prison system that is humane, just, and aligned with the principles of a modern democratic society. The pursuit of a humanitarian, gentle, compassionate and just prison system is a hallmark of a budding democracy. By nurturing continuous political will and executing evidence-based procedural intrusions, the international community can redefine justice as a tool for remedial healing and restoration, ensuring that the "lowest" amidst us are on no occasion the "forgotten" midst us.

REFERENCES

1. Charles Sobhraj v. Superintendent, Central Jail, Tihar, New Delhi (1978). (1978) 4 SCC 104 (Supreme Court of India).
2. Constitution of India (1950). Article 21 – Protection of life and personal liberty. Government of India. Available at: <https://legislative.gov.in/constitution-of-india>
3. Government of NCT, Delhi. (2022). Annual Central Jail Report 2022. Directorate General (Prisons), Tihar Jail.
4. Government of National Capital Territory of Delhi. (2022). Annual Central Jail Report (2022). Directorate General (Prisons), Tihar Jail.
5. Government of National Capital Territory of Delhi. Available at: <https://tiharprisons.delhi.gov.in/tiharprisons/history> (Accessed: 06 December, 2025)
6. Hussainara Khatoon v. State of Bihar (1979). AIR 1369, 1979 SCR (3) 532 (Supreme Court India).
7. Law Commission of India. (1987). One hundred twentieth report on manpower planning in the judiciary: A blueprint. Government of India, Ministry of Law and Justice, Department of Legal Affairs. Available at: <https://lawcommissionofindia.nic.in> (Accessed: 06 December, 2025)
8. Ministry of Home Affairs. (1980–1983). Report of the All India Prisoners Committee on Jail Reforms (Mulla Committee Report). Government of India. Available at: https://www.mha.gov.in/sites/default/files/PRV1_1TO40.pdf (Accessed: 06 December, 2025)
9. Ministry of Home Affairs. (2016). Model Prison Manual, 2016. Government of India.
10. National Crime Records Bureau. (2021). Prison Statistics (2019). Available at: <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2019&keyword=> (Accessed: 06 December, 2025)
11. National Crime Records Bureau. (2022). Prison Statistics (2020). Available at: <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2020&keyword=> (Accessed: 06 December, 2025)
12. National Crime Records Bureau. (2023). Prison Statistics India (2021). Available at: <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2021&keyword=> (Accessed: 06 December, 2025)
13. National Crime Records Bureau. (2024). Prison Statistics India (2022). Available at: <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> (Accessed: 06 December, 2025)

14. National Crime Records Bureau. (2025). Prison Statistics India (2023). Available at: <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2023&keyword=> (Accessed: 06 December, 2025)
15. National Human Rights Commission. (2024). Annual Report 2023-24. NHRC.
16. State of Rajasthan v. Balchand alias Baliay (1977). AIR 2447, 1978 SCR (1) 535, (1977) 4 SCC 308 (Supreme Court of India).
17. Sukanya Shantha v. Union of India (2024). 10 S.C.R. 493 (Supreme Court of India).
18. Sunil Batra Etc v. Delhi Admn & ors. (1978). 4 SCC 494 (Supreme Court of India).
19. Tata Trusts. (2025). India Justice Report 2025. Tata Trusts. Available at: https://indiajusticereport.org/Press_Kit (Accessed: 06 December, 2025)
20. The Hindu. (2025, August 18). Tihar Jail, India's largest prison, under the scanner for extortion racket. Available at: <https://www.thehindu.com/news/cities/Delhi/tihar-jail-indias-largest-prison-under-scanner-for-extortion-racket/article69945034.ece> (Accessed: 06 December, 2025)
21. The Probation of Offenders Act, 1958, Act No. 20 of 1958.
22. UN. (1966). International Covenant on Civil and Political Rights (ICCPR). UN GA Res. 2200A (XXI).
23. UN. (1990). United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). UN General Assembly Resolution 45/110. Available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf> (Accessed: 06 December, 2025)
24. UN. (2015). United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules). UN General Assembly Resolution 70/175.
25. United Nations. (1948). Universal Declaration of Human Rights (UDHR). UN General Assembly Resolution 217 A (III).

