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School of Law, Woxsen University
Hyderabad, India

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HYDERABAD, INDIA**

Woxsen Law Review Volume 2: 2025

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Woxsen Law Review 2025
School of Law, Woxsen University

FROM THE EDITOR'S DESK

Dear Esteemed Authors, Readers, and Legal Community,

It is both an honor and a privilege to present the Woxsen Law Review (WLR) Volume 2, 2025, a culmination of rigorous scholarship, diverse perspectives, and intellectual rigor. This volume brings together groundbreaking legal scholarship, critical analyses, and innovative perspectives that address the evolving challenges of our legal systems including an Interrogation of the Legal Framework for Internally Displaced Persons in Nigeria, Addressing the Socioeconomic Hurdles of the BOCW Act's Implementation in the Hindi Belt, From Bytes to Rights: Navigating the Digital Divide in Pursuit of the Right to Information, Scars Beyond Skin: A Critical Examination of Existing Legislation, Law Enforcement, Judicial Response and Recommendations for Improvements, OTT Platforms in Digital Entertainment and Legal Issues and Tracing the Human Cost of Dust: A Case Study On Silicosis-Affected Workers in India. Each article reflects a deep engagement with contemporary legal challenges, offering fresh perspectives that inspire debate and intellectual discourse. I extend my heartfelt gratitude to our editorial advisory board and the entire team whose meticulous efforts ensured the highest standards of academic excellence. Your commitment to fostering meaningful legal scholarship is truly commendable. As we unveil the second volume, I invite readers to explore the wealth of knowledge within these pages and engage with the ideas that shape our legal landscape.

With sincere appreciation,

Prof. Nehal Ahmad

Editor-in-Chief

Woxsen Law Review 2025

School of Law, Woxsen University, Hyderabad

**SCARS BEYOND SKIN: CRITICAL EXAMINATION OF EXISTING
LEGISLATION, LAW ENFORCEMENT, JUDICIAL RESPONSE AND
RECOMMENDATIONS FOR IMPROVEMENTS**

*Mr. Anmol Kumar Shaw¹
Dr. Souvik Roy²*

ABSTRACT:

Acid attack or violence is one of the most worldwide problems which affects everyone irrespective of their creed, caste, sex or age. In the present scenario, violence is one of the most burning issues. Acid violence is considered such violence where the offender intentionally throws acid on the victim's body with a heinous intention of disfiguring, maiming or blinding him. However, it was also found that the victim is also suffering and undergoing through internal suffering and psychological traumas while the assailants who commits this heinous offence get minimal punishment for the commission of the heinous act. This offence is a gender-neutral offence but in India statistics shows that the percentage of female victim is more as compared to male victim. And as a comparison with the international scenario countries such as Bangladesh, Taiwan, Cambodia, and Pakistan the male victims here commonly affected due the commission of the offence of acid attack. Hydrochloric, Sulfuric and nitric acid is the most used acid in committing the offence of acid attack. The reason behind increase in the number of attacks is the reliable accessibility of this in the market with a lacuna of legislation to monitor and regulate the sale of acid and along with the present punitive legislation of Indian legal system is incompetent in curbing the offence of acid attack. The study will try to highlight the reasons behind the commission of the offence of acid attack long with its consequences behind the commission. The study will also make an attempt to compare the present legislation of India with other countries in relation to offence of acid attack.

Keywords:

Acid attack, violence, international comparative study, preventive theory of punishment, challenges faced by the victim of the offence.

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1. INTRODUCTION:

Acid violence is considered as such a heinous offence that is going to change a person's life forever. The violence of acid attack³ should not be considered as a gender specific crime rather than a gender-neutral crime, where the victims are both men and women. The main intention of the offender behind committing the offence of acid is to not to commit homicide but to give him lifelong scars on the body of the victim and which will eventually give him physical as well as psychological damage. The offender tries to attack the visible body parts of the victim, such as the face, neck and hand. The most commonly used acid behind the commission of this offence is *Sulfuric Acid (H₂SO₄)*, *Hydrochloric Acid (HCL)* and *Nitric Acid (HNO₃)* because of their cheap in price and easy accessibility in the market. In the international scenario, the offence of acid attack is being committed in countries⁴namely, India, Pakistan, Cambodia, Uganda, Colombia, Bangladesh, the United Kingdom and China. In countries like India, the victims are mainly women, and the crux is that the offenders cannot take rejection of a proposal of marriage or love, male ego, insecurity, frustration, patriarchal viewpoint of the society, etc. As per the report published by the *National Crime Records Bureau*⁵ the number of cases of acid attack in the year 2022 is 202, and the reason behind the commission of acid attack is the lacuna in the present legislation mentioned within our India Legal System, dealing with punitive measures and regulations dealing with monitoring the sale of acid in India.

Definition of Victim:

In general, the term 'victim' refers to those people who have had the very worst experience of injury due to any cause, and one of such causes may be crime.⁶

Definition of Acid

The term "acid" means any substance which has an acidic or burning nature, that is capable of causing injury leading to disfigurement or temporary or permanent disability;⁷

³ Scheme for Relief and Rehabilitation of Offences (By Acid) on Women and Children, s. 3(b).

⁴ Name of the countries where the offence of acid attack is still being committed, available at: <https://www.asti.org.uk/learn/a-worldwide-problem>.

⁵ National Crime Record Bureau, "*Crime in India, Statistics Volume 1, 2022*" (Ministry of Home Affairs, 2022).

⁶ Prof. N.V Paranjapee, *Criminology and Penology (including victimology)* 52, Central Law Publication, UP, 18th edition/2019

⁷ The Prevention of Acid Attack and Rehabilitation of Acid Attack Victims Bill, 2017, s. 2(a).

Definition of Acid Attack Victim

The term “Acid Attack Victim” A female who has been accused by attacked with acid by pouring of acid with the intention of causing injury or disfigurement of any part of her body or face.⁸

I. REASONS OF ACID ATTACK

As mentioned earlier, in India, the victims of acid attacks are mainly women, and therefore, it is also being found that the most common reason behind committing the offence of acid attack is “love rejection”⁹ In which the victim rejected the proposal of the offender, and as a result which the offender commits the heinous crime of acid attack to teach her a lifelong lesson. Other reasons which are being traced out behind committing the heinous offence of acid attack is traditional orthodox patriarchal mindset of the people of the society, the male demands sexual advancement from the woman or girl when they refuse to deliver such sexual advancement to the men it hurts their male and ego and as a result of which they commit the offence of acid attack and this statement is mentioned in the report submitted by one of the organization in India who is working on Acid violence named – “ *the Campaign and Struggle against Acid Attacks on Women (CSAAAW)*”¹⁰. In India it is somehow the patriarchal mindset of the society which states that the men will take all the decision and women needs to support the same and if women refuse or oppose such decision then it’s hampering the honor and ego the male and find this attitude as rebellious one and as a result of which they commit the offence of acid attack in order to teach them a lesson.

There are other reasons that are also behind committing the offence of acid attack which is marital disputes and dowry¹¹. It is defined as an orthodox system of providing financial advancement in way of money, goods etc. It is being practiced with a view that the daughter will remain peacefully at her in laws place These customs also depicts the orthodox cheap mindset of the society which proliferate that woman being economic encumbrance. The failure to perform such customs in order to satisfy the needs of the groom’s side results in the commission of acid attack against women. The lacunas present in our current legal

⁸ The Prevention of Acid Attack and Rehabilitation of Acid Attack Victims Bill, 2017, Section 2(b).

⁹ Parvathi Menon and Sanjay Vashistha, “*Vitriolage & India – The Modern Weapon of Revenge*” 2nd *International Journal of Humanities and Social Science Invention* 2 (2013).

¹¹ Dowry Prohibition Act, 1961 (Act. 28 of 1961), Section 2.

system of the country also became a reason behind the commission of the offence. The sections provided in *Indian Penal Code 1860, Section 326A* and *Section 326B* states about the commission and attempt to commit the offence with an imprisonment of ten years and increase up to life imprisonment and later the same section and punishment is being mentioned and provided under section 124 of the *Bharatiya Nyaya Sanhita 2023*. As the laws of the country are not stricter and lacunas leads to the commission of acid attack in India as cases are still registered under the late acts and section mentioned above¹² If discussed about the international scenario, the international law states that acid violence / acid attack is not a gender-based offence rather than a gender-neutral offence in which both men and women are the victims of the offence. As per one of the reports submitted by Acid Survivors Trust International it is being clearly stated by them that there are a total number 710 acid attacks that are being committed in the England and Wales which includes 339 women and 317 men and there are 48 victims where the gender remains unknown. This report clearly states that as men are also the victim subjected to the offence of acid attack¹³ and reasons behind the commission of the offence is business revenge, property related matters, rejection etc.

SLNo	Reasons of Attack	No. of Cases	Percentage %
1	Refusal of Marriage, Love and Sexual Affairs	38	13.01
2	Property and Money Dispute	20	6.85
3	Dowry	6	2.05
4	Family Dispute	18	6.16
5	Marital Disputes (non-compatibility, arguments, extra marital affairs etc.)	32	10.96
6	Rape, Sexual Harassment, Molestation, Murder	8	2.74
7	Enmity /Eve teasing	150	51.37
8	Others	20	6.85
	Total	292	100.00

¹² Sukumar Ranganathan, “Meerut teenage acid attack victim dies, accused arrested” *The Hindustan Times*, October 8th, 2024, available at: <https://www.hindustantimes.com/cities/others/meerut-teenage-acid-attack-victim-dies-accused-arrested-101728399922316.html>, (last visited on October 11th, 2024).

¹³ Bodhisatva Ganguli, *Acid Attacks Increase by 69% in England and Wales with More Women than Men Victims*, *The Economic Times* (Oct. 19, 2023), <https://economictimes.indiatimes.com/news/international/uk/acid-attacks-increase-by-69-in-england-and-wales-with-more-women-than-men-victims/printarticle/104563195.cms>.

The figure represents the reason of acid attack in India¹⁴

Sl.No	Relationship of Victim with the Accused	No. of Cases	Percentage %
1	Person from Paternal or Maternal Family (Father, Mother, Brother, Sister, Son, Daughter, Cousin)	69	10
2	Person from the family where victims is married (Husband, wife, In-Law)	174	25.3
3	Colleague, Neighbour, Friend, Lover, Partner, Tenant, Servant	190	27.6
4	Absconding-Person only met once/ saw once/ only talked/ once/ known but with no interactions/ from same Village, or city or town	234	34
5	Completely Unknown Person/ Accused not known	22	3.2
	Total	689	100

The figure represents the relationship between the victim and accused.¹⁵

II. CONSEQUENCES/ IMPACT OF ACID ATTACK

One of the most distinguished characteristics of acid attack is it being committed at both Public and Privates places and the consequences suffered by the victims are endless. However, the most important consequences are mentioned below:

Physical Consequences:

A person's individual physical presence refers to the outer presentation of a man which includes the physical or external appearance. The offender who commits the heinous

¹⁴ Pratibha Ambedkar, "Malham: A study on acid attack victims", 16 (April, 2022), *available at*: <https://bprd.nic.in/uploads/pdf/Final%20Project%20Malham%20-%20A%20Study%20on%20Acid%20Attack%20Victims.pdf>, (Last Visited on October12, 2024).

¹⁵ Pratibha Ambedkar, "Malham: A study on acid attack victims", 16 (April, 2022), *available at*: <https://bprd.nic.in/uploads/pdf/Final%20Project%20Malham%20-%20A%20Study%20on%20Acid%20Attack%20Victims.pdf>, (Last Visited on October12, 2024).

offence of acid attack commits such offence with an ill intention to disfigure the body of the victim and as a result of which the offender target such body areas which can be seen and which defines a person, such as face, neck, hand etc. Acid burns as compared to other bodily injuries is considered to be one the most dreadful injury which a person can suffer individually as it requires drastic medical expenses and treatment. At first when the acid is poured or thrown over a victim it feels like water but the post experience of the such activity is very dreadful as the acid burns the victim's skin followed by the flesh of the victim's body layer by layer by which the victim undergoes great pain and agony. The acid burns the multiple layers of skin of the victim and in more intense case the acid may enter into the bones of the victim resulting in the dissolving of the bone. The graveness of the injury solely depends on the power of the acid and the duration after it came in contact of the skin of the victim, even after being washed off from the water the burning sensation still remains. The sensation that victims feel after the acid is being thrown at her is like cutting the skin with burning hot knife. Acid Survivor; Foundation Uganda in one of its report submitted a data stating the damages suffered by the acid attack victim committed on them, as per their reports states that a victim suffered a total of 14% of bodily injury which includes area such as face which is being *affected (87%), head and neck (67%) upper limbs (60%) and chest (54)* and those victim whose face is being target in the offence of acid attack suffers (31%) partial or complete blindness.¹⁶

Psychological Consequences:

Psychological health is equally important as physical health of a person. And the same principles imply on the case of acid attack also. When an offence of acid attack is being committed against a person not only his physical health is being damaged but also his psychological health is also hampered/ damaged. The impact of acid attack not only hampered the victim, but it also psychologically hampered the mental health of their family members also. The post consequence of acid attack leaves an impression of terror, suffering and psychological damage in the mindset of the victim, the victims feel like a disabled person and need to spend the rest of his/her life with such disabilities and thus create a mindset to finish his/her life by committing suicide. The psychological symptoms which are faced by the victim are nightmares, depression, anxiety etc. The impact of acid

¹⁶ Acid Violence in Uganda, "A situation Analysis" available at: https://assets.website-files.com/659e8d981269f42141f3aede/65ad7a16e2f794d0e973c2cf_Uganda_ASFU_Situational_Analysis_Report_FINAL_Nov2011_1.pdf, (last visited on October 12, 2024).

attack even hampers the people of the society as it creates fear amongst them. When a acid attack is committed in a locality, it creates an environment of tension, stress and fear amongst the member of that locality, indirectly the offence is so heinous that it even hampers the psychological stability of the society also. If talked only about the victim psychological health and mindset, after the commission of acid attack on the victim, it derailed the span of victim from his normal life journey. They lose confidence to face himself as every time he looks into the mirror. The reason behind the losing confidence is the society believes in physical, or outlook beauty and personality is more important than an inner one and creates a huge impact in the mindset of the victim also. There is a drastic change in the behaviour of the society with the victim before and after the incident, before the incident the society behaves in a normal way with the victim but after the incident of acid attack committed on the victim, the society will start treating the victim as an “alien” and started to watch the victim with sympathy. This orthodox mindset of the society needs to be changed and the people instead of showing sympathy to the victim need to help them in rehabilitating their life so that even the victim don’t feel any sort of problem in realigning their life back to track.

Economic and Social Consequences:

Job, Financial Stability and Marriage plays an important role in a person’s life, as per society demands the persons who will get married need to be a proper abled person because of our society orthodox thinking as it will not allow or accept a disabled person as a better half. Outer look plays an important role in getting married. Therefore, the acid attack victims also faced these social consequences; society doesn’t accept the victims as their marriage partners and looks at them with sympathy. Due to their damaged skin or outer appearance as a consequence of acid attack, the victims find it difficult to find jobs as society or the employer will judge the victim due to their disabilities rather than qualifications and personalities. The economic and social consequences are concerned the victims of acid attack offences face huge discrimination in society and which needs to be changed. The society needs to change its views while dealing with the acid attack victim. We need to make our society a better and comfortable place so that it will be easier for them to do rehabilitation.

III. ACID ATTACK IN INDIA: LEGISLATIVE ANALYSIS

A declaration was passed by the *United Nation General Assembly* in the year 1993 named “*Declaration on Elimination of Violence against Women*” and the same was ratified by India and being ratified the declaration they countries under this convention need to follow the obligation. As per one of the **Article 4(f)** of the declaration states about the women safety and formulate certain measures to protect them and therefore the ratified countries need to form certain recommendation with regard to the same. Further it also states that separate provisions should be there in their country’s legal system which will grant punitive damages to the victim of an attack. As per **Article 253 of the Constitution of India**, empowers the parliament of India to make laws and keeping in mind about providing effects to these international agreements. Therefore, being ratified to the above-mentioned declaration, it became an obligation for India to manage the problem of acid attack. The offence of acid attack previously before The *Criminal Law (Amendment) Act*, 2013 was governed under the Section 320¹⁷, 322¹⁸, 325¹⁹, 326²⁰, and 307²¹ of India Penal Code, 1860. But then there was a lacuna in these sections in dealing with the heinous crime of acid attack. The heinousness of the crime was not determined under these sections mentioned above. And due to this reason after the Criminal Law (Amendment) Act 2013 two sections were added in the Indian Penal Code 1860 – Section 326 A of Indian Penal Code, 1860- Voluntarily Causing grievous hurt by use of acids etc. and Section 326 B of India Penal Code, 1860 – Voluntarily throwing or attempting to throw acid. Further after the introduction of new criminal law, the offence of acid attack is dealt under Section 124 of Bharatiya Nyaya Snahita, 2023 – Voluntarily Causing Grievous hurt by the use of acid, etc. and the maximum punishment mentioned under these sections are ten years of imprisonment. Despite of having such strict laws, public awareness with regard to the seriousness of the offence there is still rise the commitment of this offence and hence it being proved that the present law in our Indian legal system is incompetent in dealing with the offence of acid attack. And a table given below will state the number of victims that are being hampered due the offence of acid attack²²

¹⁷ Indian Penal Code, 1860 (Act 45 of 1860) Section 320- Grievous Hurt

¹⁸ Indian Penal Code, 1860 (Act 45 of 1860) Section – 322 – Voluntarily Causing Grievous Hurt

¹⁹ Indian Penal Code, 1860 (Act 45 of 1860) Section – 325 – Punishment for Voluntarily Causing Grievous Hurt

²⁰ Indian Penal Code, 1860 (Act 45 of 1860) Section – 326 – Punishment for Voluntarily Causing Grievous Hurt by dangerous weapons or means.

²¹ Indian Penal Code, 1860 (Act 45 of 1860) Section – 307 – Attempt to Murder.

²² Pratibha Ambedkar, “Malham: A study on acid attack victims”, 12 (April, 2022), *available at*: <https://bprd.nic.in/uploads/pdf/Final%20Project%20Malham%20-%20A%20Study%20on%20Acid%20Attack%20Victims.pdf>, (Last Visited on October 12, 2024).

