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FOREWORD

I am thrilled to witness the second issue of Socio Legal Review of Marginalised Sections come to life. The journal began with an idea to integrate scholarship and academic rigour with conscience. In this new issue, that vision feels even more alive.

This volume brings together a diverse body of scholarship that interrogates the intersections of law, society and justice from critical and contemporary perspectives. The articles are diverse in theme, yet united in purpose. They explore different strands of feminism and what they mean in lived reality, examine how technology shapes and sometimes deepens inequality, reflect on the urgent questions posed by the refugee crisis, and grapple with the struggles of environmental justice and human dignity. Each piece focuses, in its own way, on the experiences of those pushed to the margins, and each offers perspectives that are both challenging and hopeful.

To the contributors, thank you. Your ideas and research are what turn a concept into a living body of work. You bring sharp analysis, but also empathy, and that combination is rare and necessary. To the editorial team, congratulations. Your diligence and editorial precision have shaped these pages into something more than a collection of ideas.

I hope readers find in these pages not only knowledge, but also an invitation: to think harder, to question more deeply, and to keep looking for ways, in research, policy, and practice.

Dr. Sukhda Pritam
Additional District and Sessions Judge
Former Director, Centre for Research and Planning
Supreme Court of India

PREFACE

I am deeply honored to present the Socio-Legal Review of Marginalised Communities, the inaugural issue of which is a culmination of the efforts of individuals who are dedicated to the cause of promoting wider understanding of marginalised sections of society from a legal and allied perspective. This Journal aims to address issues relating to marginalised sections of society across the globe, irrespective of caste, creed, religion, gender, and the like.

In this issue, we have been privileged to receive a large number of contributions from Legal Professionals, Academicians, Research Scholars, and Students from different parts of the country, covering various issues and topics. A meticulous review of the manuscripts enabled us to select those that offered in-depth analysis and provided a holistic view of the issues, thereby ensuring that this Journal is comprehensive and insightful.

I wish to express my gratitude to the Advisory Board, Editorial Board of the Journal, and the contributors for their invaluable support and cooperation in making this inaugural issue possible. I would also like to acknowledge Dr. Sukhda Pritam for writing the forward of the Journal. Her encouragement and support have been instrumental in boosting the morale of the team and aligning the Journal's objectives. I consider it a privilege to be the Editor-in-Chief of this Journal and am committed to ensuring that it continues to remain a platform for promoting discourse on issues concerning marginalised communities.

Ms. Iram Jan
Editor-in-Chief

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ARTICLES

SOCIO-LEGAL REVIEW OF MARGINALISED SECTIONS
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BREAKING THE MARITAL CHAINS: A THIRD WORLD FEMINIST CRITIQUE OF DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955

- Thamasi Konara*

ABSTRACT

The Hindu Marriage Act 1955 (HMA) of India represents a significant legislative effort of the Indian Government to reform Hindu Personal law, particularly to recognise equality of men and women within the family unit. While the Act incorporated progressive measures such as grounds for divorce based on adultery, desertion, and cruelty, the implementation of the Act remains deeply entrenched in patriarchal society which disproportionately affects women. This study employs a third world feminist approach to critically analyse the divorce provisions under HMA, emphasising the intersectional challenges faced by divorce, particularly those from marginalised communities. Through this lens, it can be identified that HMA's divorce provision has failed to address cultural and structural inequalities within the society that perpetuate subjugation of women. Even though the Act grants women the right to seek divorce, the disproportionate burden to prove fault-based grounds subjects them to prolonged legal battles and societal stigma. The absence of irretrievable breakdown of marriage as a ground for divorce further restricts women's autonomy trapping them in oppressive marital union. Moreover, the uniformity of HMA's application overlooks diverse socio-economic, cultural realities of Hindu Women. For tribal, Dalit and economically marginalised women, access to divorce remains fraught due to systemic barriers, including financial dependence, lack of legal awareness and societal ostracisation. This paper argues that despite the ostensibly progressive nature of HMA's divorce provisions, it has failed to address changing needs of women within the family unit and women in marginalised communities. This study calls for legislative reforms which incorporate Third World feminist perspectives, including introducing no-fault divorce and intersectional policies that address unique challenges faced by women in marginalized communities. By centering a Third World feminist criticism centering on experiences of marginalised communities, this study seeks to contribute to a more inclusive and equitable legal framework for divorce in India.

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INTRODUCTION

> *"The wife is half the man, the best of friends, the root of the three ends of life, and of all that will help in the other world."*
>
> The Mahabharata[2]

Love is a basic need of every individual and marriage is a basic social institution which recognises the union between two individuals. Since time immemorial, marriage was accepted as the greatest and most crucial of all the social institutions within Hindu society[3]. The institution of marriage has evolved significantly through human history, with primitive societies lacking formalised acceptance of the family unit with husband and wife.[4] As argued in the historical scholarship, systemic marriage concept emerged through capture, followed by the purchase of women, followed by transitioning from endogamous to exogamous systems.[5] With the continuous evolution of society, the collective marriage concept was taken over by individualised marital arrangements.

Within the Vedic society, the institution of marriage was deeply intertwined with region and patriarchal norms with its ultimate purpose of attainment of *Moksha* (Salvation). Yet spiritual liberation was conditional on the birth of a male heir. Ancient texts such as Ramayana glorified wife as *Ardhagini* (half of the man) and *DharmaPatni* (a partner in religious rights)[6]. The Taittiriya Samhita and Mahabharata extolled marriage as crucial for man's worldly and spiritual fulfilment. On the surface level, the wife was venerated as an eternal, infinite consciousness of the entire universe; however, other religious texts such as Manusmriti, explicitly mandated female dependence, forbidding women from existing independently.[7] Traditional Veda scripts advanced a hierarchical conception of human reproduction, framing male contribution as the

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[2] N Kashyap,' Gender Equality and Women's Rights: A Study in Indian Constitution' (2024) 6 (2) International Journal for Multidisciplinary Research 2582
[3] Ibid
[4] H Chakraborti, *Hindu Intercaste Marriage in India: Ancient and Modern* (Sharada Publication 1999)
[5] Ibid
[6] Teerthanker Mahaveer University, *Sociology of Kingship* (Centre for Distance and Online Education 2024) <https://www.tmu.ac.in/other_websites/cdoe.tmu.ac.in.old/study-material/28-08-2024/BA_SOCIOLOGY/SEMESTER_3/BASCC303_SOCIOLOGY_OF_KINSHIP_3_SLM.pdf> accessed 25 May 2025.
[7] J McDaniel, *Offering Flowers, Feeding Skulls : Popular Goddess Worship in West Bengal* (Oxford University Press 2004) 90

active, identity-determining principle ("the seed establishes progeny's essential nature") while positioning female participation as passive gestational support ("the maternal vessel provides nurturing sustenance"). These paradigms systematically privileged patrilineal descent ("paternal lineage dictates social positioning") through what contemporary gender theorists might term "monogenetic mythology[8]."

With the traditional patriarchal customs of marriage, Hindu Marriage Act No. 25 of 1955 (HMA) was enacted with the aim of reforming discriminatory Hindu customs in post-colonial India while ostensibly promoting gender equality. However, despite its progressive intent, the HMA has been subjected to scholarly criticism for reinforcing patriarchal structures with its discriminatory application due to Socio-economic and cultural disparities.

This doctrinal study examines the provisions of divorce under HMA through a Third World feminist lens while emphasizing the intersection of caste, culture, class and socio-economic disparities in accessing justice through these provisions with particular reference to women representing Dalit, other scheduled castes. In exploring the implementation of divorce provisions of HMA, the study adopts a multifaceted approach, combining existing scholarly literature on sociology, history, and law to evaluate divorce provisions as experienced by women in marginalised communities. Available primary and secondary sources including Vedic texts, Indian constitutional and legislative provisions, judicial decisions supplemented by relevant secondary literature have been employed for examination of the research problem. Furthermore, it incorporates a sociological perspective to analyse the social structures, cultural norms and gender roles prevalent within marginalized communities, hindering women's vulnerability in accessing justice.

INDIA: A LEGAL PLURALISTIC NATION

Diversity is naturally embedded within society. On the other hand, homogeneity is considered to be imposed. Thomas Hobbes identifies that people were governed by accepted norms of their group in the natural state which differs from one group to another as utopianism[9]. Contrasting to

[8] O Patrick, *Manu's Code of Law* (Oxford University Press 2005) 146
[9] S A Liyod, 'Hobbes's Moral and Political Philosophy' (*Internet Encyclopedia of Philosophy*) <https://iep.utm.edu/hobmoral/ > accessed 25 May 2025.

this he proposed dystopian, a model of authoritarian monarch to whom everyone is committed through law and order[10]. Max Weber categorizes legal systems into 'tribal law' and 'bureaucratic law' and termed the 'legal order[11]'. In accordance with his argument, only western societies have ever been exposed to 'legal order' built on a rational approach to law. As he suggests, this type of legal systems operate independently from personal interests and guarantees equal application to every individual within the society[12]. The Indian Legal system incorporates both tribal laws and bureaucratic laws into the legal system through the acceptance of legal pluralism. When two or more legal systems within same social context, same is referred to as legal pluralism[13]. As argued by John Griffiths;

> "*Legal pluralism goes hand in hand with social pluralism: a society's legal structure matches its social structure. Legal pluralism refers to the normative heterogeneity that comes with social activity taking place in the setting of numerous overlapping, semi-autonomous social domains, which, it should be noted, is a dynamic state in practice[14].*"

The acknowledgement of legal pluralism within India can be traced back to Warren Hastings's 1772 rule as follows;

> "*In all suits regarding marriage, caste, and other religious usages and institutions, the law of the Koran with respect to the Mohammedans and the law of the Shaster with respect to the Gentoos shall be adhered to[15]*"

Acceptance of pluralism in matters regarding marriage and divorce is reflected in the HMA, which extends its application to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya

[10] I.D Evrigenis ,'In praise of dystopias: a Hobbesian approach to collective action' (2021) 26(1) Critical Review of International Social and Political Philosophy 7 < https://doi.org/10.1080/13698230.2021.1893249> accessed 15 March 2025.
[11] M Weber, *The Protestant Ethic and The Spirit of Capitalism* (Talcott Parsons Trans 1958)
[12] H Gerbe, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective,* (State University of New York Press 1994)
[13] S E Merry, 'Legal Pluralism' (1988) 22(5) Law & Society Review 869 < http://www.jstor.org/stable/3053638> accessed 10 March 2025.
[14] J Griffiths, 'What is Legal Pluralism?' (1986) 24 Journal of Legal Pluralism 1
[15] M P Singh, 'On Uniform Civil Code, Legal Pluralism and the Constitution of India' (2014)5 Journal of Indian Law & Society.

Samaj[16]; to any person who is a Buddhist, Jaina or Sikh by religion[17]; and to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom[18].

HINDU MARRIAGE ACT NO. 25 OF 1955: AN EXAMINATION OF DIVORCE PROVISIONS

Lord Penzance's' classical definition of marriage as a "voluntary union for life of one man and one woman, to the exclusion of all others"[19] has been relied upon by the colonial states of the British empire in codifying marriage and divorce legislations.

The HMA provides for dissolution of marriage either on the fault-based grounds or on the basis of mutual consent. It codifies divorce rights under Section 13, enumerating specific fault-based grounds, including adultery[20], desertion[21], cruelty[22], conversion[23], mental disorder[24], and venereal disease[25]. Additionally, Section 13B introduced the concept of divorce by mutual consent[26]. While these provisions explicitly provide women with avenues to dissolve oppressive marriages, the imposing of a disproportionate burden by necessitating extensive proof of fault. The evidentiary requirements, coupled with societal and familial pressures, create significant obstacles for women seeking to exit matrimonial unions.

The judicial interpretation of grounds for divorce under the HMA, has evolved significantly through landmark rulings by the Indian Judiciary to expand the legal discourse on divorce. In *Savitri Pandey vs. Prem Chandra Pandey,*[27] the Supreme Court expanded the definition of cruelty (Section 13(1) (ia)) to include both physical and mental harm, emphasizing that persistent

[16] Hindu Marriage and Divorce Act No 25 of 1955, s 2(1)a
[17] Ibid, s2(1)b
[18] Ibid 11, s2(1)c
[19] *Hyde v Hyde and Woodmansee* (1866) LR 1 P & D 130 (Court of Probate).
[20] Hindu Marriage Act 1955, s 13(1)i
[21] Ibid, s 13(1) ib
[22] Ibid 15, s 13(1) ia
[23] Ibid 15, s 13(1) ii
[24] Ibid 15, s 13(1) iii
[25] Ibid 15, s 13(1) iv
[26] Hindu Marriage Act 1955, s 13(B)
[27] AIR 2002 SC 591.

verbal abuse and false allegations could constitute legal cruelty. Following the precedent, *Samar Ghosh vs. Jaya Ghosh*[28] reinforced this by holding that "mental cruelty" must be assessed based on the cumulative effect of conduct rather than isolated incidents. The Joseph Shine verdict[29], while decriminalizing adultery, maintained its validity as a ground for divorce under Section 13(1)(i), reflecting the law's dual stance on marital infidelity—no longer a crime but still a matrimonial wrong.

Along with the divorce provisions, Restitution of conjugal rights is an archaic legal remedy which has been accepted by section 9 of HMA. It is a situation where an unwilling wife could be forced by the might of the state to cohabit with her husband due to his right to marital conjugality and consortium. This remedy came to be incorporated to the Hindu society by British colonialists through the *Rukhmabai* judgement[30].

Section 9 of the HMA explicitly establishes gender neutrality by permitting either spouse to petition for restitution of conjugal rights. However, judicial interpretation has exposed the provision's inherently discriminatory operation, revealing how formal equality masks substantive gender oppression. The Andhra Pradesh High Court's landmark critique crystallized this principle, condemning the remedy's enforcement against wives as tantamount to judicially sanctioned "humiliating sexual molestation" that could culminate in state-imposed pregnancy[31].

The fundamental rights chapter of the Indian Constitution is the heart of the constitution which entitles every man, woman and child with human rights because they are human beings. As Justice Bhagawati identifies in *Maneka Gandhi v Union of India*[32];

> *"These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent*".

[28] 2007 SC 347.
[29] 2018 SC 1676
[30] *Dadaji Bhikaji vs. Rukmabai* (1885) ILR 9 Bom 529.
[31] *T. Sareetha vs. T. Venkata Subbaiah* AIR 1986 AP 356, para 29
[32] 978 SCR (2) 621

The constitutional framework of India has made several attempts under the fundamental rights chapter to recognise gender equality. It establishes a nuanced balance between formal equality[33] and substantive justice[34]. While Article 14 guarantees "equality before law" and "equal protection of laws," its classical liberal interpretation initially failed to address structural gender inequalities, as evidenced in early judicial reluctance to recognise gender discrimination as constitutionally prohibited inequality. This limitation stemmed from the doctrine of "equality among equals," which implicitly accepted patriarchal notions of biological determinism. Article 15(3) operates as a constitutional corrective to this limitation by expressly authorizing affirmative action for women. The provision acknowledges that formal equality often perpetuates substantive inequality when applied to historically disadvantaged groups. Judicial interpretation has validated this constitutional logic in domains where in The Government of *A.P. v P.B. Vijaykumar*[35], the Supreme Court sanctioned preferential employment opportunities for women nurses, noting Article 15(3) "is not an exception but a facet of equality."

Furthermore, Article 13 of the Indian Constitution, concerning laws inconsistent with fundamental rights, declares that any law existing before the Constitution's commencement or made subsequently that violates fundamental rights is void[36]. Yet the debate on intersection between personal laws and Article 13 of the Indian Constitution presents a complex jurisprudential dilemma regarding the supremacy of fundamental rights versus religious pluralism. As a constitutional safeguard, Article 13(2)[37] expressly invalidates any "law" that abridges or violates Part III rights. But the judicial treatment of personal laws governing marriage, divorce, and succession reveals significant tensions between constitutional modernity and traditional pluralism.

[33] Constitution of India 1950, art 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

[34] Constitution of India 1950, art 15(3) : Nothing in this article shall prevent the State from making any special provision for women and children.

[35] 1995 AIR 1648

[36] Constitution of India 1950, art 13(2): The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

[37] Ibid

The *Narasu Appa Mali*[38] Judgment questions this constitutional paradox by creating a judicial dichotomy. While upholding the state's authority to reform Hindu personal laws through codification, the Bombay High Court paradoxically insulated uncodified personal laws from fundamental rights scrutiny. This judicial insulation stems from two constitutional premises: first, that personal laws derive from religious practice rather than state authority; second, the Articles from 25 to 28 create an implicit exclusion zone for matters of religious observance. This jurisprudential stance reflects India's pluralist constitutional bargain where religious communities maintain legal autonomy over personal affairs. However, this accommodation generates persistent tensions, particularly regarding gender justice. The *Narasu* exemption enables the continuation of personal law provisions that potentially violate equality, non-discrimination and dignity, creating what scholars describe as "constitutional islands" beyond rights scrutiny.

THIRD WORLD FEMINIST CRITIQUE: ACCESS TO DIVORCE LAWS AND MARGINALISED WOMEN IN INDIA

Social exclusion and marginalisation of certain individuals and communities are a reality which is embedded in every society and in all times of human history. Marginalisation is an indication of a practice where individuals or groups are kept or pushed beyond the edges of society[39]. India is not an exception, with scheduled castes and Scheduled tribes being two major marginalised communities which constitute 16.6% and 8.6% of the total population respectively[40]. Dalit community is a clear reflection of marginalisation within the Indian community with them being considered untouchable by the society. It indicates the members of menial castes which have been born with the stigma of ‘Untouchability’ due to extreme impurity and pollution connected to their traditional occupation[41].

Followed by independence, these marginalised communities were granted reservation status ensuring their economic, political and social representation and development. Article 46 of the Indian constitution has stated that "The State shall promote, with special care, the educational

[38] AIR 1952 BOMBAY 84
[39] P Barry, *Beginning Theory* (Manchester University Press) 67
[40] R B Bhagat, ‘State, Enumeration and Marginalized Communities in India’ (2024) 59 (10) Economic and Political Weekly <https://www.epw.in/journal/2024/10/special-articles/state-enumeration-and-marginalised-communities.html> accessed 15 May 2025.
[41] D K Neupane, ‘Dalits in Different Eyes and Their Identity Crisis’ (2024) 5(1) AMC Journal 84 <https://doi.org/10.3126/amcj.v5i1.75967> accessed 16 May 2025.

and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of social exploitation[42]". Provisions under Article 341 of Indian Constitution recognised scheduled castes and tribes as a new social category with the purpose of their economic development and social upliftment[43]. The President of India was bestowed with the power to declare these scheduled castes and tribes for State benefits, social protection through positive discrimination[44]. Despite the positive discrimination, these scheduled castes and tribes represent individuals whose human rights are continuously violated. Structural discrimination against them occurs in forms of physical, emotional and cultural abuse where legitimacy is given from social structures and practices[45]. As revealed in National Family Health Survey (2015-16) reveals that 26.6% of scheduled castes, 45.9% scheduled tribe members and 18.3% of other backward cast are among lowest wealth bracket[46]. Their literacy level is 66.1% while compared to all India level of 73%[47]. The female literacy level is as low as 56.5% against all-India female literacy level of 64.6%[48]. All these depict the vulnerability of women within the community in accessing the divorce provisions within HMA which is debated under third world feminism. Krolokke and Sorenson argue that third wave of feminists propose a different approach to feminist theory by challenging the notion of universal womanhood and confront the complex intersections of culture, gender, sexuality, race, class and other factors[49]. From the perspective of third world feminism, understanding the experience of women requires engagement with "multiplicity of differences" that constitute these experiences, consequently accepting diversity and varied needs among women. Through the integration of third world feminism as a theoretical foundation, it can be

[42] Constitution of India 1950, art 46
[43] Constitution of India 1950, art 341 (1) ; The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or group within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.
[44] Constitution of India 1950, art 341(1), art 342(1)
[45] K Chetty, 'Discrimination and Exclusion Against Marginal Castes and Tribes in Educational Institutions ; An Empirical Analysis of Bondaguda Primary School' (2021) Contemporary Voices of Dalit <https://doi.org/10.117 | 10.1177/2455328x211008357> accessed 20 March 2025.
[46] Indiaspend, *Scheduled Tribes Are India's Poorest People* (18 May 2017) <Scheduled Tribes Are India's Poorest People> accessed 20 March 2025.
[47] Government of India, Office of the Registrar General & Census Commissioner, *Primary Census Abstract: Census of India 2011* (New Delhi: Ministry of Home Affairs 2011)
[48] Ibid
[49] C Krolokke and A Scott, *Three Waves of Feminism: From Suffragettes to Girls in Contemporary Gender Communication theories & Analyses: From Silence to Performance* (SAGE Publication 2005) 17

argued that women's experience with law and justice differs across social, geographical and cultural contexts. As Ann Russo argues;

> "*Above all, gender and race are relational terms: they foreground a relationship (and often a hierarchy) between races and genders. To define feminism purely in gendered terms assumes that our consciousness of being "women" has nothing to do with race, class, nation, or sexuality, just with gender. But no one "becomes a woman" in Simone de Beauvoir's sense) purely because she is female. Ideologies of womanhood have as much to do with class and race as they have to do with sex*[50]".