BOOK REVIEW

**Anger of a Man Insanity of a Woman; Aryahi Srivastava.
Whitesmann Publishing, 2025; ISBN : 978-93-48904-36-2**

Prof. Balraj Chauhan and Deepshikha Trivedi***

The Gendered Gaze of Culpable Homicide: Provocation, Cumulative Rage, and the Law's Pathologizing of Female Agency.

I was initially drawn to this book, *The Anger of a Man, Insanity of Women*, by its compelling title and the distinguished background of the author, Aryahi Srivastava, who holds a postgraduate degree from the ILI New Delhi and has pursued a course on Protection of Child Rights from Harvard University, USA. My initial expectation was that the book would structure a comprehensive legal argument focusing on existing defences under the BNS 2020 or the IPC, such as the defence of unsoundness of mind, irresistible impulse, or sudden and grave provocation, particularly in the context of battered women. I anticipated a detailed exploration of the evolution of jurisprudence, potentially comparing approaches across different jurisdictions, like the application of the Durham Rule, to suggest clear paths for law reform.

However, upon reading, the book shifts its focus. Instead of structuring a legal argument based on providing the defence of the unsoundness of mind, sudden and grave provocation, or for reforming the law to bring it in tune with the Durham Rule, the book offers a deep psycho-social analysis of patriarchal contexts. It meticulously explores how violence emerges within this framework, how the aggressor and victim are perceived under the law, and develops the author's core philosophical stance on the Victimhood Paradox. The book eloquently argues for rejecting the practice of blatantly bestowing victimhood on women, which paradoxically avoids recognizing their genuine anger and agency. While the idea that the law operates with a patriarchal lens that biases its view of women aggressors is insightful and generally correct, the characterization sometimes feels incomplete, and the reliance on this lens to explain all judicial bias appears to falter in latter chapters. The work would benefit from more rigorous legal analysis, particularly regarding the need for procedural reforms like the introduction of expert opinion evidence to fully convey that the women's intention was often to free themselves from continuous, multi-faceted torture (physical, mental, emotional, sexual), reaching a point where the mens rea component of the offense might be negated. Ultimately, this book successfully opens a crucial new avenue for research and discussion in this field, highlighting the imperative to understand the complex emotional reality of women driven to violence.

* Former VC, NLIU-Bhopal, RMLNLU- Lucknow, DNLU- Jabalpur, State Head UP CRISP.

** Research Scholar, Faculty of Law, University of Delhi.

This incisive work systematically dissects the gendered biases inherent in the application of the Indian Penal Code's defence of provocation, primarily found under Exception 1 to section 300 of the Indian Penal Code, 1860 (now Section 101 of the BNS, 2023). The author commences in Chapter 1: The Nuance of the "Victimhood" Paradox by establishing a crucial legal and socio-psychological dichotomy. Provocation, legally intended to partially excuse violence by reducing the charge from murder to culpable homicide not amounting to murder, is demonstrated to be anything but neutral in its application. The core argument is the Victimhood Paradox: a phenomenon compelling women who kill their abusers to demonstrate prolonged suffering and psychological breakdown (victimhood) to secure legal relief. Yet, this very legal process simultaneously strips her of moral agency, reducing her to the label of "mad, bad, or sad" rather than an "informed agent" capable of righteous rage. The author starkly contrasts the judicial acceptance of male rage—often excused as "righteous" or a "reasonable" response to threatened honour—with the consistent tendency to treat female anger as mere pathology. This asymmetry is powerfully illustrated by the landmark case of *R v. Kiranjeet Ahluwalia*, where the court, despite acknowledging years of cumulative abuse, ultimately granted her defence on the basis of "mental infirmity" or Battered Woman Syndrome. By pathologizing her rage as a symptom of a broken mind, the court failed to validate it as a legitimate, provoked response to decades of systemic violence. The chapter concludes that this fundamental asymmetry—which excuses male violence while medicalizing female response—is deeply rooted in socio-cultural biases that permeate judicial discourse, necessitating a radical and feminist alteration in legal interpretation to acknowledge women's anger as a "normal behavioural feature" of the human condition.