Gender Dispersion:

SLN o	Name of the State/Union Territory	Victims Nos.				Victim %		
		M	F	Oth	Total	M	F	Oth
1	Andhra Pradesh	21	32	0	53	39.62	60.38	0
2	Arunachal Pradesh	2	0	0	2	100	0	0
3	Assam	19	19	1	39	48.72	48.72	2.56
4	Bihar	0	0	0	0	0	0	0
5	Chhattisgarh	9	4	0	13	69.23	30.77	0
6	Gujrat	15	33	1	49	30.61	67.35	2.04
7	Goa	1	1	0	2	50	50	0
8	Haryana	19	32	4	55	34.55	58.18	7.27
9	Himachal Pradesh	1	4	0	5	20	80	0
10	Jharkhand	17	6	0	23	73.91	26.09	0
11	Karnataka	14	25	0	39	35.9	64.1	0
12	Kerela	38	40	4	82	46.64	48.78	4.88
13	Madhya Pradesh	36	58	0	94	38.3	61.7	0
14	Maharashtra	0	0	0	0	0	0	0
15	Manipur	0	1	0	1	0	100	0
16	Meghalaya	1	3	0	4	25	75	0
17	Mizoram	0	2	0	2	0	100	0
18	Nagaland	0	0	0	0	0	0	0
19	Orissa	33	34	0	67	49.25	50.75	0
20	Punjab	47	29	0	76	61.84	38.16	0
21	Rajasthan	19	30	0	49	38.78	61.22	0
22	Sikkim	0	0	0	0	0	0	
23	Tamil Nadu	5	28	1	34	14.71	82.35	2.94
24	Telangana	3	15	0	18	16.67	83.33	0
25	Tripura	12	10	0	22	54.55	45.45	0
26	Uttar Pradesh	68	292	11	371	18.33	78.71	2.96
27	Uttarakhand	23	16	0	39	58.97	41.03	0
28	West Bengal	0	0	0	0	0	0	0

29	Andaman & Nicobar Island	0	0	0	0	0	0	0
30	Chandigarh	3	1	0	4	75	25	0
31	Daman & Diu, Dadra and Nager Haveli	0	0	0	0	0	0	0
32	NCT of Delhi	35	53	1	90	40	58.89	1.11
33	Jammu and Kashmir	6	5	0	11	54.55	45.45	0
34	Leh and Ladakh	0	0	0	0	0	0	

IV. VICTIM COMPENSATION SCHEME

As per **the Constitution of India**, the *right to life and personal liberty* is being granted under the **Article 21**. The article further interpreted that each individual of society have got the right to live their life with dignity and this every individual has got the right to enjoy their personal liberty but when the offence of acid attack is being committed against any person this fundamental right of that victim is being violated because of the post incident effects. The victims' right to live their life with dignity is being hampered as society started looking at them with sympathy in their eyes and due to their scar and burn marks on their face and body the lost confidence in freely moving around in society and their right to personal liberty is also being hampered. The **Article 41** of the Constitution of India, states that every state should make certain provisions in order to secure the right of work, education and public assistance for the people belonging under the category of disablement, old age and unemployment, keeping in mind about their state's economics and development limits and capacity. The post incident effect of acid attack is that the victims became disabled in performing their daily life routines and jobs and as per Article 41 of the Constitution of India the state should provide assistance to these victims also. The acid attack victim's rehabilitation is also becoming country's one of the most important concerns. In one of the orders that was being passed by *the Hon'ble Supreme Court of India* dated 18.07.2013²³ states that every state should provide compensation to the acid attack victims amounting of Rs. 3 Lakhs for their post incident rehabilitation and care cost. It also directed the state that in order to facilitate immediate medical attention and expenses the

²³ Laxmi v. Union of India & or., (2014) 4 SSC 427

State should pay Rs.1 lakh to the victim within 15 days of commencement of the offence. As per Section 357 of the Code of Criminal Procedure 1973, the State Government, in coordination with the Central Government, will draw up compensation schemes for the acid attack victims.²⁴ The Central Victim Compensation Scheme is being issued by the Central Government with the objectives to provide support and supplement to the States and Union Territories Victim Compensation Schemes. For the purpose of the same an amount of Rs. 200 crores are being fixed. The most important objective of the Central Victim Compensation Fund is to provide additional Rs. 5Lakh compensation to the acid attack victims in order to meet their medical and other expenses over and above the compensation paid by the State Territory²⁵

V. ROLE OF JUDICIARY IN CURBING THE PROBLEM OF ACID ATTACK

Delinquency faced by the victim of acid attack in the initial stages after the commencement of acid attack:

The Indian police play an important and proactive role in order to create crime free surroundings. But then these police also create problems and show incompetence in dealing with the case of acid attack. The measures taken by the police authority in dealing with the acid attack victim prove to be inadequate and insufficient. The victims of acid attacks are being harassed by the police while filing a case against offenders. They show incompetent behavior while handling an acid attack victim. The framing of investigation by the police officers in the case acid attack solely depends upon the victim's background, like for example if the victim had low financial status, then it will be very difficult for the victim to file the case against the offenders as the police officers. Our Indian legal system contains a lacuna that a separate guidelines or policy should be passed for the police officials and other medical and administrative officials in order to deal with the victim.

In the year 2013 after the happening of dreadful case of Nirbhaya Rape case²⁶, the government of India constituted a Justice Verma Committee with an objective to get suggestive reforms that can be implemented in the country's criminal justice system in dealing with the issue of acid attack. The reasons due to which the offence of acid attack is being discussed in the report of Justice Verma Committee and 226th Report of Law Commission is that the victim

²⁴ National Legal Services Authority, "NALSA (Legal Services to victims of Acid Attacks) Scheme, 8" (2016).

²⁵ National Legal Services Authority, "NALSA (Legal Services to victims of Acid Attacks) Scheme, 8" (2016).

²⁶ (2017) 6 SSC 1

not only suffered physical damage, but they also need to undergo psychological pain and damages. It is also being observed by them and mentioned the same in their report is that the country lacks proper burn hospitals to deal with the acid attack victims, the medical facilities in the country with regard to the acid attack victims are also very limited and the most hectic task which the victim faced is getting admission in one of those burn hospitals and the medical expenses remains an another burden over the shoulders of the victim as the medical treatment differs from case to case and so the expenses. The medical expenses faced by the victim are huge and then there are victims whose family's financial background is really poor and due to which they won't be able to provide proper treatment to the victim. These problems mentioned above need to be solved and for this proper legislation and policy are being required.²⁷

Role of Judiciary in curbing the problem of acid attack in India.

It was after the *Criminal Amendment Act, 2013* Section 326A and Section 326B was added in the *Indian Penal Code, 1860* providing a separate section for the offence of acid attack. But before the Criminal Amendment Act, 2013, the offenders who commit the offence were not punished in accordance with the heinousness of the crime. They were booked under Section 320 – Hurt of Indian Penal Code, 1860 which provided a minimal punishment of 3 years, and its offenders booked under this section can easily be released on bail.

a. Ravinder Singh vs. State of Haryana²⁸

The victim of this case was a woman. Her husband threw acid on her wife who refused to give him divorce, as the husband was into an extra-marital relationship. The refusal of not giving divorce became the reason of committing an acid attack on her by her husband. And as a consequence of the attack the wife suffered huge physical damage as her entire body was burned due to the acid and which leads to the death of the victim. Since in the case happened in the year 1975 when acid attack was dealt under section 320, 322, 325 and 307 of India Penal Code, 1860 and therefore the husband charged under Section – 307 of Indian Penal Code, 1860 – attempting to murder, but the life imprisonment was not imposed on the husband even after the wife's death. This case proves the lacuna of our Indian legal system dealing with the offence of acid attack.

²⁷ National Legal Services Authority, "NALSA (Legal Services to victims of Acid Attacks) Scheme, 4" (2016).

²⁸ Ravinder Singh v. State of Haryana SC 856 AIR (1975)

b. **Syed Shafique Ahmed vs. State of Maharashtra**²⁹

In this case also the victim of the acid attack offence was a woman. The offender was the woman's husband and another person. The reason behind the commencement of acid attack on woman was personal enmity of husband with his wife and as a result of which the husband (offender) poured acid on his wife with a vindictive mind of taking revenge from her. The victim suffered multiple injuries and burn on her body and as a result of which the victim succumbed to death because of the unbearable pain the victim undergone with. However, in this case the offender was booked under section 326 and 324 of India Penal Code, 1860. The punishment sentenced to the offender of the crime was 3 years of imprisonment along with a fine amounting to Rs. 5000/-. This case is another example of incompetency of our Indian legal system while dealing with the problem of acid attack.

c. **State of Karnataka by Jalahalli Police Station v. Joseph Rodrigues**³⁰

This is a Landmark case, in which for the first time an acid attack victim was paid huge compensation of Rs. 500,000/- for meeting the medical expenses. In this case the victim works in the office of the offender named Joseph Rodrigues. Being an employee of that company, the victim decided to quit her job, and this became the reason that her employer (offender) Joseph Rodrigues poured 1.5 liters of Sulphuric Acid on her. As a consequence, she suffered serious physical injuries to her body like the acid that melted her face, neck and shoulder and worst was that there was a hole in her head due to the acid in her head and as a result of all these injuries the victim suffered blindness for the rest of her life. The offender was booked under Section 307 – Attempt to Murder, of Indian Penal Code, 1860 and was sentenced to imprisonment for life.

d. **Laxmi Agarwal vs Union of India**³¹

Laxmi is a survivor and victim of this heinous crime of acid attack. She became the victim of the crime when her age was 15 years (minor), when two men (offenders) who threw acid on her the time she was waiting for a bus near Tughlaq Road in

²⁹ CriLJ 1403 (2002)

³⁰ State of Karnataka by Jalahalli Police Station v. Joseph Rodrigues s/o V.Z. Rodrigues (Decided in the Hon'ble High Court of Kerala on 22/8/2006)

³¹ (2014) 4 SSC 427

the year 2005. The reason behind the commission of acid attack on her because she rejected to marry the offender which hurts his male ego as a result of which he committed the offence on her. The name of the offender was Naeem Khan. The consequence of the offence was that victims who were all faced was burned due to the acid and she went through several surgeries and medical treatments. Due to this incident that committed on her she lost her childhood and along with this she was dropped out of her school. The behavior of the society changed totally towards her, people started mocking her and blaming her for doing some wrongful activity due to which she was being punished as a way of being acid thrown on her. Due to this inhuman behavior, she received from society she hides her face from them for 8 years. It was in the year 2012 where she gained back her courage after commission of Nirbhaya Gang rape case³². In the very same year, she filed a *Public Interest Litigation* (PIL) before the Supreme Court of India demanding new criminal law or amendment that need to be made in the then existing criminal laws in India, i.e. Indian Penal Code, 1860, Indian Evidence Act and Code of Criminal Procedure. Further, in her PIL she had also pleaded for laws and regulation and policies, dealing with the compensation that need to be paid to the acid attack victim and a separate legislation to monitor the sale of acid in India. In this very landmark case, the Supreme Court passed some important guidelines mentioned below:

- i. There will be prohibition in the counter sale of the acid provided that the vendor needs to maintain a register where the name of buyer and seller of the acid need to be mentioned.
- ii. Complete prohibition on selling acid to those people who are minors (below the age of 18).
- iii. The purchaser needs to produce proper Identification Card while purchasing a acid from any store.
- iv. The sellers of acid within an interval of fifteen days need to submit a report containing their updated stock with their concerned Sub-Divisional Magistrate and failing to which the stocks will be confiscated by the Sub-Divisional Magistrate and the seller will be imposed a fine of Rs. 5000/-.

³² (Mukesh & Anr. V. State (NCT of Delhi) &ors), (2017) 6 SSC 1

- v. The SC gives guidelines with regard to compensation that needs to be paid to the victim, amounting to Rs. 300000/- from the concerned State or Central govt. authority and out of the amount mentioned above Rs. 100000/- need to be given to the victim within 15 days from the commission of the incident in order to bear the immediate medical expenses of the victim and the balance amount of Rs. 2 Lakhs need to be disbursed within 2 months from the date of payment of the earlier amount at the earliest.

e. **Mahesh vs State by Melebennur Police on July, 2021³³**

In this case also the reason for committing the offence of acid attack on victim was love rejection. The offender named Mahesh aged 32 proposed the victim who was a woman for marriage but the victim's family rejected the proposal of the offender and as result of hurting his male ego he decided to take revenge from her. The offender intention was to disfigure her with a thought that if he won't be able to marry her non should be allowed to marry the women. On 31.01.2014 around 4.40 P.M the accused threw acid on the victim when she was proceeding on a public road, and as a result of which she suffered huge physical damages as she suffered burn on her face. Acid attack is violation of Article 21- Right to life and Personal Liberty mentioned in Indian Constitution. In this case also the offender named Mahesh was sentenced to life imprisonment and was booked under Section 326A, 326B and 307 of Indian Penal Code, 1860.

f. **Paramita Bera & Anr v. The Union of India & Ors on 8th September, 2023³⁴**

In this case a minor girl aged 17 years and her brother aged 14 years old was a victim of the heinous crime of acid attack. Compensation amounting to Rs. 4,50,000/- was awarded to the male minor victim whereas on the other hand the female minor victim hasn't received any compensation neither from the State Govt. nor from the Central Govt. The petitioner of this case which was the minor girl victim argued before the Supreme Court of India regarding her entitlement of receiving compensation. The Supreme Court of India in this case that as per NALSA's

³³ Criminal Appeal NO.512/2016(C)

³⁴ WPA 5633 of 2021

compensation scheme (2018), an amount of Rs. 7 – 8 lakhs compensation along with an additional 50% compensation because of the victim being a minor.

The Supreme Court also stated that uniform compensation needs to be paid to the acid attack victim across the states. The apex court in the landmark case of *Laxmi Agarwal vs Union of India*³⁵ have directed guideline with regards to the compensation amounting to Rs. 3lakhs need to be paid to the victim of the acid attack offence. The reason behind having a uniform compensation scheme in every state is properly stated by the apex court in the case of *Parivartan Kendra v. Union of India*³⁶, there are several other problems which the victim of acid attack faced as a post consequence of the offence which are mentioned below:

- **Limited Job Forecasts:** Due to facial or physical damage caused to the victim of acid attack. This causes a huge problem for them to find a stable job.
- **Social Stigma and Mortification:** Due to their, disfigure appearance they faced sympathy, humiliation and rejection from society.
- **Diminished Marriage Prospectus:** Again, due to their physical disfigured appearance the acid attack victim finds difficulties in getting their stable life partner.

These outcomes call for hefty financial support to aid in the victims' healing and rehabilitation. This is further supported by the NALSA compensation Scheme (2018), which promotes full recompense for victims of acid attacks.

g. Meerut teenage acid attack victim dies, accused arrested³⁷

The heinous incident of acid attack and murder happened in the village of Pathra, dist – Amroha, Meerut with a minor victim aged 14year scummed to death after her neighbors dragged her from her house then throw acid on her and beaten her mercilessly. The name of the accused was Prempal and his son Yogendra. Later on,

³⁵ (2014) 4 SCC 427

³⁶ (2016) 3 SCC 571

³⁷ Sukumar Ranganathan, “Meerut teenage acid attack victim dies, accused arrested” *The Hindustan Times*, October 8th, 2024, available at: <https://www.hindustantimes.com/cities/others/meerut-teenage-acid-attack-victim-dies-accused-arrested-101728399922316.html>, (last visited on October 11th, 2024).

the victim was admitted to Meerut Medical College where she died due to the injury caused due to acid attack. The probable reasons that are being traced out is financial disturbance and long-standing feud between the accused and victims' family. The accused was charged and booked under Section 137(2)³⁸, 124(1)³⁹, 115(2)⁴⁰ and 351(2)⁴¹ of Bharatiya Nyaya Sanhita.

VI. COMPARATIVE STUDIES OF LEGISLATION ON ACID ATTACK OF DIFFERENT COUNTRIES

The offence of acid attack is a global problem and its being committed and witnessed in maximum parts of the world such as United States of America, Sri Lanka, Malaysia, Italy, China etc. But then there are certain countries where the commission of the offence is too much such countries are Bangladesh, Cambodia, Uganda, India and Pakistan and among these countries the Bangladesh holds a maximum record for the commission of the offence. This paper will try to discuss comparative studies of the legislation of different countries.

BANGLADESH

This country holds the maximum number of records for the commission of the offence of in the world. In the mid-1990s, the boost in the cases of attack in this country were seen. In order to control the increase in the number of acid attack offence in the country, the government of Bangladesh has passed two acts named **The Acid Offences Prevention Act, 2002** and **The Acid Control Act, 2002**. These acts were being passed in order to neutralize the commission of the offence of acid attack in their country. Section 4⁴² of the act states the punishment provided for the commission of acid attack and as a result of which if the victim lost his/her life then the offender will punish with **death penalty or rigorous imprisonment for life and in addition to it the victim needs to pay a fine exceeding one lakh Taka.**

³⁸ Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), Section 137(2) - Kidnapping

⁴⁰ Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), Section 115(2) - Voluntarily causing hurt.

⁴¹ Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), Section 351 (2)- Criminal Intimidation.

⁴² Acid Offence Control Act, 2002 (Act II of 2002), Section 4- Punishment for causing death by Acid.

After the passing of these stricter law there is a decline from 30% to 20%⁴³ in the commission of the offence.

PAKISTAN

The country of Pakistan is one of the few nations around the world who have a separate legislation which deals with these offences. Prior to the passing of separate legislation dealing with the offence of acid attack, the offence was dealt as a form of domestic violence and the case was booked under **The Domestic Violence (Prevention and Protection) Act, 2009**. Provided that the country passed a separate legislation dealing with the offence of acid attack names – **The Acid Control and Acid Crime Prevention Act 2011**, in this legislation the attack treated as a separate offence under section 326A and 326B of the above-mentioned act and provided punishment for committing the offence of attack that is punishment of imprisonment for a term minimum 14 years to life imprisonment and a fine of one million rupees.⁴⁴ Under **Section 4 of Anti-Acid theft and Acid Crime (Punishment) Act, 2010** states the punishment for administering or throwing acid on the victim will be punished with imprisonment for life or death penalty in severe cases.

AFGHANISTAN

Afghanistan under their Article 5 of their Constitution list 22 acts, under those acts the offence is being included as separate offence. It became the duty of the state of Afghanistan to follow all the international treaties signed by them along with the *Universal Declaration of Human Rights* and the same has being mentioned under Article 7 of the Constitution of Afghanistan. As per Article 228, 229, 230 of the Afghanistan Penal Code 2017 states the provision relating to acid attack and also states the punishments that is imprisonment for term of 10-20years or life imprisonment for life.

CAMBODIA

The National Assembly of Cambodia passed the acid law in the year 2011. The name of the law passed the national assembly of Cambodia is “Acid Law”. The

⁴³ Shaheema Hameed, Bhupal Bhattacharya, “Scarred for Life: Thoughts on Legal Perspectives of Acid in Selected Countries with a Focus on India” 23 *Journal of International Women’s Studies* 4 (2022).

⁴⁴ Maryam Saeed, “Acid Crimes in Pakistan: Law and Plight of Victims” 3 (2022)

main objective behind passing the law is neutralize the commission of the offence of acid attack along with regulating, monitoring and controlling the sale of acid which became one of the reasons for the commission of the offence. After the implementation of the “Acid Law” the attack is being criminalized. The positive side of the Acid Law is that it creates segregation between intentional or unintentional killing, cruel or inhuman way of using acid and causing injury to the victim etc., all these activities are punishable under this legislation. As per Article 16 of the Acid Law states the punishment for intentional killing of victim by the use of acid attack is punishable with an imprisonment up to 30 year or life imprisonment. The reason behind the passing of this act is to reduce or to neutralize the commission of the offence of acid attack.⁴⁵

OTHER ARABIC OR MIDDLE EAST COUNTRIES

Acid attack offence as mentioned in the study is proved to be a global problem which need to be death with strictness and requires strict laws to curb the problem of offence. There are certain middle east and African countries in the world which provide death penalty for committing the offence of acid attack those countries are *‘Iran, Saudi Arabia, United Arab Emirates, Yemen, Qatar, Yemen and Somalia’*. Even our neighboring country like Bangladesh provides death penalty for committing the offence of acid attack.

- i. **Iran:** Islamic Penal Code (2013), Article 612
- ii. **Qatar:** Penal Code (2004), Article 313
- iii. **Saudi Arabia:** Anti-Terrorism Law (2017), Article 2
- iv. **Somalia:** Penal Code (1962), Article 221
- v. **United Arab Emirates:** Federal Penal Code (2020), Article 348
- vi. **Yemen:** Penal Code (1994), Article 234

If discussed the same with India, the present law of our country is proved to be incompetent in dealing with the offence of acid attack. A mere provision that is

⁴⁵ Punishment fitting the crime: Effectively punishing and combatting acid violence in Cambodia through the creation and enforcement of law, *available at*: <https://sithi.org/medias/files/others/acid-attack/2012-05-25-CCHR-Punishment-fitting-the-crime-ENG.pdf> (last visited on October 17, 2024)

Section 124 of Bhartiya Nyaya Sanhita will not be able to deal with offence and also there is a lack of legislation which deals with the regulating and monitoring the sale of acid in our country. Therefore, a separate legislation dealing with the offence is required in our countries along with the implementation of capital punishment i.e. death penalty need to be given in to the offenders for committing the heinous offence of acid attack.

VII. CONCLUSION

In this paper the researcher tried to portray the gravity of the heinousness of the offence of acid attack, particularly focusing on the punishment prescribed in our Indian legal system along with this the post incident consequences faced by the victims of the offence. The researcher in this paper also tries to highlight the lacuna in the Indian legal system with a comparative analysis made with the international laws dealing with the offence.

The offence is kind of offence where the offender requires a tremendous ill will for the commission of this offence and as a result of which the Indian legal system should punish them severely. It is important to keep in mind that in this offence due to the absenteeism of prompt investigation and trial, the quantum of the punishment can be of some deterrence. Therefore, the punishment which was provided previously in the 'Indian Penal Code, 1860' in Section 326A was imprisonment for a term not less than 10 years, extendable up to life and with fine. For the attempt to commission of the offence of acid attack provided under Section 326B of India Penal Code, 1860 states imprisonment up to five years maximum extended up to seven years and with fine. After the introduction of New Criminal Laws in the year 2023, the punishment provided in "Bharatiya Nyaya Sanhita, 2023" Section 124 provided the same quantum of punishment which was earlier provided in the Section 326 A and 326B of India Penal Code, 1860. There is no change in the quantum of punishment even in the new criminal law introduced in the year 2023. The author suggests implementing capital punishment i.e. death penalty for commission or attempting the offence of acid attack. In this paper another important aspect which the researcher tries to draw attention is to have an immediate formation of new rehabilitation schemes along with sound compensation which will be adequate for the victim to meet their proper medical expense. There

should be proper job opportunities, training etc. should be provided for the victim in order to bring their derailed life back to track. Certain measures which help to curb the offence are awareness of the offence to society from the grass root level. Even it is highly suggested that the media should also play an active role to sensibly handle the case of acid attack.