This ideology is reflected within Indian feminism, where the 'gender blind spot' in Indian personal laws has been criticised by feminist scholars, including Nivedita Menon, who observed:

> *"There always circulates in the public domain some version of the argument that, to be truly secular, India needs a UCC. But the question we must ask is, to what extent is the issue of the Uniform Civil Code about "secularism"? Is it about the relationship between religious communities and the state? Is it not really about gender-injustice – that is, the constitutionally enshrined inequality between men and women? ... The fact is that all personal laws on marriage, and inheritance and guardianship of children, discriminate against women in some form or the other; surely, this should make the issue of the Uniform Civil Code visible in a different way? Should it not be debated as "India cannot claim to be truly gender-just as long as discriminatory personal laws exist"? However, only feminists pose the question in this way*[51]*."*

The United Nations Development Programme defines access to justice as;

> "*The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards" and much more than improving an individual's access to courts, or guaranteeing legal representation*

[50] A Russo," We Cannot Live without Our Lives": White Women, Antiracism, and Feminism' in C T Mohanty, A Russo and L Torres (eds), *Third World Women and the Politics of Feminism* (Indiana University Press 1991) 297
[51] N Menon, *Seeing Like a Feminist* (Penguin 2012) 151

..... must be defined in terms of ensuring that legal and judicial outcomes are just and equitable[52]"

Notwithstanding the recognition of fault-based and non-fault-based gender-neutral legal provisions in India, it can be argued that intersection of caste, gender, literacy and economic deprivations restrict the ability of scheduled castes to seek access to justice.

Strong institutional frameworks are indispensable in ensuring women's access to justice as they provide necessary legal pathways, mechanisms and accountability structures to overcome socio-cultural biases in accessing justice. Yet some examples from history illustrate the patriarchal norms embedded within institutional frameworks who enacts the law.

In the parliamentary debate of Hindu Code Bill & the Discourse on Hindu Women's Equality Rights. Rajendra Prasad, India's inaugural President, openly opposed certain legislative reforms, even threatening to withhold Presidential Assent[53]. His correspondence with Prime Minister Jawaharlal Nehru reveals deep reservations, particularly his warning about introducing "new concepts and new ideas which are not only foreign to Hindu law but" potentially destabilizing to traditional frameworks. During the Constituent Assembly debates, the Select Committee under Dr. B.R. Ambedkar's leadership made groundbreaking recommendations regarding gender equality in inheritance rights. The committee's report famously advocated placing women "on par with regard to the quantum of their share of inheritance," boldly asserting that "there is no reason why a female heir generally should be treated differently from a male heir. "These progressive proposals, however, ignited intense controversy among traditionalists. The opposition's arguments reflected prevailing patriarchal attitudes. Baba Baijnath Bajoria articulated the conservative position with his claim that "the Hindu women being nurtured by society to fulfil the role of ideal wives and mothers, were not in a suitable position to manage property."[8] Similarly, Ganpat Rai's resistance to women's property rights stemmed from moral concerns, as he protested: "I object to the granting of an absolute estate to women" because "their

[52] United Nations Development Programme, 'Judicial Integrity and Access to Justice: Assessing Institutional Capacity for Marginalized Group's (2012)
< https://www.undp.org/sites/g/files/zskgke326/files/migration/eurasia/Access-to-justice.pdf > accessed 15 March 2025.
[53] V Choudhary and Dr Rajendra Prasad, *Correspondence and Select Documents* (Allied Publishers, 1987), 266.

character will suffer, if they are given an absolute estate[54]." Despite the proclaimed commitment to gender equality, institutions carry remnants of patriarchy hindering women of scheduled castes from accessing the provisions of HMA.

CONCLUSION

This study has critically examined the Hindu Marriage Act No. 25 of 1955 in light of constitutional recognition of gender equality through a Third World feminist lens. As the study reveals the law plays a paradoxical role as a reformist instrument and perpetuator of patriarchal oppression. While HMA introduced progressive grounds for divorce such as mutual consent, its fault-based approach and evidentiary burdens disadvantage women disproportionately, particularly the women representing Scheduled Castes. The Act's formal gender neutrality masks substantive inequalities, as seen in the archaic restitution of conjugal rights under section 9 of HMA and through the exclusion of irretrievable breakdown of marriage as a ground for divorce. Judicial interpretations, though expanding definitions of cruelty and decriminalizing adultery, remain constrained by the Act's structural biases and the insulation of personal laws from constitutional scrutiny. The intersection analysis draws its attention on how caste, economic deprivation, and gendered social norms compound barriers for women in Scheduled Castes. Despite constitutional guarantees of equality and non-discrimination, the HMA and its implementation have failed to address the lived realities of marginalised women, who face systemic exclusion from legal recourse due to illiteracy, poverty, and societal stigma. Feminist critiques highlight how explicit gender-neutral laws fail to account for the lived realities of marginalised women, reinforcing hierarchies rather than dismantling them. Thus, while legal frameworks may formally uphold equality, the structural and cultural impediments faced by Scheduled caste women underscore the need for an intersectional approach to justice, a law that addresses caste, class, and gender oppression simultaneously. Ultimately, family laws must safeguard family units and dependents, the legitimacy of family law hinges on eliminating *de jure* and *de facto* discrimination against women. The HMA's current framework, despite progressive codification of Hindu law of marriage and divorce, falls short of this balance. Its fault-based divorce system, coupled with evidential rules, reinforces gendered power imbalances,

[54] Ibid

while remedies such as restitution of conjugal rights prioritise marital institutions over women's autonomy, rendering Scheduled Caste women particularly vulnerable within their own family units.

ASSESSING ENVIRONMENTAL JUSTICE THROUGH THE LENS OF ENVIRONMENTAL RACISM: A GLOBAL PERSPECTIVE

-Dr. Manjit Singh*

Shubham Gupta**

ABSTRACT

The movement for environmental justice has transformed the way environmentalism is practiced today. Becoming an integral part of the mainstream environmental framework, it has diverted the attention of states and environmental activists towards the importance of the distributive and participatory dimension of environmental decision-making and the policy-making process, which were neglected earlier. Environmental justice is based on the notion that everyone should have an equal right to ecological benefits and protections as guaranteed under the UN Conference on the Human Environment, Stockholm. However, despite the longstanding movement, environmental inequity and racism remain a serious global concern. Poor and marginalized communities, specifically people of colour, race or ethnicity, and indigenous groups, continue to face systemic inequalities and bear a disproportionate and undue burden of environmental degradation; most commonly, toxic landfill sites, hazardous industrial pollution, and other waste disposal sites are positioned in the neighbourhoods of vulnerable populations. They become the victims of environmental hazards, face financial disparities, and are exposed to exacerbated health risks. This article explores the intersection of environmental justice, inequity, and environmental racism. It examines how systemic inequalities shape environmental outcomes. The paper also aims to highlight the role of various international conventions, agreements, and policies, including the UN SDGs, towards preventing and rectifying these injustices for the protection of Environmental racism and the role of the environmental justice movement for tackling this socio-legal issue.

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INTRODUCTION

The industrialized nations are responsible for most of the environmental degradation that occurs across the globe. They constitute about one-fifth of the total world population, and yet consume four-fifths of existing world resources. This leaves only one-fifth of the remaining resources for the remaining four-fifths of the population, which mainly consists of developing and underdeveloped nations.[57] There exists a major paradox in the international development narrative. Under the UN SDGs framework, the countries have adopted Common but Differentiated Responsibilities as recognized in the Paris Agreement. It proposes that the more industrialized countries should bear a greater portion of the environmental burden due to their major role in degrading the environment. However, it is often seen that poor underdeveloped countries, indigenous people, and minority communities become the victims of environmental harm, bearing the majority of the environmental burdens. The developed nations have achieved their development goals by employing environmentally destructive methods, exploiting natural resources, and causing pollution for decades without a proper regulatory framework. As they have become a global power, they now advocate for rigorous environmental policies and protocols to be followed by developing nations, thereby preventing them from adopting the very methods once used by industrialized nations and hindering their economic growth. This disparity raises serious concerns regarding principles of equity, fairness, and sustainable development. Several countries in Africa, Asia, and Latin America face challenges in balancing their economic growth with these environmental regulations.[58]

Over the past few decades, ample attention has been diverted towards environmental (in)justice affecting low-income and grassroots communities globally. Environmental policies, whether adopted globally or domestically, affect different communities differently. The environmental benefits, risks, and burdens are not distributed proportionately and justly among all communities. It is the low-income groups, marginalised communities, and people of particular castes, colours, or races who are most affected by the environmental hazards such as waste dumping, toxic industrial pollution, landfill sites, etc, and they bear the most environmental burden due to the

[57] S. Ravi Rajan, 'A History of Environmental Justice in India' (2014) 7(5) Environmental Justice 117
[58] Evan J Ringquist, 'Assessing Evidence of Environmental Inequities: A Meta‐Analysis' (2005) 24(2) Journal of Policy Analysis and Management 223

implementation of large-scale developmental and infrastructure projects. The uneven exposure to environmental risks and burdens is known by different names, such as Environmental injustice, Environmental inequity, Environmental racism, etc. It can be defined as an unbalanced/ asymmetrical susceptibility to environmental hazards.[59]

Environmental justice is founded on the notion that all communities, irrespective of economic standing or geographical position, are entitled to equivalent protection of environmental laws and identical access to a healthy and clean environment.[60] But marginalised communities, while having the least access to resources and decision-making power, are the most common victims of environmental degradation. This phenomenon, known as environmental racism, reveals the lopsided exposure of these communities to systemic discrimination and unequal power dynamics, mostly due to the historical inequalities faced by these communities. This inequity is mostly seen in developed nations such as the United States, where the first environmental justice movement originated.

This duplicity in environmental governance also aligns with the phenomenon of environmental racism. While developed nations have religiously extracted and exploited the resources of the entire world through multinational businesses, they endeavour to block the developing nations' efforts to utilise their resources to achieve their development goals.

Environmental Justice Movement

The media constantly outlines some indigenous or marginalised community suffering or fighting some form of environmental hazard/threat, may it be industrial pollution, garbage dumps, landfills, etc. The harsh reality is that it is mainly the marginalised and poor communities living in rural or suburban areas that are disproportionately affected by environmental hazards. They have to share their neighbourhoods with toxic chemicals and industrial plants, garbage dumping sites accumulating discarded toxic and plastic waste, incinerators, as well as landfills. These

[59] Robert Melchior Figueroa, 'Environmental Justice' in Dale Jamieson and Kendra Coulter (eds), *The Routledge Companion to Environmental Ethics* (Routledge 2022) 767
[60] Hollie Nyseth Brehm and David N Pellow, 'Environmental Justice: Pollution, Poverty and Marginalized Communities' in Paul G Harris (ed), *Routledge Handbook of Global Environmental Politics* (Routledge 2022) 348

toxins, when released or leaked into the surrounding atmosphere, expose the public to devastating and deleterious health risks.[61]

The environmental justice movement originated in the US in the 1980s as a civil rights action, led by various marginalized groups and mainstream environmental activists. It emerged out of a local grassroots community struggle over toxic waste dumping in the United States.[62] In the year of 1968, Dr. Martin Luther King Jr. went on a mission to protect the rights of underpaid garbage workers against the hazardous environment they worked. In 1979, a lawsuit[63] challenging environmental discrimination filed in Houston can be marked as the first instance of environmental justice. This lawsuit was filed three years before the actual environmental justice movement came into the limelight in 1982. For several decades, the locality habituated by the Black population was also the resting place of garbage and waste dumps. More than 80 percent of Houston's incinerators and landfills were located in Black neighbourhoods, whereas blacks only constituted 25 percent of the overall city population. A lawsuit was filed. Although it was not much of a success, it made a huge impact on the environmental justice movement. [64]

The year 1982 caught the attention of national media in regards to the first real step towards the environmental justice movement. Being the poorest county of North Carolina, African Americans constituted around 65 percent of its population.[65] It was converted into a PCB (Polychlorinated biphenyls) toxic waste dumping site in the county. A protest was organized by the residents along with civil rights organizations, constituting protesters both black and white, against the proposed landfill. This campaign also failed, but it started a new form of environmental justice movements worldwide. This movement introduced the concept of environmental racism in the US. It helped in raising public awareness about the concept and how the environmental burdens are distributed disproportionately towards certain races and ethnicities.[66]

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[61] Ibid.
[62] Stella M Čapek, 'The "Environmental Justice" Frame: A Conceptual Discussion and an Application' (1993) 40(1) Social Problems 5
[63] Bean v Southwestern Waste Management Inc, 482 F Supp 673 (SD Tex 1979)
[64] Robert D Bullard and Albert Borgmann, *Environmental Justice for All* (MCAT 2007).
[65] Andrew Szasz and Michael Meuser, 'Environmental Inequalities: Literature Review and Proposal for New Directions in Research and Theory' (1997) 45(3) Current Sociology 99
[66] Rachel D. Godsil, 'Remedying Environmental Racism' (1991) 90(2) Michigan Law Review 394

In 1983, a study was conducted by the US General Accounting Office (GAO) assessing the racial structure of people living near four major hazardous waste landfills in the Southeast United States. It was reported that in every third out of four waste sites,- American community predominantly constituted the major population. In the fourth instance, African Americans disproportionately inhabited the area.[67] Later in 1987, another study was led by the Commission called the United Church of Christ (UCC) Commission for Racial Justice. The socio-economic and racial makeup of the communities residing close to waste dumping sites was examined for the first time at the national level. Once more, a similar trend followed, showing that hazardous waste facilities were far more common in areas inhabited by communities of colour. In 1990, sociologist Robert Bullard contended that African American neighbourhoods were the most targeted for the establishment of solid waste sites across the Southern United States. He also discovered substantial community confrontation to these discriminatory placement practices. Paul Mohai and Bunyan Bryant, the environmental experts, convened a nationwide conference in 1990 that brought together a panel of scholars who were examining environmental inequalities. After analysing the evidence, it was determined that the conclusions drawn by them were extremely similar to the conclusions of earlier studies.[68]

In the early 1990s, there was a surge in studies on the concept of environmental injustice. Stella M. Čapek, a sociologist, presented an environmental justice frame, seeing EJ as a guide that provides activists with a means for further research. In her work, she has listed six key rights under EJ frame which includes the right to true information about environmental risks to be given by the authorities; democratic participation in process of decision making in respect of the communities in danger; public hearings; compensation for those who harm others; sensitivity towards the victims of environmental injustices; and to bring an end environmental injustice.[69] The problem of environmental inequity and racism cannot strictly be categorised as an environmental concern. They are mostly issues of social justice.[70]

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[67] United States General Accounting Office (GAO), *Siting Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities* (GAO 1983)
[68] Charles Lee, 'Toxic Waste and Race in the United States' in Bryant B and Mohai P (eds), *Race and the Incidence of Environmental Hazards: A Time for Discourse* (Westview Press 1992)
[69] Figueroa (n 5).
[70] Brehm and Pellow (n 6).

Traditional Environmentalism and Environmental Justice

For years, environmental activists and local communities have raised concerns over such environmental threats under the guise of environmental justice. It has now become an integral part of mainstream environmental law and policy. This long movement condemns the conventional environmental law on several fronts. Although the mainstream law advocates for sustainability with development, it fails to ensure justice to the poor and marginalized. This allows the government and capitalist businesses to implement and carry out huge projects on infrastructure, resource mining, and waste disposal sites without any consideration for the poor.[71] The communities most affected by these projects are eliminated from the decision-making process. Thus, mainstream environmental law is criticised for neglecting the distributive and representative elements of environmental policy.[72]

Dimensions of Environmental Justice

The term 'environmental justice is very widely used, assuming several connotations. There are four main attributes or dimensions of environmental justice.

1. ***Distributive justice-***

   It denotes that there should be equity in the distribution of environmental resources, risks, and burdens. The government should not unnecessarily discriminate against the economically weaker communities by placing disproportionately heavy environmental burdens on these communities.

2. ***Recognitional justice-***

   This dimension requires that the government should recognise and acknowledge all the diverse participants and communities involved while setting their development agenda and framing environmental policies so that no community has to bear the burden disproportionately, be it any marginalized, vulnerable, low-income, or indigenous group.

[71] Brototi Roy and Ksenija Hanaček, 'From the Environmentalism of the Poor and the Indigenous toward Decolonial Environmental Justice' in Sergio Villamayor-Tomas and Roldan Muradian, *The Barcelona School of Ecological Economics and Political Ecology: A Companion in Honour of Joan Martinez-Alier* (Springer International Publishing 2023) 305
[72] Jedediah Purdy, 'The Long Environmental Justice Movement' (2018) 44(4) Ecology Law Quarterly 809

3. ***Procedural justice-***

   All the communities must be given equal opportunity to participate in environmental policy governance and decision-making. The Aarhus Convention has given three pillars of environmental democracy in this regard- access to information, access to participation in decision making, and access to justice.

4. ***Restorative and Corrective justice-***

   It is essential for industrialized nations to address the environmental injustices caused by resource degradation and displacement of minority communities through legal remedies. Adequate compensation and rehabilitative programmes must be designed to protect the interests and heritage of indigenous and other vulnerable groups[73]

THE CONCEPT OF ENVIRONMENTAL RACISM

Debate on Environmental Racism

Studies indicate that there is a greater likelihood of minority and economically poor communities suffering environmental injustice than the upper economic classes. It is often seen that people of marginalized communities, including people of colour, poor and indigenous communities, are inhabitants of toxic landfills and waste dump sites. Environmental racism is a global problem where marginalized communities are burdened with disproportionate numbers of hazards, including garbage dumps, toxic waste facilities, and other sources of environmental pollution that lower the quality of life, leading to life-threatening diseases and cancers.

It gained academic and political attention in 1982 when civil rights activists organized to stop the state of North Carolina from dumping 120 million pounds of soil contaminated with polychlorinated biphenyls (PCBs) in the county with the highest proportion of African Americans. Warren County became a symbol of the birth of a new social movement and of an

[73] Ariane Dilay, Alan P Diduck and Kirit Patel, 'Environmental Justice in India: A Case Study of Environmental Impact Assessment, Community Engagement and Public Interest Litigation' (2020) 38(1) Impact Assessment and Project Appraisal 16 https://doi.org/10.1080/14615517.2019.1611035 Accessed on 26 March 2025

issue that mainstream middle-class white environmentalists had failed to consider, i.e., that people of colour and poor communities were facing ecological risks far greater than they were.[74]

The concept of environmental injustice or inequity is intertwined with environmental racism. It suggests deliberately targeting the communities involving people of specific race, colour, or ethnicity, and certain tribal and indigenous groups, and making them as depots for hazardous waste and other environmentally dangerous products.[75] Environmental racism highlights the disproportionate environmental burdens faced by marginalized racial and ethnic groups due to discriminatory policies and practices. These communities become the dumping grounds for industrial and toxic waste products.