Chapter 2: Understanding Masculinity and its Relationship with Violence serves as the theoretical fulcrum of the entire work, meticulously turning the analytical lens onto the social construct of masculinity and its embedded, violent link to the law. The author skillfully deconstructs masculinity, defining it as a "socially manufactured performance" that inherently equates manhood with emotional control, social dominance, and a structural "entitlement" to aggression. The chapter's critical intellectual contribution is the theory of "dual violence": men are first victims of the social order that demands rigid hypermasculine conformity (structural violence), and this resulting anxiety over concealing their fundamental weakness, labeled "impotent bigness," then manifests as outward violence against subordinates (external violence). The judiciary, in turn, historically validates this aggression, effectively converting male sexual insecurity into legal sympathy. This bias is glaringly evident in Indian case law, such as *Sultan and anr. v. State of Rajasthan*, where the court validated honor rage leading to murder, and even more explicitly in *Changdeo v. State of Maharashtra*. In the latter, the court granted the provocation defense solely because the victim's words—calling the accused "impotent"—threatened his fragile masculine identity, underscoring how male anxiety

and ego are toxically prioritized over the victim's right to life and bodily integrity. The author's conclusion here is unequivocal: this ingrained judicial reasoning grants the aggressor an unearned victimhood, while the actual victim is deemed to have been "asking for it," thereby sanctioning the systemic exclusion of the "other" from the realm of justice.

Chapter 3: Honour, Anger and Masculinity profoundly extends the examination of male aggression by characterizing the preservation of familial honour as an "inherited" masculine duty, thereby rendering the resulting violence a "virtuous conduct" seemingly compelled by social reason. The central failing critiqued here is the court's persistent refusal to assess the propriety of the provocation—that is, whether the honour breach itself was morally justified—focusing only on whether the aggressor lost self-control. The systemic patriarchal understanding is highlighted in *Anek Singh v. State of Uttar Pradesh*, where a son murdered his widowed mother for pursuing an intimate relationship. The fact that the state itself charged the offense as the lesser s. 304(I) IPC (culpable homicide not amounting to murder) and framed the relationship as "illicit" demonstrates a pervasive, institutional perpetuation of the patriarchal ideal that denies a woman's sexual autonomy, even in widowhood. The hypocrisy of granting aggressors victimhood is further compounded by judicial inconsistencies, such as in *Ayyangar v. State of Tamil Nadu*. The court rejected the provocation defense but on the convoluted reasoning that the accused did not appear angry enough and had sufficient time to "cool off," missing the author's crucial point that anger, particularly latent, existential rage, can accumulate and is not always expressed as a visible, momentary frenzy. Furthermore, the court in *Shamsher Singh v. State of U.P.* openly upheld a toxic social hierarchy by granting provocation when a son-in-law killed his uncle-in-law for merely slapping him after he was found abusing his niece. The court's reasoning—that the "respectable position" of a 'damaad' was sufficient grounds for murderous rage—underscores how legal discourse validates anti-social, gendered dominance rooted in familial hierarchy.

Chapter 4: Violence, Femininity and the Defence of Provocation confronts the direct, painful consequences of this gendered jurisprudence, arguing forcefully that female rage is consistently categorized as an "abnormality"—a "symptom of loss of her femininity"—at the expense of recognizing its legitimacy. The author demonstrates that this labeling reinforces women's structural subordination, as they are culturally expected to be "mute" and passive, with anger being associated solely with a "defect of reason" (insanity). The chapter champions the concept of "cumulative provocation" as the necessary feminist interpretation, contrasting it sharply with the pathologizing lens of Battered Woman Syndrome (BWS). In the revisited *Kiranjeet Ahluwalia* case, the court saw her decade of tolerance as "natural" but her moment of retaliation as "strange" and abnormal. The discussion profoundly illustrates the conflation of female rage with "fear" and "**helplessness**" in cases like *Girja Devi v. State of Gujarat*, where the woman killed her husband during a sexual assault/threat to their child. While the court recognized grave and

sudden provocation, it failed to draw the line to private defence and instead focused solely on her "fear," ignoring the "impulsive rage" brewing from years of abuse. Similarly, in *Shashirekha v. State of Karnataka* and *Povammal v. State*, the women's desperation, dependency-rage, and accumulated frustration were dismissed as "vengeance" or "agitation," thereby undermining the judicial opportunity to acknowledge that violence, though usually condemned, can be a sudden, explosive reaction to sustained, structural oppression that forces a woman to "shed her (culturally) imposed femininity."