The offence of acid attack deserves severe and strict punishment as the gravity of the crime is more heinous if compared with the offence of rape and murder. In the offence of murder, the offender tries to finish the physical existence of the victim. In the offence of rape, the offender with a heinous intention tries to destroy and degrade the soul of a female victim. But the offence of acid attack first of all is a gender-neutral offence along with this the offender not only damages the physical body of the victim but also damages the soul of the victim.

Therefore, it is suggested to have a stricter punitive measure that need to be implemented in our India Legal System because it is highly required to have an appropriate prevention value which need to be created in the society in order to deal with the offence or else the problem will not be solved in the society. The suggested measure provided in this paper will be helpful in curbing the offence of acid attack and will create an appropriate prevention value in order to root out the evil of acid attack from society.

OTT PLATFORMS IN DIGITAL ENTERTAINMENT AND LEGAL ISSUES

*Md Hasan*¹

ABSTRACT

OTT platforms have evolved as a disruptive entity within the digital entertainment realm in India, providing a diversified and expanding audience with a comprehensive range of material, encompassing movies, TV shows, web series, and documentaries. The rapid evolution of the entertainment business has given rise to a multitude of legal difficulties and concerns that necessitate careful consideration and resolution. This Paper presents a comprehensive analysis of the legal challenges pertaining to Over-The-Top (OTT) platforms within the Indian jurisdiction. The initial segment of this Paper delves into the expeditious expansion and transformation of over-the-top (OTT) platforms in India. This passage outlines the various factors that contribute to the widespread appeal of these platforms. These factors include the availability of affordable internet access, the increasing prevalence of smartphones, and a growing demand for on-demand and customized information. These platforms have not only revolutionized the manner in which material is consumed but have also introduced a multitude of legal complexities.

The subsequent section explores the legal challenges faced by over-the-top (OTT) platforms in the Indian context. The text examines the lack of a standardized regulatory framework for these platforms, which gives rise to apprehensions over content restriction, age-appropriate categorization, and adherence to cultural values prevalent in India. The Paper also emphasizes the difficulty of self-regulation faced by over-the-top (OTT) platforms and the constraints associated with it. Furthermore, this study delves into the examination of data privacy, piracy, and competition legal concerns within the over-the-top (OTT) market. The Paper subsequently examines contemporary advancements and endeavours undertaken by the Indian government in response to these legal apprehensions. The aforementioned measures encompass the issuance of preliminary guidelines aimed at regulating over-the-top (OTT) platforms. These guidelines entail the implementation of content classification protocols and the establishment of a mechanism for

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addressing grievances. Nevertheless, it is imperative to emphasize the necessity for enhanced clarity, increased openness, and the implementation of comprehensive regulatory measures.

In summary, the advent of OTT platforms has had a substantial influence on the digital entertainment sector in India. The legal complexities associated with these platforms necessitate thorough examination and regulatory measures to achieve a harmonious equilibrium between artistic expression, safeguarding consumer interests, and upholding cultural sensitivities. This Paper emphasizes the urgent requirement for a strong and all-encompassing legislative structure to tackle the difficulties presented by over-the-top (OTT) platforms in India's digital entertainment domain.

Keywords: OTT Platforms, Digital Entertainment, Legal Challenges, Piracy, Media.

1. INTRODUCTION

The entertainment consumption patterns in India have experienced a significant transformation in recent years, mostly driven by the rapid growth of Over-the-Top (OTT) platforms. The emergence of these platforms has caused significant disruption to established ways of media consumption, as they provide a wide range of information that can be accessed at any time and from any location. This has posed a challenge to the dominant position of conventional television and cinema. The convenience and variety offered by over-the-top (OTT) platforms have been embraced by the Indian population, who have access to affordable high-speed internet and an expanding number of smartphones.²

The concept of over-the-top (OTT) content delivery is more than just a technological advancement; it signifies a significant shift in socio-cultural norms and practices.³ The accessibility of a wide range of content, including movies, television shows, web series, documentaries, and other forms of media, has significantly transformed the way viewers engage with such material. The current transition is distinguished by the implementation of an on-demand framework, granting the viewer autonomy over the selection, timing, and manner in which they access and engage with material. Amidst the widespread enthusiasm around the digital revolution, a multifaceted array of legal

² E.Sundaravel and Elangovan N, *Emergence, and future of Over-the-top (OTT) video services in India: analytical research*, JOURNAL BINET, (November 22, 2023, 9:29 PM) <http://dx.doi.org/10.18801/ijbmsr.080220.50>

³ ROBERT W. CRANDALL (eds), *Demand for Communications Services – Insights and Perspectives*, 33-57(Springer, Boston, 2014).

obstacles has surfaced, hence demanding a thorough analysis of the legislative structure that governs these platforms within the Indian context.⁴

2. THE RISE OF OTT PLATFORMS IN INDIA

2.1 Growth and Popularity

The rapid and widespread adoption of Over-the-Top (OTT) platforms in India represents a significant and disruptive change in the country's entertainment landscape. One crucial factor driving this transformation is the extensive adoption of high-speed internet, facilitated by cost-effective data plans that have equalized the availability of digital content among both urban and rural populations. The widespread adoption of smartphones, fuelled by competitive pricing and government efforts, has transformed these portable gadgets into personalized hubs for entertainment, enabling a shift from conventional television viewing to on-the-go streaming. The Indian population, which is primarily composed of young individuals with a strong affinity for technology, has enthusiastically adopted the wide array of diversified and top-notch material provided by over-the-top (OTT) platforms. This content encompasses a range of offerings, including popular Bollywood films, regional language movies, and foreign television programs. The adaptability of over-the-top (OTT) platforms was further emphasized by the global COVID-19 epidemic, as the implementation of lockdown measures resulted in a significant increase in the desire for digital entertainment. The establishment of strategic alliances with film studios, production houses, and telecommunications firms, in conjunction with well-executed marketing initiatives, has bolstered the platforms' brand recognition and facilitated their extensive acceptance. The proliferation of over-the-top (OTT) platforms in India may be understood as a complex occurrence influenced by various factors such as technology progress, demographic patterns, content approaches, and strategic partnerships. Together, these elements are fundamentally transforming the way digital media is consumed inside the nation.⁵

2.2 Market Dynamics

The Indian market for Over-the-Top (OTT) platforms is marked by fierce rivalry and a dynamic interaction of strategies among key participants. Prominent multinational entities such as Netflix,

⁴ *Id* at 58.

⁵ Anant Sharma & Manasvi Shah, *Legal Challenges faced by Over the Top (OTT) Platforms in India*, MYLAWYERSADVICE, (November 29, 2023, 3:24 PM) <https://mylawyersadvice.com/legal-challenges-faced-by-over-the-top-ott-platforms-in-india/>

Amazon Prime Video, and Disney+ Hotstar engage in competition with domestic platforms like Zee5, Voot, and Alt Balaji, hence establishing a dynamic and fiercely contested environment. An essential aspect of this competition is around the endeavour to create unique and innovative content. Various platforms allocate significant resources towards producing exclusive series, movies, and documentaries as a means to differentiate themselves from their competitors. The market is influenced by a variety of monetization tactics, such as subscription-based models that offer several tiers of plans and ad-supported models. These strategies are strategically priced to strike a balance between generating income and ensuring user accessibility. Collaborative partnerships and licensing arrangements with overseas studios and content providers serve to enhance content repositories and facilitate the globalization of Indian content. The growing market dynamics are influenced by several factors, including the emphasis on data-driven personalization, technological breakthroughs that enhance user experiences, and strategic collaborations with telecommunications companies and smart TV manufacturers. In the swiftly evolving market, the differentiation of OTT platforms relies on critical factors such as competitive pricing, value propositions, and the capacity to effectively embrace emerging technologies. In light of the ongoing evolution within the business, it is crucial to comprehend and effectively navigate the market dynamics in order to achieve continuous growth and success within the Indian over-the-top (OTT) sector.⁶

3. LEGAL CONSIDERATIONS IN THE INDIAN OVER-THE-TOP (OTT) INDUSTRY

The proliferation of Over-the-Top (OTT) platforms in India has given rise to a multitude of legal obstacles, which arise from the industry's dynamic characteristics, wide-ranging content options, and the lack of a complete regulatory structure. This section delves into the complex legal issues that have arisen in the Indian over-the-top (OTT) market, spanning many concerns pertaining to content regulation, data privacy, intellectual property, and competition law.⁷

3.1 The Regulatory Framework and its Implications for Content Censorship:

⁶ Team Amlegals, *Over the Top (OTT) Platforms Legal Compliances and Challenges in India – Part II*, AMLEGALS (November 29, 2023, 3:30 PM) <https://amlegals.com/over-the-top-ott-platforms-legal-compliances-and-challenges-in-india-part-ii/>.

⁷ Anisha Mishra, *Legal Framework for Over-The-Top (OTT) Platforms and Apps in India: A Comprehensive Analysis*, KHURANA & KHURANA (November 29, 2023, 3:44 PM) <https://www.khuranaandkhurana.com/2023/05/10/legal-framework-for-over-the-top-ott-platforms-and-apps-in-india-a-comprehensive-analysis/>

One of the predominant legal considerations pertaining to Over-The-Top (OTT) platforms in India revolves around the issues of content filtering and regulation. In contrast to conventional media, over-the-top (OTT) platforms function within a digital realm that surpasses geographical limitations, posing challenges in the implementation of consistent regulatory frameworks. The lack of a well-defined regulatory framework for Over-The-Top (OTT) services has resulted in a state of uncertainty when it comes to discerning the boundaries between permissible content and that which can be classified as obscenity or hate speech. This phenomenon has sparked discussions about the concept of artistic autonomy and the necessity of either self-imposed restrictions or external supervision.

The continuous development of content regulation and censorship within the over-the-top (OTT) domain is a persistent phenomenon. Achieving a harmonious equilibrium among the principles of freedom of speech, cultural awareness, and societal conventions, all while safeguarding the interests of users, continues to pose a substantial obstacle.

The Government of India implemented the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021⁸ in order to address these concerns. The regulations necessitate over-the-top platforms to adhere to a set of ethical guidelines, encompassing a method for addressing complaints and a system for classifying content. Nevertheless, there are ongoing worries surrounding the potential limitation of artistic expression and the subjective interpretation of regulations that continue to prevail. Furthermore, digital media platforms and intermediaries have contested these regulations in multiple High Courts, arguing that they confer excessive authority to the Executive, surpassing the original intent of the parent legislation. The High Courts of Bombay, Madras, and Kerala have issued Interim Orders that temporarily suspend the enforcement of specific provisions within the laws, so preventing the government from adopting any coercive measures against digital media organizations and OTT platforms in cases of non-compliance.⁹

3.2 Issues Surrounding Data Privacy:

The significance of privacy and data protection has escalated due to the huge volume of user data created by Over-The-Top (OTT) services. Over-the-top (OTT) services accumulate an extensive

⁸ Information Technology Act, 2000, § 87, No. 21, Acts of Parliament, 2000 (India).

⁹ Sephali Svati, *Classification of Content, Content Regulation and Ethics - OTT platforms in India*, 3(4) IJLSI, 509, 515-518, (2021).

array of user data, encompassing personal information, viewing patterns, preferences, and interaction data. It is of utmost importance for platforms to effectively describe their data collection methods to users and acquire their explicit consent prior to the acquisition or processing of any personal data. This entails the provision of clear and comprehensive information regarding the objectives, extent, and timeframe of data gathering, as well as guaranteeing users the choice to decline participation or revoke their consent.

In order to establish and uphold trust with their users, over-the-top (OTT) platforms must prioritize the implementation of effective data protection mechanisms, get explicit consent, and maintain openness in regard to data collection and usage.

OTT platforms in India are anticipated to be subjected to the forthcoming Personal Data Protection Bill, which is projected to augment the existing data protection requisites. The proposed legislation will incorporate fundamental concepts such as data minimization, purpose limitation, and accountability. Maintaining compliance with growing data protection rules is of utmost importance for Over-The-Top (OTT) platforms in order to mitigate potential legal ramifications.¹⁰

3.3 Piracy and Intellectual Property Rights:

An other crucial facet of entertainment law is to the domain of copyright and Intellectual Property Rights. Over-the-top platforms (OTTs), functioning as channels for content distribution, must guarantee that they possess the requisite licenses and permissions for the content they provide. This entails acquiring permissions from filmmakers, producers, and other relevant parties involved in the production of audio-visual content.¹¹

The Copyright Act of India offers legal safeguarding to the original creations of authors, encompassing many forms of media such as movies, television shows, and online series. Over-the-top platforms (OTTs) are required to exercise caution while dealing with copyright regulations in order to prevent potential instances of infringement and subsequent legal liabilities. Furthermore, it is imperative for them to tackle concerns pertaining to licensing, revenue sharing, and royalty remittances to content creators, as these matters can become intricate owing to the characteristics of digital distribution and licensing contracts.

3.4 Necessity for Comprehensive Regulation:

¹⁰ Himi Singla, *Self-Regulation by Over-the-Top Platforms: A Study in Context of Video Streaming Services in India*, 3(4) IJLMH, 1626, 1632-1635(2020).

¹¹ Shreya Verma, *Analysis of OTT Predominance and IPR Violations*, IPLF, (November 29, 2023, 5:00 PM) <https://www.ipandlegalfilings.com/analysis-of-ott-predominance-and-ipr-violations/>

In spite of the efforts made by the government, there exists an urgent requirement for a comprehensive and flexible legal framework that effectively tackles the distinctive problems posed by the Over-The-Top (OTT) business. The legal system ought to strike a delicate equilibrium between the artistic autonomy of content creators and the obligation to safeguard societal values, user privacy, and fair competition. It is imperative for stakeholders, encompassing governmental entities, industry participants, and legal scholars, to engage in collaborative efforts aimed at formulating a resilient and adaptable regulatory framework that promotes expansion while ensuring the protection of the rights and interests of all relevant entities.¹²

The absence of regulatory measures governing the content disseminated on over-the-top (OTT) platforms has resulted in a growing array of issues for producers, directors, and the digital platforms responsible for showcasing this content. In the case of *Justice for Rights Foundation v Union of India*¹³ (W.P.(C) No. 11164 of 2018), the non-governmental organization (NGO) submitted a petition to the Delhi High Court, contending that Over-The-Top (OTT) platforms operate without regulation and lack any kind of censorship. The fundamental issue under consideration by the court pertained to the absence of regulatory measures for over-the-top (OTT) platforms, despite the existence of censorship and regulation for cable and direct-to-home (DTH) operators. The High Court dismissed the petition, prompting the petitioner to subsequently file a writ petition before the Supreme Court. Upon the court's consideration of the matter, a notice was dispatched to the Government of India, requesting an elucidation about the absence of regulations pertaining to Over-The-Top (OTT) services. The Ministry of Information and Broadcasting responded by stating that the Information Technology Act of 2000 contains sufficient provisions addressing content-related concerns. These provisions specifically address the transmission of sexually explicit acts (as outlined in section 67A, which pertains to the punishment for publishing or transmitting material containing sexually explicit acts in electronic form) and the transmission of obscene material (as outlined in section 67, which pertains to the punishment for publishing or transmitting obscene material in electronic form). The Supreme Court concurred and determined that the existence of adequate provisions within the Information Technology Act, 2000, obviated the necessity for any regulatory legislation pertaining to over-the-top (OTT) platforms.

¹² Aarushi Jain & Krishnangi Bhatt, *Over-the-Top' Interference with Curated Content in India*, CYRILAMARCHANDBLOGS, (November 29, 2023, 5:08 PM)<https://corporate.cyrilamarchandblogs.com/2023/05/over-the-top-interference-with-curated-content-in-india/>.

¹³ *Justice for Rights Foundation v Union of India*, 2019 SCC ONLINE DEL 10962.

In summary, the legal framework governing the Indian over-the-top (OTT) business is intricate and diverse, involving several aspects such as content regulation, data privacy, intellectual property, and competition law. The rapid evolution of the industry needs a regulatory framework that is both comprehensive and flexible enough to effectively respond to emerging issues and technological advancements. It is imperative to acknowledge and tackle these legal concerns in order to cultivate a thriving and accountable Over-The-Top (OTT) ecosystem within the Indian context.

4. CASE STUDY: CONTENT ON OTT PLATFORM

One of the recent issues in the realm of over-the-top (OTT) platforms revolves around the television series *Tandav*, which is available on the Amazon Prime streaming service. Multiple First Information Reports (FIRs) have been lodged in the state of Uttar Pradesh (UP) and various other states against the creators of the aforementioned series, as well as the individual responsible for overseeing content at Amazon Prime India. The primary cause for the filing of the First Information Report (FIR) stemmed from the perceived lack of reverence for the Hindu religion and its deities, as well as the inappropriate portrayal of these deities within the series. The nomenclature of the television series has also generated significant debate, as "*Tandav*" is a sacred ritual associated with Lord Shiva, and therefore, its portrayal in a negative manner has caused controversy. In response to the aforementioned occurrences, the creators of the show issued an apology and subsequently eliminated specific scenes from the series.¹⁴

In the matter of *Aparna Purohit vs State of Uttar Pradesh*,¹⁵ an application seeking Anticipatory Bail was submitted to the Allahabad High Court. The High Court rejected the application for anticipatory bail and noted that the portrayal of the deity in a manner deemed disagreeable had caused offense to the religious emotions of Hindus. Consequently, the court determined that the accused could not be exonerated just by the removal of the problematic parts and offering an apology. The Supreme Court initially declined to provide any form of legal safeguard, but subsequently extended temporary protection to the plaintiff. Nevertheless, the Supreme Court has asserted the necessity of content screening on over-the-top (OTT) services. According to the Supreme Court, the regulations pertaining to digital media are increasingly adopting the shape of

¹⁴ HIMI SINGLA, *supra* note 9 at 1628.

¹⁵ *Aparna Purohit vs State of Uttar Pradesh*, (2021) 3 All LJ 634

advisory principles, lacking a robust system to effectively assess or enforce appropriate measures against those who contravene these recommendations.

Several issues have emerged that have sparked discussions regarding the regulation and challenges encountered by over-the-top (OTT) platforms. These controversies involve movies and series such as *Mirzapur*, *Patal Lok*, *Leila*, and others. A First Information Report (FIR) was lodged against the creators of the television series "*Leila*" and the streaming platform Netflix, as certain lawmakers argued that the content of the show maligns the reputation of India and portrays it negatively. Instances have been observed wherein the leader of the content production team for Over-The-Top (OTT) websites and the creators of this content have faced legal action in the form of an FIR or criminal prosecution. Several over-the-top (OTT) platforms exhibit hesitancy in producing web series or films that delve into issues pertaining to religion or politics. The aforementioned phenomenon has resulted in the violation of the artistic autonomy of those who produce content, as well as the practice of self-imposed censorship. The criminal proceedings and lawsuit fees are causing significant hardship for the content creators as well. One of the issues faced by over-the-top (OTT) platforms and content developers pertains to the legal uncertainty that arises after the release of information.

5. RECENT DEVELOPMENTS AND GOVERNMENT INITIATIVES

The government of India has announced the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹⁶ (referred to as the "IT Rules, 2021"), as a replacement for the Information Technology (Intermediaries Guidelines) Rules, 2011. The responsibility for overseeing Online media outlets and OTT Platforms, as outlined in Part III of the Intermediary Rules, shall be assumed by the Ministry of Information and Broadcasting. It is noteworthy that these rules were formulated within the framework of the Information Technology Act of 2000. The establishment of a three-tier grievance redressal mechanism is mandated for them.

First tier (Level I): As per the recently implemented regulations, a digital website or content publisher would be required to designate a grievance redressal officer situated in India, who will be obligated to address any complaints within a stipulated timeframe of 15 days.¹⁷

¹⁶ Information Technology Act, 2000, § 87, No. 21, Acts of Parliament, 2000 (India).

¹⁷ Lata Jha, *Government sets out regulations for digital media, OTT platforms*, MINT, (November 29, 2023, 5:20 PM) <https://www.livemint.com/news/india/government-sets-out-regulations-for-digital-media-ott-platforms-11614254583608.html>.

Second tier (Level II): The second tier will consist of a self-regulatory entity composed of news publishers or streaming platforms, led by a retired judge from the Supreme Court or a high court, or an individual of notable eminence.

Third tier (Level III): Thirdly, and of utmost significance, the Ministry of Information and Broadcasting will establish an inter-departmental group to address grievances.

In lieu of pre-censored material, platform proprietors will be required to categorize their content based on distinct age cohorts, namely: "U" or universal rating, as well as designations for 7+, 13+, 16+, and 18+ age brackets. This will necessitate a tailored development approach for India, as comparable age groupings are not present in other nations.