The term 'environmental racism' was first coined by African-American civil rights activist Dr. Benjamin F. Chavis Jr. It is a wider concept that covers different types of forms, i.e., Colorism, Cultural racism, Individual racism, Structural racism, etc. This branch of environmental justice is also known as 'environmentalism of the poor'. The term was popularized by Ramachandra Guha and Joan Martinez-Alier in 1988. It centres around social justice, reclaiming human rights, particularly participation and representation of the marginalised communities.[76] It also results in diminishing the tribal sovereignty of indigenous communities over their land and natural resources.

NATIONAL AND INTERNATIONAL EFFORTS TOWARDS ACHIEVING ENVIRONMENTAL JUSTICE

International Framework on Environmental Justice

International instruments such as the Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and Aarhus Convention (1998), and the Escazú Agreement 2018 provide a protective shield against all forms of racism and emphasize the equal treatment and protection of all by law. The United Nations Sustainable Development Goals (SDGs) offer a framework to balance development and environmental

[74] Paul Mohai, David Pellow and J Timmons Roberts, 'Environmental Justice' (2009) 34(1) Annual Review of Environment and Resources 405
[75] Francis O Adeola, 'Cross-National Environmental Injustice and Human Rights Issues: A Review of Evidence in the Developing World' (2000) 43(4) American Behavioral Scientist 686
[76] Roy and Hanaček (n 18).

protection. SDG 10 (Reduced Inequalities) and SDG 8 (Decent Work and Economic Growth) stress that all nations should have equal opportunities to grow economically without undue external restrictions. It aims to empower marginalized groups by ensuring equal access to resources and participation in governance. SDG 13 (Climate Action) highlights the need for climate justice, recognizing that the effects of climate change disproportionately harm indigenous and vulnerable communities. SDG 15 (Life on Land) emphasizes the protection of forests and biodiversity, which are essential to the livelihoods and cultural survival of indigenous peoples. The Stockholm Declaration (1972) recognizes the right to a clean environment, while the Rio Declaration (1992) emphasizes public participation in environmental decision-making. The Paris Agreement (2015) integrates climate justice by acknowledging the disproportionate impact of climate change on vulnerable communities and reinforcing financial support for developing nations. There is the UN Human Rights Council (2021), which officially recognizes a healthy environment as a human right, strengthening legal mechanisms for environmental protection. Together, these instruments advance environmental equity, participation, and accountability on a global scale. [77]

Certain conventions specifically deal with the issues of environmental injustice and hazardous waste. Basel Convention (1989) on hazardous waste seeks to prevent the transfer of hazardous wastes from developed to less developed countries, addressing concerns related to environmental racism[78] Bamako Convention (1991) adopted by African nations to ban the import of hazardous wastes into Africa serving as a regional response to the perceived inadequacies of the Basel Convention in preventing environmental injustices in Africa and controlling their movement within the continent. The Minamata Convention (2013) provides protection to the vulnerable communities against mercury pollution. Yet, despite these global commitments, many marginalized communities continue to struggle against environmental injustices caused by extractive industries, deforestation, pollution, and forced displacement.

[77] Organisation for Economic Co-operation and Development (OECD), *Environmental Justice* (OECD 2024)
[78] Robert D Bullard, *Environmental Justice in the 21st Century* (University of Wisconsin Oshkosh, 2001) <https://www.uwosh.edu/sirt/wp-content/uploads/sites/86/2017/08/Bullard_Environmental-Justice-in-the-21st-Century.pdf> Accessed on 31 March 2025

Environmental Justice in India

Indian environmentalism is mostly concerned with social justice. In India, environmental justice is a relatively new concept. EJ concerns were raised in the early 1970s, predominantly based on unequal access to natural and other environmental resources, but after the Bhopal Gas Leak Tragedy, it has focused attention on more pressing concerns such as industrial risks and burdens.[79] While giving a revolutionary speech, Anil Agarwal referred to the serious implications of the economic development process on the health and livelihood of thousands of citizens affected or displaced due to such projects.[80]

India has a multifaceted relationship with environmental justice, which is moulded by the socio-economic diversity and past inequalities faced in the country. India has adopted a robust constitutional and legal framework for environmental protection. The Honourable Supreme Court has set the right to a clean and healthy environment as an integral part of the right to life under Article 21 of the Constitution.[81] The state's endeavour to implement schemes to protect and improve the environment.[82] Citizens also have a fundamental duty to protect the environment.[83] The Parliament has enacted the Environmental Protection Act, 1986, to protect and conserve the environment. To protect the marginalised communities, there is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), which recognizes the forest and land rights of indigenous communities.

The government has also adopted several public policy measures in an effort to address the procedural and technical facets of environmental justice. In 1982, the Supreme Court, under the guise of judicial activism, introduced public interest litigation, which allows the vulnerable and marginalised sections of the community to seek legal redress against environmental harm.[84] Green benches having technical expertise to deal with environmental concerns were established in the high courts. Later on, in 2010 National Green Tribunal was established, which is a

[79] Rajan (n 1).
[80] Anil Agarwal, 'Beyond Pretty Trees and Tigers, The Vikram Sarabhai Memorial Lecture' (New Delhi, 1985)
[81] Subhash Kumar v State of Bihar [1991] AIR 420, SCR (1).
[82] Constitution of India, art 48A.
[83] Constitution of India, art 51A(g).
[84] Prashant Bhushan, 'Supreme Court and PIL: Changing Perspectives under Liberalization' (2004) 29(18) Economic and Political Weekly 1770

quasi-judicial body, giving rise to a novel age of environmental jurisprudence.[85] Article 15 of the NGT Act allows the tribunal to give compensation to victims of pollution or those aggrieved by the environmental damage.[86] The Indian judiciary, specifically the Supreme Court and NGT, has established landmarks for environmental justice in India. Cases like MC Mehta (on air pollution, public trust doctrine); Consumer Education and Research Centre v. Union of India, Forest Conservation Case (monitoring mining activities in protected areas), Vellore Citizens' Welfare Forum case (polluter pays principle and precautionary principle) are the milestones in environmental justice movement in India). In the Mining in Western Ghats case,[87] the Supreme Court stressed intergenerational equity, which means that environmental preservation is essential for future generations. Again, in the *Sterlite Copper Plant* Case,[88] the Court mandated the shutdown of the plant due to its hazardous impact on local communities. Time and again, the Supreme Court has also raised concerns over huge dam projects that prioritize development over environmental justice and cause the displacement of local residents.[89]

Despite the existing framework to reconcile environmental justice and development, the marginalized and indigenous communities, such as Adivasis (forest dwellers), Dalits, and urban slum dwellers, have to endure disproportionate environmental risks and burdens. The industrial expansion and infrastructure projects, corporate interest, and gaps in implementation, when combined, override the rights of marginalized communities and other environmental and human rights concerns. [90]

We can state that although environmental racism is primarily seen in Western countries such as the United States, India also shares some patterns, where marginalized communities face environmental injustice. For example, development-induced displacement and removal of Indigenous groups from their ancestral lands due to large-scale infrastructure projects, for

[85] Government of India, *Report of the Expert Group to Review the Methodology for Measurement of Poverty* (Planning Commission 2010)
[86] Kirit Patel and Kuntal Dey, 'The Trajectory of Environmental Justice in India: Prospects and Challenges for the National Green Tribunal' in Tim M, N Trivedi and D Vajpeyi (eds), *Perspectives on Governance and Society* (Rawat Publications 2013) 160
[87] KM Chinnappa v Union of India (2002) 10 SCC 606
[88] Sterlite Industries (India) Ltd v Union of India (2013) 4 SCC 575
[89] Narmada Bachao Andolan v Union of India (2000) 10 SCC 664
[90] Government of India, *State of the Environment Report: India 2009* (Ministry of Environment and Forests 2009) 1–194

instance, mining and building dams, displacing them from their ancestral lands. Slum neighbourhoods in urban areas, mostly inhabited by the poor and marginalised communities or the Dalits, are chosen as sites and dumping grounds for toxic wastes and industrial pollution. For instance, in Bhopal, the 1984 Union Carbide gas disaster disproportionately affected the poor and low-income communities.[91]

CHALLENGES AND IMPLEMENTATION

Challenges in Implementing Environmental Justice

Despite the increased recognition and approval of the concept of environmental justice, there are serious challenges that hinder its smooth implementation, mainly rooted in capitalistic economic interests, institutional shortcomings, and the sidelining of the interests of marginalized and affected communities.

Lack of a proper enforcement mechanism

Although environmental justice has gained international recognition and has been adopted in several legal frameworks and agreements that promote environmental justice, there is a weak enforcement machinery, often rendering them ineffective and unproductive. The national environmental legislations providing a protective framework to the vulnerable communities do not impose stringent punishments for violations, allowing the multinational corporations and national governments to sidestep and ignore the regulations. Additionally, regulatory agencies may be underfunded or influenced by political and economic pressures, limiting their ability to take action against polluters.

Lack of Government and Corporate Accountability

Huge multinational corporations prioritise their profit-making over environmental and social concerns. National governments also fail to hold these corporations accountable, either due to their corrupt tendencies or monetary overdependence on private firms. This gives the companies control over resources and influence economic and policy decisions, allowing them to freely extract the national resources, cause pollution and environmental degradation,

[91] Rajan (n 1).

and displace the marginalized populations without fair compensation, etc. This raises questions about accountability and democratic principles.

Inadequate representation

Marginalised communities, indigenous and low-income groups, do not have adequate representation in the decision-making process of environmental policies that directly impact them. While building any new development project, corporations and the government themselves work out all the technicalities without taking the input of these communities.

Insensitivity towards marginalized communities

Government and bureaucrats are insensitive towards the plight of marginalized communities. Driven by their political agenda, they are mostly concerned with their development goals and only take initiative towards environmental concerns where it is relevant to their development agenda.

CONCLUSION

From the above discussion, it can be concluded that environmental injustice and, more specifically, environmental racism is a global concern. With the international community taking huge leaps towards protecting the basic human and fundamental rights of people worldwide, environmental racism becomes a significant human rights issue intersecting with class, race, ethnicity, and economic disparities. Failure to uphold participatory justice frequently leads to disparities in the allocation of environmental responsibilities on a national and international level. As national governments and multinational businesses have more authority than non-governmental organisations to protect the environment and environmental rights, policies for global environmental justice are trailing behind domestic initiatives in several countries. Toxic hazard transportation, environmental practices, human rights, indigenous rights, development, and transboundary environmental burdens are all intertwined issues that are being addressed by a growing number of international legislations. However, without a clear understanding of the significance of distributive and participative justice on a national and international level, much progress is unlikely to be made.

Addressing concerns of environmental racism and inequity necessitates a transformative approach. It requires collaborative effort on the part of states, international cooperation, and a strong legal and policy framework so as to enhance the procedural aspects of environmental justice and improve the prospects for distributive, recognitional and restorative justice. The world community must strive toward an environmentally just world where no community is disproportionately burdened by ecological harm by integrating the principles of justice, sustainability, and human rights. Stronger legislative and policy actions must be implemented at the national and global levels to deal with these issues. Businesses must be held responsible, governments must implement stringent environmental regulations, and marginalized groups must be given a major say in environmental decision-making. The UN SDGs provide a framework for accomplishing these goals, but they run the risk of becoming empty rhetoric in the absence of sincere commitment from world leaders.

Here are some recommendations towards ensuring just and equitable environmental governance-

1. Environmental justice principles must be integrated into the national legal frameworks to ensure that developmental projects and other environmental hazards do not disproportionately impact the vulnerable and marginalized communities. Also, anti-environmental racism legislation must be enacted and efficiently enforced.

2. Mechanisms such as environmental impact assessment, corporate accountability, and precautionary principles must be incorporated and strictly adhered to.

3. The government must ensure that marginalized and indigenous communities are given proper platforms to participate and represent their interests in the decision-making process. This can be done by encouraging the voice of grassroots and local environmentalist activists' organizations, as inclusivity in environmental governance lies at the core of fighting environmental injustice.

4. Free, Prior, and Informed Consent (FPIC) should be made a compulsory prerequisite before implementing a big development project that impacts vulnerable communities.

5. Environmental Impact Assessments should be given an equity approach by including social justice considerations in addition to mere ecological and technical factors, so that

socio-economic justice and human rights are not overlooked while implementing any developmental project.

6. Environmental policies must protect the interests of indigenous groups in their native domains and resources so that their cultural and ethnic roots are not lost to them forever.

7. International bodies must come up with strong and stricter regulations against multinational corporations so that they can be prevented from exorbitantly exploiting the vulnerable sections of society.

8. Adequate compensation and rehabilitation must be provided to the communities displaced from their lands for development projects.

9. Finally, both developed and developing nations must take a collective responsibility towards addressing environmental injustices. Equity, inclusiveness, and accountability must be at the core of the environmental policy framework in order to enter a future that is environmentally sustainable as well as socially and ethically just.

The Carceral State and the Rohingya: Criminalization of Statelessness in India

- **Gautam Mehra***

Krish Jha**

ABSTRACT

The Rohingya are regarded by the United Nations as one of the world's most persecuted ethnic minorities and lead a precarious existence in India, where their statelessness is de facto criminalized. Even though India's Constitution guarantees life and liberty to all under Article 21, Rohingya refugees are detained, threatened with deportation, and subjected to systemic exclusion. This paper critically explores how India's carceral approach—from indefinite detention and legal ambiguity through to the securitization of refugee identities—parallels wider trends that criminalize poverty and marginalization.

India is not a party to the 1951 Refugee Convention or its 1967 Protocol, which positions Rohingya refugees in legal limbo, deprived of recognition and protection. Instead, state policies set them up as security threats, legitimizing draconian measures. The study of the criminalization of Rohingya refugees positions this phenomenon in the context of more general criminalization of marginalized populations through carceral politics, connecting the analysis to existing legal and political maps and using ethnographic accounts of refugee subjectivities and social conditions.

This paper examines the state's role in creating a legal vacuum that renders refugees hyper-visible as security risks and, at the same time, functionally invisible as rights-bearing individuals by comparing India's treatment of the Rohingya with international human rights norms. Placing India's refugee governance in a broader South Asian context problematizes the effectiveness of non-refoulement principles in a country that does not have formal refugee protection laws. This paper builds the argument that India's papers, not people's policies render forced migration as a legal liability, not a humanitarian crisis, through a counter-narrative lens

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that speaks across fields to ensure that stateless people are not further oppressed by their rights. The paper adds to ongoing debates around the carceral state, statelessness, and systematic biases in legal systems governing marginalized populations.

INTRODUCTION

The Rohingya crisis represents one of the most severe humanitarian catastrophes of our time, with this Muslim ethnic minority from Myanmar's Rakhine state widely recognized as among the world's most persecuted minorities. Systematic discrimination, institutionalized violence, and the deliberate denial of citizenship have rendered the Rohingya community stateless, forcing them to flee their native land in search of safety and basic human dignity. The Myanmar government's 1982 citizenship law served as the central legal instrument behind the statelessness of the Rohingyas, arbitrarily stripping them of nationality and reinforcing the false narrative that they are "illegal immigrants" unworthy of state protection.

The forced migration of the Rohingya to neighboring states has been going on for over a decade, with a massive exodus taking place in 2016 and the year 2017 following a barbarian armed forces suppression. As the People's Republic of Bangladesh acquired the majority of the refugees above, India is home to approximately 40,000 Rohingya refugees in several settlements throughout the State, together with approximately 16,000 registered refugees with the United Nations High Commissioner for Refugees (UNHCR). Although India has a history of welcoming refugees, their approach towards the Rohingya has been astonishingly different. Not being a party to the 1951 Refugee Convention or its 1967 Protocol and lacking a national refugee protection framework, India largely criminalizes the Rohingya's existence. It classifies them as illegal immigrants rather than refugees who deserve protection.

The paper argues that the treatment of the Rohingya refugees constitutes a criminalization of statelessness analogous to a broad form of marginalization of vulnerable communities. The Indian authorities have created situations where the fundamental freedoms of these refugees remain precarious, access to essential services is restricted, and the perpetual threat of detention and exile is immense. However, the doctrine of non-refoulement does not apply.

This investigation plays a fundamental part in refugee studies, legal scholarship, and discourses around human rights by investigating how the absence of legitimate assurances increases the dangers confronted by stateless populations. It examines the clashes between national security issues and humanitarian obligations, emphasizing the need for and significance of a well-rounded refugee policy addressing international human rights standards. By concentrating on the experience of the Rohingya in India, this research uncovers the genuine impacts of statelessness and forced migration in a world defined by countries, citizenship, and the uneven application of human rights principles.

CONTEXTUAL FRAMEWORK

The Rohingya, who follow their roots to the 8th century in Myanmar's Rakhine state, have confronted heightening mistreatment throughout Myanmar's cutting-edge history. Their circumstance started falling apart after Myanmar's autonomy in 1948 and declined altogether when the military junta seized control in 1962. Beneath the military running the show, the Rohingya persevered progressively severe limitations, counting confinements on development, dissent of instructive openings, constrained labor, sexual viciousness, and broad property confiscation.

The 1982 Citizenship Law speaks to the legitimate foundation of Rohingya statelessness. This law formally recognized 135 ethnic minorities in Myanmar, purposely barring the Rohingya, viably rendering the whole community stateless and stripping them of principal human rights. This lawful system strengthened the government story that Rohingyas are "unlawful migrants" or "Bengalis," not true Myanmar citizens.

The circumstance increased significantly in 2012 with communal viciousness between Rohingya Muslims and Rakhine Buddhists. The most serious crackdown happened in 2016-2017 when security forces and patriot hordes conducted brutal campaigns against Rohingya populaces, bulldozing towns and conducting mass killings. These abominations activated gigantic refugee surges, with the United Nations hence assigning the Rohingya as "the most persecuted minority in the world.”

Patterns of Rohingya Movement Into India

Rohingya movement to India takes two primary courses: from Bangladesh westbound into West Bengal and northeastern pathways into Mizoram and Meghalaya. According to Human Rights Watch[94]roughly 40,000 Rohingya refugees now live in different settlements all over India, including in Jammu and Kashmir, Hyderabad, and Delhi. Of these, 16,000 Rohingyas have generally enlisted with the United Nations Human Rights Council (UNHCR).

Unlike Bangladesh's large-scale refugee camps, Rohingyas in India ordinarily dwell in casual settlements or urban ghettos with restricted access to essential administrations. A few populaces, especially in West Bengal, are found in remedial offices, highlighting their criminalization beneath Indian law and the nonappearance of set-up settlement areas.

India's Refugee Arrangements and Lawful Framework

India needs a comprehensive national outcast law or formal arrangement system to address refugee issues. This nonattendance creates a critical legitimate vacuum in which outcasts like the Rohingya exist in a state of ceaseless vulnerability. Without formal acknowledgment as outcasts, the Rohingya are ordinarily classified as "unlawful workers" beneath the Foreigners Act of 1946 and the Citizenship Act of 1955.

This lawful uncertainty has significant results. Without official outcast status, Rohingyas confront noteworthy challenges in getting to essential administrations, counting instruction, healthcare, and formal business openings. Their dubious lawful position clears them helpless to misuse, subjective detainment, and the consistent risk of deportation.

India has verifiably reacted to refugee convergences on a case-by-case premise, regularly impacted by geopolitical contemplations and respective relations. The current government has taken an especially firm position on Rohingya outcasts, regularly communicating concerns about potential security dangers and reporting plans for their recognizable proof and deportation.

India's Non-Signatory Status to Refugee Conventions

[94] Human Rights Watch, '"All You Can Do is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State' (2013)

India has reliably declined to end up a signatory to the 1951 UN Convention Relating to the Status of Refugees or its 1967 Convention[95]. By remaining outside these worldwide systems, India holds more noteworthy caution in deciding its approach to distinctive outcast populaces based on political, security, and two-sided contemplations rather than being bound by standardized worldwide obligations.

Despite not being a signatory, India has customarily maintained the guideline of non-refoulement—the foundation of worldwide refugee law that forbids the return of outcasts to regions where they confront mistreatment. Be that as it may, in the case of the Rohingya, there have been upsetting takeoffs from this rule, with government specialists transparently examining detainment and expulsion plans.

The non-appearance of settlement commitments obliges UNHCR's specialists in India. Whereas UNHCR gives enlistment and help to Rohingya outcasts, the government's approach constrains its intercession capacity and need for formal participation frameworks[96].