Chapter 5: Women Who Kill: Who Are They? synthesizes the book's core arguments by focusing on the societal compulsion to "other" women who express anger and violence. The author posits that the judiciary's failure to see women's anger as legitimate results in their dual labeling: the "mad" woman receives sympathy due to her perceived helplessness, while the "bad" woman is outcast and deemed unfeminine, her agency rejected. The author correctly criticizes the notion that the extraordinary standard of prolonged violence set by *Kiranjeet Ahluwalia* is the minimum threshold for recognizing the defence. Instead, they assert that any violence and the resulting emotional reaction over a period of time deserve "rightful recognition under law," arguing that the legal system often merges complex emotions like Anger, Fear, and Disgust into the single, passive state of "helplessness," ensuring the response receives only pity, not justification. This critique is most acute in the analysis of the "other woman" complex, where the judiciary upholds patriarchal norms by excusing violence against women perceived as moral transgressors. This is glaringly evident in *Nawaz v. State* (CrI. A. No. 2153/2013), where the court excused murder because the victim called the accused a "prostitute", reasoning that "no lady would like to hear such a word." The author correctly condemns this as reinforcing the social mandate to label the prostitute realm as "immoral." However, this condemnation risks an internal conceptual loop: by rejecting the court's decision, the author diminishes the reality of internalized subjugation—the mandatory, intense shame women are conditioned to feel and react to when their honour is attacked, a reality she herself championed in earlier chapters. The author's strong condemnation of the court's reasoning thus risks negating the emotional truth of the honour-driven anger that defines patriarchal female experience. Likewise, the *Kusum Sagun Malmanke v. State of Maharashtra* judgment, by excusing the mother's murder of her co-wife daughter, strengthened the notion of "relational superiority" and institutionalized the rivalry between women for a man's space, failing to condemn the systemic creation of the competitor. Furthermore, the author's critique of the court's decision in *Valarmathi v. State* (CrI. A. No. 904 of 2012) highlights the rush to avoid outcasting women: while the author is correct to condemn the court for fabricating a non-existent provocation (doubt of "fidelity") under Section 114 IEA merely to grant mercy, the author misses the opportunity to apply her *own* superior cumulative provocation argument to the case's context, missing that the sudden rage to kill after an ordinary quarrel may indeed have been the eruption of

long-endured, latent emotional or verbal violence. The chapter concludes that the judicial tendency to "mechanically" apply the exception by "ticking the boxes of ingredients" based on social bias, instead of assessing reasonability and propriety, denies women the right to be recognized as informed agents.

Conclusion

The concluding section delivers the book's powerful final mandate: the judiciary must cease employing Exception 1 to section 300 IPC as a tool to either sympathetically reclaim women as victims or to validate toxic masculinity and their corresponding entitlements. The core flaw lies in the "test of reasonable person," which remains structurally blind to the "gendered factors and the biases" that define a woman's reality and limit her options. The book demands a legal shift from perpetual "sympathizing" with a woman's state—a posture that inevitably leads to her perpetual subordination—to genuinely "empathizing" with her rage, requiring a deeper judicial understanding of *why* she chose violence. The author insists on treating women as subjects of the law, recognizing that "The emotion of anger is universally present in all gendered bodies," and that violence is not "alien to feminine behaviour." The path forward requires judicial

wisdom to factor in all relevant circumstances and, by adopting a feminist reading that champions the concept of cumulative provocation, courts can utilize the defence to strengthen social progress. This compelling work urges the legal landscape to recognize a woman's criminal responsibility based on facts and her contextual position, rather than on the cultural expectation that she should "dare to commit barbarism and topple down the structural expectations for women," ultimately ensuring that every person, with all their human attributes and emotions, is treated as a deserving part of the socio-cultural mainstream.