It will be necessary for platforms to incorporate parental controls for content categorized as U/A 13+ or above, as well as dependable age verification systems for content categorized as "A".¹⁸

6. CONCLUSION

The transformative journey of India's digital entertainment scene has been underscored by the seismic upheaval brought about by Over-the-Top (OTT) platforms. This movement has been characterized by innovation, problems, and the subsequent response from the government. The proliferation of these platforms has been propelled by various factors, including the ubiquitous availability of internet connectivity, the affordability of smartphones, and a transformative shift in content creation and consumption patterns. Consequently, these developments have significantly altered the manner in which audiences engage with media. This study has explored the legal complexities that emerge from this shift, encompassing issues such as the lack of a complete regulatory framework, apprehensions regarding content control, data privacy, piracy, and competition law.

The Ministry of Information and Broadcasting has released draft rules that exemplify recent government measures, representing a significant stride towards the implementation of regulatory control. The aforementioned rules, which seek to promote uniformity in content categorization and provide an effective system for addressing complaints, demonstrate the government's acknowledgement of the necessity for regulation within the ever-evolving over-the-top (OTT) industry. The commitment to developing legislation that effectively address the concerns of

¹⁸ Kinjal Keya and Aditya Pratap Singh, *OTT Regulation: A Need for Modern Day Entertainment*, CSIPR, (November 29, 2023) <https://csipr.nliu.ac.in/technology/ott-regulation-a-need-for-modern-day-entertainment/>

creative freedom, cultural sensitivities, and user protection is shown through collaborative endeavours, which involve engaging with industry stakeholders and seeking their input.

Nevertheless, the journey towards regulation is not without of obstacles. The discussions prompted by the draft rules underscore the intricacies of reconciling the divergent interests within the over-the-top (OTT) business. Achieving an optimal equilibrium necessitates the acknowledgment and resolution of apprehensions about probable ramifications on artistic ingenuity, alongside the implementation of conscientious business protocols and the protection of user welfare.

In summary, the OTT industry in India is currently at a pivotal point where the convergence of innovation and regulation is taking place. The proactive measures taken by the administration demonstrate a dedication to adjusting to the dynamic digital environment. Ongoing collaboration, open conversation, and adaptation will be of utmost importance as the industry and regulatory environments continue to undergo evolution. The task at hand is establishing a regulatory framework that not only effectively deals with the existing legal intricacies but also cultivates a dynamic and accountable digital entertainment ecosystem for the forthcoming times. The trajectory of the OTT business will be influenced by the joint efforts of government bodies, industry participants, and legal experts. This collaboration is crucial in order to sustain the industry's growth and meet the demands of creators and consumers in the rapidly evolving digital environment.

7. SUGGESTION

Regrettably, the task of finding a resolution is not a straightforward endeavour since it involves more than simply identifying the obstacles at hand. The recognition that the right to freedom of speech and expression is vital is widely acknowledged. However, it is important to note that this right is not absolute and is subject to reasonable limitations. The aforementioned premise is commendable, although its practical application in establishing a comprehensive legal framework, particularly in the context of digital media, poses significant challenges.

A potential solution could involve the implementation of a hybrid model of governance. The use of pre-screening systems would pose significant challenges. One potential approach involves the establishment of an autonomous, self-governing entity consisting of representatives from the industry. This body would be responsible for addressing grievances and complaints pertaining to over-the-top (OTT) content. Its operations would be guided by a specific set of principles that align with the values and norms of contemporary society in the 21st century.

The self-regulatory body has the provision for appealing recommendations, which can be done before an appellate committee constituted by the same body. The appellate committee consists of independent members who serve on the panel. One potential avenue for further regulation could be the establishment of a quasi-judicial entity, consisting of both industry experts and judicial members, whose determinations would carry decisive weight. This framework has the potential to expedite the resolution process and alleviate the workload of High Courts and Supreme Courts, who are now overwhelmed by a considerable number of relatively trivial lawsuits pertaining to OTT content. The efficacy of the suggested system is contingent upon the autonomy of self-regulatory entities, the underlying principles that govern them, the composition of their members, and various other intricate factors.

The demand for an improved redressal and regulatory framework for Over-The-Top (OTT) material is undeniably increasing. However, achieving a viable solution necessitates the alignment of the media industry, public interest, and government policy.

ADDRESSING THE SOCIOECONOMIC HURDLES OF THE BOCW ACT'S IMPLEMENTATION IN THE HINDI BELT

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ABSTRACT: India, as a welfare state, has time and again enacted legislation to protect the rights of the vulnerable, ensure security, and provide a better future. In 1996, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, commonly known as the BOCW Act, was enacted with the same intent. BOCW protects the rights of the construction workers of India, enhances their working conditions, and provides them with benefits for a secure future. However, there have been several stumbling blocks to the BOCW Act's implementation, especially in the Hindi belt states of Uttar Pradesh and Bihar. Uttar Pradesh and Bihar are states with substantial labour populations working in the building and construction industries, both within the state and as migrants in other states, but slow implementation and penury execution of the BOCW Act has always been a recurring challenge in these regions. Contributing causes to these hurdles include laborers' unawareness, ineffective bureaucracy, corruption, insufficient oversight, and difficulties with cess. In this paper, the authors examine the socioeconomic and political causes that contributed to the failures of BOCW, emphasizing low literacy and awareness, bureaucratic neglect, and the nomadic character of the construction industry workers. Further, this paper suggests policy changes and a better implementation strategy for the effectiveness of BOCW in the Hindi belt states. The key objective is to provide pragmatic suggestions to policymakers, implementation agencies, and interested parties to rectify the inadequacies and enhance the efficiency of the BOCW Act. In its entirety, this paper aims to contribute to improving the present and future conditions of building and construction workers in Uttar Pradesh and Bihar.

Keywords: BOCW, Uttar Pradesh, Bihar, Labor, Construction, Unorganized Sector.

1. TRACING LABOR WELFARE IN THE WELFARE STATE

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Labor welfare has been a vital part of India's socioeconomic legislation and policies, and the Constitution of India also acknowledges this in several articles.³ Notably, Article 39⁴ of the Constitution asks the State to offer appropriate means of livelihood and human working circumstances, while Article 42⁵ demands that the State maintain fair and human terms of employment.⁶

India's labor market is predominantly informal, with over 90% of the workforce engaged in the unorganized sector, including construction workers.⁷ The construction industry is a significant element of India's economy, employing millions of people in dangerous circumstances with inadequate job security. To address this, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act⁸ ("BOCW Act" *hereinafter*) enacted in 1996, was enacted with the intent to meet the welfare requirements of construction workers.

The BOCW Act provides measures for social security, welfare payments, health, safety, and better working conditions, and it also demands the collection of a cess from building projects to support these benefits. Despite its ambitious intent, the BOCW Act has encountered inadequate implementation, notably in regions of the Hindi Belt states of Uttar Pradesh and Bihar, from where construction workers comprise a substantial portion of the workforce across the country.

2. UTTAR PRADESH AND BIHAR BUILDING THE NATION, BUT AT WHAT COST?

As of the 2011 Census of India, Uttar Pradesh has a population of over 200 million, while Bihar has over 100 million.⁹ Both states have labor-intensive economies, with agriculture and construction comprising substantial areas of employment. The construction business, in particular, is a key employer, given the fast urbanization and infrastructural development in the

³ SN Misra, *Labour and Industrial Laws* (27th ed, Central Law Publication 2013)

⁴ Constitution of India 1949, art. 39

⁵ Constitution of India 1949, art. 42

⁶ Misra (n 1)

⁷ S V Ramana Murthy, 'Measuring Informal Economy in India' 7(2) International Monetary Fund Statistical Forum 2019 <<https://www.imf.org/-/media/Files/Conferences/2019/7th-statistics-forum/session-ii-murthy.ashx>> accessed 17 December 2024

⁸ Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, Act No. 27 of 1996

⁹ National Commission on Population, *Census of India 2011* (Report, 2019) Ministry of Health & Family Welfare, *Population Projections for India and States 2011 – 2036* (Technical Group on Population Projections, 2019)

area. The construction industry employs a considerable fraction of the unorganized labor force from Uttar Pradesh and Bihar, especially from the rural and last-mile population. In Uttar Pradesh, there are an estimated 5 million workers in the construction business, while Bihar contributes roughly 2.5 to 3 million workers.¹⁰ These laborers are engaged in different tasks, including constructing residential and commercial constructions, roads, bridges, and other infrastructure projects.

The construction worker populations from Uttar Pradesh and Bihar are integral to India's development and economic fabric. Both states, with high population densities and limited local industrial opportunities, contribute large numbers of workers to the construction sector, both within the states and through migration to other regions in India.¹¹ Many of these workers, often unskilled or semi-skilled, migrate to urban centers or other states for employment. Despite their critical role, these workers frequently face challenges such as informal employment, low wages, lack of social security, and poor working conditions.

A majority population of construction workers are involved in temporary, contract-based labor, with little to no job security or access to formal employment benefits. Most workers in this industry lack any legal job documents, making it impossible for them to access any social security benefits typified by high levels of informality and vulnerability, which is one of the key objectives of the enactment of labor welfare legislation like the BOCW Act.

2.1. Socio-Economic Background Brings Labor to Construction Work

The construction worker population in Uttar Pradesh and Bihar largely originates from disadvantaged socio-economic backgrounds. Most workers belong to Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), groups that have traditionally endured social and economic marginalization.¹² Due to prevalent poverty in these populations, workers typically take up construction occupations to augment their family income, and they do so in risky settings without long-term job security or social rights, within the state and in other regions too. The literacy rate in Uttar Pradesh is about 67.68%, while in Bihar, it is 61.8%, according to the 2011 Census. These literacy rates are among the lowest in the nation and disproportionately impact the labor community, making it difficult for workers to interact with

¹⁰ Shamindra Nath Roy, Manish & Mukta Naik, *Migrants in Construction Work: Evaluating their Welfare Framework* (Policy Brief, 2017) Centre for Policy Research (CPR, 2017)

¹¹ National Commission on Population (n 7)

¹² Rajendra P. Mangain & Sher Verick, *The State of Employment in Uttar Pradesh* (Report, ISBN 978-92-2-130294-0, 2017) International Labour Organization (ILO, 2017)

official procedures of registration and access to social systems of labor welfare legislation such as the BOCW Act.¹³

2.2. Migrating from the Hindi Belt to Metropolitan Cities

One of the most defining elements of the labor population from Uttar Pradesh and Bihar is the high prevalence of labor migration, both within the states and beyond state boundaries. Migrant laborers from these states represent a large construction workforce in major metropolitan areas including Delhi, Mumbai, Bengaluru, Kolkata, and Hyderabad.¹⁴ Migration of labor from Uttar Pradesh and Bihar is forced by the absence of appropriate local job prospects and the seasonal nature of agricultural work. This movement is sometimes cyclical, with workers returning to their native villages during the agricultural season and migrating back to cities for construction work when farming operations slow down.

Migrant workers are among the most vulnerable sections of the labor market owing to their lack of formal employment contracts and difficulties in accessing social security programs in states where they are not permanent residents. They are commonly employed *via* contractors and sub-contractors, who make use of their mobility to circumvent compliance with labor rules. Additionally, the lack of interstate coordination mechanisms means that migrant workers lose their rights to welfare benefits when they move from one state to another, further marginalizing them from the advantages that the labor welfare legislations are designed to give. Research undertaken by the Indian Council of Social Science Research (ICSSR) on migration from Bihar and Uttar Pradesh showed that over 60% of families in rural regions had at least one member who had traveled for employment. This pattern of movement leads to the concentration of substantial labor populations from these two states in urban construction markets throughout India, although their access to social benefits remains widely fragmented.¹⁵

2.3. Experiencing Below-par Working Conditions

The working conditions of construction workers from Uttar Pradesh and Bihar include a lack of safety precautions, excessive working hours, and inadequate access to health care. Many workers are employed on a daily wage basis, with no formal contracts, making it simpler for

¹³ Davendra Verma, et. al, *Women and Men in India* (Periodical, 2016) ch 3 Ministry of Statistics and Program Implementation, *Literacy and Education* (MoSPI, 2016)

¹⁴ Shamindra Nath Roy (n 8)

¹⁵ BK Mishra, '50% of Bihar households Exposed to Migration: Study' (*The Times of India*, 15 February 2020) <<https://timesofindia.indiatimes.com/city/patna/half-of-households-in-bihar-exposed-to-migration-study/articleshow/74141815.cms>> accessed 17 December 2024

employers to avoid labor rules. The absence of sufficient health and safety procedures in construction sites has resulted in a high incidence of work-related injuries and deaths.¹⁶

Female construction workers in these states suffer much tougher circumstances. Females are generally forced to low-paying positions such as transporting goods, and females seldom earn the same compensation as their male colleagues, even when doing equivalent activities.¹⁷ Gender-based pay discrepancies are persistent, notwithstanding the legal obligation for equal compensation under the Equal Remuneration Act.¹⁸ Moreover, female workers are less likely to get benefits under the labor welfare legislation, since they are typically ignored in the registration procedure under labor welfare legislation such as the BOCW Act.¹⁹

2.5. Poor Access to Social Security and Labor Welfare

Despite the presence of many labor welfare legislations, including the BOCW Act, the ease of access to social security for construction workers from Uttar Pradesh and Bihar remains abysmally low. The fundamental reason for this is the low rate of worker registration with the state Building and Other Construction Workers Welfare Boards. As of 2019, government estimates revealed that approximately 10% of the anticipated construction workers in Uttar Pradesh and Bihar had registered under the BOCW Act. This lack of registration hinders workers from enjoying the numerous benefits offered under these legislations, including life and disability protection, maternity benefits, pensions, and educational help for their children.²⁰ An additional issue contributing to the lack of access is the poor performance of the state welfare boards in the Hindi belt states. Despite the huge quantities of cess received from building projects, the delivery of benefits has been relatively restricted owing to administrative delays and a lack of accountability. For instance, in Bihar, the Comptroller and Auditor General (“CAG” *hereinafter*) stated that just 20% of the collected cess had been used by the welfare board for 10 years, with the bulk of it either unspent or misappropriated.²¹

¹⁶ Sasmita Samanta & Jyotiranjana Gochhayat, ‘Critique on occupational safety and health in Construction Sector: An Indian Perspective’ (2023) 80 *Material Today* 3, 3016-3021

¹⁷ Taniya Dutta, ‘India’s invisible female construction workers: underpaid and overworked’ (*The National News*, 7 March 2022) <<https://www.thenationalnews.com/world/2022/03/07/hold-indias-invisible-female-construction-workers-underpaid-and-overworked/>> accessed on 20 December 2024

¹⁸ Equal Remuneration Act 1976, Act 25 of 1976

¹⁹ Nirmanshree, *Women Construction Workers in India* (Policy Brief, 2023) Habitat for Humanity India (Habitat for Humanity, 2023)

²⁰ Sambhavna Biswas, ‘No Card, No Benefits’ (*India Development Review*, 27 July 2021) <<https://idronline.org/article/rights/improving-access-to-building-and-other-construction-workers-bocw-cards/>> accessed on 31 December 2024

²¹ Comptroller and Auditor General of India, *State Finance Audit Report for the Year ended 31 March 2023* (Report, No. 1, 2024) Government of Bihar, *Labour Cess* (Gov Bihar, 2024)

3. UNPACKING THE BUILDING AND OTHER CONSTRUCTION WORKERS ACT

The BOCW Act was enacted to address the welfare and safety of construction workers, a vulnerable population of India's unorganized labor force. The BOCW Act intends to enhance working conditions, regulate safety standards, and give social security benefits to workers, as well as women, involved in building and construction operations.²² One of its important components is the registration of workers, which guarantees that they become eligible for social benefits like as life and disability insurance, maternity benefits, pensions, and educational support for their children.²³ To support these social systems, the Act demands the collection of a cess ranging from 1% to 2% of the building project cost – from employers, contractors, or builders.²⁴ The collected cess money is then administered by the State Welfare Boards to support the welfare programs for workers.

The execution of the BOCW Act is monitored by two bodies: the Central Advisory Committee ("CAC" *hereinafter*) and the State Building and Other Construction Workers Welfare Boards. The CAC functions at the national level, advising the government on policy concerns and regulations, while the state-level boards manage the registration of workers, the collection of the cess, and the dispensing of welfare payments. Despite the BOCW Act's broad structure, its implementation has met considerable obstacles, especially in the states of Uttar Pradesh and Bihar, where a huge chunk of the construction labour remains unregistered and uninformed of the advantages available to them²⁵ clubbed with administrative inefficiencies, corruption, and the migratory character of the construction workforce have further limited the BOCW Act's efficacy in these areas.

3.1. Why the BOCW Act's Implementation failed!

The BOCW Act's implementation has experienced various challenges, ranging from poor registration of workers to improper usage of collected cess. Various studies, including those from the CAG, have revealed failures in cess collection and the inability of State Welfare Boards to give benefits to construction workers.²⁶

²² Kalapana Devi & UV Kiran, 'Status of Female Workers in Construction industry: A Review' (2013) 14 International Journal of Humanities and Social Science 4, 27-30

²³ Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, Act No. 27 of 1996, sec. 22

²⁴ Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, Act No. 27 of 1996, sec. 3

²⁵ Sambhavna (n 18)

²⁶ Comptroller and Auditor General of India, *Performance Audit on Welfare of Building and Other Construction Workers* (Report, No. 3, 2024) Government of Tamil Nadu, *Labour Cess* (Gov TN, 2024)

In Uttar Pradesh, the State Building and Other Construction Workers Welfare Board was created to enforce the provisions of the Act. However, a CAG investigation from 2021 found that out of an estimated 4 million construction workers, only roughly 0.5 million were registered with the welfare board. Furthermore, despite massive cess collection, the revenues were mostly unutilized. The CAG study noted systemic flaws, such as corruption, lack of understanding among workers, and bureaucratic inefficiencies, as important causes for the failure of the plan in the state.²⁷

Bihar's implementation of the BOCW Act replicates the issues experienced in Uttar Pradesh. A considerable section of the construction workforce from Bihar is unregistered, and there have been incidents of mismanagement of cess. In *Pratap Singh v. State of Bihar*,²⁸ the petitioner, a construction worker, challenged the refusal of the State Welfare Board to award benefits despite being registered. The Patna High Court reprimanded the State administration for its lethargic attitude and urged quick action to fix the errors in the payment of compensation.

4. BARRIERS TO EFFECTIVE IMPLEMENTATION OF THE BOCW ACT

The failure to effectively implement the BOCW Act in Uttar Pradesh and Bihar is a bundle of issues ranging from low awareness and bureaucratic inefficiencies to inadequate enforcement. A large portion of construction workers in these states remain unregistered under the BOCW Act due to poor outreach and a lack of information about the welfare schemes available. Additionally, corruption and delays in processing applications have hindered the distribution of benefits.

Lack of Awareness and Education: The majority of construction workers in Uttar Pradesh and Bihar are uninformed of the terms of the BOCW Act and their right to benefits. The lack of understanding is worsened by poor literacy levels among the workers, especially in rural regions. This has resulted in low registration rates and underutilization of available benefits.

Ineffective Bureaucracy and Corruption: The bureaucratic apparatus in Uttar Pradesh and Bihar entrusted with executing the BOCW Act is typically under-resourced and plagued by corruption, with claims of welfare cess being transferred or abused. The incompetence of State Welfare Boards in processing applications and disbursing payments has further worsened the situation.

²⁷ Comptroller and Auditor General of India, *Financial Audit for the Year 2019-20* (Report, No. 7, 2021) ch 3 Government of India, *Performance Audit on Management of District Mineral Foundation Funds* (GoI, 2021)

²⁸ *Pratap Singh v State of Bihar* (1977) 2 SCC 1

Challenges with Cess Collection: Cess collection, which is important for paying the welfare services under the BOCW Act, has been uneven in Uttar Pradesh and Bihar. Many building projects do not comply with the cess rules, and enforcement organizations lack the competence to guarantee compliance. Even when cess is collected, delays in transferring cash to the welfare boards further hamper the execution of assistance programs.

Insufficient Oversight and Monitoring: Both Uttar Pradesh and Bihar have insufficient systems to supervise and monitor the execution of the BOCW Act. Without frequent audits and supervision, gaps in registration, cess collection, and payment of benefits go uncorrected. The absence of an impartial agency to supervise the implementation has led to a scenario where State Welfare Boards function with no accountability.

The nature of employment in the construction sector, coupled with insufficient political will and weak monitoring mechanisms, further exacerbates the situation, leaving millions of workers without social security and protections mandated by the BOCW Act, and that needs correction through policy and strategy.

5. THE BOCW ACT NEEDS A POLICY AND STRATEGY SHIFT

Improving the implementation of the BOCW Act in Uttar Pradesh and Bihar, a multi-pronged policy and strategy shift is essential. First, there must be a robust awareness campaign targeted at construction workers and employers, using local languages and community outreach to inform them of their rights and benefits under the Act. In *Bihar State Construction Workers Union v. State of Bihar*,²⁹ the Court stressed the necessity for awareness programs to remind workers of their rights under the Act. The Court underlined that simply legislative action is inadequate without the supporting administrative measures to distribute information and encourage registration.