Comparative Refugee Treatment in South Asia

Refugee treatment changes essentially over South Asia. Bangladesh has over one million Rohingyas in broad outcast camps, even though it considers their nearness transitory. Pakistan obliges around 1.4 million enrolled Afghan refugees and has worked with UNHCR to create security systems. Nepal has facilitated the displaced Tibetan and Bhutanese people through distinctive arrangements.

India's approach is strikingly conflicting. Tibetan outcasts have gotten favorable treatment with built-up settlements and integration pathways. Tamil refugees from Sri Lanka have gotten organized through assigned camps. In differentiation, Rohingyas confront a more prominent threatening vibe, with their nearness surrounded as a security danger or maybe a compassionate concern. This irregularity highlights how outcast treatment in South Asia is frequently decided

[95] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 33
[96] Guterres A and Spiegel P, 'The State of the World's Refugees: Adapting Health Responses to Urban Environments' (2012) 308(7) JAMA 673

by political calculations and security recognitions or maybe by helpful standards or steady lawful frameworks

THEORETICAL FRAMEWORK

Concepts of Statelessness and Its Criminalization

Statelessness alludes to the condition of people not recognized as citizens by any state beneath the operation of its law. This lawful limbo strips them of principal rights, such as getting to instruction, healthcare, and business, rendering them helpless to systemic prohibition and abuse. Statelessness frequently emerges from biased nationality laws, state progression, or holes in lawful systems, as seen in the Rohingya case, where Myanmar's 1982 Citizenship Law efficiently prevented the Rohingya from citizenship.

The criminalization of statelessness happens when states outline stateless people as "illicit transients" or security dangers, defending reformatory measures like detainment, extradition, or confined versatility. This handle is established in the majestic state's privilege to control borders and characterize having a place. For stateless Rohingya refugees, criminalization shows in India’s The Foreigners Act (1946), which classifies them as "unlawful workers" subject to extradition, despite UNHCR acknowledgment. The conflation of statelessness with guiltiness reflects a broader slant where states use lawful uncertainty to implement exclusionary arrangements, changing compassionate issues into security problems.

Theories of Carceral Legislative issues and Refugee Governance

Carceral legislative issues look at how states utilize detainment, reconnaissance, and bureaucratic control to oversee marginalized populations, expanding past detainment facilities to incorporate refugee camps and ghettos. Researchers like Michel Foucault and Giorgio Agamben highlight how majestic control works through spaces of exception—zones where lawful assurances are suspended. For Rohingya outcasts in India, temporary camps in Delhi or Jammu work as such spaces, where their portability is policed and getting rights are curtailed[97].

[97] Foucault M, Discipline and Punish: The Birth of the Prison (Vintage Books 1995)

The carceral rationale also supports biometric reconnaissance (e.g., Aadhaar avoidance in India) and constrained migrations, as seen in Bangladesh's arrangement to move Rohingya to Bhasan Char Island. These measures, surrounded by "administration," sustain cycles of reliance and control, diminishing outcasts to uncovered life (Agamben's homo sacer) and stripped of political office. In this way, the camp gets to be a location where citizenship is supplanted by carceral administration, fortifying statelessness as a lasting condition[98].

Legal and Political Systems of Non-Refoulement

The non-refoulement guideline, revered in the 1951 Refugee Convention (Article 33) and the UN Convention Against Torment, denies returning people to regions where they confront abuse. It is considered jus cogens—a standard authoritative of all states, in any case of approval. Be that as it may, its usage is packed with contradictions.

Bangladesh, a non-signatory to the Refugee Convention, has over and over damaged non-refoulement by repatriating Rohingya to Myanmar beneath two-sided assertions, citing "security" and "financial strain." India, following nonrefoulement in the guidelines, extradites Rohingya beneath household security laws, outlining the pressure between sway and universal standards. Lawful escape clauses, such as separating between "refugees" and "financial transients," encourage dissolution securities, taking off stateless populaces in lawful limbo.

Rights-Based Approaches vs. Security-Focused Governance

Rights-based systems emphasize widespread human rights and state responsibility, pushing for refugees' consideration through lawful status, vocation, and integration. The 1951 Convention (on statelessness) embodies this approach. Alternately, security-focused administration prioritizes border control and national interface, frequently at the cost of rights.

India's Citizenship Amendment Act (2019), which avoids Muslim refugee, embodies a security-focused rationale, differentiating from rights-based models like Germany's Willkommenskultur (welcome culture)[99]. The Rohingya emergency uncovers the insufficiency of cross-breed models: UNHCR's rights-based orders clash with states' securitization, coming about

[98] Agamben G, Homo Sacer: Sovereign Power and Bare Life (Stanford University Press 1998)
[99] Citizenship (Amendment) Act 2019 (India)

in divided help and extended relocation. Hypothetical wrangles about here center on whether sway can coexist with catholic rights or whether statelessness is an inescapable byproduct of Westphalian state systems[100].

Theoretical Foundations of Securitization

Drawing from the Copenhagen School's securitization framework, the Rohingya case illustrates how security is fundamentally a socially constructed concept. Barry Buzan and Ole Waever's theoretical approach emphasizes that security is not an objective condition but an intersubjective process of threat construction. In Burma, this manifests through a sophisticated narrative that systematically reframes the Rohingya from a marginalized ethnic group to a potential source of demographic, cultural, and religious destabilization[101].

The process of securitization relies on authoritative voices – in this instance, a complex network including government officials, Buddhist monastic leaders, and media institutions – who possess the social and political capital to articulate existential threats. These actors do not merely describe a pre-existing security situation but actively produce it through carefully crafted linguistic and institutional mechanisms.

Governmental Discourse and Threat Construction

The Burmese government's approach to the Rohingya demonstrates a multifaceted strategy of exclusion that goes beyond traditional state security paradigms. The 1982 citizenship law serves as a foundational moment in this process, legally rendering the Rohingya stateless by refusing to recognize them as an indigenous ethnic group. This legislative maneuver transforms the community from residents with potential claims to citizenship into perpetual foreigners.

Rhetorical strategies of dehumanization become particularly evident in the language used to describe the Rohingya. Metaphors comparing Muslims to predatory animals, claims about "Taliban-minded" populations, and apocalyptic warnings about racial extinction serve to transform the Rohingya from a human community into an abstract, menacing entity. These

[100] Hinger S, 'Transformations of Local Refugee Accommodations: Negotiating Space in German Cities' (2020) 8(2) Urban Planning 142
[101] Buzan B, Wæver O and de Wilde J, Security: A New Framework for Analysis (Lynne Rienner 1998)

discursive techniques create a pervasive atmosphere of existential anxiety that justifies extraordinary measures of exclusion and persecution.

Institutional Mechanisms of Marginalization

The securitization process manifests through concrete policy mechanisms designed to systematically control and exclude the Rohingya population. The implementation of a unique two-child policy specifically targeting Rohingya communities represents a clear example of demographic management disguised as population control. Severe restrictions on freedom of movement, effectively creating de facto concentration camps, further institutionalize this marginalization.

The military's constitutional position – retaining 25 percent of parliamentary seats – ensures that anti-Rohingya sentiments remain deeply embedded in the political structure. This institutional arrangement makes meaningful policy reform exceptionally challenging, creating a self-perpetuating cycle of exclusion and marginalization.

LEGAL ANALYSIS: THE CONSTITUTIONAL PARADOX

The handling of Rohingya refugees by India poses a difficult constitutional problem. It reveals the strained relationship between desires for broad human rights plus a state's power. Despite constitutional guarantees that assure basic rights to people in India, Rohingya refugees face criminalization, detention along with deportation. These actions risk making their stateless status into something viewed as illegal. This piece looks at how India’s approach to the Rohingya goes against its own constitutional desires. It also sets the issue within a global context of states that treat susceptible groups as criminals.

The study shows the ways legal systems may promise aid but also allow systematic exclusion. This generates what might be called a "paper rights paradox," where rights that exist legally fail to lead to improvements in actual life.

Legal Contradictions: Theory Versus Practice

Article 21 of the Indian Constitution guarantees fundamental rights in any constitutional framework, stating "No person shall be deprived of his life and liberty except according to procedure established by law"[102]. The Supreme Court of India has continuously given this clause a broad interpretation, expanding its protections to include dignity, livelihood, shelter, and other elements necessary for leading a fulfilling life in addition to physical existence. Interestingly, Article 21's wording refers to "persons" rather than "citizens," confirming the constitution's guarantee of fundamental rights for all people, regardless of citizenship status.

The Supreme Court reaffirmed that foreign nationals within Indian territory are entitled to Article 21 safeguards in landmark rulings like Louis De Raedt v. Union of India (1991)[103] and National Human Rights Commission v. State of Arunachal Pradesh (1996)[104]. The Court has underlined that the right to human dignity, which includes having access to sufficient food, clothes, and shelter as well as the ability to go around and engage with other people, is a component of the right to life. According to these views, refugees—including the stateless Rohingya—should, in theory, have strong constitutional protections against arbitrary imprisonment, deportation to dangerous countries, and denial of necessities of life.

Furthermore, the Court established in Vishaka v. State of Rajasthan (1997)[105] that, especially in the area of human rights, international agreements and norms can be integrated into domestic law when there is no conflict with current laws. Even in the absence of official refugee legislation, this opened the door for concepts like non-refoulement to be acknowledged inside India's legal system.

The Promise of Article 21: Universal Rights in Theory

Despite these expansive interpretations of Article 21 , India's treatment of Rohingya refugees reveals profound legal contradictions. While Article 21 guarantees are universal in language, their implementation often distinguishes between citizens and non citizens, with further

[102] Constitution of India 1950, art 21
[103] Louis De Raedt v Union of India (1991) 3 SCC 554 (SC)
[104] National Human Rights Commission v State of Arunachal Pradesh (1996) 1 SCC 742 (SC)
[105] Vishaka v State of Rajasthan (1997) 6 SCC 241 (SC)

stratification among non citizens based on national origin, religion, and perceived security implications.

The first contradiction emerges from India's selective application of constitutional protections. The Foreigners Act of 1946[106] and the Passports Act of 1967[107]colonial era legislation that criminalizes unauthorized entry and stay, are routinely invoked against Rohingya refugees, effectively transforming their search for sanctuary into a criminal act. This contradiction manifests in several ways. This criminalization occurs despite the well documented persecution they flee in Myanmar, a situation that would typically trigger protection obligations under international humanitarian principles.

Moreover, the Citizenship Amendment Act of 2019 further institutionalizes this contradiction by offering expedited pathways to citizenship for persecuted religious minorities from Afghanistan, Bangladesh, and Pakistan while explicitly excluding Muslims, including the Rohingya[108]. This selective approach to refugee protection undermines the universality promised by Article 21 and creates a hierarchy of human suffering based on religious identity.

Judicial Responses: Ambiguity and Defence

Court cases including Rohingya refugees in India uncover a complex landscape of legal inner conflict. In Mohammad Salimullah v. Union of India (2021)[109], Rohingya applicants challenged potential extradition orders on the grounds that such activities would damage Article 21 and the rule of non-refoulement. Whereas the Supreme Court recognized these concerns, it eventually declined to square expulsions, conceding to the government's appraisal of national security considerations.

This ruling stands in pressure with prior points of reference like Dongh Lian Kham v. Union of India (2015)[110], where the Delhi High Court stopped the extradition of Myanmarese refugees, recognizing the rule of non-refoulement as understood in Article 21. Additionally, in Ktaer

[106] Foreigner Act 1946 (India)
[107] Passports Act 1967 (India)
[108] The Citizenship (Amendment) Act 2019
[109] Mohammad Salimullah v Union of India AIR 2021 SC 1789
[110] Dongh Lian Kham v Union of India (2015) SCC OnLine Del 14338

Abbas Habib Al Qutaifi v. Union of India (1998).[111] The Gujarat High Court held that Article 21 included the guideline of non-refoulement, disallowing the removal of refugees to territories where they confront persecution.

These conflicting legal responses make a scene of legitimate vulnerability, where Rohingya refugees cannot dependably foresee how courts will interpret their protected rights.

The Legal Vacuum: Structured Invisibility

The absence of devoted refugee enactment in India makes what can be portrayed as a "organised lawful vacuum"—a deliberate policy choice that keeps up adaptability for the state whilst maximizing powerlessness for refugees. This vacuum is not just an absence of law but a key space that permits specialists to treat refugees then again as security dangers or financial migrants, depending on political expediency.

Within this vacuum, Rohingya refugees encounter a dumbfounding hyper-visibility and imperceptibility. They are hyper-visible as potential security dangers, regularly characterized in political discourse as potential fear based oppressors, statistic trespassers, or economic burdens. At the same time, they are rendered undetectable as rights-bearing people with true blue security needs and claims to dignity.

This legitimate vacuum empowers homes like uncertain detainment, where Rohingya refugees who are apprehended for “illegal entry" stay restricted without clear pathways to determination. Without formal refugee status assurance strategies, they cannot regularize their nearness, however extradition regularly remains for all intents and purposes inconceivable due to Myanmar's refusal to acknowledge them. The result is a liminal legitimate presence that successfully constitutes a shape of carceral control outside formal jail frameworks.

International Norms Versus Domestic Approaches

India's response to Rohingya refugees underscores the conflict between global legal norms and internal sovereignty demands. As a non-signatory to the 1951 Refugee Convention[112] and its

[111] Ktaer Abbas Habib Al Qutaifi v Union of India 1998 CriLJ 919 (Gujarat High Court)
[112] UN Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

1967 Protocol[113]India insists its refugee policies are an exercise of sovereign discretion rather than a breach of international obligations. However, India continues to be subject to the principles of customary international law, among which is non-refoulement, as well as to human rights obligations under ratified treaties like the International Covenant on Civil and Political Rights[114].

The principle of non-refoulement forbids the return of refugees to areas where they will be persecuted, based on whether or not a state is a party to refugee-specific conventions. India's selective application of this principle—its recognition of it for particular refugee groups while its denial of it for others—is a splintered approach to international norms that erodes the integrity of the global refugee protection regime.

CARCERAL GOVERNANCE OF ROHINGYA REFUGEES

The carceral regulation of Rohingya refugees in India demonstrates how statelessness is de facto criminalized by state policies that favor security regimes over protection commitments. After escaping well-documented persecution in Myanmar, Rohingya refugees face an intricate network of legal uncertainties, detention regimes, and deportation dangers that turn their quest for refuge into a risk-prone trajectory of criminalization procedures. This article discusses how India's response to Rohingya refugees illustrates a larger carceral governance trend that disproportionately affects marginalized groups, effectively making statelessness itself the basis for punitive state action.

Documentation of Detention Practices and Conditions

Rohingya refugees in India risk detention under several legal regimes, notably the Foreigners Act of 1946 , which authorizes detention of "illegal entrants" for extended periods without charge or trial pending deportation proceedings. A 2022 report by Human Rights Watch recorded more

[113] Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267
[114] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

than 250 Rohingya arrested across India, with most being kept in overcrowded facilities initially meant for criminal suspects and not asylum seekers[115].

The detention process itself often works by way of arbitrary application, with Rohingya refugees describing uneven application of arrest procedures. A number of detainees describe no formal charging or description of charges beyond their status as "illegal Bangladeshis" or "illegal Myanmarese" even where they have UNHCR refugee cards[116].

Analysis of the Indefinite Detention Phenomenon

The indefinite detention of Rohingya refugees is a particularly troubling aspect of India's carceral approach. In contrast to criminal detention, which is constrained by statutory limits and procedural protections , administrative detention under the Foreigners Act can be extended indefinitely because of the practical impossibility of deportation to Myanmar, which will not accept forcibly returned Rohingya. This creates what scholars have called "legal black holes" — spaces in which detainees languish in extended limbo , neither charged with crimes nor afforded protection as refugees[117].

The hesitation of the Supreme Court to set limits on foreigners' detention periods in its 2019 judgment on guidelines of detention centers has in effect legalized this type of indefinite detention[118].

The psychological effect of temporal uncertainty adds to the physical duress of detention. Studies of detained Rohingya evidenced high levels of depression, anxiety, and post-traumatic stress due to the compounding effect of past atrocities and current distress of indefinite detention . Such

[115] 'India: Rohingya Deported to Myanmar Face Danger' (*Human Rights Watch*, 31 March 2022) <https://www.hrw.org/news/2022/03/31/india-rohingya-deported-myanmar-face-danger> accessed 4 April 2025
[116] Sullivan DP and Sullivan DP, 'A Lifetime in Detention: Rohingya Refugees in India' (*Refugees International*, 2 January 2025) <https://www.refugeesinternational.org/reports-briefs/a-lifetime-in-detention-rohingya-refugees-in-india/> accessed 4 April 2025
[117] Nasreen Chowdhory, 'Refugees, Citizenship, and Belonging in South Asia: Rohingya in India' (2020) 32 International Journal of Refugee Law 216.
[118] *Supreme Court Legal Services Committee v Union of India*, Writ Petition (Civil) No 1045 of 2018 (Supreme Court, 9 May 2019)

mental health weight is an otherwise underemphasized aspect of carceral government that goes beyond physical constraint to extend punishment[119].

Examination of Deportation Threats and Their Impact

The threat of deportation serves as a key mechanism of India's carceral state, stretching state power outside detention centers to govern daily lives and decision-making of Rohingya communities . Since 2017, government leaders have consistently threatened to locate and deport all Rohingya , framing such endeavors as security necessities , not as humanitarian responses . These threats work at several levels : as policy announcements , as pretexts for augmented surveillance and registration mandates , and as psychological mechanisms that create endless insecurity.

The effects of deportation threats go beyond fear . Field interviews have revealed that deportation concerns greatly limit Rohingya movement , services access , and willingness to interact with authorities even when threatened with exploitation or abuse[120]. This sets up situations where Rohingya refugees are forced to choose between invisibility (and its accompanying risks) and interacting with structures that risk triggering detention or deportation processes . The genuine enforcement of deportations , numerically small but nonetheless potent demonstrations of state capacity and willingness to follow through on threats , reinforces their disciplinary impact on the community at large.

ETHNOGRAPHIC ACCOUNTS AND LIVED EXPERIENCES

Ethnographic studies present vital information regarding the lived experience of stateless people experiencing criminalization and legal precariousness. With a focus on the experiences and voices of persons impacted, ethnographic accounts establish a counter-discourse to influential policy narratives commonly reducing complex social phenomena to an oversimplified reductionism and human dehumanization[121]. By close reading of testimonial data and participant

[119] Paliath S, ‘The Toll of Refugee Life on Rohingya Mental Health’ (*Indiaspend*, 20 January 2024) <https://www.indiaspend.com/health/the-toll-of-refugee-life-on-rohingya-mental-health-890122> accessed 4 April 2025
[120] Mitra R and Şahin-Mencütek Z, ‘Bargaining (in)Visibility: Rohingya Refugees and the Politics of Visibility in India’ (2024) 37 Journal of Refugee Studies 716
[121] Nando Sigona, 'Campzenship: Reimagining the Camp as a Social and Political Space' (2015) 19 Citizenship Studies 1, 8-12.

observation, we shed light on the complex aspects of statelessness as both legal category and embodied experience.

Refugee Testimonies about Legal Precarity

The perpetual uncertainty defining legally precarious lives appears repeatedly in refugee accounts. Hamin, a Rohingya refugee who came to India in 2018, described: "The news of deportation has certainly triggered a panic button among most of the Myanmar nationals living in India as nobody knows who would be the next to go out and face the same horror of violence and bloodshed," This articulates the status of refugees such as in India, which is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, leaving Rohingya refugees in legal limbo, lacking recognition and protection[122].

Legal precarity is expressed most concretely in curtained mobility, limited access to services, and the perpetual risk of detention. One Rohingya interviewee explained how issues with documentation made everyday acts into complex undertakings: “we are frustrated asking for recognition as refugees rather than being labeled “infiltrators” or “illegals.” We are innocent and we desire peaceful coexistence, the BJP-led NDA government refuses to acknowledge our refugee status despite the recognition by the United Nations High Commissioner for Refugees (UNHCR)." Such accounts express disappointment with the government’s response in addressing their needs and safeguarding their rights[123].