BOOK REVIEW

Act and Omission in Criminal Law Autonomy, Morality and Applications to Euthanasia;
Roni Rosenberg. Routledge Publication, 2025; ISBN : 978-1-032-46173-1

G.S. Bajpai and Ankit Kaushik ***

The maxim *actus non facit reum nisi mens sit rea* translates superficially to the idea that an act cannot be guilty unless the mind is also blameworthy. A deeper examination of the maxim, however, uncovers several legal, moral and philosophical fault lines. For the element of *mens rea*, issues range from delineation and definition of standards such as intention, knowledge, negligence etc. (Morgan, 2016) to questions of strict liability which do away with the requirements of *mens rea* itself (Horder, 2016). The element of *actus reus* suffers from the problem of vagueness in terms of harmfulness and wrongfulness (Hirsch, 2014).

In terms of *actus reus*, much scholarly attention has also been paid to the issue of omissions vis-à-vis acts. At its most fundamental level, the criminalisation of an act prohibits the doing of the act. In contrast, the criminalisation of an omission pertains to the imposition of a legal obligation to perform an act. Akin to several major debates in criminal law and for reasons discussed in detail below, however, the discourse on act and omission falls squarely at the intersection of law and moral philosophy.

Driving home these moral philosophic and legal perspectives, Roni Rosenberg's work titled "Act and Omission in Criminal Law: Autonomy, Morality and Applications to Euthanasia" is a rich addition to the growing body of literature on the topic (Roni Rosenberg, 2025). The book is divided into two parts with nine chapters. The first four chapters are devoted to understanding the rationales and theories for and against distinguishing acts and omissions in terms of criminalisation. Chapters five to seven enunciate judicial discourse, types of duties, and punishments for omission offences. Chapter eight differentiates between conduct- and result-based offences while chapter 9 creates a distinction between passive and active euthanasia based on the foregoing discussion.

There is much in the book that merits compliments. The book first consolidates and then builds upon the theoretical premises that underlie the debate on acts and omissions. The same, combined with the use of a discursive but simple writing style, makes the book a fantastic addition to any curriculum pertaining to advanced courses on the general principles of criminal law. Therefore, this book is recommended to anyone looking to explore the landscape of omissions-related liability in depth. The book has earned a well-deserved place at the National Law University Delhi, both in its library and its courses on criminal law.

Vice Chancellor & Senior Professor at National Law University Delhi.
Assistant Professor, National Law University Delhi.

THEORETICAL DISTINCTIONS BETWEEN ACT AND OMISSION:

Rosenberg classifies the theoretical rationales underpinning the distinction between act and omissions under skeptical, moral, legal and autonomy. The skeptical theory argues that, *ceteris paribus*, harm caused by an act cannot be differentiated from a harm caused by an omission. The crucial requirement being that intention, motive, outcome and cost of harm prevention remain unchanged.

A commendable feature of Rosenberg's work is that his explanation of all the abovementioned theories is interspersed with thought experiments – some original, others inspired or replicated – to contextualise an in-depth analysis. To illustrate, the skeptical theory is instantiated in Rachel's (Rachels, 2006) thought experiment negating the distinction between killing and letting die. In this hypothetical scenario, Smith and Jones are both potential beneficiaries of a large fortune in the event of their respective nephew's demise. While Smith enters his nephew's bathroom and drowns him, Jones sees his nephew slipping and drowning in the bathtub but chooses not to save him. The motive, intention and outcome in both cases being the same, there is no distinction between the act in Smith's case from the omission in Jones' cases. Rosenberg then presents the critique and counterarguments to the experiment in an analytical attempt to dissect, deconstruct and construct the skeptical theories.

The moral theories too receive a similar treatment from Rosenberg. The moral rationales distinguish between an act and omission based upon the doer's (or the non-doer's in cases of omission) blameworthiness with respect to a harm premised upon a duty to prevent the same in cases of omission. The moral considerations are analysed by Rosenberg on grounds of liberty, causation, harm to victim and, dominance. Detailing and analysing Rosenberg's discussion of all themes within the confines of a book review is implausible. However, to exemplify the depth of Rosenberg's analysis, we may turn to his treatment of the liberty rationales.