Simplifying the registration process through digital platforms and mobile applications, along with the establishment of local help centers, can ease access. Additionally, strong monitoring and accountability mechanisms need to be implemented to curb bureaucratic delays and corruption. Further, collaboration with local NGOs and labor unions to facilitate worker registration and enforce compliance can also enhance oversight. Lastly, regular audits and a dedicated task force at the state level could ensure efficient fund utilization and timely delivery of welfare benefits, ensuring that the BOCW Act reaches the intended beneficiaries.

²⁹ *Bihar State Construction Workers Union v State of Bihar* (1999) 1 SCC 537

5.1. Untangling Bureaucratic and Administrative Systems

Improving the ability of State Welfare Boards is vital for the proper execution of the BOCW Act. This involves providing enough resources, training workers, and minimizing bureaucratic red tape. To eliminate corruption, the recruiting procedure for welfare board officials should be made more open, and rigorous anti-corruption measures should be applied. Hon'ble Supreme Court, in *Bandhua Mukti Morcha v. Union of India*,³⁰ laid down that the State has a responsibility to defend the rights of workers, especially those who are vulnerable. The case underlined the role of the State to guarantee that labor support measures are efficiently administered. This idea is significant in the context of the BOCW Act, where inefficient bureaucracy has failed to address the requirements of workers.

5.2. Stakeholders Collaboration

Collaboration between the government, labor unions, non-governmental organizations, and the private sector will enhance the execution of the BOCW Act. Non-governmental organizations play a significant role in promoting awareness among workers, aiding them in the registration process, and campaigning for their rights. The private sector can help by guaranteeing compliance with cess collection and supporting worker welfare measures.

5.4. Digital India comes on Onboard

The use of technology may simplify the implementation procedure of the BOCW Act. Digital systems may be established to assist in the registration of workers, tracking cess collection, and payment of benefits. Additionally, biometric identification may be used to guarantee that benefits reach the appropriate beneficiaries and to avoid fraudulent claims. The Supreme Court in *Common Cause v. Union of India*³¹ examined concerns connected to cess collecting and money misappropriation and underlined that delays in cess collection were contributing to the collapse of assistance systems for construction workers, and technology has a possible solution to these problems.

6. CONCLUSION

The BOCW Act was enacted to safeguard the rights and welfare of construction workers in India but has suffered substantial implementation issues, notably in Uttar Pradesh and Bihar.

³⁰ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161

³¹ *Common Cause v Union of India* (2017) 7 SCC 158 (SC)

Judicial interventions in precedents like *Pratap Singh v. State of Bihar*,³² *Bandhua Mukti Morcha v. Union of India*,³³ and *Common Cause v. Union of India*³⁴ have underscored the State's commitment to safeguard worker rights, noting that mere legality is insufficient without effective implementation and inspection. Despite these legal obligations, state bureaucracy and administrations in Uttar Pradesh and Bihar have failed to administer the BOCW Act properly. To tackle these challenges, a thorough reform strategy is essential with a collaborative approach with government, bureaucracy, civil society organizations, and the private sector with technological aid at the grassroots level.

The BOCW Act has the potential to substantially improve the lives of construction workers in India; realizing this promise requires a determined effort to overcome the socio-economic, political, and administrative restrictions that today hinder its implementation. By fixing these issues, the government can ensure that construction workers obtain the social security and welfare benefits they are lawfully due, hence ensuring social justice and equity in India.

³² *Pratap Singh* (n 26)

³³ *Bandhua Mukti Morcha* (n 28)

³⁴ *Common Cause* (n 29)

AN INTERROGATION OF THE LEGAL FRAMEWORK FOR INTERNALLY DISPLACED PERSONS IN NIGERIA

Dr. Andah David Angbazo

ABSTRACT

Since the beginning of the existence of the human race, people have had to move from one place to another for diverse reasons. The movement and displacement of persons is a phenomenon that uproots people from their social, economic, cultural, and educational environment and turns them into wanderers within their country. Nigeria, a country with a population of over 200 million, has one of the highest numbers of internally displaced persons (IDPs) globally. As of December 2022, there were approximately 4.5 million IDPs in the country. The work adopted the doctrinal method of legal research by examining source materials—primary and secondary. The work found that there is in existence in Nigeria a legal framework for internally displaced persons, which provides for their rights and obligations. These rights have not been enjoyed by these categories of people due to the failure on the part of the governmental agency saddled with this responsibility. Similarly, the protection and proactive response of government agencies responsible for internal displacements are often non-existent or belated. The work recommended that the National Emergency Management Agency (NEMA) should be repositioned to be more effective. In terms of protection and enhancement of the rights of this category of persons, the National Human Rights Commission (NHRC) should ensure that the same are enforced and defended, especially in conflict situations.

Keywords: Internally Displaced Persons, Causes of Displacement, Challenges, Rights and Obligations, Nigeria.

1.0. INTRODUCTION

Internally displaced persons (IDPs) are individuals who have been forced to leave their homes or habitual residences due to armed conflict, violence, human rights abuses, or natural and man-made disasters. Unlike refugees, who cross international borders and receive protection under international law, IDPs remain within their country of origin and do not have the same legal protections. This situation presents significant challenges for IDPs, including displacement, human rights violations, and limited access to essential services such as food, water, and healthcare. From climate change-induced disasters to protracted conflict and violence, Nigeria has been facing multiple crises that have caused a significant increase in the number of IDPs.

The issue of internal displacement is a pressing concern globally, with millions of people being forced to flee their homes due to conflict, violence, and natural disasters.

2.0. DEFINITION

2.1. INTERNALLY DISPLACED PERSONS (IDPs)

An internally displaced person (IDP) is a person who is forced to flee his or her home, but still remains within the borders of his or her country. The UN Guiding Principles on Internally Displacement defines Internally Displaced Persons thus:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.¹

The above definition recognized that people can be displaced not only by sudden or expected conflicts but also by situations of generalize violations of human rights like was the case in Burma, Ethiopia and Iraq, where the displacement of populations was not a spontaneous event but an organized state policy implemented over years or even decades².

The following categories of persons qualify as IDPs:

- a. Internally displaced citizens of the country concerned.
- b. Former refugees who have returned to their country of origin but are unable to return to their former homes or find another durable solution through social and economic integration in another part of the country.
- c. Displaced stateless persons who have their habitual residence in the country concerned.

¹ UN doc. E/CN.4/1998/53/Add.2 (11 February 1998)

² E. Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern' [2005] (24)(3)*Refugee Survey Quarterly*, 10

- d. Displaced nationals of another country who have lived there for a long time (maybe even generations) and have largely lost contact with their country of nationality.
- e. Displaced nationals of another country who have their habitual residence in the country concerned because they been admitted permanently or for prolonged periods of time.

2.2. KEYS DIFFERENCES BETWEEN INTERNALLY DISPLACED PERSONS AND REFUGEES.

S/N	REFUGEES	INTERNALLY DISPLACED PERSONS
1.	Refugees are individuals who are outside their country of origin and unable or unwilling to return due to a well-founded fear of persecution based on either race, religion, nationality, political opinion, e.t.c	IDPs are individuals or groups who have been forced to flee their homes due to violence, conflict, human rights violations, or natural disasters, but remain within their own country.
2.	Refugees are granted legal status and protection under international law. The United Nations High Commissioner for Refugees (UNHCR) is responsible for providing aid, protection and advocating for refugees' rights.	IDPs do not receive the same formal legal protections as refugees under international law because they have not crossed international borders. Instead, national governments are primarily

		responsible for their protection and assistance.
3.	Refugees can apply for asylum in a foreign country, and if granted, they may receive protection, residency and certain rights in that country.	IDPs do not seek asylum in foreign countries because they remain within their home country. However, they may seek internal relocation to safer areas or require support from the government and humanitarian organizations to meet basic needs.

3.0. LEGAL FRAMEWORK IN NIGERIA FOR INTERNALLY DISPLACED PERSONS IN NIGERIA

3.1. THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA.

The Constitution of the Federal Republic of Nigeria though being the primary legislation in the country, does not expressly make any specific references to the term "IDPs". However, due to the status of IDPs as citizens who reside within their own state's boundaries, they are also entitled to certain constitutionally given rights. In accordance with the fundamental duty of government that, citizens, including IDPs, are to be protected and assisted in the enjoyment of their unalienable rights, it is the responsibility of the Nigerian government as a whole to ensure that these rights are respected to the effect that:

*It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of this Chapter of this Constitution.*³

The provisions of the Constitution make all the guarantees, responsibilities, and obligations it establishes binding on all Nigerian authorities and individuals.

The Federal Executive has the authority to execute and maintain this Constitution under section 5(1)(b) of the 1999 constitution (as amended), which includes ensuring the protection of IDPs' human rights, notably those outlined in Chapter IV³⁹. This requirement led to the creation and Presidency adoption of the National Policy on Internally Displaced Persons (IDPs) in Nigeria in 2012.

3.2 The only national authority saddled with the protection of the internally displaced, usually referred to as internally displaced persons (IDPs) is the National Emergency Management Agency (NEMA). It is responsible for providing direct material assistance to displaced persons in Nigeria. It offers material assistance to repatriated Nigerians and IDPs no matter the cause of displacement. The agency came into existence through the promulgation of the National Emergency Relief Act of 1999 which has today been transformed into National Emergency Management Agency (Establishment, etc.) Act 2004. The Agency was established under Section 1 of both the old and new Acts, but under the old Act, to perform the function of organizing, providing and coordinating emergency relief to victims of national disasters throughout the Federation and matters incidental thereto. The functions of the Agency as outlined in section 6(1) of the new Act are as follows:

- a. To formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for efficient and effective response to disasters at national level;

³ Section 13 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

- b. Co-ordinate and promote research activities relating to disaster management at the national level;
- c. Monitor the state of preparedness of all organizations or agencies which may contribute to disaster management in Nigeria;
- d. Collate data from relevant agencies so as to enhance forecasting, planning and fields operation of disaster management;
- e. Educate and inform the public on disaster prevention and control measures;
- f. Co-ordinate and facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to distress call;
- g. Co-ordinate the activities of all voluntary organizations engaged in emergency relief operations in any part of the Federation;

Though the mandate of NEMA is clear cut, its impact in attending to internal displacements in Nigeria is far from adequate. There are cases of belated responses, insufficient responses or even not addressing the felt needs of the internally displaced persons.

3.3 NATIONAL POLICY ON INTERNALLY DISPLACED PERSONS IN NIGERIA.

This policy was developed by the Nigerian government in response to internal displacement issues and to adequately solve issues relating to the rights of IDPs in Nigeria. The Policy begins by restating the fundamental rights that all citizens have under the 1999 Constitution while simultaneously acknowledging the unique vulnerability of women and children and providing them with extra protections. It went further to include the criteria for national and international humanitarian agencies to deliver humanitarian assistance, it also includes protections against displacement.⁴

4.0. INSTITUTIONAL FRAMEWORK

4.1. NATIONAL COMMISSION FOR REFUGEES, MIGRANTS AND

⁴ National Policy on Internally Displaced Persons in Nigeria 2012

INTERNALLY DISPLACED PERSONS

The National Commission for Refugees, Migrants and Internally Displaced Persons was established by Decree 52 of 1989 now Cap. N21, LFN, 2004. The Commission's mandate was expanded by the Federal Government to cover issues relating to IDPs and the coordination of Migration and Development in 2002 and 2009 respectively. The Commission is mandated to coordinate the national action for the protection and assistance of Refugees, Asylum Seekers, Returnees, Stateless Persons and IDPs. Given the similarities in the humanitarian challenges faced by both refugees and IDPs, it is appropriate to argue that this commission is the only known institution in respect of IDPs related matters as far as Nigeria is concerned.

4.2. NATIONAL EMERGENCY MANAGEMENT AGENCY

The National Emergency Management Agency (NEMA) is the agency responsible for coordinating disaster management and emergency response in Nigeria. It was established by Decree No. 12 of 1999, which was later re-enacted as the NEMA Act of 2011. Its main goal is to reduce the impact of disasters and ensure the safety and well being of citizens during times of emergencies. With the increase of such emergencies and disasters in the nation, the mandate of NEMA has been tested and in most cases, it has not responded in a satisfactory manner. One would expect NEMA to be proactive especially in recurrent cases of natural disasters like flood with forecasts made by the Nigerian Meteorological Agency (NiMet).

4.3. NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The NHRC is an independent government agency established to promote and protect human rights in the country. It was created in 1995 under the National Human Rights Commission Act. The commissioner's mission is to ensure that citizens' fundamental rights, as enshrined in Nigeria's Constitution and international human rights law are respected and protected. Such an important organization like the NHRC is meant to have improved human rights protection in Nigeria. However, human right abuses are done with impunity. The cases handled by the

NHRC are either not published or when published, the government does not take any actions on the findings and recommendations made. It is also safe to state that displacement caused by conflicts are hardly handled by the NHRC maybe because of the volatile nature of such conflicts or because security agencies are involved. The mandate of the NHRC needs to be increased to cover pro bono services to victims of conflicts with or without the intervention of security agencies. This will aid in justice delivery.

5.0. INTERNAL DISPLACEMENT IN NIGERIA

Internal displacements in Nigeria have over the years been as a result of civil war, insurgency and counterinsurgency, communal clashes, religious violence, political violence, natural disasters and conflict over resources. Majority of 36 States in Nigeria are prone to experiencing natural disasters, especially flooding⁵. Communal violence is a prominent cause of internal displacement. It is often accompanied by violent clashes between communities and several violations of human rights. Before the onset of insurgency, communal violence was the regular and constant cause of displacement across Nigeria. The causes of communal violence in Nigeria have historical roots. This has been reflected by the rise in communal violence, which simplified, can be summarised into five categories: ethnic rivalry, religious violence, land conflicts, conflicts related to the demarcation of administrative boundaries and political elections. Noteworthy is the Boko Haram insurgency which has translated into a major security threat to the Nigerian state.

The most significant driver of internal displacement in Nigeria is the ongoing insurgency by the extremist terror group Boko Haram, which started in the year 2009. The dreaded Boko Haram group, whose main aim has been to establish an islamic state (a move that has been violently opposed by the Nigerian government in defence of the sovereignty of Nigeria), has

⁵ The most recent one which occurred in Borno State on the 10th day of September, 2024, was as a result of the collapse of the Alau Dam. Over 70% of the residents in Maiduguri and Jere local government were affected and displaced by the flood.

waged terror and armed rebellion primarily in Nigeria's northeastern region, notably in the states of Borno, Yobe and Adamawa states. For over a decade of its continuous attacks, the group has used terror tactics, including bombings, kidnappings, and attacks on civilians, military, and government targets. Since the beginning of Nigeria's conflict with the Islamist armed group Boko Haram in 2009, thousands of lives have been lost, and more than two million people have been displaced in the country's northeast. Many internally displaced persons (IDPs) have sought refuge in camps set up and run by state governments across the northeast region. Government authorities in collaboration with humanitarian organizations have provided food, water, sanitation facilities, health care, and education to those displaced, often for years. The IDPs⁶ have spread across the six northeastern states and beyond, with strong concentrations in Borno, Yobe and Adamawa, as well as in neighboring Taraba state, Gombe state and Bauchi state. Most IDPs have headed to nearby cities from territories controlled by terrorist groups, which has emptied the rural Northeast of residents. Maiduguri, which was attacked but never taken by Boko Haram, has become the country's main city of refuge with an estimated 800,000 IDPs⁷. The most affected groups have been women, children, and young people, who together account for nearly 80% of the displaced population.

Another source of displacement in Nigeria is the conflict between farmers and herders. The violence between farmers and armed pastoralists, otherwise known as herdsmen, is another major cause of IDPs today in Nigeria. With their cows and other livestock they invade people's farms and kill and sack the people from their villages at any least resistance to the ravage of their farms. Conflicts between herdsmen and their host communities have resulted to many people being displaced from their homes while the herdsmen take over their homes and farms.⁸

⁶ Boko Haram attacks across Nigeria's borders have also led to internal displacement in Chad, Cameroon, and Nigeria.

⁷ (IRD and AFD, 2018).

⁸ Emmanuel Maya, SPECIAL REPORT: Inside Agatu killing field: blood on the streets, charred bodies everywhere'' *Premium Times*, 18 March 2016 <<http://www.premiumtimesng.com/news/headlines/200369->

This again has ethno-religious character because the herdsmen are generally Hausa-Fulani and so Muslims. Thomson Reuters Foundation reported in February 2017 of 27,000 people in Kaduna having been forced to flee their homes due to violence between Muslim herdsmen and largely Christian farmers in Southern Kaduna; which killed at least 800 people. Thousands of Agatu people in Benue State have also been displaced by the same Fulani herdsmen in 2016 and 2017. No fewer than 60,000 lives have been lost as a result of farmers/herders clashes in the country. Between 2017 and 2020, suspected Fulani attackers were reported to have carried out 654 attacks and killed 2539 Nigerians. Serial targeted mass killings have also continued in the North Central states, especially Benue and Plateau states, including the 2021 attack on Bassa Local Government Area that left 17 dead and the 2022 attack in Puka and Dinter LGA, which led to the death of 7 persons⁹. The most recent reported massacre occurred on the eve of Christmas 2023, about 50 villages in Bokkos, Mangu and Barkin Ladi Local Government Areas of Plateau State were visited with a crushing bloodbath by terrorist gunmen whom many think are Fulani militia. This attack lasted for three days, and the count of human losses is estimated to be about 200. Houses numbering over 221, farmlands and several vehicles were also set ablaze. At least 10,000 displaced persons from the several affected communities are in Internally Displaced Persons (IDP) camps.

The challenges faced by IDPs are multifaceted and complex. Displaced persons suffer significantly higher rates of mortality than the general population. They also remain at high risk of physical attack, forced recruitment into armed groups, sexual assault and abduction, and frequently are deprived of adequate shelter, food and health services. IDPs are vulnerable to poverty, social exclusion, and discrimination, which can hinder their ability to recover and lead

special-report-inside-agatu-killing-field-blood-on-the-streets-charred-bodies-everywhere> accessed 10th November, 2024.

⁹ See Nextier SPD Policy Weekly reports <<https://www.vanguardngr.com/2024/01/insecurity-60000-lives-lost-in-farmers-herders-clashes-nextier/>> Accessed on the 10th November, 2024.

productive lives. The overwhelming majority of internally displaced persons are women and children who are especially at risk of abuse of their basic rights. More often than refugees, the internally displaced tend to remain close to or become trapped in zones of conflict, caught in the cross-fire and at risk of being used as pawns, targets or human shields by the belligerents. According to reports, the number of people in need of urgent assistance in North-East Nigeria rose from 7.9 million at the beginning of 2020 to 10.6 million since the onset of COVID-19. Since then, the protection environment for internally displaced people, returnees and host community members in North-East Nigeria has been further seriously challenged in a high-risk context for the spread of the disease in the camps and communities. Even before the pandemic, protection incidents particularly gender-based violence as well as sexual exploitation and abuse had remained a major protection concern, despite sustained efforts in terms of prevention and response¹⁰.

6.0 RIGHTS AND OBLIGATIONS OF INTERNALLY DISPLACED PERSONS.¹¹

6.1 RIGHTS OF INTERNALLY DISPLACED PERSONS

- a. All rights contained in the Constitution of Nigeria, statutes and domesticated sub-regional, regional and international human rights and humanitarian treaties, which all citizens of Nigeria are entitled to, shall be applicable to all internally displaced persons in Nigeria.
- b. All IDPs have the right to enjoy in full equality, the same rights and freedoms under both international and domestic laws as do all other citizens and persons in Nigeria. However, non-citizens may not be eligible to vote and be voted for in local elections unless the law expressly entitles them to.
- c. IDPs shall have:

¹⁰ See the OCHA situation report of July 2020 <<https://reporting.unhcr.org/nigeria-2020-year-end-report-issues-and-challenges>> accessed on the 10th November, 2024.

¹¹ See: National Policy on Internally Displaced Persons.