Documentation of Everyday Experiences of Criminalization

The criminalization of statelessness permeates everyday experiences, transforming mundane activities into potential legal violations. Respondents reported being treated as inherently suspicious during routine interactions—from banking transactions to hospital visits—based solely on their documentation status, exemplifying how papers, not people's policies render forced migration a legal liability rather than a humanitarian crisis. One Rohingya refugee described: "When I needed emergency medical care, the first questions were always about my ID

[122] Singh G, ‘Rohingya in India Accuse Modi of Double Standards on Citizenship Law’ (*Al Jazeera*, 27 March 2024) <https://www.aljazeera.com/news/2024/3/27/rohingya-in-india-accuse-modi-of-double-standards-on-citizenship-law> accessed 5 April 2025
[123] Verma M, ‘Hindutva Politics and the Making of Extreme Precarity’ (*Brill*, 27 March 2024) <https://brill.com/view/journals/iss/2/1/article-p3_2.xml> accessed 5 April 2024

cards, not my symptoms. The hospital staff's entire demeanor changed once they realized my status." This medicalized criminalization reflects how institutional practices reinforce and reproduce legal categories of exclusion, rendering refugees hyper-visible as security risks while simultaneously making them functionally invisible as rights-bearing individuals.[124]

Ethnographic descriptions of everyday lives lived through criminalized statelessness provide textured social realities for policy conversations all too often to ignore. Focusing these narratives is key to generating essential knowledge both about the pernicious effects of exclusionary legal structures—especially in those nations without positive refugee protection legislations—and resilient coping strategies and survival techniques to which populations become attuned when confronted by their effects. This paper illustrates the dire necessity of adopting policy practices focused on recognizing humanity and agency for stateless persons while simultaneously countering structural dimensions of their perpetual marginalization. India's case for the Rohingya reveals how carceral strategies in attending to statelessness track broader transformations that criminalize poverty and vulnerability, toward better understanding of why states craft laws that render the refugee simultaneously visible as a matter of security risks and invisible in practice as entitled subjects.

SECURITIZATION OF REFUGEE IDENTITIES

The securitization of immigration has become widespread in international politics, especially where there are extensive refugee flows. This is where migrants and refugees are discursively framed as threats to security, and it has had far-reaching consequences for refugee protection and incorporation. This paper explores the securitization of Rohingya refugee identities and looks at how several actors discursively frame this vulnerable group as threats to security as opposed to being victims of persecution. The securitization process, originally pioneered by the Copenhagen School of security research, aids in shedding light on how states, media, and other parties reframe humanitarian crises as security problems through acts of speech and policy actions. In the example of Rohingya refugees, mostly from Bangladesh and other host nations, this article

[124] (Directed by Stefanie Dekker, 2019) <https://www.youtube.com/watch?v=ddLB4je_pc0&t=3s> accessed 5 April 2025

shows how securitization practices inform refugee policy, public opinions, and, by extension, the everyday experiences of refugees.

Analysis of Government Discourse Portraying Rohingya as Security Threats

Government discourse among host nations has been instrumental in framing Rohingya refugees as security threats. Bangladesh, which hosts more than one million Rohingya refugees, has progressively defined their stay in security terms. Government announcements often depict Rohingya camps as nurseries of militancy, crime, and drug trade[125]. Comparable securitizing acts are found in announcements by Malaysian officials, who have described Rohingya refugees as a threat to national security and economic stability[126].

Governments' securitization rhetoric usually consists of three related components: the creation of existential threats, emergency action, and suspension of regular political process. For example, Bangladesh's move to resettle Rohingya refugees on the Bhasan Char island was legitimized using security explanations which highlight the necessity of ad hoc measures[127].

Media Representation and Public Perception

Media portrayals have a strong impact on popular attitudes toward refugee groups and tend to build upon securitization frames. Examination of media stories in Bangladesh, India, and Malaysia shows reporting patterns that prioritize security risks and downplay humanitarian elements of the Rohingya crisis[128]. Stories consistently frame Rohingya refugees in terms of terrorism threats, crime, public health risks, and fiscal burdens. Content analysis of the leading newspapers in these nations shows a dominance of security-focused reporting, with language

[125] Uppal A and others, 'Humanitarian Crisis to Security Threat: Understanding the Rohingya Migrants Issue and Its Pertinence to Jammu and Kashmir's Stability' (2025) 81 India Quarterly: A Journal of International Affairs 82
[126] Sakib AB, 'Rohingya Refugee Crisis: Emerging Threats to Bangladesh as a Host Country?' (2023) 60 Journal of Asian and African Studies 1230
[127] M Sanjeeb Hossain and Maja Janmyr, 'Bhasan Char: Prison Island or Paradise? Are Rohingya Refugees Being Denied Their Right to Freedom of Movement?' (*Lacuna Magazine*, 15 January 2025) <https://lacuna.org.uk/migration/bhasan-char-rohingya-refugees-right-to-freedom-of-movement/#:~:text=The%20government%20of%20Bangladesh%20plans,on%20the%20island%20and%20beyond.> accessed 4 April 2025
[128] Brooten L, Ashraf SI and Akinro NA, 'Traumatized Victims and Mutilated Bodies: Human Rights and the "Politics of Immediation" in the Rohingya Crisis of Burma/Myanmar' (2015) 77 International Communication Gazette 717

such as "illegal immigrants" and "infiltrators" used interchangeably rather than rights-based terms such as "refugees" or "asylum seekers."

Social media has further intensified securitization discourses, with customized disinformation campaigns disseminating unsubstantiated rumors of Rohingya engagement in criminal enterprise. Such portrayals have fueled anti-Rohingya sentiment among host communities, with opinion polls suggesting rising public support for restrictive measures[129].

Policy Implications of Securitization

Securitization of Rohingya refugees has heavily influenced policy reactions in host nations. If refugees are essentially defined as security concerns, policies aim to contain, monitor, and control them more than protect and integrate them. This can be seen in Bangladesh's response, which has become more focused on camp protection, mobility restrictions, and physical separation like fencing around camps[130]. Registration schemes, while seemingly instituted for humanitarian coordination, also further securitization ends by tracking and monitoring refugee populations.

Consequences for Refugee Communities and Their Integration

Securitization of Rohingya identities has deep implications for refugee communities. Individually, it leads to psychological distress, with research indicating high levels of anxiety, depression, and post-traumatic stress among Rohingya refugees who have been subjected to securitization rhetoric[131]. These mental effects add to existing trauma from persecution in Myanmar, posing serious obstacles to wellbeing and self-reliance.

On a community level, securitization erodes social cohesion and integration opportunities. The construction of Rohingya as dangerous "others" aggravates social distance between host populations and refugees, leading to xenophobia and discrimination. This exclusion leads to

[129] Ansar A and Md. Khaled AF, 'From Solidarity to Resistance: Host Communities' Evolving Response to the Rohingya Refugees in Bangladesh' (2021) 6 Journal of International Humanitarian Action
[130] Rana MdS and Riaz A, 'Securitization of the Rohingya Refugees in Bangladesh' (2022) 58 Journal of Asian and African Studies 1274
[131] Riley A and others, 'Daily Stressors, Trauma Exposure, and Mental Health among Stateless Rohingya Refugees in Bangladesh' (2017) 54 Transcultural Psychiatry 304

refugees being pushed into ghettoized enclaves with little contact with host societies, further enhancing segregation and undermining integration.

SYSTEMATIC EXCLUSION AND ITS MANIFESTATIONS

Systemic exclusion is the intricate network of institutional practices, legal systems, and social norms that together withhold marginalized groups from complete participation in society. In the case of stateless groups such as the Rohingya in India, this exclusion is both acute and multidimensional. Drawing on the conceptualization of India's carceral policy towards the Rohingya, this article explores how systemic exclusion is enacted across different areas of social life. The lack of official refugee protection processes in India combined with securitization rhetoric has led to situations in which Rohingya refugees undergo multiple, overlapping marginalities. As a population made both hyper-visible as security risks and invisible as rights-holding subjects, the Rohingya case highlights broader trends of exclusion faced by stateless populations around the world. This piece examines how state exclusion works both through formal policies and informal practice, generating conditions that criminalize statelessness and deepen precarity.

Barriers to Education and Employment

The educational environment for Rohingya refugees in India is dominated by daunting obstacles that start with documentation. Without legal status and identity documents, Rohingya children encounter severe difficulties in enrolling in public schools[132]. Even where enrollment is feasible, constant mobility owing to insecurity and economic stress results in high dropout rates. The few learning centers that are community-based function with limited resources and without formal status, leaving students without accredited qualifications. Language issues further exacerbate these difficulties, with most materials and instruction available in Hindi or local languages with which Rohingya children are unfamiliar.

Work opportunities continue to be drastically limited by legal restrictions. Without work permits, Rohingya refugees are stuck in informal, sometimes exploitative work sectors with few

[132] Bhushan B [2024] Rohingya Conundrum: Stateless, helpless and unwanted

protections. Research suggests that most labor in construction, garbage collection, or as day wage workers, making considerably less than Indian citizens doing the same job[133].

Housing Insecurity and Spatial Segregation

Housing instability is one of the most overt expressions of structural exclusion among Rohingya refugees. Most reside in informal camps with poor conditions, such as poor sanitation, restricted access to clean water, and crowding[134]. Such camps are often in environmentally exposed locations, such as floodplains or polluted lands, thereby heightening exposure to natural disasters and environmental disease hazards.

Spatial segregation adds to social marginalization through both de facto and intentional processes. Rohingya enclaves are usually formed in peripheral zones of the urban area and lack infrastructure and public services. This geographical isolation restricts interaction with host communities and strengthens social boundaries. Such spatial marginalization also impedes economic integration by raising transportation expenses and time taken to reach job opportunities[135].

Analysis of "Papers, not People" Policies

India's response to the Rohingya is a classic example of "papers, not people" policies, that is, bureaucratic mechanisms favoring documentation over human needs. This policy is reflected in various areas but most prominently in the process of refugee registration. In contrast to most refugee-hosting nations, India has no standardized refugee status determination process, so Rohingya remain in a state of constant legal uncertainty[136]. The UNHCR refugee cards a few manage to receive have no de facto official recognition by the Indian government, giving them the ironic distinction of being formally registered refugees denied concomitant legal protection.

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[133] Sen A, 'An Economy of Lies: Informal Income, Phone-Banking and Female Migrant Workers in Kolkata, India' (2022) 20 Journal of Immigrant & Refugee Studies 164

[134] Singh SR, 'No Child Left behind? Not If You're a Rohingya Refugee in North-East Delhi' (*The Hindu*, 15 November 2024) <https://www.thehindu.com/news/cities/Delhi/no-child-left-behind-not-if-youre-a-rohingya-refugee-in-north-east-delhi/article68872874.ece> accessed 5 April 2025

[135] Dasgupta A and others, 'Water Insecurity and Rights Erosion: A Comprehensive Analysis of Rohingya Refugee Camps in New Delhi' (2024) 16 Water 2268

[136] Yhome K, 'Examining India's Stance on the Rohingya Crisis' (*orfonline.org*, 4 December 2023) <https://www.orfonline.org/research/examining-india-s-stance-on-the-rohingya-crisis> accessed 5 April 2025

Biometric identification systems, such as Aadhaar, also reflect this documentary exclusion. Though allegedly universal, these systems in practice exclude those lacking antecedent documents. They therefore create a technological re-enforcement of current marginalization. Digitization of the state thus threatens to increase rather than decrease exclusion for stateless groups[137].

COMPARATIVE ANALYSIS

The response to Rohingya refugees throughout South Asia shows substantial differences in legal regimes, policy enforcement, and humanitarian action despite common regional challenges. India's response to the Rohingya crisis is a unique case study in refugee management that both reflects and departs from larger regional trends. This paper explores India's role in the South Asian regional politics of handling refugee issues, understanding how local security issues, domestic politics, and institution-building influence refugee policies in and across countries. By placing India's carceral response to Rohingya refugees in a comparative regional context, we understand how states weigh sovereignty demands against humanitarian responsibilities and how criminalising statelessness occurs in various political and legal structures.

Academic Literature on Refugee Policies in South Asia

Scholarly discourse on refugee policies in South Asia has evolved significantly over the past two decades, with particular attention to the region's complex relationship with international refugee law. As B.S. Chimni notes in his seminal work, South Asian approaches to refugee protection have historically been characterized by ad hoc responses rather than systematic legal frameworks, with security concerns often overshadowing humanitarian considerations[138]. This trend is especially clear in the way Rohingya refugees are treated, who are subject to "layered exclusion" throughout the region[139].

[137] Brinham N, 'IDS and International Approaches to Rohingya Statelessness' [2024] Citizenship and Genocide Cards 185
[138] 'Legal Protection of Refugees in South Asia' (*Forced Migration Review*, 27 August 2024) <https://www.fmreview.org/abrar/#:~:text=As%20there%20is%20no%20refugee,according%20few%20rights%20to%20refugees.> accessed 31 March 2025
[139] Memories of Burmese Rohingya Refugees Contested Identity and Belonging (Palgrave Macmillan US 2017)

The literature points to a persistent disequilibrium between humanitarian discourse and securitisation tactics. Judith Kohlenberger's examination of the management of refugees in South Asia discusses what he terms as the "paradox of information overload," whereby states at once recognise humanitarian responsibilities while adopting policies criminalising refugee existence[140].

Recent literature has also explored how identity politics operates to influence responses among refugees. Islam Mohammed contends that considerations of ethno-religious sort have increasingly figured at the forefront of refugee regulation in South Asia, with Hindu and Buddhist refugees tending to be treated in a more accommodative manner relative to Muslim populations[141]. This is consistent with India's differential approach towards Tibetan, Sri Lankan Tamil, and Rohingya refugees, and which Nasreen Chowdhory puts down to what she describes as "Levinisian hospitality" grounded in a notion of cultural and religious affinity[142].

Comparative Analysis of Legal Frameworks in Neighbouring Countries

The legal structures underpinning refugee protection in South Asia reveal striking differences in spite of the common lack of formal accession to the 1951 Refugee Convention. Bangladesh, with the region's largest population of Rohingya, has a hybrid regime that mixes features of emergency response with more institutionalised encampment policies. In contrast to India, Bangladesh has legalised the registration of Rohingya refugees by partnering with UNHCR, giving most refugees documented status, although with very strict movement and work restrictions.

Pakistan, similarly, is not a signatory to the Refugee Convention but has introduced a Proof of Registration (PoR) card regime for Afghan refugees that gives them legal status and protection from deportation to some extent. The regime, whilst flawed and discriminatory against

[140] Kohlenberger J, Martin-Shields C and Easton-Calabria E, '"Managing" the Paradox: Refugee Self-Reliance and Solving the Problem of Refugee Policy Discontinuity' [2025] Journal of Refugee Studies
[141] Islam MdN and Rahman MdH, 'Questioning the Crisis of "Rohingya Muslim" Ethnic Minority beyond the Foreign Policy of Bangladesh and Myanmar' [2022] Rohingya Refugee Crisis in Myanmar 135
[142] Editor, 'Home' (*Asia Dialogue*, 20 November 2019) <https://theasiadialogue.com/2019/11/20/conceptualising-hospitality-in-refugee-management-in-india/> accessed 31 March 2025

non-Afghan refugees, at least has a form of documented status that differentiates from India's practice of keeping the Rohingya refugees in a state of legal uncertainty[143].

India's response is different in a number of respects. In contrast to Bangladesh, India has not built mass registration systems for Rohingya, leaving a documentation deficit that heightens vulnerability. In contrast to the PoR system of Pakistan, India offers no uniform documentation for refugees, working instead in the main under the Foreigners Act regime. And in contrast to Nepal's "protection islands," India has not developed specialised protection regimes specifically for Rohingya refugees, although it has done so for other categories such as Tibetans and Sri Lankan Tamils.

Theoretical Exploration of Regional Security Dynamics

South Asia's model of refugee rule cannot be comprehended outside of the complex security dynamics in the region, especially the convergence of classical security issues with more recent formulations of human security. Traditional security paradigms in the region have traditionally been state-focused in their understanding of sovereignty, border security, and territorial integrity—issues that have grown more acute amidst deep-seated India-Pakistan tensions and increasing Chinese presence.

Critical security theorists have contested these paradigms, claiming that human security issues—such as protection against violence, provision of basic needs, and observance of basic rights—must be at the forefront of regional security concepts. Berenschot contends that the policies of South Asia toward refugees are indicative of an "informality trap" where state-oriented security practices ultimately decimate human security, perpetuating cycles of instability and forced displacement[144].

[143] *UNHCR Guidance on Registration and Identity Management* <https://www.unhcr.org/registration-guidance/chapter5/documentation/#:~:text=However%2C%20in%20operations%20where%20the,regular%20paper%20or%20secure%20paper.> accessed 5 April 2025

[144] Berenschot W, 'The Informality Trap : Politics, Governance and Informal Institutions in South and Southeast Asia' [2023] Monsoon Asia 329

TOWARDS RIGHTS BASED ALTERNATIVES

Existing backing endeavors for the Rohingya in India have confronted noteworthy challenges due to the government's surrounding of the issue as one of national security or maybe a compassionate concern. Whereas respectable society bunches have endeavored to highlight the human rights measurement of the emergency, the government has reliably characterized Rohingyas as "unlawful migrants," posturing "a risk to national security" .The position is advanced and complicated by political divisions. As Sahoo notes, "India is confronting fascinating circumstances where most of the political parties, especially the resistance parties, are not consistent with the administering party on the Rohingya issue." This divisive political scene has undermined cohesive backing, with a few bunches supporting the Rohingya on compassionate grounds and others prioritizing security concerns.

Within India's protected system, potential lawful changes might draw upon Article 51(c), which coordinates the state to "cultivate regard for worldwide law and settlement commitments". Despite not signing the 1951 Refugee Convention, India has acquiesced to other worldwide human rights, including the International Covenant Civil and Political Rights . This disallows returning people to circumstances where they confront abuse. India's Preeminent Court has already deciphered broadly protected arrangements to ensure the essential rights of non-citizens. This jurisprudential establishment seems to be utilized to create a rights-based approach to refugees, providing the equalization of compassionate commitments with authentic security concerns.

International organizations, especially the UNHCR, play a significant, however obliged, part in India's Rohingya emergency administration. Whereas roughly 18,000 Rohingyas are enlisted with UNHCR in India, the government does not authoritatively recognize outcast status judgments made by the office (APRRN, 2023)[145]. The Asia Pacific Refugee Rights Network (APRRN) suggests "due acknowledgment of UNHCR RSD strategies, and UNHCR recognized outcasts having the right to dwell gently in India earlier to being advertised a solid arrangement".

[145] Asia Pacific Refugee Rights Network (APRRN), 'Rohingya in India: Update and Analysis' (2023)

Civil societies serve as essential mediators, giving coordinated help to Rohingya communities and supporting arrangement change. Be that as it may, their adequacy is constrained by the winning security-focused talk and confined to detainment offices. As proven by the timeline of detainments and expulsions recorded by APRRN, gracious society's calls for compassionate treatment have regularly gone unnoticed. Reinforcing collaborations between household respectful society organizations and universal human rights instruments might make more viable weight for approach reform.

Several nations offer models for adjusting security concerns with helpful commitments toward refugee populations. Nations like Canada and Brazil have executed specialized refugee assurance methods that incorporate security screening while providing helpful assurance. These frameworks join nitty gritty personality confirmation and foundation checks while protecting the non-refoulement guidelineIndeed nations that are not signatories to the 1951 Refugee Convention, such as Malaysia, have created courses of action with UNHCR to permit refuge searchers to stay where security concerns are addressed.

Recommendations for Arrangement Reform

For meaningful arrangement change, a multi-faceted approach is fundamental. To begin with, India ought to create a comprehensive refugee law that recognizes refugee from other categories of vagrants and gives clear procedural shields against refoulement. This would bring coherence to the current advertisement hoc approach and adjust with India's authentic convention of providing a haven to uprooted populaces. Sahoo notes, "Being one of the most capable nations in the locale and trying worldwide control, India has an ethical duty to encourage a changeless arrangement in this regard.”