One of the primary moral rationales for distinguishing between acts and omissions is the extensive intrusion on the agent's liberty by the latter. Rosenberg divides the liberty theory into two. First, a narrow theory of liberty that is concerned with restriction by an omission-based liability on an individual's liberty to the exclusion of any other act. For instance, if the law mandates us to save a drowning person, we are legally obligated to drop any activity we may be engaged in to save a drowning person. Rosenberg argues as against the same that such restrictions depend upon the definition of the offence and may not necessarily create such stringent restrictions. He exemplifies the same through the example of a ban on smoking which, although restricts a person from smoking, still allows the person to engage in other activities like singing and dancing. Even though the example does not quite fit within the theme, in as much as the ban on smoking is a prohibition of an act rather than a positive obligation, Rosenberg forwards the second liberty theory to check the extensive

intrusiveness argument against the narrow theory of liberty. This refers to the liberal understanding that extensive intrusiveness can be effectively checked through a legal requirement of a duty to act.

Rosenberg then develops the idea of a duty to act in the third chapter on legal rationales. This chapter highlights five core legal rationales for distinguishing between acts and omissions, three of which have been discussed in this review. Through the first rationale, Rosenberg proffers that even though the duty to act requirement may or may not emerge from a causation-based moralistic discourse, it finds a principled legal basis in the fair notice rationale underlying the principle of legality. The second rationale dictates that the duty act requirement emerges from a rule of lenity which requires statutes to be interpreted in a manner favourable to the accused. However, as correctly pointed out by Rosenberg, such rationale is primarily grounded in the moralistic framework discussed in the preceding paragraph.

The third legal rationale is the coordination problem which highlights issues of efficiency in coordination and justice. Rosenberg's treatment of the rationale, relying on Feinberg, is primarily focussed upon rescue offences. The coordination problem, for instance, justifies imposing the duty to rescue on specific individuals who can perform the rescue most efficiently and effectively. A parent is best situated to rescue a child, and a firefighter is best equipped to deal with a fire. According to this rationale, the law prioritises the duty to rescue on such a basis rather than creating a general duty to rescue. It is unclear, however, as to how the rationale would apply to the duty in cases of easy rescue. It is also apparent that the rationale focusses more on institutional arrangements i.e. searching for the most efficient path to reduce/prevent harm, rather than a deontological enquiry aimed at determining the scope and extent of a legal duty owed by all individuals.

THE AUTONOMY RATIONALE: DISTINGUISHING BETWEEN KILLING AND LETTING DIE

The fourth rationale is Rosenberg's original contribution to the distinction between act and omission. Viewing the fourth rationale, which he terms the Autonomy Rationale, from the vantage point of the debate on the prohibitions relating to killing versus prohibitions on letting die, Rosenberg proffers that there is a distinction between the values that underlie both. He argues that:

“The prohibition against killing encompasses broader and more significant values, particularly safeguards human life, constitutes our personal autonomy as individuals and as a society and enabling us to lead secure lives free from fear. By contrast, the prohibition against letting die does not guarantee our person autonomy, although in certain instances, it may expand it.”

Can this distinction be so simplistic? As the discussion on the principle by Rosenberg goes on to show, it is not. Rosenberg argues that the autonomy rationale differs from other rationales in that it does not focus on a causal distinction between acts and omissions, as both lead to harm. This may not be a strength of the principle but rather a critique. The autonomy rationale, through a singular and unidirectional focus on the extent of violation of autonomy by an act, loses sight of the intention and context of the act which other rationales consider. For instance, a withdrawal of life support may be reflective of respect for autonomy and dignity in certain instances of letting die more than the value of preservation of life through a prohibition on killing. The same was a basis of the legalisation of passive euthanasia in the Indian jurisdiction wherein J. Dipak Misra (Common Cause v. Union of India) opined that:

“But when a patient really does not know if he/she is living till death visits him/her and there is constant suffering without any hope of living, should one be allowed to wait? Should she/he be cursed to die as life gradually ebbs out from her/his being? Should she/he live because of innovative medical technology or, for that matter, should he/she continue to live with the support system as people around him/her think that science in its progressive invention may bring about an innovative method of cure? To put it differently, should he/she be —guinea pig for some kind of experiment? The answer has to be an emphatic — No! because such futile waiting mars the pristine concept of life, corrodes the essence of dignity and erodes the fact of eventual choice which is pivotal to privacy.”