- i. The right to seek safety in another part of the country and be received without discrimination of any kind;
 - ii. The right to leave their country;
 - iii. The right to seek asylum in another country; and
 - iv. The right to be protected against forcible return to or relocation in any place where their life, safety, liberty and/ or health would be at risk.
- d. IDPs have a right to request and receive protection and assistance from the state and local authorities and shall not be punished or persecuted for making such a request.
- e. Vulnerable IDPs shall have a right to receive protection and assistance required by their condition or special needs. Such vulnerable IDPs shall include children (including separated, unaccompanied and orphaned children), women (including nursing mothers, expectant mothers and female heads of households), persons with disabilities, and the elderly.
- f. The right to liberty and security of every person is guaranteed. No one shall be arbitrarily arrested or detained. IDPs shall not be interned in camps. If confinement is necessary, it shall not last longer than absolutely necessary and warranted by exigencies. Such confinement must cease immediately the necessity or exigency ends. IDPs shall not be taken hostage.
- g. Displaced children shall not be recruited as child soldiers or permitted to take part in hostilities. Cruel, inhuman, and degrading practices that compel compliance with recruitment shall be prohibited always.
- h. Every human being including IDPs has the right to recognition as a person before the law. Therefore, the relevant authorities (including the Nigeria Immigration Services, the National Identity Management Commission, Independent National Electoral Commission, Nigeria Police Force, Federal Road Safety Commission, Local Government Authorities,

and any other institution) shall ensure that all IDPs are issued all documents necessary for the enjoyment of their legal rights. This shall include the issuance of passports or other travel documents, national or personal identification documents, drivers' licenses, voters' cards, birth certificates, marriage certificates, and other related documents.

- i. The right to seek employment or participate in economic activities.
- j. The right to vote and be voted for in their places of displacement, relocation or return and participate in government or civic affairs; and the right to communicate in a language they understand. IDPs shall also have the right to associate freely with other persons.

It is noted that these rights are not protected by the government during displacement. There are even some reports of abuses by state actors at IDP camps. It is therefore apposite to state that the rights enshrined in our statutes are not enjoyed by internally displaced persons and they cannot enforce same given their incapacitation.

6.2 OBLIGATIONS OF INTERNALLY DISPLACED PERSONS

Like all citizens, IDPs have an obligation to be law-abiding citizens. IDPs shall take responsibility for the commission of individual and group crimes during the events leading to displacement and thereafter. Specifically, IDPs shall be responsible for the following:

- a. Individual criminal responsibility under national and international law;
- b. Individual criminal responsibility for genocide, war crimes and crimes against humanity;
- c. Individual and group crimes of a very serious nature as defined under national and state laws;
- d. Respect the culture and norms of host communities;
- e. Abide by rules and regulations in collective settlements.

In reality, we find it difficult to believe that internally displaced persons can fulfill any statutory obligations or legally imposed duties on them given their peculiar disadvantaged

position. It seems that their duties are temporarily abated until such a time that they can carry out such duties.

7.0 OBLIGATIONS AND RESPONSIBILITIES OF GOVERNMENT¹²

In the event of displacement of minor magnitude, the State Governments will take primary responsibility; while in the event of major displacement, the Federal Government will activate all response measures in collaboration with the State Governments. International human rights law imposes on government three major obligations with regards to ensuring the realization of the rights of internally displaced persons:

1. The obligation to respect the human rights of internally displaced persons, i.e. to refrain from actively violating them;
2. The obligation to protect such rights, i.e. to intervene and take protective action on behalf of the victims of internal displacement against threats by others or stemming from their displaced situation;
3. The obligation to fulfil these rights, i.e. to provide goods and services necessary to allow internally displaced persons to fully enjoy their rights; and to discharge these obligations without discrimination.

It is observed that the protections required for internally displaced persons are not enjoyed by them. Government and its agencies charged with this onerous task often fail in such responsibilities. This failure is not only colossal, it is existential in nature. For instance, displacements due to conflicts with land-grabbing undertones and motives have generational impact if not properly addressed and redressed by the government.

8.0 CONCLUSION

¹² Ibid

Internal displacement in Nigeria is driven by a combination of insurgency, ethnic conflicts, environmental factors, political instability, and criminal activity. While the government and international organizations have responded with varying degrees of success, addressing the root causes of displacement remains a challenge. Comprehensive and sustained efforts involving security, conflict resolution, humanitarian aid, and governance reform are needed to mitigate displacement and support the millions of displaced Nigerians.

FROM BYTES TO RIGHTS: NAVIGATING THE DIGITAL DIVIDE IN PURSUIT OF THE RIGHT TO INFORMATION

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ABSTRACT

In the digital age, access to information is pivotal in ensuring transparency and active participation in democratic processes. The Right to Information, recognized as a fundamental human right in international and national legal frameworks. However, the digital revolution, while promising to democratize information access, paradoxically creates the digital divide. This divide is characterized by disparities in access to, use of, and proficiency with digital technologies. As individuals, communities, and nations find themselves on the wrong side of this divide, their right to information is hindered. The paper explores the interplay between the digital divide and the right to information, emphasizing implications, ethical and legal obligations, and potential solutions. It also highlights successful case studies and best practices from around the world that have effectively bridged the digital divide. The digital divide's impact on various socio-economic factors is examined in depth and outlines recommendations for governments, non-governmental, and international organizations. Further, addresses the digital divide as an imperative human rights issue in the digital age. Bridging this divide ensures that the right to information remains a universal and meaningful human right for all. As the world becomes increasingly digitized, equitable access to information resources is essential for democratic societies to thrive.

Keywords: Digital Divide, Right to Information, Human Rights, Digital Literacy, Information Access

I. INTRODUCTION

In the context of an ever-expanding digital landscape and growing interconnectivity, the availability of information plays a fundamental role in fostering democratic principles, promoting openness, and facilitating human progress. The Right to Information (RTI) is

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recognized as a fundamental human right across various international and national legal frameworks. It serves as a crucial mechanism for fostering accountability, supporting good governance, and facilitating people engagement in decision-making processes³. The capacity of individuals to obtain information, exchange thoughts, and participate in public dialogue is crucial for fostering a dynamic and all-encompassing democratic society.

Nevertheless, the implementation of the Right to Information varies across different segments of the global populace. The advent of the digital revolution, despite its potential to enhance the accessibility of information, has inadvertently generated a substantial and enduring obstacle known as the digital divide. The aforementioned division is distinguished by inequalities in the availability, utilization, and mastery of digital technologies, specifically the internet. Various individuals, communities, and nations encounter challenges that hinder their capacity to fully exercise their Right to Information, placing them in a disadvantaged position⁴. The concept of the digital divide comprises a range of complex inequities, which include variations in the availability of high-speed internet, ownership of digital devices, proficiency in digital literacy, and the capacity to effectively traverse online resources. These disparities are influenced by a range of characteristics, such as geographical location, socioeconomic standing, level of education, age, and other related variables. As the process of digitization continues to advance globally, the aforementioned inequities are accentuated, resulting in the emergence of a "knowledge gap" that delineates individuals with access to digital resources from those without such access.

The importance of the digital divide within the framework of the Right to Information is of utmost significance. In light of the growing dependence of governments and organizations on digital platforms for the distribution of information, it is imperative for people to possess the necessary skills and means to access and utilize these resources in order to effectively exercise their Right to Information⁵. The phenomenon known as the digital gap, if not properly attended to, poses a threat to the fundamental principles of fairness and inclusiveness that constitute the foundation of the Right to Information.

B. Purpose and objectives of the paper

Specific objectives include:

- a. Examining the concept of the digital divide and its various dimensions.

³ *Ashok Kumar Thakur v. UOI* (2008) 6 SCC 1.

⁴ *M P High Court Bar Association v. Union of India & Ors.* (W.P. (C) No. 155 of 2023).

⁵ *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1.

- b.** Assessing the impact of the digital divide on the exercise of the Right to Information.
- c.** Analysing legal and ethical implications arising from the digital divide in the Right to Information context.
- d.** Exploring strategies and initiatives for bridging the digital divide, including government policies, civil society efforts, and private sector involvement.
- e.** Investigating the global perspective and diversity of approaches to address this issue.

C. Research questions

To guide exploration of the digital divide as a human right for the Right to Information, this paper will address the following questions:

- a)** What are the key dimensions of the digital divide, and how do they impact access to and utilization of information resources, particularly in the context of the Right to Information?
- b)** What strategies and initiatives have been employed to bridge the digital divide in different parts of the world, and what lessons can be drawn from successful initiatives?
- c)** How do various stakeholders, including governments, non-governmental organizations, and international bodies, contribute to addressing the digital divide as it pertains to the Right to Information?
- d)** To what extent is the Right to Internet Access recognized as a human right, and how does it intersect with the Right to Information?
- e)** What are the most significant challenges and barriers in bridging the digital divide for the Right to Information?

D. Methodology

In order to address the aforementioned inquiries and accomplish the designated goals, this study has utilized qualitative research methodologies. Data is gathered from several sources, encompassing legal documents, scholarly literature, reports issued by international organizations, and case studies. The utilization of qualitative analysis is employed to scrutinize the legal and ethical frameworks surrounding the digital divide, with the purpose of evaluating its effects on the accessibility of information and technology resources. Furthermore, a comparative analysis is done of different countries in order to identify best practices and policy implications.

II. THE DIGITAL DIVIDE AND THE RIGHT TO INFORMATION

Across demographics and different sorts of cities, India is experiencing a colossal internet gap. Not only is it crucial to guarantee the fundamental right to internet access, but it is also imperative to take particular constructive efforts to ensure that it's access is easy, affordable, and secure. This is because important services are rendered unavailable to over a third of the population⁶. In addition, the establishment of such a right would pave the way for other accessory rights that are vital to the protection of data confidentiality, safety from the potential damaging effects of the internet, and the obligation to be treated equally.

In the past few years, the Indian judiciary has acknowledged the significance of having access to the internet. In a case, the SC ruled that the right to freedom of speech and expression, as outlined in Article of the Indian Constitution⁷, encompasses the right to access the internet. However, the court emphasised that this right is not an absolute right and that it may be conditioned by reasonable constraints upon its exercise⁸. The digital divide's impact on the exercise of the right to information can be inculcated by the following points:

1. Access to Information Resources: The digital divide directly affects individuals' ability to access information. Those with limited or no internet access, especially in rural and economically disadvantaged areas, face barriers in obtaining critical information from government agencies, educational institutions, and other institution/sources⁹.

Limited access to digital devices and high charges of internet connections inhibits individuals from exercising their Right to Information¹⁰, which often involves online applications, databases, and government websites.

Faheema Shirin, an inhabitant of a women's hostel, contested new laws at her hostel that limited the usage of electronic devices. The High Court of Kerala ruled that the limitation violated the freedom to access the Internet, the right to privacy, and the right to education in accordance with the principle of unjustifiable infringement¹¹. This case was significant for a few reasons: first, it demonstrated that limits on the Internet might be implemented not only for safeguarding nation's interests or but also for arbitrary reasons or any other malafide political purposes;

⁶ Subhash Ahlawat, 'In The Era of Digitization: Is Access to Internet Fundamental' (*Subhash Ahlawat*, April 2024), <[Access to Internet as a Fundamental Right: The Indian Perspective](#)> accessed 7 January 2025.

⁷ Constitution of India, art 19 (1) (a).

⁸ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

⁹ *Action Committee Unaided Recognized Private School v. Directorate Of Education W.P. (C)-101/2023*.

¹⁰ Nicola Lucchi, 'Internet Content Governance and Human Rights' [2014] 16(4) JETLaw <[Internet Content Governance and Human Rights](#)> accessed 1 January 2025.

¹¹ *Faheema Shirin vs. State of Kerala*, AIR (2020) Ker 35.

second, it demonstrated how other fundamental rights are significantly linked to the access of Internet.

2. Participation and Engagement: The digital divide impacts civic engagement and participation. Individuals without access to digital tools and online platforms are less likely to engage in discussions, access government services, participate in online consultations or know about the works of a government. This limited participation affects the extent to which citizens can hold governments accountable and contribute to policy-making processes, which are fundamental aspects of the Right to Information.

3. Information Quality and Relevance: The digital divide may lead to disparities in the quality and relevance of information accessed¹². Those with limited access to the internet may rely on outdated or less reliable sources, hindering their ability to make informed decisions and engage in meaningful discourse. This aspect is critical because the Right to Information extends beyond mere access; it includes the right to accurate and timely information.

B. Instances illustrating the consequences of the digital divide

1. Rural vs. Urban Disparities: The rural-urban digital divide is underscored by case studies conducted in several nations. In rural regions, the presence of insufficient facilities and inadequate connectivity frequently leads to diminished availability of information, education, and vital services. Based on the findings of the India Inequality Report 2022, conducted by the non-governmental organization Oxfam, it is revealed that a mere 31 per cent of the rural population utilizes the internet, which is in stark contrast to the significantly higher figure of 67 per cent observed among the urban population¹³.

According to the National Service Scheme (NSS) report for the academic year 2017-18, a mere 9 per cent of students enrolled in various courses had the privilege of utilizing a computing device with connectivity to the internet¹⁴. Additionally, it was found that 25 per cent of the pupils enrolled had the opportunity to utilize the internet through diverse devices. The likelihood of owning a computer is positively correlated with both higher levels of education and income.

¹² Nader S. Sweidan & Ahmad Areiqat, 'The Digital Divide and its Impact on Quality of Education at Jordanian Private Universities' (2021) 10 (3) IJHE <<https://files.eric.ed.gov/fulltext/EJ1299922.pdf>> accessed 6 January 2025.

¹³ Indian Development Review, 'The Digital Divide in India: From Bad to Worse?' (*Indian Development Review*, 16 February 2023) <[Access to Internet as a Fundamental Right: The Indian Perspective](#)> accessed 8 January 2025.

¹⁴ Akshara Srivastava, 'Women, Rural Poor, Unemployed Lagging Due to Digital India: Oxfam India' (*Business Standard*, 5 December 2022) <[Women, rural poor, unemployed lagging due to digital divide: Oxfam India | Economy & Policy News - Business Standard](#)> accessed 4 January 2025.

According to the study published by the Telecom Regulatory Authority of India (TRAI), the internet penetration rate in India in 2018 was approximately 49 per cent. Out of the total population, 25 per cent resided in rural areas and 98 per cent resided in urban areas¹⁵.

According to the research published by the National Statistical Office (NSO), a majority of households with internet connectivity are concentrated in urban areas, with 42% of such homes having access to the internet¹⁶. In rural areas of India, the percentage of individuals with internet connectivity is limited to a mere 15%. Government initiatives like BharatNet, which are designed to facilitate digital connectivity in rural areas of India, have not been successful in achieving their intended outcomes.

2. Educational Divide: The digital divide has a substantial impact on the field of education. The lack of access to the web and digital tools among students presents significant obstacles in their ability to utilize online educational materials, leading to inequities in learning possibilities¹⁷. The digital gap is having a significant impact on children's ability to acquire knowledge and foster their growth¹⁸.

The acquisition of essential technological skills by pupils is impeded in the absence of access to the Internet. In the present day, YouTube, an internet-based video platform, offers a vast array of videos that give educational content at no charge. Access to these films simply requires an internet connection and a minimum of a smartphone. Despite the abundance of websites and blogs that provide educational knowledge¹⁹.

The Government of India has also undertaken a commendable attempt through its MOOC-based Swayam Platform to provide high-quality education²⁰. This is achieved through the dissemination of video lectures and educational materials in the form of PDFs. Recently a new platform namely Swayam Plus²¹ has been launched to cater the needs of development of skills that are at par with industry standards. As the courses are being develop by the major industry stakeholders. These various instances exemplify a pressing necessity to eliminate the digital

¹⁵ A Mahendru and others, 'Digital Divide: India Inequality Report 2022' (*People's Archive of Rural India*, December 2022) <[Digital Divide: India Inequality Report 2022](#)> accessed 2 January 2025.

¹⁶ Surojit Gupta, 'NSO Survey Finds Big Rural-Urban Divide in Computer, Internet Use' *Times of India* (India, 25 November 2019) <[NSO survey finds big rural-urban divide in computer, internet use | India News - Times of India](#)> accessed 1 January 2025.

¹⁷ *Justice For All vs Government Of Nct Of Delhi & Ors* AIR 2021 (NOC) 107 (DEL.).

¹⁸ 'What is Digital Equity?' (*Internet Society Foundation*, 21 June 2023) <[What is digital equity? | Internet Society Foundation](#)> accessed 3 January 2025.

¹⁹ OECD, *Innovating Education And Educating For Innovation: The Power Of Digital Technologies And Skills* (OECD Publishing 2016) 35.

²⁰ K. J. Mathai, 'Impact of MOOC in Teachers' Education through Swayam Platform – In Indian Context' (2019) 10 (4) IJDS <[Impact-of-MOOC-in-Teachers-Education-Through-Swayam-Platform.pdf](#)> accessed 5 January 2025.

²¹ 'About Swayam Plus' (*Swayam-Plus*) <[SWAYAM Plus](#)> accessed 8 January 2025.

divide in order to ensure individuals' access to their fundamental rights of education and information.

3. Employment Opportunities: In this day and age, the majority of job openings and the application processes for those jobs are conducted online. Those who are unable to access internet job listings and do not possess the necessary digital abilities have a more difficult time finding work.

These days, the vast majority of interviews are conducted online in order to provide candidates with greater convenience. If this is not possible, then at least some of the interview phases are conducted online. Even in the case of in-person interviews, if there is a pressing need, the interview can be conducted online. Because there are now a multitude of online hiring channels, pages, and blogs that offer a variety of job openings, one does not need to search for job announcements in newspapers or magazines as was common practice in the past.

In a bench consisting of J. K.V. Viswanathan and J. J.K. Maheswari, the SC arrived to the protection of an individual who belonged to a marginalised section of society. The man had been stated failed due to the fact that in the form of application that was submitted online, he had entered his date of birth as December 18, 1997, when in fact he had entered December 8, 1997. The SC ruled that this mistake in the application form was insignificant and didn't have any role in the method of selection²².

The Court observed:

*“In the instant case, we cannot turn a **Nelson’s eye** to the ground realities that existedthis court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.”*

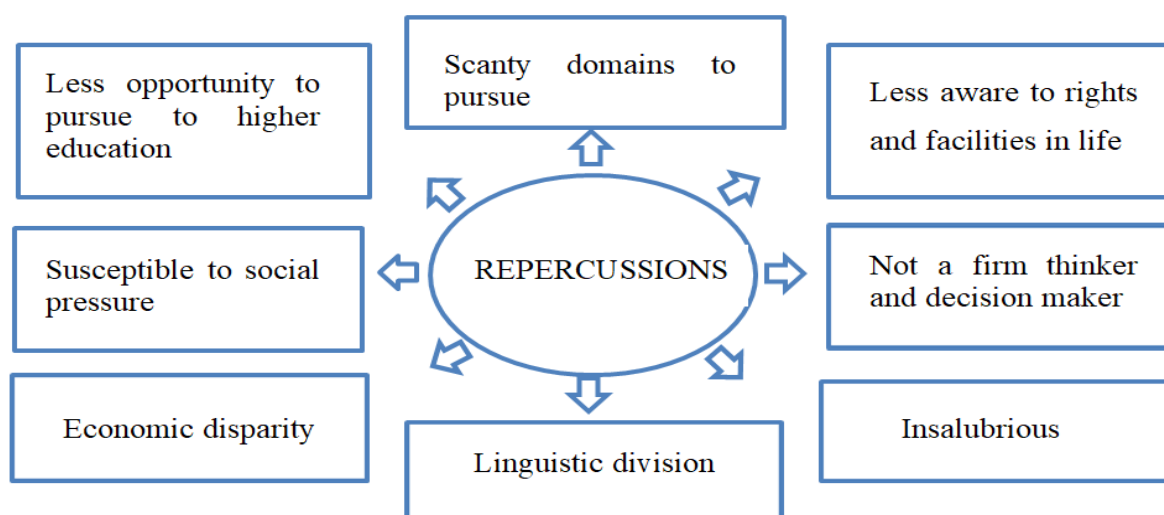
4. Political Participation: The phenomenon known as the digital divide can exert an influence on political participation, whereby disenfranchised groups experience limited accessibility to crucial information pertaining to elections, candidates, and voting protocols. The process of selecting a leader for a nation is a complex undertaking, requiring careful consideration and discernment in the decision-making process. It is imperative to use prudence and thoughtfulness while making choices on national leadership. The availability of internet access provides individuals with the opportunity to gather information regarding a candidate's professional background, work experience, personal characteristics, and political affiliations²³.

²² ‘Digital Divide: SC Comes to Rescue of Bihar Man Who Had Made Error in Online Job Form’ (*The Leaflet*, 3 January 2024) <[Digital divide: SC comes to rescue of Bihar man who had made error in online job form – The Leaflet](#)> accessed 2 January 2025.

²³ Moritz Hoferer and others, ‘The impact of technologies in political campaigns’ (2020) 538 *PHYSICA A STAT.* <[The impact of technologies in political campaigns - ScienceDirect](#)> accessed 7 January 2025.

By utilizing this information, individuals can engage in a comprehensive analysis to determine which candidate aligns most closely with their own values and beliefs, thereby informing their voting decision.