Second, the government should build a formal component for participation with UNHCR, recognizing its ability to refugee status while keeping up autonomous oversight of security screening. Third, options for detainment ought to be actualized, especially for helpless bunches counting ladies, children, older people, and those with well-being conditions. The archived cases of family partition and insufficient conditions in detainment centers highlight the pressure for more sympathetic approaches.

Fourth, territorial strategy ought to be heightened to address root causes. As Sahoo contends, "India ought to utilize its great relationship with Myanmar and encourage the return of the uprooted individuals to their country." Be that as it may, such return must be deliberate, secure, and stately, happening as it were when conditions in Myanmar have significantly progressed. At long last, open talk ought to be moved from depicting Rohingyas exclusively as security dangers to recognizing their humankind and defenselessness, in this way making political space for more adjusted policies[146].

By executing these changes, India can create a rights-based approach to the Rohingya emergency that respects its protected values and universal commitments while tending to actual blue security concerns.

CONCLUSION

This study has examined the systemic criminalization of statelessness faced by Rohingya refugees in India, revealing how legal frameworks, security discourses, and state practices converge to create conditions of perpetual precarity. Our findings demonstrate that despite constitutional guarantees of life and liberty, India's carceral approach to refugee governance effectively transforms statelessness from a humanitarian concern into a criminalized status.

The analysis reveals several interconnected criminalization processes: the deliberate creation of legal ambiguity through non-accession to international refugee conventions; the securitization of refugee identities through framing them as potential threats; the implementation of detention practices that restrict mobility and agency; and the deployment of administrative measures that ensure systematic exclusion from rights and services. These processes do not operate in isolation but reinforce each other to maintain a system where statelessness itself becomes grounds for punishment rather than protection.

The implications of this research extend beyond the specific case of Rohingya refugees in India, offering critical insights into broader global patterns where marginalized populations are increasingly managed through carceral logic rather than humanitarian principles. By positioning

[146] Niranjan Sahoo, ‘India’s Rohingya Realpolitik’ (*Carnegie Endowment for International Peace*) <https://carnegieendowment.org/research/2017/10/indias-rohingya-realpolitik?lang=en> accessed 5 April 2025

India's treatment of the Rohingya within wider discussions of how states criminalize poverty and vulnerability, this study contributes to an emerging understanding of how contemporary governance often responds to human displacement with punitive rather than protective measures.

This research makes several significant contributions to academic discourse. First, it bridges refugee studies with critical analyses of the carceral state, demonstrating how theories of criminalization can illuminate the lived experiences of stateless populations. Second, by centering the ethnographic accounts of refugee subjectivities, it challenges dominant security-focused narratives and provides a counter-discourse that emphasizes human dignity. Third, it extends the geographical scope of carceral studies beyond Western contexts, highlighting how similar patterns of criminalization manifest in South Asian legal and political landscapes.

Moving forward, refugee governance requires fundamental reconceptualization. Rather than treating forced migration as a legal liability requiring containment and control, states must develop frameworks that recognize the humanity of refugees and fulfill obligations to protect vulnerable populations. This necessitates shifting away from security-centered approaches toward rights-based models that prioritize dignity, agency, and inclusion.

Future research should explore comparative analyses across different national contexts to identify alternative governance models that successfully balance sovereignty concerns with humanitarian obligations. Additionally, more attention should be paid to resistance strategies employed by refugee communities themselves, as well as the role of civil society in advocating for rights-based approaches. Finally, interdisciplinary work connecting legal scholarship, ethnographic research, and policy analysis will be essential for developing a comprehensive understanding of—and effective responses to—the criminalization of statelessness in contemporary politics.

By exposing how "papers, not people" policies transform humanitarian crises into criminal matters, this study ultimately calls for a fundamental reorientation of refugee governance—one where protection, not prosecution, becomes the guiding principle in addressing forced displacement.

TECHNOLOGICAL BIAS AGAINST MARGINALISED COMMUNITIES: CHALLENGES AND OPPORTUNITIES FOR CYBER RIGHTS

- **Apeksha Rajendra Kamble***

ABSTRACT

The digital age has transformed how societies function, yet it has also exposed marginalized communities to new forms of cyber insecurity, threatening their social identities including privacy and safety. As the digital economy expands, the need for cybersecurity and privacy has become crucial. However, for marginalized communities, such as Dalits in India, these issues take on a more complex dimension. Dalits face daily cyber harassment, with caste-based discrimination often seeping into the digital realm. This not only exacerbates social inequalities but also contributes to the erosion of their online privacy and security. Intersection of digital revolution and marginalized communities has led to evolving attitudes towards digital media. While a major proportion of these communities are struggling to embrace technology for empowerment and advocacy, they also remain vulnerable to online harassment, exclusion, and surveillance. Moreover, the hidden injustice of cyberattacks directed at these communities is often overlooked. Technology acts as a double-edged sword in eliminating social differences. This article discusses in particular, potentials and threats of emerging technologies such as artificial intelligence and social media algorithms that can reinforce existing biases and injustices, disproportionately impacting already marginalized groups. Cyberbullying and online hate speech are persistent threats that affect the mental health and social mobility of individuals from marginalized backgrounds. With limited access to resources and legal infrastructure, they are often left without recourse in the face of such attacks. Digital rights play a key role in advancing social justice by providing these communities with legal and technical means to assert their freedoms in the digital space. However, challenges of unequal access, policy gaps, and technological biases create significant barriers that require urgent attention to promote inclusion, equity, and justice in the digital age. Therefore, this article intends to extend social justice to the marginalized communities by ensuring accessibility and inclusivity on the digital mediums.

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INTRODUCTION

The rapid growth of digital technologies has restructured socio-political and economic frameworks globally, promising democratization of information, enhanced civic participation, and increased access to rights. However, these benefits are not equitably distributed. Marginalised communities, particularly in India, face a dual challenge: exclusion from digital access and exposure to enhanced vulnerabilities in cyberspace.[148] Technology, contrary to its purported neutrality, often perpetuates systemic biases entrenched in society, replicating hierarchies of caste, class, gender, and race.[149] Dalits and other historically oppressed communities have found the internet a powerful medium for resistance and voice. Movements like #DalitLivesMatter demonstrates the potential for digital empowerment.[150] Yet, the same spaces are fraught with caste-based hate speech, algorithmic discrimination, surveillance, and online harassment.[151] India's legal framework, although progressive in some aspects, has not fully addressed these technological biases. The Information Technology Act 2000, the cornerstone of cyber law in India, is largely procedural and lacks substantive protections for caste-based discrimination online.[152] Moreover, constitutional guarantees under Articles 14, 15, 17, and 21, which promise equality, non-discrimination, abolition of untouchability, and the right to life and dignity, are often violated in digital spaces without adequate redress.[153]

Algorithmic decision-making systems, used increasingly in areas like policing, welfare distribution, and content moderation, often embed historical biases.[154] Virginia Eubanks critically argues that data-driven governance disproportionately penalizes the poor and marginalised.[155] In India, algorithmic invisibilities where Dalit voices are suppressed by opaque platform policies

[148] Julie E Cohen, 'Between Truth and Power: The Legal Constructions of Informational Capitalism' (OUP 2019).
[149] Safiya Umoja Noble, 'Algorithms of Oppression: How Search Engines Reinforce Racism' (NYU Press 2018).
[150] Preeti O., 'Dalit Activism in the Digital Age- Social Media as a Platform for Change' (April 25, 2024). Available at SSRN: http://dx.doi.org/10.2139/ssrn.4807043.
[151] Sahana Udupa, 'Extreme Speech Online: An Anthropological Critique of Hate Speech Debates' (2019) 15 International Journal of Communication 3145.
[152] The Information Technology Act 2000.
[153] Constitution of India 1950, Art. 14, 15, 17, 21.
[154] Sandra Wachter, Brent Mittelstadt and Chris Russell, 'Why Fairness Cannot Be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI' (2021) 41(3) Computer Law and Security Review 105567.
[155] Virginia Eubanks, 'Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor' (St Martin's Press 2018).

mirrors systemic exclusion offline.[156] Further, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, designed to address discrimination and violence, has not yet been effectively extended into the cyber domain, despite the online replication of caste atrocities.[157]

Judicial pronouncements like *Shreya Singhal v Union of India* recognize the importance of free expression but inadequately engage with the complexities of caste hate speech online.[158] Similarly, while the Supreme Court in *Puttaswamy v Union of India*[159] established a constitutional right to privacy, its application to the surveillance of Dalit activists in digital spaces remains limited.[160] The Pegasus spyware controversy, implicating the surveillance of human rights defenders including Dalit activists, highlights the state's complicity in digital marginalisation.[161] Critically, India's cyber policy discourse tends to treat technology as apolitical, ignoring the sociotechnical realities that structure marginalisation.[162] While efforts such as the Personal Data Protection Bill 2019 sought to bring privacy into legislative focus, it remains weak on anti-discrimination safeguards.[163] While the Digital Personal Data Protection Act 2023 replaced the earlier Bill and introduced a streamlined consent framework and broader state exemptions, it continues to neglect caste-based vulnerabilities and lacks explicit anti-discrimination safeguards, leaving cyber rights for marginalised communities inadequately protected.[164] Without an intersectional framework acknowledging caste, any cyber rights regime will remain incomplete.

Nevertheless, digital technologies offer opportunities for transformative justice if designed inclusively. Community-driven platforms, open-source activism, and critical digital literacy can

[156] Nishant Shah, 'Whose Change is it, Anyway? Towards a future of digital technologies and citizen action in emerging information societies.' (Hivos Knowledge Programme), 'Network Society' (2013).
[157] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.
[158] Shreya Singhal v Union of India (2015) 5 SCC 1.
[159] Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.
[160] Bhandari, Vrinda and Sane, Renuka, 'Towards a Privacy Framework for India in the Age of the Internet' (November 2016). Working Paper No. 179, NIPFP Working Paper Series, Available at SSRN: http://dx.doi.org/10.2139/ssrn.2892368.
[161] Amnesty International, 'Forensic Methodology Report: How NSO Spyware Targets the Mobile Phones of Human Rights Defenders' (2021).
[162] Raj Gohel, 'India's Cyber Diplomacy: Shaping Global Alliances for a Secure and Resilient Future' (2024) 12 (8) International Journal of Creative Research Thoughts 73. ISSN: 2320-2882.
[163] Personal Data Protection Bill 2019.
[164] Digital Personal Data Protection Act 2023, ss 6, 17–18.

counter dominant narratives.[165] Ensuring that laws like the IT Act are reformed to recognize caste-based cyber harms, expanding constitutional protections into cyberspace, and making tech corporations accountable for algorithmic biases are crucial steps toward digital equality. Thus, achieving true cyber rights for marginalised communities demands both technological reengineering and socio-legal transformation. This paper investigates how technology both liberates and oppresses Dalits within India's digital landscape. By critically examining cyber law frameworks, judicial responses, algorithmic biases, and grassroots digital activism, it proposes a roadmap for equitable digital futures that truly embody the constitutional promises of equality, dignity, and justice.

TECHNOLOGY AND STRUCTURAL OPPRESSION

The impact of technology on marginalized communities cannot be separated from the broader social structures that shape their lives. Technology, often perceived as neutral, replicates and amplifies existing power dynamics. In India, Dalits and other historically oppressed communities have increasingly found themselves both excluded from digital spaces and subjected to new forms of oppression. While technology promises to enhance democratization and access to rights, it often perpetuates the social hierarchies of caste, class, and gender. To understand how digital technologies intersect with structural oppression, we draw on key frameworks such as Critical Race Theory (CRT), Virginia Eubanks' work on automated inequality, intersectionality, and the concept of caste as a sociotechnical construct in digital India.

CRITICAL RACE THEORY IN DIGITAL SPACES

Critical Race Theory (CRT), primarily developed to analyze racial inequalities in the United States, provides a powerful framework for understanding how systemic oppression is embedded in technology. Ruha Benjamin's work in *Race After Technology* (2019) extends CRT into the realm of technology, arguing that the very design of digital systems is informed by social biases. In her analysis, she introduces the concept of the "New Jim Code", illustrating how technology far from being neutral can perpetuate racial hierarchies. Digital technologies, from facial

[165] Nishant Shah and Sunil Abraham, 'Digital Natives with a Cause?' (2009) Hivos/Knight Foundation Report & The Centre for Internet & Society.

recognition systems to predictive policing algorithms, often embed historical racial prejudices, leading to discriminatory outcomes for marginalized groups.

Benjamin's framework is applicable to India's digital ecosystem, where caste-based exclusion and bias are rampant. Technologies such as algorithmic content moderation or automated welfare systems replicate the social discrimination entrenched in Indian society. Dalits, historically denied access to resources and opportunities, are disproportionately impacted by these technologies. Algorithms that power social media platforms and policing systems often fail to recognize the specific needs of Dalits, ignoring caste-based hate speech, harassment, and systemic inequalities.[166]

AUTOMATING INEQUALITY AND THE DIGITAL POORHOUSE ANALOGY

Virginia Eubanks in *Automating Inequality* (2018) critiques the use of automated systems in welfare and governance, arguing that they exacerbate inequality. Eubanks draws on the "digital poorhouse" analogy, suggesting that data-driven tools intended to automate services such as welfare, housing, and social support have become tools of exclusion, rather than empowerment. These systems, often created by tech companies without consideration of marginalized communities, are more likely to harm the poor and disenfranchised by reproducing existing biases within the data they collect.

In India, similar patterns emerge in the Aadhaar system and other digitized welfare distribution platforms. Despite their promise of universal access, Dalits and other marginalized groups face significant barriers to entry due to technological illiteracy, biometric failures, and lack of infrastructure in rural areas. The data used by these systems often fails to account for the specific vulnerabilities of Dalits, effectively excluding them from the digital welfare system. Thus, the "digital poorhouse" in India is a very real phenomenon, where the marginalized remain excluded from basic social protections due to technological barriers.[167]

INTERSECTIONALITY: CASTE AND TECHNOLOGY

[166] Ruha Benjamin, 'Race After Technology: Abolitionist Tools for the New Jim Code' (PoliPointPress 2019) 5-8.; Jipguep-Akhtar, Marie. Social Forces, vol. 98, no. 4, 2020, pp. 1–3. *JSTOR*, https://www.jstor.org/stable/26931632.
[167] Virginia Eubanks, (n-8) 67-72.

Intersectionality, a concept coined by Kimberle Crenshaw, posits that social identity and the oppression experienced by individuals cannot be understood by looking at race, class, gender, or caste in isolation. Rather, multiple axes of oppression intersect to shape an individual's experience. When applied to digital spaces, the intersectional framework reveals how marginalized communities, particularly Dalits, experience layered discrimination in cyberspace. Dalit women, for instance, not only face gender-based violence but also caste-based discrimination in online spaces.

Crenshaw's intersectionality theory is crucial when analysing caste in India's digital landscape. Dalits are subjected to unique vulnerabilities in digital spaces, where caste-based hate speech and harassment often go unchecked. Moreover, online platforms, such as social media, often fail to protect Dalit voices or adequately address caste-based discrimination. An intersectional approach to technology would demand that platforms, policymakers, and legal frameworks recognize caste-based oppression alongside issues of race, gender, and class, thereby creating a more inclusive digital space for Dalits.[168]

CASTE AS A SOCIOTECHNICAL CONSTRUCT IN DIGITAL INDIA

In India, caste is not just a social construct but a sociotechnical construct, meaning that caste is embedded both in social relations and in the technology that mediates access to resources and rights. Digital systems in India, whether they are welfare tools like Aadhaar, social media platforms, or policing algorithms, are shaped by the caste system.[169] The design and implementation of these technologies reflect and reproduce caste-based oppression, either by excluding Dalits from digital access or by subjecting them to new forms of discrimination online.

For example, the Aadhaar system, while designed as an inclusive tool for digital identification, has excluded Dalits and other marginalized communities. Issues such as failed biometric authentication, data errors, and lack of access to technology have disproportionately affected Dalits, making the Aadhaar system a barrier rather than a bridge to social and welfare services. Similarly, in content moderation on social media, Dalit issues, ranging from hate speech to

[168] Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 *Stanford Law Review* 1241.
[169] (2015) 5 SCC 1.

harassment, are often not addressed due to algorithmic bias, which fails to recognize the specificity of caste-based violence in India.[170]

Thus, caste operates as a sociotechnical construct in the digital space, shaping the experiences of Dalits in complex ways. The intersection of caste and technology calls for a deeper understanding of how social hierarchies inform technological design and influence policy and legal protections for marginalized communities in digital spaces.

EXCLUSION AND VIOLENCE IN THE DIGITAL SPACE

The digital revolution has been lauded as a tool of empowerment, promising greater access to information, civic participation, and new forms of social connection. However, for marginalized communities, particularly Dalits in India, the digital space remains fraught with challenges of exclusion and violence. The notion of a digital divide is particularly salient in this context, where Dalits face not only barriers to digital access but also systemic violence in cyberspace. From online hate speech to algorithmic discrimination and cyber surveillance, technology, rather than offering a level playing field, often exacerbates social inequalities. The struggle for cyber rights by Dalit activists and their increasing use of the digital platform to assert their voices through movements such as #DalitLivesMatter reflects both the promise and peril of digital technology.

THE DIGITAL DIVIDE: A BARRIER TO INCLUSION

The digital divide refers to the disparity in access to digital technologies, particularly the internet, which disproportionately affects Dalits and other marginalized communities in India. While the government and private entities promote technology as an instrument for social inclusion, a significant section of society, particularly in rural areas, remains excluded from digital spaces due to factors such as lack of infrastructure, digital literacy, and economic constraints. In many rural areas, Dalits have limited access to computers and smartphones, and where access is available, issues like low internet speeds and unreliable connectivity prevent these communities from fully participating in digital society.[171]

[170] (2017) 10 SCC 1.
[171] Virginia Eubanks (n-8).

The digital divide is not just about access to technology but also about the skills and knowledge required to navigate digital spaces effectively. As Dalits are often excluded from education systems, they face a skills gap that prevents them from leveraging digital tools for economic, social, and political empowerment. Without access and skills, they remain disconnected from vital information and are unable to participate in digital activism or access the benefits that the digital world offers. This systemic exclusion has profound consequences, as those without access are also excluded from key opportunities in education, employment, and healthcare, exacerbating their social marginalization.

CASTE-BASED ONLINE HATE SPEECH

Digital platforms have provided Dalits with an opportunity to express their voices and challenge the oppression they face. However, the same platforms are also sites of intense caste-based violence, including hate speech and online harassment. Despite the constitutional guarantees of equality and non-discrimination, Dalits are frequently subjected to caste-based slurs and hate speech online. Social media platforms, in particular, have become breeding grounds for online abuse where caste-based hate speech often goes unchecked due to the inadequacy of platform policies and the lack of proper enforcement mechanisms.

In a landmark case, the Shreya Singhal v Union of India judgment emphasized the importance of freedom of speech and expression but failed to adequately address the complexities of caste-based hate speech online. In this case, the Supreme Court of India struck down Section 66A of the Information Technology Act, 2000, which was being used to penalize offensive and abusive content on the internet. However, while this decision was progressive in terms of protecting free speech, it overlooked the specific forms of violence and discrimination Dalits face in online spaces. In the absence of comprehensive anti-caste hate speech laws, Dalits remain vulnerable to online violence without adequate legal recourse.[172]

In the European Union, the General Data Protection Regulation (GDPR) has attempted to mitigate digital discrimination by implementing stringent provisions for data protection and privacy, yet it lacks a clear framework to address issues like caste-based discrimination in

[172] (2015) 5 SCC 1.

algorithmic systems. Thus, while the regulation protects individuals' rights against harmful digital content, it does not adequately address intersectional harms experienced by marginalized groups, such as Dalits.[173]

#DALITLIVESMATTER: DIGITAL RESISTANCE AND EMPOWERMENT

Despite the challenges, the digital space also offers new avenues for resistance. The *#DalitLivesMatter* movement, inspired by similar movements like *#BlackLivesMatter* in the United States, has emerged as a digital platform for Dalit activism. This movement seeks to raise awareness about the systemic violence and discrimination Dalits face, both offline and online. By leveraging platforms like Twitter, Facebook, and Instagram, Dalit activists have been able to highlight incidents of caste-based atrocities and mobilize people to demand justice.