However, it must be clarified that the decision cited above is not contrary to Rosenberg's analysis with respect to the ownership of the shield. Rosenberg proffers that the distinction between killing and letting die relates to the idea that if a person's death results from an intrusion of a safe space (a shield) the same is classified as a killing whereas if the person dies not as a consequence of such intrusion, the case would be one of letting die. The shield in *the Common Cause* is the requirement of an advanced directive or a living will requiring the person to consent to the withdrawal of life support at a point in time prior to such withdrawal.

ACTIVE AND PASSIVE EUTHANASIA:

Rosenberg hypothesises that “majority of rationales proposed for distinguishing between acts and omissions are not applicable to the distinction between active and passive euthanasia.” Rosenberg's analysis of the liberty, moral, legal and autonomy-based rationales in the context of active and passive euthanasia is agreeable in principle. For instance, Rosenberg is correct in stating that the liberty rationale in both its narrow and liberal conceptions cannot be applied because a physician cannot argue that their liberty to go about their profession is being restricted by their duty to rescue the terminally ill patient.

However, several nuances require deeper examination. The argument that passive euthanasia may be premised on considerations such as individual autonomy to choose how to die can be questioned. Rosenberg argues that such autonomy emerges from “*the right to decide how to live and die as long as it does not harm others.*” The same is premised on the conception of the harm principle propounded by J.S. Mill (Mill, 2008) and furthered by Joel Feinberg (Feinberg, 1984). The rationale underlying the criminalisation of suicide, however, does not necessarily emerge from the harm principle but rather from legal paternalism, wherein the state, as *parens patriae*, decides what is and what is not prohibited. Further, the claim that “*state should not protect the right to life when the individual to whom this right applies does not seek such protection*” may not apply in all jurisdictions, in as much as waiver of fundamental rights such as the right to be life may be constitutionally impermissible (*Basheshar Nath v. Commissioner of Income Tax*).

CONCLUSION:

Roni Rosenberg's work on act and omission in the context of euthanasia cannot be termed as anything but seminal in furthering the academic discourse. The author must be applauded not only for their contribution to the criminal law academy in substantive terms, but also for the work's exemplariness of how an analysis combining moral philosophy and legal discourse should be conducted. The book succeeds in presenting a systemic and insightful account of the various rationales underlying the distinction between acts and omissions as well as their (in)applicability to the distinctions between passive and active euthanasia while treading complicated themes such as autonomy and morality.

REFERENCES

- Basheshar Nath v. Commissioner of Income Tax, AIR 1959 SC 149.
- Common Cause v. Union of India, (2018) 5 SCC 1.
- Feinberg, J. (1984). *Harm to Others: The Moral Limits of the Criminal Law*. Oxford University Press.
- Hirsch, A. v. (2014). Harm and Wrongdoing in Criminalisation Theory. *Criminal Law and Philosophy*, 245-256.
- Horder, J. (2016). *Ashworths Principles of Criminal Law*. Oxford University Press.
- Mill, J. S. (2008). *On Liberty and Utilitarianism*. Bantam Classics.
- Morgan, N. (2016)). Fault Element of Offences. In Barry Wright and Stanley Yeo (eds.), *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*, (pp. 59-86). New York: Routledge.
- Rachels, J. (2006). Active and Passive Euthanasia. In B. S. (eds.), *Killing and Letting Die* (p. 112). Fordham University Press.
- Roni Rosenberg. (2025). *Act and Omission in Criminal Law: Autonomy, Morality and Applications to Euthanasia*. Routledge.

THE INDIAN SOCIETY OF CRIMINOLOGY

(Affiliated with the International Society of Criminology, Paris)

Regd. Office C/o. Department of Criminology, University of Madras, Chennai 600005

The Indian Society of Criminology was founded in the year 1970 with the objects to advance the study and application of criminology, criminological science (criminal biology, psychology, sociology and penology) and forensic sciences for the welfare of society and to facilitate co-operation among persons interested in the criminal phenomenon.

Membership is open to all persons interested in the study and application of criminology and forensic sciences. The Society publishes the Indian Journal of Criminology which is a prized publication. For procuring the Journal, Application for membership and all other correspondence should be addressed to:

The Secretary, Indian Society of Criminology
C/O Department of Criminology and Criminal Justice,
Manonmaniam Sundaranar University,
Tirunelveli-627012, Tamil Nadu, India

EXECUTIVE COUNCIL, (2022-2024)

PRESIDENT

Dr. Nirmal Kanti Chakrabarti,
Vice Chancellor, The West Bengal National
University of Juridical Sciences, Kolkata.