The repercussions of ebbing down Digital Literacy can lead to an array of disparities in a nation which directly and indirectly affects one's right to have information. Some of them are presented through a chart below:



5. Healthcare and Public Services: Individuals' access to vital healthcare information and government services might be inhibited when they have limited digital access, which is especially problematic in locations that are underserved or distant²⁴.

One facet of this is the application of newly developed technologies in the medical field. One can simply make an appointment with a doctor, have a consultation with them online, and even get their medications using the internet today. However, in order to take advantage of such services, one must be knowledgeable about them and have access to the internet.

It is also to be noted that in government hospitals, government has digitized the process of taking appointment of a doctor through an app which can be easily downloaded via google play store. This has put an end on long standing cue for the appointment and easy for the individuals to manage its appointment details. Hence, now those who have access to internet can easily make appointment while others still have to struggle for the same which creates a disparity in itself.

C. Legal and ethical implications of a digital divide in the right to information context

²⁴ Cynthia J. Sieck and others, 'Digital inclusion as a social determinant of health' (2021) 4 (1) NPJ Digital Medicine <[Digital inclusion as a social determinant of health | npj Digital Medicine](#)> accessed 5 January 2025.

1. Violation of Human Rights: The digital gap, in instances when it restricts persons' ability to access information, can be interpreted as a transgression of their human rights, namely the Right to Information as acknowledged in both international and domestic legal systems.

Today there are plethora of opportunities to earn or work online and even more women centric jobs are emerging but due to digital divide rural women and men are not able to access them or have information about them²⁵, which in turn widening the economic disparity between rural and urban areas.

2. Inequity and Discrimination: The persistence of the digital divide has the potential to further worsen pre-existing disparities in social and economic conditions²⁶. The aforementioned issue gives rise to ethical considerations pertaining to the potential for discrimination on the basis of technology and information accessibility.

3. Accountability and Transparency: The presence of a notable digital gap has the potential to compromise the fundamental tenets of government accountability and transparency²⁷, since certain individuals may be marginalized from obtaining public records, government reports, and other forms of information that facilitate transparency.

4. Inclusivity and Diversity: The inclusivity of the Right to Information should be duly acknowledged, taking into account the diverse nature of people. The presence of a digital gap, which has a disproportionate impact on vulnerable communities and marginalized sections of society, has the potential to hinder inclusivity within decision-making processes. As it is seen, only a few Adivasi and Dalit households have access to the internet, in contrast to other sections of society²⁸.

5. Digital Literacy and Privacy: The resolution of the digital gap necessitates consideration of matters pertaining to digital literacy and the safeguarding of online privacy. The ethical issue of paramount importance lies in guaranteeing that individuals possess the ability to navigate the digital realm in a secure and responsible manner²⁹.

²⁵ 'The Digital Divide and Is it Holding Back Women in India?' *Hindustan Times* (India, 16 January 2022) <[The digital divide and is it holding back women in India? - Hindustan Times](#)> accessed 1 January 2025.

²⁶ Sy. A. Saeed & Ross M. Masters, 'Disparities in Health Care and the Digital Divide' (2021) 23 (9) CURR. PSYCHIATRY REP. <[Disparities in Health Care and the Digital Divide - PMC](#)> accessed 7 January 2025.

²⁷ 'Safeguarding Freedom of Expression and Access to Information Through a Multi-Stakeholder Approach: Guidelines For The Governance of Digital Platforms' (UNESCO) <[Safeguarding freedom of expression and access to information: guidelines for a multistakeholder approach in the context of regulating digital platforms - UNESCO Digital Library](#)> accessed 5 January 2025.

²⁸ Jadhav Chakradhar, Prashant K. Chaudhary & Jyantimala Nayak, 'Digital discrimination in India: Is India digitally inclusive?' (*Odishabarta*, 2023) <[Digital Discrimination in India: Is India digitally Inclusive\(?\). | \(odishabarta.com\)](#)> accessed 2 January 2025.

²⁹ Yong J. Park, 'Digital Literacy and Privacy Behavior Online' (2013) 40 (2) COMMUN. RES. <[Digital Literacy and Privacy Behavior Online, Communication Research | 10.1177/0093650211418338 | DeepDyve](#)> accessed 1 January 2025.

III. BRIDGING THE DIGITAL DIVIDE: STRATEGIES AND INITIATIVES

A. Government initiatives and policies

- 1. Infrastructure Development:** Governments often invest in expanding digital infrastructure, such as broadband networks and internet connectivity in rural and underserved areas³⁰. This includes initiatives to connect remote regions with high-speed internet access.
- 2. Digital Inclusion Programs:** Central Government as well as State Governments are running digital inclusion programs aimed at providing affordable devices, internet access, and digital literacy training to marginalized communities such as PM E-Vidhya, DIKSHA, Swayam and Swayam Prabha, E-Pathshala etc.³¹
- 3. E-Government Services:** Governments are increasingly moving government services online, making it easier for citizens to access information and engage with public institutions. These services should be designed to be user-friendly and accessible to all.
- 4. Public-Private Partnerships:** Collaboration between governments and private sector entities can lead to innovative solutions to bridge the digital divide. These partnerships may involve subsidies for internet access or the development of digital skills training programs.
- 5. Universal Service Obligations (USOs):** Some countries have established USOs, requiring telecommunication companies to provide affordable access to telecommunications and broadband services in underserved areas³².

B. Non-governmental and civil society efforts

- 1. Community Networks:** Grassroots initiatives and community networks often play a crucial role in providing internet access to remote or marginalized communities. These networks are often community-owned and operated.
- 2. Digital Literacy Programs:** Non-governmental organizations and civil society groups frequently offer digital literacy and skills training to empower individuals with the knowledge to access and use digital resources effectively.
- 3. Advocacy and Awareness:** These organizations advocate for policies that promote digital inclusion and raise awareness about the consequences of the digital divide. They may also engage in public discourse to drive change.
- 4. Accessibility Initiatives:** Accessibility initiatives focus on making digital content and technology more inclusive for people with disabilities. This includes initiatives to ensure websites, apps, and content are accessible to all.

³⁰ *Incable Net(Andhra) Limited & Ors vs Ap Aksh Broadband Ltd.& Ors*, 2010 (6) SCC 719.

³¹ 'PM e-Vidya' (Ministry of Education) <[PM e-Vidya](#)> accessed 7 January 2025.

³² Philipe Chone and others, 'Universal service obligations and competitions' (2009) 12 (3) IEP 249.

C. Private sector involvement

1. Connectivity Solutions: Telecommunication companies often invest in expanding their networks. They should make an effort to make internet packages affordable so that it can reach to underserved populations.

2. Low-Cost Devices: Private companies sometimes produce low-cost devices, such as smartphones and tablets, to make digital access more affordable for a broader range of consumers.

3. Digital Skills Training: Tech companies may offer digital skills training programs to equip individuals with the knowledge to use digital tools effectively so that individual can become industry ready.

4. Corporate Social Responsibility: Some corporations engage in corporate social responsibility (CSR) activities that include initiatives to bridge the digital divide in the areas where they operate.

D. International organizations and partnerships

In the realm of education, digital skills and competencies comprise a domain that is continuously evolving in line with the advancement of novel technologies. Mobile internet access, cloud-based computing, the "Internet of Things," digital data, artificial intelligence, and a surge in computer-driven choice-making and other forms of automation are all expected to experience substantial growth over the course of the next decade³³. It's possible that some of the most important "digital skills" that are expected to emerge as a result of these changes won't entail the direct application of digital technology. Despite the livelihoods of individuals who do not have their own access to these technologies are becoming increasingly reliant upon broadband. This is due to the fact that many of the key institutions in their life are based on the utilisation of electronic devices and electronic data.

1. United Nations Initiatives: The United Nations, through its agencies like ITU (International Telecommunication Union) and UNESCO, works to promote global digital inclusion and literacy³⁴. They provide guidance and support to nations in bridging the digital divide.

³³ 'How Can Digital Skills Development Help Bridge The Digital Divide?' (*Broadband Commission For Sustainable Development*) <[Working Group on Education \(2017\) - Broadband Commission](#)> accessed 3 January 2025.

³⁴ 'Digital Inclusion of All' (*ITU: Committed to Connecting the World*, November 2023) <[Digital inclusion of all](#)> accessed 8 January 2025.

2. Global Alliances: Organizations like the Alliance for Affordable Internet (A4AI) and the World Wide Web Foundation work to reduce the cost of broadband access and promote affordable internet³⁵.

3. Bilateral and Multilateral Partnerships: Countries often collaborate on international projects to expand digital connectivity in underdeveloped regions. These partnerships may involve financial support, technological expertise, and knowledge sharing.

E. Challenges and limitations in bridging the digital divide

1. Financial Barriers: Financing digital inclusion initiatives can be a significant challenge, especially for lower-income countries. Funding and resource allocation can be a barrier to implementing comprehensive strategies.

2. Technological Challenges: Expanding digital infrastructure in remote or geographically challenging areas can be technically complex. It may require innovative solutions to overcome these challenges.

3. Digital Literacy: Digital literacy programs often face challenges in reaching the most marginalized populations. Cultural and linguistic differences may require tailored training approaches.

4. Privacy and Security: As individuals gain access to the digital world, they may also face privacy and security risks. Addressing these concerns is crucial to ensuring digital inclusivity.

5. Sustainable Development: Bridging the digital divide must align with sustainable development goals. Initiatives should not only provide access but also contribute to broader development objectives.

IV. HUMAN RIGHTS FRAMEWORK

A. The right to information as a human right

1. Historical Evolution: The concept of the Right to Information has evolved over time, with various international and national instruments recognizing it as a fundamental human right. This includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and numerous national legislations³⁶.

2. Core Principles: The Right to Information is based on core principles such as transparency, accountability, and the free flow of information. It empowers individuals to seek and receive information held by public authorities.

³⁵ 'Advancing Meaningful Connectivity: Towards Active and Participatory Digital Societies' (A4AI) <[Home - Alliance for Affordable Internet](#)> accessed 5 January 2025.

³⁶ Sudhir Naib, *The Right To Information Act 2005: A Handbook* (Oxford University Press 2011).

3. Impact on Democracy: The Right to Information is intrinsically linked to democracy, as it enables citizens to make informed decisions, participate in public discourse, and hold governments accountable for their actions.

B. The right to internet access as a human right

1. Emergence of Digital Rights: In the digital age, the Right to Internet Access is increasingly recognized as a human right. This right encompasses not only access to the internet but also the skills and tools necessary to utilize it effectively³⁷.

2. Expanding Definitions: The Right to Internet Access extends traditional human rights principles to the digital realm. It includes the right to access information, participate in the digital economy, and express oneself online.

3. Global Recognition: Various international and regional bodies, such as the United Nations Human Rights Council, have recognized the importance of internet access as a human right³⁸. Some countries have also enshrined this right in their national laws³⁹ such as Estonia, Greece, France, Finland, Costa Rico, Spain, and Canada.

C. Intersection of these rights

1. Complementary Nature: The Right to Information and the Right to Internet Access are highly complementary. Internet access is a means to exercise the Right to Information effectively, as it facilitates access to a wide array of information sources.

2. Digital Inclusivity: Ensuring that individuals have access to the internet is a critical component of digital inclusivity. It broadens the scope of the Right to Information, making it more accessible and relevant in the digital age.

3. Ethical Considerations: The intersection of these rights raises ethical questions about equitable access to digital resources and the responsibility of governments and other stakeholders to ensure that marginalized populations can fully participate in the digital world.

4. Legal obligations of states:

a) International Commitments: States have international legal obligations to respect, protect, and fulfil these rights. They are bound by international human rights treaties to ensure that their citizens can exercise these rights.

³⁷ C Howell & Darrell M. West, 'The Internet as a Human Right' (*Brooking*, 7 November 2016) <[The internet as a human right](#)> accessed 3 January 2025.

³⁸ 'Promoting Human Rights as Digital Rights' (*Internet Rights & Principles Coalition*) <[Internet Rights and Principles Coalition – Committed to making Internet work for human rights](#)> accessed 7 January 2025.

³⁹ Seema, 'Right to Internet: A fundamental right under Constitution of India' (2023) 3(1) INT. J. CIV. LAW LEGAL RES.<[Right to internet: A fundamental right under constitution of India](#)> accessed 4 January 2025.

b) Positive Obligations: Governments have positive obligations to take active measures to bridge the digital divide and ensure that their citizens can access information and the internet. This may include implementing policies, providing infrastructure, and offering digital literacy programs.

c) Non-Discrimination: States must also ensure that their actions do not discriminate against particular groups in terms of access to information or internet services. Discriminatory practices can be in violation of human rights principles.

d) Accessible Information: States are responsible for making public information accessible, including online content. This requires them to design websites and digital resources that are inclusive and meet accessibility standards.

D. Challenges and controversies

1. Balancing Rights: The intersection of these rights can create challenges in balancing the individual's right to information against privacy concerns and the need for security, particularly in the context of online surveillance and data protection.

2. Digital Literacy: Ensuring individuals have the skills to navigate the internet safely and responsibly is a challenge that must be addressed to protect human rights in the digital age.

3. Global Variations: There can be significant variations in how states interpret and implement these rights, leading to disparities in access to information and the internet.

4. Surveillance and Censorship: In some regions, state-sponsored surveillance and censorship can limit individuals' ability to exercise these rights, raising ethical and legal concerns.

V. CHALLENGES AND BARRIERS

A. Socio-economic factors

1. Income Disparities: Socio-economic disparities play a significant role in the digital divide. Low-income individuals and families may struggle to afford the necessary devices and internet subscriptions, limiting their access to online information.

2. Geographic Disparities: Rural and remote areas often face disparities in access due to a lack of digital infrastructure. The cost of expanding broadband networks to these regions can be prohibitive.

3. Affordability: Even when internet access is available, it may not be affordable for low-income populations, further exacerbating the digital divide.

B. Infrastructure and technological challenges

1. Lack of Infrastructure: Many regions lack the basic digital infrastructure required for internet access. This includes the absence of reliable electricity, telecommunications towers, and internet service providers.

2. Technological Barriers: Some individuals may lack the skills or familiarity with digital technology required to access information online effectively.

3. Connectivity Issues: Poor connectivity, slow internet speeds, and network outages can hinder the ability to access and use online information resources.

4. Digital Device Accessibility: The cost of digital devices, such as smartphones and computers, can be a significant barrier, particularly in low-income households.

C. Education and digital literacy

1. Lack of Education: Individuals with limited access to quality education may struggle to develop the digital literacy skills necessary to navigate online resources effectively.

2. Digital Literacy Gaps: Even when education is available, disparities in digital literacy skills may persist, particularly among older generations or marginalized communities.

3. Language and Cultural Barriers: Language and cultural diversity can create barriers to accessing online information, particularly for minority populations.

D. Privacy and security concerns

1. Data Privacy: Concerns about data privacy and online security may deter individuals from engaging with digital platforms and sharing personal information.

2. Cybersecurity Risks: Online threats, including cyberattacks and scams, can impact the perceived safety of online activities, potentially limiting access to information⁴⁰.

3. Surveillance: State or corporate surveillance can have a chilling effect on individuals' freedom to seek and access information without fear of repercussions.

E. Cultural and linguistic diversity

1. Language Barriers: Online information is predominantly available in a limited number of languages, which can be a barrier for individuals who do not speak these languages.

2. Cultural Relevance: The content available online may not always be culturally relevant or appropriate for diverse populations, which can hinder access to information.

3. Indigenous Communities: Indigenous communities often face unique challenges in accessing information online, including the preservation of their cultural heritage and protection of traditional knowledge.

VI. CASE STUDIES AND BEST PRACTICES

⁴⁰ *K.S.R. Menon v. State of Kerala* W.P. (C) 21609.

A. Highlight successful examples of bridging the digital divide

Several effective projects have been implemented to address the digital divide and ensure access to the Right to Information in several countries, including India. These initiatives offer valuable insights into the strategies employed by these nations. Some of them are as follows:

1. South Korea's Digital Inclusion Model: South Korea has received praise for its comprehensive endeavors to narrow the digital gap. The government's all-encompassing digital inclusion policy includes the building of infrastructure, implementation of digital literacy initiatives, and provision of assistance for low-income households. This has led to a significant increase in internet usage and proficiency, enhancing the availability of the Right to Information.

In order to address the widening digital divide, the Seoul Metropolitan Government (SMG) has devised the 2022 Digital Competence Strengthening Plan to address the growing digital divide caused by the rapid digital transformation⁴¹. This plan aims to promote digital inclusion by providing tailored digital education and fostering ecosystems that bridge the disparity between education and employment.

2. Estonia's E-Government and Digital Identity: E-government infrastructure and digital identity systems in Estonia are recognized to be among the most advanced in the world⁴². In addition to the incorporation of digital literacy into the educational system, citizens have access to a wide variety of government services that are available online⁴³. In the wake of a cyberattack carried out by Russia in 2007, the Estonian government designated the training of cybersecurity professionals and the expansion of digital services national security goals⁴⁴. The residents of Estonia now have greatly increased access to information as a result of these efforts, which has helped Estonia become one of the most technologically sophisticated societies in the United States.

3. India's National Digital Literacy Mission: One of the goals of India's National Digital Literacy Mission (NDLM) is to ensure that every family has at least one member who is proficient in digital literacy. In addition to receiving instruction in digital literacy, participants in the program are awarded a digital literacy certificate following successful completion of the

⁴¹ 'Digital Inclusion' (Seoul Metropolitan Government) <[Digital Inclusion - Seoul Metropolitan Government](#)> accessed 5 January 2025.

⁴² Mari Roonemaa, 'Global Lessons From Estonia's Tech-Savvy Government' (*The UNESCO Courier*, 18 April 2017) <[Global lessons from Estonia's tech-savvy government | The UNESCO Courier](#)> accessed 3 January 2025.

⁴³ 'e-Identity' (*E- Estonia*) <[ID-card - e-Estonia](#)> accessed 3 January 2025.

⁴⁴ Savannah Wallace, 'Estonia: The First Digital Literate Country' (*Medium*, 26 July 2020) <[Estonia: The First Digitally Literate Country | by Savannah Wallace | The Startup \(medium.com\)](#)> accessed 4 January 2025.

program. The implementation of this effort represents a big step toward ensuring that even underserved communities have access to their digital resources.

Additionally, there is a program that is known as the Digital Saksharta Abhiyan (DISHA), which operates on the same principles. Between the years 2014 and 2016 (both of these programs are no longer active), about 53.67 lakhs of people living in rural areas of India advantaged through these programs⁴⁵. During the year 2017, the government of India gave its approval to a program called the Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA) with the intention of introducing digital literacy in rural areas of the country. The program's objective is to reach 6 crore rural families, with each home consisting of one individual.

4. Rwanda's Rural Internet Connectivity: Via collaboration between the private and public sectors, the Rwandan government has made the implementation of internet connectivity in rural areas a priority⁴⁶. In order to bridge the gap between urban and rural areas, programs such as "One Laptop per Child" have been implemented to deliver digital gadgets to schoolchildren⁴⁷. Additionally, community telecenters have been established to provide access to information resources.

In the context of Rwanda's larger aspirations to transform itself into a knowledge-based economy and a regional technology powerhouse, the country has achieved tremendous progress in expanding internet access for its inhabitants⁴⁸. This amazing development may be ascribed to a mix of measures taken by the government, investments made by the business sector, and international alliances that were targeted at boosting digital literacy and extending the digital infrastructure of the country.

B. Analyze what made these initiatives effective?

1. Comprehensive Approach: Successful initiatives often take a holistic approach that addresses multiple facets of the digital divide. This includes infrastructure development, digital literacy programs, and affordable access, ensuring a more inclusive solution.

⁴⁵ PIB Delhi, 'Digital Literacy Mission' (Press Information Bureau, 21 December 2022) <pib.gov.in/PressReleaseIframePage.aspx?PRID=1885365> accessed 3 January 2025.

⁴⁶ 'In Rwanda, Broadband Internet Connects Rural Communities to a Bright Future' (ITU: The UN Agency For Digital Technologies, 28 May 2020) <[In Rwanda, Broadband Internet connects rural communities to a bright future - ITU Hub](https://www.itu.int/en/ITU-D/ITUHub/ict/news/story/20200528-rwanda-broadband-connects-rural-communities-to-a-bright-future)> accessed 7 January 2025.

⁴⁷ 'One Laptop Per Child (OLPC)' (Rwanda Basic Education Board (REB)) <[OLPC \(reb.gov.rw\)](http://reb.gov.rw)> accessed 3 January 2025.

⁴⁸ Simon Kemp, 'Digital 2024: Rwanda' (Datareportal, 23 February 2024) <[Digital 2024: Rwanda — DataReportal – Global Digital Insights](https://datareportal.com/reports/digital-2024-rwanda/)> accessed 5 January 2025.