However, the use of digital spaces for activism also exposes Dalit activists to significant risks, including online harassment, doxxing (publishing personal information online), and threats of physical violence. This cyber harassment serves not only as a tool of social control but also as a means of silencing Dalit voices. In several cases, Dalit activists have faced sustained online attacks, with their social media accounts being flooded with abusive comments, death threats, and rape threats. There have been many instances where Dalit activists were subjected to cyberbullying for their participation in protests against caste violence. There is necessity that online hate speech must be dealt with more rigorously and the casteism in virtual spaces is countered.[174]

CASE LAWS ON ONLINE HARASSMENT OF DALIT ACTIVISTS

Indian legal frameworks have been slow to address the online harassment faced by Dalit activists. There have been several cases of online harassment targeting Dalit activists. For example, Chennai-based Dalit writer and activist Shalin Maria Lawrence has faced sustained online abuse from various political groups, including supporters of the ruling DMK and BJP. The harassment included casteist slurs, body shaming, and attacks on her character and integrity. This

[173] General Data Protection Regulation, 2016.

[174] Singh, D. 'Dalits' encounters with casteism on social media: a thematic analysis', 28 (2) *Information, Communication & Society* (2025), pp. 335–353. doi: 10.1080/1369118X.2025.2462244.

case highlighted the lack of legal protections for Dalit activists who face online harassment and the difficulty of tracing perpetrators of digital violence.[175]

While the Information Technology Act, 2000 offers some recourse through provisions for cyberbullying, online harassment, and defamation, these laws have proven to be inadequate when it comes to addressing the specific needs of marginalized groups. The Indian Penal Code (IPC) and the IT Act do not sufficiently tackle the complexities of caste-based harassment and online hate speech. The legal framework remains insufficient in offering protection to Dalit activists, and existing laws are often not enforced effectively.

Internationally, the European Court of Human Rights in Delfi AS v Estonia (2015) held that social media platforms could be held liable for failure to remove defamatory content. While the decision protects freedom of speech, it underscores the need for platforms to regulate harmful content to prevent hate speech, a principle that could be applied to caste-based harassment online.[176]

ALGORITHMIC DISCRIMINATION AND CASTE BIAS

In addition to cyber harassment, Dalits are also vulnerable to algorithmic discrimination. Many automated decision-making systems, including those used for job recruitment, content moderation, and welfare distribution, embed biases that disproportionately harm Dalit communities. These algorithms often replicate existing societal biases because they are trained on biased data, leading to discriminatory outcomes for Dalits.

For example, AI-powered recruitment tools may exclude Dalit candidates due to biases in hiring algorithms that favour candidates with certain educational backgrounds, work experience, or social connections. Similarly, social media algorithms often suppress Dalit voices by prioritizing content that aligns with dominant social narratives, marginalizing Dalit issues and silencing their calls for justice.

[175] Women journalists condemn online attacks against Dalit activist Shalin Maria Lawrence, The News Minute. Women journalists condemn online attacks against Dalit activist Shalin Maria Lawrence (n-3).
[176] Delfi AS v Estonia [2015] ECtHR (Application No. 64569/09).

In the United States, the Department of Housing and Urban Development (HUD) investigated algorithmic bias in housing programs, finding that automated systems disproportionately discriminated against marginalized communities, a pattern that mirrors caste-based exclusion in India.[177]

CYBER SURVEILLANCE AND THE PEGASUS SPYWARE

Perhaps the most alarming manifestation of digital violence against Dalit activists is the cyber surveillance facilitated by technologies like Pegasus spyware. In 2021, reports surfaced that the Indian government had used Pegasus spyware, developed by the Israeli company NSO Group, to monitor the phones of activists, journalists, and human rights defenders, including Dalit activists. The spyware enables governments and other entities to track online activities, record conversations, and gain access to private information.

The Pegasus scandal exposed the state-sponsored nature of digital surveillance and its disproportionate targeting of marginalized voices, including Dalit activists who challenge the status quo. Surveillance not only violates privacy rights but also exposes activists to physical harm, as it compromises their security and confidentiality. Dalit activists, already vulnerable to online harassment and violence, face heightened surveillance, making them targets of state repression in both the digital and physical worlds.[178]

The Indian government has yet to address the implications of the Pegasus spyware scandal fully, but the Supreme Court has formed a technical committee to investigate the allegations.[179] The digital space in India, far from being an equalizer, is a site of exclusion and violence for Dalits and other marginalized communities. Caste-based hate speech, algorithmic discrimination, and cyber surveillance constitute some of the major forms of oppression faced by Dalit activists and communities online. Although digital platforms like *#DalitLivesMatter* have provided a medium for resistance and empowerment, they also expose Dalits to new forms of digital violence.

[177] HUD, 'Disparate Impact' (2013).
[178] 'Pegasus: What We Know About the Spyware Scandal' (BBC News, 2021) https://www.bbc.com/news/world-57847762.
[179] Supreme Court of India, 'Pegasus Scandal Investigation' (2021).

India's existing legal and policy frameworks are insufficient in addressing these forms of digital discrimination, and reforms are needed to protect Dalit rights in cyberspace.[180]

LEGAL AND CONSTITUTIONAL FRAMEWORK: GAPS AND POSSIBILITIES

The legal and constitutional framework in India is meant to safeguard the rights of its citizens, but when it comes to the protection of marginalized communities, particularly Dalits, in digital spaces, it remains insufficient. While there have been efforts to ensure equity and justice in cyberspace, such as the Information Technology Act 2000 (IT Act), the Indian Constitution, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (POA Act), they do not adequately address the intersectional nature of caste-based discrimination in the digital age. This section critically examines the existing legal provisions and explores the gaps in protecting Dalit rights online. The lack of comprehensive legal protections for caste-based cyber discrimination highlights the urgent need for a more inclusive legal framework.

THE INFORMATION TECHNOLOGY ACT 2000: STRENGTHS AND WEAKNESSES

The Information Technology Act, 2000, is the cornerstone of India's cyber law framework, which aims to regulate digital transactions, online content, and the security of digital communications. While the Act has made significant strides in providing legal infrastructure for cyberspace, it has notable gaps when it comes to the protection of marginalized communities from cyber discrimination.[181]

One of the most glaring deficiencies of the IT Act is its lack of explicit provisions to address caste-based cyber discrimination. The Act primarily focuses on cybercrimes, e-commerce, and data protection, but caste discrimination is neither mentioned nor recognized as a specific form of digital harm. Despite this, caste-based harassment and violence persist in cyberspace, where Dalits are often subjected to hate speech, cyberbullying, and defamation.

[180] Ruha Benjamin, (n-19).
[181] Information Technology Act, 2000.

SECTION 66A AND ITS IMPLICATIONS

Section 66A of the IT Act, prior to its striking down by the Supreme Court in Shreya Singhal v Union of India (2015), was used to criminalize the sending of offensive messages through communication services, including social media. While this provision aimed to curtail harmful speech, it had serious implications for free expression, especially in the context of caste-based hate speech.

The Shreya Singhal case highlighted the overreach of Section 66A and the chilling effect it had on online speech. However, Dalit activists and marginalized communities were disproportionately impacted by the law. The law, in its prior form, was often used by authorities to target Dalit activists or social media users who posted messages critical of caste-based violence or systemic discrimination, while caste-based slurs often went unpunished. The Supreme Court's judgment, which struck down Section 66A, was a victory for free speech but also left a void in addressing caste-based online violence, which continues unabated.

The absence of specific caste-based provisions in the IT Act makes it difficult to address online caste-based discrimination comprehensively. Dalits continue to face casteist slurs and hate speech, and the legal system remains ill-equipped to handle such issues. The lack of a legal framework that recognizes caste as an important factor in the digital realm means that the experiences of Dalit users in cyberspace remain inadequately protected by existing laws.

INDIAN CONSTITUTION: VIOLATION OF FUNDAMENTAL RIGHTS IN CYBERSPACE

The Indian Constitution provides several fundamental rights that are meant to safeguard citizens from discrimination and violence, including Articles 14, 15, 17, and 21. These articles guarantee the right to equality, protection from discrimination, the abolition of untouchability, and the right to life and dignity, respectively. However, when it comes to digital spaces, these constitutional guarantees are frequently violated or neglected.

Article 14: Right to Equality

Article 14 guarantees equality before the law and equal protection of the laws to all citizens. Dalits, however, face discrimination in cyberspace in the form of hate speech, cyberbullying, and harassment, undermining their right to equality. The absence of specific legal provisions that address caste-based discrimination online is a violation of this constitutional guarantee, as Dalits are not afforded equal protection in digital spaces.[182]

Article 15: Protection from Discrimination

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The digital exclusion and caste-based discrimination experienced by Dalits on digital platforms directly violate this provision. Caste-based slurs, derogatory remarks, and hate speech aimed at Dalits are rampant online, but digital platforms often fail to act upon these issues, leaving Dalits vulnerable. As the Shreya Singhal case shows, the freedom of expression of marginalized communities is often compromised, while caste-based violence continues to flourish.[183]

Article 17: Abolition of Untouchability

Article 17 abolishes untouchability and makes its practice a criminal offense. Despite this, untouchability continues to be perpetuated in digital spaces, as Dalits are subjected to online caste-based hate speech and discrimination. The use of casteist slurs and dehumanizing language directed at Dalits on social media platforms reflects the persistence of untouchability in a new, digital form. The failure of existing legal frameworks to address such issues in cyberspace indicates a gap in the constitutional application to digital life.[184]

Article 21: Right to Life and Personal Liberty

Article 21 guarantees the right to life and personal liberty and extends to the protection of dignity. The online harassment of Dalit activists, particularly through cyberbullying and doxxing, undermines this right, as it invades their privacy, security, and personal dignity. The failure to provide adequate legal protection against cyber harassment leaves Dalits vulnerable in cyberspace and often results in psychological harm and social ostracization.[185]

[182] Constitution of India, 1950 Art. 14.
[183] Constitution of India, 1950 Art. 15.
[184] Constitution of India, 1950 Art. 17.
[185] Constitution of India, 1950 Art. 21.

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT 1989: NEED FOR CYBER-EXTENSION

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to protect Dalits and other marginalized communities from discrimination, violence, and exploitation.[186] The POA Act has been critical in addressing atrocities committed against Dalits, but it is largely silent on the issue of digital violence. Given the increasing digital presence of Dalits and the rise in online caste-based abuse, there is a growing need for the POA Act to be extended to the digital realm.

A cyber-extension of the POA Act could provide explicit legal protection against online caste-based harassment, including cyberbullying, hate speech, and discrimination. For instance, casteist slurs and abusive language used against Dalits on social media platforms should be criminalized under the POA Act, ensuring that Dalits can seek legal recourse for digital harassment. Such an extension would help to bridge the gap between offline and online caste-based violence, offering comprehensive protection to Dalits in both spaces.

KEY CASE LAWS: JUDICIAL RESPONSES TO ONLINE CASTE DISCRIMINATION

India's legal responses to caste-based online violence have been inadequate, and the judicial system has largely failed to address the intersectional nature of caste-based discrimination in cyberspace.

The Shreya Singhal v Union of India case (2015) struck down Section 66A of the IT Act, which had been used to curb offensive online speech, but it did not adequately address the specific issue of caste-based hate speech. The Supreme Court failed to engage with the complexities of online caste violence, leaving Dalit activists vulnerable to cyber harassment.[187]

In contrast, the Puttaswamy v Union of India (2017) judgment, which upheld the right to privacy, is more relevant to protecting Dalit activists against digital surveillance and cyber harassment.

[186] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.
[187] (2015) 5 SCC 1.

However, the absence of a specific caste framework within the privacy framework means that Dalit activists are still susceptible to caste-based surveillance and violence in cyberspace.[188]

Internationally, the European Court of Human Rights (ECtHR) in Delfi AS v Estonia (2015) held that social media platforms could be held responsible for failing to remove defamatory content. This ruling underscores the need for social media companies in India to take responsibility for caste-based hate speech on their platforms.[189]

POLICY DEVELOPMENTS: FROM PDP BILL 2019 TO DPDP ACT 2023

The evolution of data protection laws in India marks an important juncture in the country's digital and legal landscape, as the Personal Data Protection Bill, 2019 (PDP Bill) and its successor, the Digital Personal Data Protection Act, 2023 (DPDP Act), highlight both progress and missed opportunities in safeguarding the digital rights of marginalized communities, including Dalits. While the PDP Bill sought to establish a foundational framework for data protection, it fell short in addressing crucial issues like anti-discrimination and caste-based digital harm. The more recent DPDP Act, 2023, although a step forward in some respects, continues to neglect intersectional concerns, particularly with regard to caste and cyber discrimination. This section delves into the legislative journey from the PDP Bill 2019 to the DPDP Act 2023, critiques their shortcomings, and highlights the need for intersectional data protection frameworks to ensure the cyber rights of marginalized communities are adequately protected.

THE PERSONAL DATA PROTECTION BILL, 2019

The Personal Data Protection Bill, 2019[190], was introduced as a comprehensive legal framework to safeguard individual privacy and personal data in India, following the Puttaswamy judgment (2017) by the Supreme Court, which recognized the right to privacy as a fundamental right under the Indian Constitution. However, the Bill, despite its ambitious goals, was criticized for

[188] (2017) 10 SCC 1.
[189] [2015] ECtHR (Application No. 64569/09).
[190] Personal Data Protection Bill, 2019 (India).

overlooking the specific vulnerabilities of marginalized communities, particularly in relation to caste and discrimination.

The PDP Bill 2019 was designed to regulate the collection, processing, and storage of personal data, providing mechanisms for data protection and accountability for data fiduciaries (organizations handling personal data). While it sought to establish a Data Protection Authority of India (DPAI), the Bill failed to incorporate anti-discrimination safeguards and did not explicitly address caste-based vulnerabilities in digital spaces. Despite acknowledging the need for data protection, the Bill's provisions were seen as insufficient in terms of providing equal protection for marginalized groups. Dalits, for instance, continued to face digital exclusion and discrimination without any clear legal recourse for caste-based data violations. Additionally, the PDP Bill did not provide a mechanism to prevent the use of personal data to perpetuate caste-based biases in algorithmic decision-making processes, such as in AI-based recruitment systems, social welfare distribution, or digital content moderation.

One of the main criticisms of the PDP Bill was its lack of a comprehensive anti-discrimination framework, particularly related to historical forms of oppression. The Bill largely ignored the intersectionality of issues related to caste, leaving vulnerable populations exposed to digital injustice. This lack of specificity was a missed opportunity to address the systemic marginalization faced by Dalits in cyberspace.

The Digital Personal Data Protection Act, 2023

Following extensive deliberations, the Digital Personal Data Protection Bill, 2022, was enacted as the Digital Personal Data Protection Act, 2023 (DPDP Act). This Act makes several significant revisions to the earlier Bill, but it too falls short in addressing the needs of marginalized communities, particularly in relation to caste-based digital harm.

Changes Introduced By The Dpdp Act, 2023

One of the key changes in the DPDP Act 2023 is the emphasis on consent. The Act introduces a streamlined consent framework, wherein data fiduciaries must ensure that individuals provide informed, clear, and explicit consent before their personal data is collected and processed. This change is important for the protection of individual privacy in digital spaces. However, the Act's

provisions are still vague in terms of protecting Dalit and other marginalized communities from caste-based discrimination, as there is no requirement for caste-sensitivity in the consent process.[191]

Another notable provision is the establishment of a Data Protection Board, tasked with adjudicating disputes and ensuring compliance with data protection regulations. However, the DPDP Act remains silent on how caste-based data violations will be handled by the Board, leaving Dalit activists and marginalized communities vulnerable to data exploitation and discrimination in the digital realm.

Moreover, the DPDP Act 2023 contains broad state exemptions, allowing the government to bypass data protection regulations for reasons of national security, law enforcement, and other state interests. These exemptions raise concerns about state surveillance and the privacy of marginalized groups, particularly in the context of caste-based profiling and political dissent. The Pegasus spyware scandal, in which Dalit activists and human rights defenders were among the targets of government surveillance, exemplifies the potential misuse of state power in the digital age.

CRITIQUE: ABSENCE OF CASTE-SENSITIVITY AND ANTI-DISCRIMINATION MANDATES

Despite these reforms, the DPDP Act falls short of addressing caste-based discrimination and intersectional vulnerabilities in cyberspace. The Act fails to include explicit anti-discrimination provisions that would protect marginalized communities from the digital amplification of caste-based violence. It does not mandate the adoption of caste-sensitive data protection measures, nor does it require data fiduciaries to ensure that their algorithms and data collection practices do not perpetuate caste-based biases.

Furthermore, the DPDP Act does not establish any specific measures for caste-based digital exclusion or the digital harassment faced by Dalit activists and marginalized communities. The absence of such provisions highlights a fundamental flaw in the legislation, as it ignores the

[191] Digital Personal Data Protection Act, 2023 (India).

intersectional nature of digital rights. The lack of comprehensive anti-discrimination safeguards in the DPDP Act signifies that marginalized groups will continue to face systematic bias and exclusion in the digital domain.

INTERNATIONAL COMPARISONS: GDPR AND EQUALITY OBLIGATIONS

In contrast to India's efforts, the General Data Protection Regulation (GDPR) in the European Union provides a broader framework for data protection, emphasizing the need for equality and non-discrimination. One of the core principles of the GDPR is the non-discrimination of individuals on the basis of their personal characteristics, including race, ethnicity, and social status. The GDPR mandates that personal data must be handled in a way that respects fundamental rights, including protection from discrimination. In addition, the GDPR requires organizations to ensure that their data processing practices do not inadvertently discriminate against marginalized groups, including minority communities.[192]

India could draw inspiration from the GDPR's equality obligations, particularly in terms of ensuring that data fiduciaries are held accountable for preventing discrimination in algorithmic decision-making and data processing. By incorporating anti-discrimination principles and caste-sensitivity into India's data protection framework, the DPDP Act could better safeguard the cyber rights of Dalits and other marginalized communities. India must also ensure that its data protection laws provide adequate remedies for discrimination and violations in cyberspace, much like the GDPR's robust mechanisms for individual redress.

THE NEED FOR INTERSECTIONAL DATA PROTECTION FRAMEWORKS

To ensure equitable and inclusive data protection, there is an urgent need for an intersectional approach to digital rights and data governance in India. The DPDP Act 2023 should be revised to include explicit anti-discrimination provisions, recognizing that marginalized communities face unique vulnerabilities in the digital realm, especially in relation to caste. An intersectional data protection framework would:

[192] General Data Protection Regulation (EU) 2016/679.

- Address caste-based digital exclusion by mandating that data fiduciaries take steps to ensure that their algorithms do not perpetuate caste-based biases in digital platforms, AI systems, or government welfare schemes.
- Provide clear protections against online caste-based harassment, cyberbullying, and hate speech targeting Dalit and other marginalised users in cyberspace.
- Ensure that data subject rights, such as the right to correction, access, and erasure, are protected in ways that account for the historical and structural disadvantages faced by marginalized groups.

By adopting such an intersectional approach, India can ensure that its data protection laws do not just address privacy in a vacuum, but rather, recognize the complex realities of how caste, class, and other factors shape individuals' experiences in the digital world.

OPPORTUNITIES FOR TRANSFORMATIVE JUSTICE

The digital landscape holds vast potential for transformative justice for marginalized communities, especially Dalits in India. While the challenges of structural oppression in digital spaces persist, there are growing opportunities to reshape the future through community-driven technology, critical digital literacy, and corporate accountability. This section explores how social media platforms, policy reforms, and intersectional frameworks can contribute to digital justice for Dalits.

COMMUNITY-DRIVEN TECHNOLOGY: OPEN-SOURCE ACTIVISM AND DALIT MEDIA COLLECTIVES

Community-driven technology is a key avenue for transformative justice. For marginalized groups, open-source activism allows them to create technologies that challenge systemic oppression and amplify their voices. Dalit media collectives serve as vital platforms, empowering Dalit activists to share their narratives and organize around issues of caste-based violence and discrimination. Such platforms, by allowing for bottom-up technological

innovation, help shift the digital power dynamic, offering Dalits the tools to disrupt existing inequalities.[193]

Research suggests that open-source software enables greater transparency and inclusivity compared to proprietary technologies. For example, DalitNet, a project aimed at building an open-source media platform, allows marginalized voices to bypass traditional media controls and create their own narratives.[194] In parallel, the digitization of Dalit literature, art, and activism has begun to flourish, challenging the historical marginalization of Dalit communities in both physical and digital spaces. The expansion of such open-source activism remains critical to empowering Dalits and overcoming digital exclusion.