CHAIRPERSON

Dr. Purvi Pokhariyal,
Professor and Dean, School of Law, Forensic Justice
& Policy Studies, National Forensic Sciences
University.

VICE CHAIRS

Dr. K.P. Asha Mukundan,
Mumbai
Dr. Anil G Variath,
Mumbai
Dr. Beulah Shekhar,
Gandhinagar, Gujarat
Dr. Sarfaraz Ahmed Khan,
Kolkata
Dr. Syed Umarhathab,
Tamil Nadu
Dr. M.V. Nagarajan,
Chennai, Tamil Nadu

SECRETARY

Dr. K. Paramasivan,
Assistant Professor & Head
Department of Criminology and Police
Administration

TREASURER

Dr. M.D. Allen Selvekumar,
Assistant Professor, Department of Criminology,
University of Madras, Chepauk, Chennai.

EXECUTIVE COUNCIL MEMBERS

Mr. A.K. Azey Kumar Rhakul, Madurai, Tamil Nadu.
Dr. D. Murugesan, Madurai, Tamil Nadu.
Dr. Dipa Dube, Kharagpur, West Bengal.
Mr. Jayesh Kumar, Jodhpur, Rajasthan.
Dr. M. Srinivasan, Chennai, Tamil Nadu.
Dr. Nandini G Devarmani, Belagavi, Karnataka.
Dr. Nandkishor Santram Bhagat, Bhandara
Maharashtra.
Mr. Neeraj Kumar, Lucknow, Uttar Pradesh.
Dr. R.N. Mangoli, Belagavi, Karnataka.
Mr. R. Sambath, Tirumangalam, Tamil Nadu.
Dr. R. Sivakumar, Tirunelveli, Tamil Nadu.
Dr. Ramakrishnan. D, Madurai, Tamil Nadu.
Dr. Ravichandran D, Oragadam, Tamil Nadu.
Dr. S.M. Mahendra Simha Karna, Sagar, Madhya
Pradesh.
Mr. Vinoth E., Tirunelveli, Tamil Nadu.
Dr. Vipin Vijay Nair, Sonipat, Delhi NCR.

EDITOR, INDIAN JOURNAL OF CRIMINOLOGY

Prof. G.S. Bajpai,

INDIAN JOURNAL OF CRIMINOLOGY

Subscription Form

I would like to subscribe to Indian Journal of Criminology for _____ year(s).

Individual : **INR 500/- per year**
Institutional : **INR 1100/- per year**
Foreign : **US\$80/- per year**

(A sum of INR.100 should be included for postal charges in India and US\$5 for Air Mail for international postal charges) Payment should be made through NEFT/RTGS to the following account.

Bank Account Holder Name: **National Law University Delhi**

Bank Account No.: **1338145000011**

IFSC Code: **HDFC0001338**

Bank Name: **HDFC Bank**

In case of payment through Cheque/Demand Draft, kindly draw the Cheque/DD in favour of THE REGISTRAR, NATIONAL LAW UNIVERSITY DELHI, payable at New Delhi

Registered under GST (Yes/No). If yes, please provide the GST number

DETAILS OF SUBSCRIBER :

Name (In block letters) :

Designation :

Institution/Company :

Phone/Mobile :

E-mail :

Mailing address :

Payment details: :

RTGS/NEFT/UTR No. or :

Details of Demand Draft

Demand Draft. No.
Date
Drawn on
Amount

To procure the copies of the journal please contact:

Executive Editor

Indian Journal of Criminology National Law University,

Delhi Sector-14, Dwarka, New Delhi-110078

www.nludelhi.ac.in +91 011 28035818

E-mail: indianjournalofcriminology@gmail.com



INDIAN SOCIETY OF CRIMINOLOGY
Department of Criminology, University of Madras
Chepauk, Chennai-600005, Tamil Nadu, India
Website : www.isc70.org

NATIONAL LAW UNIVERSITY, DELHI
Sector-14, Dwarka, New Delhi-110078
Phone : +91 011 28035818
Website : <http://www.nludelhi-ac.in>