2. Government Commitment: A strong commitment from the government is a common factor in successful programs. Governments play a pivotal role in policymaking, funding, and execution of digital inclusion initiatives.

3. Public-Private Partnerships: Collaborations with the private sector can bring technological expertise and financial resources to initiatives, helping scale and sustain efforts to bridge the digital divide.

4. Integration with Education: Incorporating digital literacy into formal education curricula ensures that future generations are well-prepared to navigate the digital world effectively.

5. Accessibility and Affordability: Making digital devices and internet access affordable and accessible to all income groups is crucial for success.

6. Monitoring and Evaluation: Effective programs often include monitoring and evaluation mechanisms to assess their impact and adapt strategies as needed.

7. Cultural Relevance: Recognizing and respecting cultural diversity is a key to making information accessible and relevant to diverse populations.

VII. RECOMMENDATIONS AND POLICY IMPLICATIONS

A. Proposed strategies for governments

1. National Digital Inclusion Strategies: Governments should develop and implement comprehensive digital inclusion strategies that address access to digital infrastructure, affordability, and digital literacy. These strategies should be tailored to the specific needs of their populations.

2. Universal Service Obligations (USOs): Governments should consider imposing USOs on telecommunication companies to ensure universal access to affordable and reliable internet services, particularly in underserved areas.

3. E-Government Initiatives: Promote the development of e-government platforms that make public information easily accessible online. Ensure that these platforms are user-friendly and accessible to all, including individuals with disabilities.

4. Digital Literacy in Education: Integrate digital literacy into school curricula to ensure that students are equipped with essential skills to navigate the digital world effectively. In addition to informal peer mentoring programs, community learning centres shall be designed for youngsters who are not enrolled in school and who lack fundamental computer skills.

5. Subsidies and Support Programs: Provide subsidies or support programs to low-income households to make digital devices and internet access more affordable.

6. Data Privacy and Cybersecurity: Develop and enforce regulations that protect the privacy and security of individuals online. Ensure that data protection laws and cybersecurity measures are in place.

B. Recommendations for non-governmental organizations

1. Digital Literacy Initiatives: NGOs can play a vital role in providing digital literacy training, especially to marginalized communities. These initiatives can empower individuals to access information effectively.

2. Advocacy and Awareness: NGOs should advocate for digital inclusion policies and raise awareness about the importance of bridging the digital divide in the context of the Right to Information.

3. Community Networks: Support and promote community networks that provide local and affordable internet access in underserved areas.

4. Accessibility Initiatives: Work to ensure that digital content and services are accessible to individuals with disabilities. Promote inclusive design and assistive technologies.

C. Recommendations for private sector involvement

1. Affordable Connectivity: Telecommunication companies and internet service providers should offer affordable and accessible internet packages, particularly for low-income households.

2. Digital Skills Training: Private sector entities can contribute by providing digital skills training programs for their employees and communities they serve.

3. Corporate Social Responsibility (CSR): Engage in CSR initiatives aimed at bridging the digital divide in the areas where they operate. This could involve investments in digital infrastructure, devices, or digital literacy programs.

D. Recommendations for international organizations and partnerships

1. Global Collaboration: International organizations should facilitate collaboration between nations to share best practices, resources, and expertise in addressing the digital divide.

2. Funding and Support: International bodies can provide funding and technical support to nations in need, particularly in low-income and developing countries, to build digital infrastructure and implement digital inclusion programs.

3. Monitoring and Reporting: Encourage nations to report on their progress in bridging the digital divide and ensuring access to the Right to Information, promoting transparency and accountability.

4. Fostering development of digital skills in adherence to industry needs: International and National hand-in-hand employability strategies; enhanced industry-specific courses and skills;

timely training of employed individuals and chances of re-skilling training for unemployed individuals and other marginalized groups etc.

E. The role of academia and research

1. Academic Research: Academic institutions should conduct research on the digital divide and its implications for the Right to Information, generating valuable data and insights. There is a need to incorporate digital skills into the national school system's curriculum and promote extracurricular activities and groups outside of the classroom.

2. Policy Recommendations: Researchers can inform policymakers by providing evidence-based policy recommendations, helping shape effective strategies

3. Education and Advocacy: Academia can also play a role in raising awareness about the importance of digital inclusion through education and advocacy efforts. These recommendations and policy implications provide a roadmap for governments, NGOs, the private sector, international organizations, and academia to address the digital divide in the context of the Right to Information.

VIII. CONCLUSION

The digital age has transformed the way information is accessed, disseminated, and utilized, redefining the landscape of the Right to Information. In this context, the digital divide emerges as a critical challenge, hindering the universal exercise of this fundamental human right. This paper has explored the intricate interplay between the digital divide and the Right to Information, revealing the multifaceted implications, ethical considerations, and legal obligations. The digital divide poses significant obstacles to the realization of the Right to Information. Disparities in access to digital infrastructure, affordability, and digital literacy result in unequal opportunities for individuals and communities to engage with online information resources. As a consequence, marginalized populations, especially in rural or economically disadvantaged areas, are disproportionately affected. This not only hinders their ability to make informed decisions but also limits their participation in democratic processes and the exercise of accountability. Understanding the digital divide as a human rights issue necessitates comprehensive and concerted action from governments, non-governmental organizations, the private sector, international bodies, academia, and other stakeholders. The case studies and best practices highlight the potential for bridging the digital divide effectively. South Korea's digital inclusion model, Estonia's e-government initiatives, India's National Digital Literacy Mission, and Rwanda's rural internet connectivity represent successful approaches. These initiatives have succeeded by taking a holistic approach that includes infrastructure development, digital literacy programs, and affordable access. Government

commitment, public-private partnerships, and the integration of digital literacy into education systems have been pivotal in their success. Non-governmental organizations have played a significant role in providing digital literacy training and advocating for digital inclusion. The private sector's contributions have come through affordable connectivity, digital skills training, and corporate social responsibility initiatives. International organizations have facilitated global collaboration, funding, and support for nations in need. Moreover, the role of academia in conducting research, generating policy recommendations, and raising awareness about digital inclusion is vital. There is also need to pave the way for the development of digital skills which refers to “*a range of different abilities, many of which are not only ‘skills’ per se, but a combination of behaviours, expertise, know-how, work habits, character traits, dispositions and critical understandings*”. These combined efforts ensure that individuals and communities are not left behind in the digital revolution. Hence, addressing the digital divide in the context of the Right to Information is an imperative for the realization of human rights in the digital age. The recommendations and policy implications provided in this paper serve as a roadmap for stakeholders to create a more inclusive, equitable, and informed world. Bridging the digital divide will uphold the principles of democracy, transparency, and the right to participate in the shared information.

TRACING THE HUMAN COST OF DUST: A CASE STUDY ON SILICOSIS-AFFECTED WORKERS IN INDIA

Salik Anwar¹ & Nehal Ahmad²

ABSTRACT:

Silicosis, a preventable yet incurable occupational lung disease, continues to afflict thousands of Indian workers, particularly in mining, stone-cutting, and construction sectors. This study examines silicosis through the dual lens of occupational hazards and human rights, highlighting systemic neglect, inadequate workplace safety, and weak enforcement of labour laws. It explores how socio-economic vulnerabilities and informal labour practices exacerbate workers' exposure to silica dust, resulting in profound health and livelihood consequences. Drawing from case studies and policy analysis, the paper argues that silicosis is not merely a public health issue but a violation of the right to life, dignity, and safe working conditions guaranteed under constitutional and international human rights frameworks.

Keywords: Silicosis, Human Rights, Occupational Health

INTRODUCTION

It is, undoubtedly, a matter of great concern that seventy-five percent of the global workforce lives in third-world countries. More than 175 million workers are victims of occupational accidents and diseases every year. The informal sector workers in India constitute more than 90 percent of the total workers. Women, unfortunately, play an important role in the informal economy. It contributes 66 percent of the GDP (Gross National Product); despite this, the workers have no protection. According to an estimate by Sterling Smith in his article, Occupational Health and Safety in India, the loss due to occupational diseases and accidents in India is US \$ 12 billion.

Silicosis is an incurable lung disease caused by inhalation of dust containing free crystalline silica. Crystalline silica or silicon dioxide (SiO₂) is found in quartz, including clay bricks, concrete, mortar, and tiles. Occupations with exposure to silica dust include mining, tunneling, stonework, and sand blasting. In all these occupations, workers breathe in tiny silica particles released into the air with the dust created by cutting, crushing, chipping, grinding, drilling, blasting, or mining, and in the process become victims of silicosis. All those engaged in the manufacture of ceramics, glass, and abrasive powders are also susceptible to silica dust.³ A frequent cause of death in people with silicosis is silicotuberculosis and lung cancer. Respiratory insufficiencies due to massive fibrosis and heart failure are other causes of death. However, due to a lack of awareness, even among doctors, silicosis is often confused with other diseases. The number of persons who die from silicosis in India is large, but there are no

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³ NHRC Intervention on silicosis, p.2, First Edition: 10 December (2016).

statistics available concerning these deaths. It has also been established that there is no medical treatment for silicosis. Silicosis is thus a disabling, irreversible, fatal disease and continues to progress even when contact with silica stops. It is, therefore, ironic that in comparison to other deadly diseases like HIV/AIDS and cancer, silicosis has not received the required attention that it deserves.

PRASAR v Union of India (2008 in W.P (C) No. 79 of 2005) is a landmark case on this issue wherein this non-governmental organization in New Delhi submitted a petition before the Commission on 13 June 2003, stating that on the basis of the survey conducted in the Lalkuan area in August 2001. Silicosis was detected among the stone crushers, stone quarry workers, miners, and construction workers. The petitioner sought a remedy for the occupational disease of silicosis because the contractors, agents, etc., were grossly negligent towards the working conditions of workers, which resulted in silicosis among many of them. On these grounds, the petitioner requested a grant of compensation for these workers. It was further submitted that in the year 1992, the Supreme Court of India in M.C. Mehta vs Union of India had ordered the closure and shifting of the stone crushing, quarrying, mining, and other activities from the Lal Kuan area to Pali in Haryana. The petitioner had enclosed a list of 83 people alleged to have been suffering from silicosis.

Definition of workers

According to section 2 clause 1 of the Factories Act, “any person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing or any incidental to or connected with the manufacturing or the subject of the manufacturing process “It is also defined in the mines act section 2 clause h, “a person is said to be employed in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge, whether for wages or not.” The abovementioned definition clearly indicates that there is no security for the wages of unorganized workers in the factories. In other words, there is no contract between workers and the employer. Here, there is a clear-cut violation of fundamental rights under Article 21 of the Constitution of India and the directive principles of state policy.

Research

Research studies conducted by the World Health Organization, Indian Council of Medical Research and the National Institute of Occupational Health have time and again brought forth the fact that silicosis is not only a serious threat to the health of all those who are engaged in occupations that are potentially exposed to crystalline silica dust but is a constant health hazard for people living in the vicinity where these occupations are carried out. Silicosis is thus a disabling, irreversible, fatal disease and continues to progress even when contact with silica stops. It is, therefore, ironic that in comparison to other deadly diseases like HIV/AIDS and cancer, silicosis has not received the required attention that it deserves. As a result, a large number of workers affected by it receive negligible support, and their families are left in miserable conditions.

India has a thriving mining sector, with mining being a major activity in the states of Rajasthan, Madhya Pradesh, Gujarat, Chhattisgarh, Jharkhand, Odisha, and West Bengal. In 1999, the Indian Council of Medical Research reported that around 3.0 million workers are at high risk of exposure to silica; of these, 1.7 million work in mining or quarrying activities, 0.6 million in the manufacture of non-metallic products (such as refractory products, structural clay, glass, and mica), and 0.7 million in the metals industry. There are also around 5.3 million construction workers at risk of silica exposure.

The Present Status

Vide order dated 30th January 2008 in W.P (C) No. 79 of 2005 titled 'Health & Safety Association vs. Union of 11 India & Ors.' This Court had considered certain aspects for the reduction of occupational hazards of the employees of the Thermal Power Stations in the country and had also issued certain directions:

- 1 Comprehensive medical checkup of all workers in all the coal-fired thermal stations by doctors appointed in consultations with the trade unions. The first medical check-up is to be completed within six months.
- 2 Free and comprehensive medical treatment to be provided to all workmen found to be suffering from an occupational disease, ailment, or accident until cured or until death.
- 3 Services of the workmen not to be terminated during illness and to be treated as if on duty.
- 4 Compensation to be paid to workmen surrendering from any occupational disease, ailment, or accident in accordance with the provisions of the Workmen's Compensation Act 1923.
- 5 Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.
- 6 Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation to be recommended by the National Institute of Occupational Health (NIOH), Ahmadabad, Gujarat.
- 7 All employers to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.
- 8 Safe methods to be followed for the handling, collection, and disposal of hazardous waste are recommended by NIOH. Appointment of a Committee of experts by NIOH, including therein Trade Union representatives and Health and Safety NGO's to look into the issue of Health and Safety of workers and make recommendations.

We direct the above duty holders to submit a report on the following aspects: (i) the geographical location and the industries/ mines state-wise where workers at risk of silicosis are to be found, and the estimates of the number of workers working at these sites. (ii) The details of the number of workers suffering from silicosis/ pneumoconiosis in the country, State-wise, and industry mine-wise. (III) the details of the workers covered by clause (IV) above regarding medical treatment and compensation paid. (v) Details of the number of workers who had died of silicosis during the last 10 years and the details of compensation, if any, paid. There shall

also be directions to the Director General Mines Safety (DGMS) and Director General, Factory Advice Service and Labour Institutes (DG-FASLI) to carry out an occupational health and safety survey of silicosis-affected workers under section 91A of the Factories Act, 9A of the Mines Act, by actively involving, apart from government officials. The non-government organizations working in the silicosis-affected area and submit a comprehensive report to this Court within eight weeks from today as to the facilities available in the field of treatment, actual payment of compensation made available to the victims, and other rehabilitation steps for the affected workers and their family members. It shall also be made clear in the report as to the preventive measures introduced and implemented in the industries throughout the country. Such reports shall be filed within three months so that the required expenditure shall be born by the state concerned where the enquiry is being conducted.”

DELHI

Medical examinations were done by the certified surgeons of workers, but no data is available for the same. (P.26, para2, report submitted by the investigation team in compliance with the order dated 23.08.2016) There is an inadequate number of specialists in the state. (p.30-63 para2, report submitted by the investigation team in response to the order dated 23.08.2016. The data shows 110 cases of Silicosis / Silicotuberculosis, which have been diagnosed in past years, including the cases diagnosed by NITRD and CDMO, which is contrary to the data submitted by the government. (p.31, para2, report submitted by the investigation team as per the order dated 23.08.2016). No compensation has been paid to any Silicosis Silicotuberculosis-affected patients to date by the Government of Delhi.

HARYANA

The same condition is in Haryana, where the medical examination was carried out by certified surgeons, but they are unable to provide any data. The team could collect the data/ identify 111 cases of Silicosis /Silicotuberculosis/ Occupational Lung Diseases. The report submitted by the expert team concludes that the State Government of Haryana has paid compensation only to 19 people suffering from Silicosis / Silicotuberculosis in accordance with the State Silicosis Rehabilitation Policy. “Medical Specialist” is unavailable. (p. 53). It is pertinent to mention that the rehabilitation policy of the Government of Haryana covers only employees working in the organized sector, whereas most of the workers who are affected by Silicosis are from the unorganized sector. The report of the expert committee clearly shows that there was no data available in industrial establishments for workplace dust monitoring. (p.71. Para 3, Report submitted by the expert committee in response to the order dated 23.08.2016.

MADHYA PRADESH

Total confirmed cases of dead and alive in the district of Dhār are 209, and in Alijapur, 339. In the district of Jhabua, it is 584. Moreover, there is no center in the name of ASHA for Silicosis patients in the Districts of Jhabua, Arijapur, and Dhar, as claimed by the State Govt. in the affidavit, March 2015. No cash for medicine, as was stated in the affidavit. The report submitted by the investigation team concludes that nothing has been done in the name of a

comprehensive medical check-up for the Silicosis-affected persons in the Districts of Arijapur, Jhabua, and Dhar. (p.18) No provisions of the Antoday Card for Silicosis-affected patients.

Training of doctors has not been done at the health centers of the affected areas of Alirajpur, Jhabua, and Dhar, as per the report of the investigation team. None of the widows has received pensions in the districts of Alirajpur, Dhar, and Jhabua, as was stated in the affidavit, p.272, point 13. No separate pension scheme for the silicosis victims in MP state, as was mentioned in the Affidavit 270 point 9. (p.20 para 4, report submitted by the investigation team as per the order dated 23.08.2016.

No benefits of the social schemes to the silicosis-affected patients. None of the patients have been given Rs. 800 to silicosis patients for the medical treatment, 15000 in case of death of silicosis, in case of death of silicosis a monthly pension of Rs 550 to the widow and Rs 700 to the orphan, cash benefits of Rs 5000 for daughter's marriage, Rs 1500 to 3000 for family planning or Rs. 850 to 2050 scholarship to children despite the letter of the Principal Secretary, Govt. of M.P dated 15. 07.2011. (p.24) Since 1985, 650 cases of silicosis have been diagnosed by the Board, and 676 slate workers have died due to silicosis, and about 15 deaths occur due to silicosis every year. The total No. of cases diagnosed by Madasaur Silicosis Board from 1985 to 2016 is 650, and the number of deaths is 676. 93 cases of silicosis have been confirmed in Vidhisha, and 34 are suspected silicosis patients as per the report of the M.P. state TB officer, dated 25th March 2017. In the district of Panna, 47 people were suspected of silicosis.

GUJRAT

The number of registered silicosis patients as per DISH is 50. Only 18 patients have been compensated by ESIC. What about the remaining victims? Patients who are dead are 17. No. of silicosis patients not registered under ESIC is 06. No. of silicosis patients covered under ESIC, but the compensation status pending is 25. Assistance given in the unorganized sectors, only in case of silicosis deaths (Rs 100000 per person), is 81. This amount should be less than Rs 4 lakh. No rehabilitation policy for the silicosis victims in the state of Gujarat. The conclusion that is inevitable from the report is that the work environment for workers is very poor. No awareness among workers about the risk of health hazards due to silica exposure. No arrangement for regular screening of workers.

RAJASTHAN

About 19000 workers have been screened out of which 9000 have been certified as having the disease. In 2016, the number of silicosis cases was 369. The report submitted by the investigation team clearly states that the mine owners lack the will to control the dust. Therefore, the only way to prevent silicosis is to close down these crushers. From June 2013 to March 2016, 1655, have been confirmed as silicosis patients. The Pneumoconiosis Board has certified that 257 patients have died due to silicosis. In Bhilwara 1064 cases were certified to silicosis. In Ajmer, 619 had been diagnosed as silicosis/ silico-tuberculosis, and 56 had died. No. of workers at risk of exposure to crystalline silica, approx. 6000-7000. 5534 workers are required to be compensated. 223 victims of silicosis have died. There should be proper investigations and medical checkups of the workers in the industries. There should be no

restrictions on the silicosis identity card issue for the affected patients. Most of the silicosis-affected patients do not have the above-mentioned card in order to take advantage of the relief. The statements of the silicosis-affected persons will be enough in this regard. Mining workers affected by silicosis / silico-tuberculosis should be included in the same category. Only 15 victims affected by silicosis received compensation in the NCT of Delhi. It is pertinent to mention that they are not among the 110 victims.

CONCLUSION

We appreciate the Haryana Govt. Rehabilitation Policy for silicosis patients, but the silicosis rehabilitation pension, family pension, and financial assistance for education should be increased as per the policy of the Government of Haryana. The “Kanyadan” assistance on the occasion of the marriage of a daughter and son should be equal (i.e., 51000. Most of the workers who suffer from this disease belong to the unorganized sectors. There should be a central registry for silicosis disease. The affidavits submitted by the Government of Madhya Pradesh are entirely different from the findings of the investigation team. The silicosis situation in Alirajpur, Jhabua, and Dhar is very critical. They have received nothing in terms of compensation, rehabilitation, or assistance. There should be proper implementation of the order of the Principal Secretary of Labour, Govt. of Madhya Pradesh. The amount of compensation which had been paid to the silicosis victims in the state of Gujarat is not satisfactory. 81 silicosis victims have been provided Rs 1 lakh. However, it should not be less than Rs 4 lakh as per the recommendation of NHRC. In the State of Rajasthan, only 2950 victims of Silicosis have been compensated so far. What about the remaining victims who have not been provided any assistance? There are more than 5534 workers who are required to be compensated. The Government of Rajasthan should take a drastic step regarding the implementation of the policy for the silicosis victims at any cost. Compensation should be equal for every silicosis victim.



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