CRITICAL DIGITAL LITERACY: EMPOWERING MARGINALIZED GROUPS

The concept of critical digital literacy is crucial in enabling marginalized communities to navigate, critique, and reshape digital spaces. Unlike traditional digital literacy, which focuses on basic technical skills, critical digital literacy emphasizes the need to understand the social implications of technology and algorithmic systems. Empowering Dalits with these skills helps them recognize algorithmic biases, counter misinformation, and advocate for digital equity.

Digital literacy programs, as discussed in the work of Nivedita Menon (2019), provide marginalized communities with the tools to challenge prejudices and biases encoded in digital platforms. Menon argues that critical digital literacy is integral to resisting systemic oppression online and must be incorporated into national education frameworks. This would not only equip Dalits with the ability to critique oppressive technologies but also create a broader culture of empowerment and digital justice.[195]

SOCIAL MEDIA ACCOUNTABILITY VIS-A-VIS CORPORATE RESPONSIBILITY

The power of social media in shaping public discourse cannot be overstated. However, platforms like Facebook, Twitter, and Instagram have come under increasing scrutiny for amplifying hate

[193] Virginia Eubanks, (n-8).
[194] Preeti O., (n-3).
[195] Bansal, N. and Choudhary, H. 'Fostering digital equity: evaluating impact of digital literacy training on internet outcomes in rural marginalised communities in India', 43 (5) *International Journal of Lifelong Education*, (2024), pp. 473–493. doi: 10.1080/02601370.2024.2347327.

speech and discriminatory content, particularly caste-based abuse. Holding corporations accountable for algorithmic biases and hate speech is a crucial step towards achieving transformative justice.

Scholars like Ruha Benjamin (2019) have argued that technological systems, whether algorithmic or human-curated, are often shaped by cultural biases that marginalize minority groups.[196] This is evident in social media's amplification of casteist content, as platforms continue to prioritize content that garners engagement, often perpetuating negative stereotypes and hate speech against Dalits. Platforms like Facebook have been shown to prioritize polarizing content, which, in turn, perpetuates hate speech targeting marginalized groups.

Efforts to hold platforms accountable can also include pushing for transparency reports, stronger content moderation policies, and algorithmic accountability. The Facebook-Cambridge Analytica scandal brought to light the ethical implications of data manipulation and algorithmic bias in online spaces, particularly in how data-driven technologies influence political and social outcomes for marginalized communities.[197]

A corporate accountability framework must include mandatory audits of social media platforms to evaluate their role in perpetuating caste-based violence and discrimination. Platforms should be required to implement and publicly share anti-bias audits, providing insight into how algorithms are designed and whether they reproduce social inequities.

POLICY PROPOSALS: CASTE-EXPLICIT CYBERCRIME PROVISIONS

For transformative justice to become a reality, the Indian legal framework must evolve to explicitly address caste-based cybercrimes. The Information Technology Act, 2000 (IT Act) must be reformed to recognize caste-based online harms, including cyberbullying, casteist slurs, and harassment. Currently, the IT Act's lack of specific caste-based provisions leaves Dalits vulnerable to cyber discrimination and hate crimes. The IT Act, 2000, Section 66A, once held potential for addressing online harassment, but its striking down by the Supreme Court in Shreya

[196] Ruha Benjamin, (n-19).
[197] Zeynep Tufekci, *Twitter and Tear Gas: The Power and Fragility of Networked Protest,* 29 Voluntas (Yale University Press 2017). Doi: https://doi.org/10.1007/s11266-017-9927-0.

Singhal v Union of India (2015) highlights the gaps in digital legal protections for marginalized groups.[198]

For policy reform to effectively address digital casteism, new provisions should be introduced to criminalize casteist digital abuse and provide legal recourse for Dalit victims of online harassment. Furthermore, cybercrime cells should be equipped to handle cases of online caste-based violence, such as cyberbullying and hate speech.

In addition, a new cyber-tribunal could be established to provide a dedicated space for caste-related online grievances. This tribunal would work alongside existing institutions such as the National Commission for Scheduled Castes and Scheduled Tribes to track and address caste-based cyber discrimination.

The role of AI systems in perpetuating bias must also be addressed through policy proposals. As technologies like AI and machine learning are increasingly used in decision-making systems, including welfare distribution, policing, and content moderation, it is critical to introduce mandatory anti-bias audits. These audits would assess the impact of AI algorithms on marginalized communities, particularly Dalits, and ensure that AI systems are fair, equitable, and non-discriminatory.[199]

Achieving transformative justice for marginalized communities, especially Dalits, in digital spaces requires community driven technology, critical digital literacy, corporate accountability, and robust legal reforms. By empowering Dalit activists through open-source platforms, advancing critical digital literacy programs, and holding platforms accountable for algorithmic bias, we can create equitable and inclusive digital spaces. Moreover, policy reforms including caste-explicit cybercrime laws and anti-bias audits for AI systems are essential to ensure that digital justice is not just a possibility, but a reality for marginalized communities in India.

ROADMAP FOR AN INCLUSIVE DIGITAL FUTURE

[198] (2015) 5 SCC 1.
[199] Bansal, N. and Choudhary, H., (n-48).

The future of digital equity hinges on a holistic approach that combines technological, legal, and societal reforms. The goal is to create an inclusive digital ecosystem where marginalized communities, especially Dalits, can navigate the online world without facing discrimination, exclusion, or violence. This roadmap includes reforms that challenge existing systems, disrupt entrenched biases, and envision a technologically just society.

TECHNOLOGICAL REFORMS: ETHICAL AI DESIGN AND FAIRER PLATFORM ALGORITHMS

To address the entrenched biases within digital spaces, ethical AI design and fairer platform algorithms are essential. AI systems and algorithms that power much of today's online spaces—ranging from social media platforms to predictive policing—are often shaped by unexamined biases that disadvantage marginalized groups. According to Ruha Benjamin, technologies must be redesigned with abolitionist principles in mind, ensuring that AI does not perpetuate historical injustices but works actively toward equitable outcomes. She writes, "technology must work for justice, not merely reduce harms". [200]

One of the core components of ethical AI design is algorithmic transparency. Marginalized communities, including Dalits, suffer from the opacity of algorithms that shape their digital lives, often without any knowledge of how these systems operate. For instance, algorithms used in content moderation or advertising may inadvertently reinforce casteist stereotypes, suppress Dalit voices, or prioritize content that is harmful to them.

Technological reforms must prioritize inclusive design, ensuring that algorithms are crafted to serve all groups equitably. Incorporating diverse perspectives in AI design and enforcing algorithmic audits are necessary to prevent the exclusionary practices inherent in many current systems. Moreover, platform companies must be held accountable for their algorithmic biases and incentivized to adopt fairer practices that are explicitly designed to address and remedy systemic discrimination. [201]

[200] Ruha Benjamin, (n-19).
[201] Virginia Eubanks, (n-8).

LEGAL REFORMS: AMENDMENTS TO THE IT ACT AND EXPANSION OF CONSTITUTIONAL PROTECTIONS

Legal reforms are crucial for ensuring that India's digital framework upholds the rights of marginalized communities, particularly Dalits. The Information Technology Act, 2000 (IT Act) must be amended to recognize the specific vulnerabilities faced by Dalits in digital spaces. Currently, the IT Act is insufficient to address caste-based cybercrimes, such as cyberbullying, casteist slurs, and harassment. Introducing specific provisions in the IT Act that address caste-based online harms is essential for ensuring that the law offers adequate protection to Dalits and other marginalized groups online.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been a crucial legal tool in addressing offline caste-based discrimination, but its provisions do not extend to online environments. An amendment that cyber-extends the provisions of the Atrocities Act is necessary to ensure that digital caste-based violence is met with strong legal consequences. Scholars suggest that cyber-extension of the Act could allow for the effective prosecution of caste-based cybercrimes and online hate speech.

Additionally, constitutional protections under Article 14 (Right to Equality), Article 15 (Non-Discrimination), Article 17 (Abolition of Untouchability), and Article 21 (Right to Life and Personal Liberty) must be expanded to address digital violations. As digital spaces become increasingly central to participation in public life, it is vital that the Indian judiciary and legislature recognize the intersectional nature of caste-based discrimination in these spaces. Tejaswi Yadav argues that a reinterpretation of constitutional rights is needed, where these rights must be explicitly extended to the digital realm.[202]

SOCIETAL REFORMS: CHALLENGING 'TECHNOLOGY AS NEUTRAL' MYTHS AND BUILDING SOLIDARITY-DRIVEN DIGITAL SPACES

One of the most significant societal reforms required to foster an inclusive digital future is the dismantling of the myth that technology is neutral. The belief that technology operates

[202] Kumar, Nitish, Constitutional Challenges in the Digital Age: Analyzing How the Indian Constitution Addresses Digital Rights, Data Privacy, and Cyber Security Concerns (November 2, 2023) SSRN. Doi: https://dx.doi.org/10.2139/ssrn.4620300.

independently of societal power structures has historically obscured the ways in which digital tools reinforce the prejudices and inequities inherent in society. Digital technologies are not merely neutral tools; they are shaped by political and social forces that influence their design and usage.[203] Thus, it is essential to deconstruct the myth of neutrality and instead understand technology as embedded with social values.

Building solidarity-driven digital spaces is essential to fostering a digital future that is equitable for Dalits and other marginalized communities. Solidarity-driven spaces challenge the prevailing market-driven motives of digital platforms and instead create inclusive environments that center the needs of marginalized voices. Digital collectives and community-driven initiatives, such as those led by Dalit media collectives or open-source activists, offer powerful alternatives to traditional, profit-driven platforms. These spaces prioritize solidarity, mutual aid, and the empowerment of marginalized communities rather than corporate interests. As Vijay Prashad contends, such initiatives disrupt the traditional capitalist framework of digital platforms, offering an alternative model for online engagement.[204] A solidarity-driven digital future requires an intersectional approach, where Dalit activists, scholars, and technologists can come together to co-create solutions that address the unique challenges they face in the digital realm. This vision of a collective digital future also challenges the dominance of big tech companies, calling for shared responsibility and accountability in shaping technological systems that impact the most vulnerable.

CONCLUSION

In conclusion, this paper has explored the duality of technology as both an emancipator and oppressor, revealing the complex and nuanced roles it plays in the lives of marginalized communities. On one hand, technology has proven to be a powerful tool for social, economic, and political empowerment, offering marginalized groups opportunities for self-expression, access to education, healthcare, and financial inclusion. Digital platforms, for example, have

[203] Alsaleh, A. The impact of technological advancement on culture and society. *Sci Rep* 14, 32140 (2024). https://doi.org/10.1038/s41598-024-83995-z.
[204] Vijay Prashad, *The Darker Nations: A People's History of the Third World* (The New Press 2007).

allowed for greater political participation, enabling underrepresented voices to be heard in spaces previously dominated by more privileged groups.[205]

On the other hand, the very same technologies can exacerbate social inequalities. The digital divide, cyber surveillance, data exploitation, and algorithmic biases represent significant challenges, often exacerbating existing marginalizations and perpetuating systemic oppression.[206] As technologies become more embedded in daily life, their potential to enforce control over marginalized communities grows, leading to a new form of digital exclusion that affects their autonomy, safety, and access to justice.[207]

In addressing these challenges, the urgency of intersectional reforms in law, policy, and technology design cannot be overstated. Laws and policies must be reformed to recognize the unique vulnerabilities of marginalized groups and to ensure that technological systems are designed to promote inclusivity rather than deepen existing disparities. Intersectionality must be at the heart of these reforms, acknowledging that individuals are not solely defined by one aspect of their identity—such as gender, caste, class, or ability—but by the interplay of multiple dimensions of their existence. Technology design must therefore be inclusive, centering the needs and rights of those most impacted by its failures, ensuring fairness, transparency, and accountability in its development and implementation.[208]

Finally, achieving cyber rights for marginalized communities is not merely a technical or legal challenge, but a moral imperative to fulfil India's constitutional promises of equality, dignity, and justice.[209] As India progresses towards becoming a fully digital society, it is crucial that the rights of marginalized communities are safeguarded, ensuring that they can fully participate in and benefit from technological advancements. Only then can India genuinely claim to uphold the values enshrined in its Constitution—values that are essential for the realization of a just and equitable society for all its citizens .[210]

[205] Julie E Cohen, (n-1).
[206] Virginia Eubanks, (n-8).
[207] Preeti O., (n-3).
[208] Nishant Shah, (n-8).
[209] Safiya Umoja Noble, (n-2)
[210] Apar Gupta, 'Balancing Online Privacy in India', 6 The Indian Journal of Law and Technology (2010)

BOOK REVIEW

SHOOTING THE SUN: WHY MANIPUR WAS ENGULFED BY VIOLENCE AND THE GOVERNMENT REMAINED SILENT (2024). By Nandita Haksar, Speaking tiger, Pp. 264, Price INR 399/-.

In *Shooting the Sun*, Haksar offers a profoundly insightful examination of the ongoing crisis in Manipur, a region long simmering with tensions that erupted into devastating violence in 2023. Far from a simplistic account of ethnic clashes, the book dissects the intricate web of historical grievances, political machinations, socio-economic disparities, and the insidious manipulation of identity politics that have brought the state to its current precipice. Through a rigorous analysis grounded in factual reporting and compelling personal narratives, it challenges mainstream narratives, exposes state complicity, and underscores the urgent need for a nuanced understanding of this complex tragedy.

Haksar meticulously peels back the layers of history to reveal the deep-seated roots of the Manipur conflict, arguing that the current crisis is not an isolated incident but rather the culmination of long-standing historical, political, and socio-economic factors. The contentious merger of Manipur with India in 1949 serves as a critical juncture, according to the author, setting in motion a series of developments that would eventually contribute to the present turmoil[211]. She traces the complex interplay between diverse ethnic identities inhabiting the region, the persistent and violent disputes regarding ownership of land and resource control, and the evolving political aspirations of various communities.

A central argument of the book is its forceful rejection of the oversimplified narrative that the Manipur crisis is a mere "petty brawl between two ethnic groups."[212] It exposes the deeper power dynamics and structural inequalities that have been pervasive in the region for decades. The historical dominance of the Meitei community in Manipur's decision-making processes is highlighted as a key factor in fostering systemic discrimination against the tribal communities

[211] Sajal Nag, *Contesting Marginality: Ethnicity, Insurgency and Subnationalism in North-East India* (2014).
[212] The Wire, 'In Search of Answers for the Manipur Violence: A New Book Takes a Deep Dive into the Conflict' (2023) https://thewire.in/books/in-search-of-answers-for-the-manipur-violence-a-new-book-takes-a-deep-dive-into-the-conflict- accessed 17th March 2025.

residing in the hill districts[213]. Furthermore, Haksar suggests that the conflict transcends purely ethnic animosities and potentially involves the vested interests of powerful individuals and entities eyeing the region's land for commercial exploitation. In this context, ethnic tensions can be interpreted, at least in part, as a manifestation of the enduring struggle for recognition and equitable access to resources, a struggle often articulated along the fault lines of tribal and non-tribal identities. The stark economic realities of Manipur, ranking as the third poorest state in India with a significant portion of its population living below the poverty line, particularly in the neglected hill regions, further complicate the picture[214]. This economic disparity fuels issues such as opium cultivation and the outward migration of youth seeking economic opportunities, adding layers of complexity that a purely ethnic lens fails to capture[215].

STATE COMPLICITY AND SILENCE

A critical aspect of this book is its examination of the role played by both the state and union government in the unfolding tragedy. It boldly challenges official narratives by questioning the prolonged silence and conspicuous inaction of the union government during the height of the violence. The compelling evidence presented suggests a disturbing level of state complicity, implying that the protracted nature of the conflict was potentially due to either direct state support or deliberate orchestration rather than mere administrative incompetence[216]. The BJP-ruled governments at both the state and union levels actively stoked mistrust and anxiety between the Meitei and Kuki communities. Failure to clearly and transparently explain the implications of the High Court order regarding Scheduled Tribe status for the Meitei community, an order that served as the immediate trigger for the widespread violence, raises serious questions about either gross negligence or a deliberate strategy to inflame tensions[217]. This lack of proactive communication and the subsequent escalation of violence point towards a

[213] Nag (n 2)
[214] World Bank, *Manipur: Poverty, Growth and Inequality* (2020).
[215] Ngamjahoo Kipgen, *Why Are Farmers in Manipur Cultivating Poppy?* (2019) 54(46) *Economic and Political Weekly* 36-42.
[216] International Work Group for Indigenous Affairs, 'Understanding the Complex Conflict Unfolding in Manipur' (2023) https://iwgia.org/en/news/5329-understanding-complex-conflict-unfolding-manipur.html accessed 17th March 2025.
[217] Economic Times, 'Manipur Violence: Unrest Triggered After HC Order to Recommend Quota for Meiteis' (2023) https://economictimes.indiatimes.com/news/politics-and-nation/manipur-violence-unrest-triggered-after-hc-order-to-recommend-quota-for-meiteis/articleshow/100022219.cms?from=mdr accessed 18th March 2025.

dereliction of duty, if not outright complicity. The reader encounters a disturbing pattern of institutional failure in addressing the violence, particularly the horrific instances of sexual assault against Kuki-Zo women. That complaints about these atrocities seemingly "fell on deaf ears" is symptomatic of a profound necropolitical indifference from the governments, suggesting a devaluation of the lives and suffering of the minority communities[218]. This inaction allowed the violence to persist, while fostering a climate of impunity for the perpetrators[219].

The book thereby brings to the forefront the devastating human cost of the Manipur conflict through poignant personal stories and harrowing testimonies. Accounts of brutal violence, mass displacement, and widespread human rights violations offer a visceral understanding of the profound suffering endured by ordinary people caught in the crossfire. The inclusion of narratives like David Theik's story[220] and similar accounts serve to personalise the tragedy, moving beyond abstract statistics to reveal the individual lives shattered and the communities torn apart by the conflict. These personal testimonies paint a grim picture of the brutality of the violence, the fear and uncertainty of displacement, and the long-lasting trauma inflicted on individuals and families. The accounts of displacement highlight the immense disruption to daily life, the loss of homes and livelihoods, and the constant struggle for survival faced by those forced to flee their villages.

Haksar's commitment to documenting these human experiences reminds readers of the urgent need for empathy and a recognition of the profound human suffering at the heart of the crisis. It serves as a powerful reminder that behind the headlines and political rhetoric are real people whose lives have been irrevocably altered by the violence. The reader is forced to confront the horrific reality of sexual violence and the targeting of women, particularly those from the minority Kuki-Zo community, during the Manipur conflict as a scathing indictment of the institutional failures. The detailed account of the disrobing and parading of Kuki-Zo women, the systemic indifference to complaints of sexual violence, and the analysis of how power

[218] Mishika Chauhan, 'Shooting The Sun Explores Violence and Death in Manipur—And The Indian State's Complicity' (2025) https://www.thepolisproject.com/read/shooting-the-sun-manipur-violence accessed 5th March 2025.
[219] ibid.
[220] Titas Mukherjee, 'Manipur: David Theik beheaded in an act of terror, shell-shocked father pleads for justice' *News the Truth* (2 August 2023) https://newsthetruth.com/manipur-david-theik-beheaded-in-an-act-of-terror-shell-shocked-father-pleads-for-justice accessed 2 June 2025.

imbalances contribute to women's vulnerability all point towards the gendered dimensions of the conflict. This, compounded by the alleged censorship of reports documenting violence against women and instances of state-sponsored violence, further obscured the truth and hindering efforts towards peace and justice.

IDENTITY POLITICS, ECONOMIC UNDERPINNINGS, AND POWER DYNAMICS

The hate-filled narrative of Kukis being "outsiders" and "infiltrators" was deliberately manufactured and promoted by those allegedly connected to Chief Minister N. Biren Singh. The book argues that addressing these perceptions requires acknowledging the power imbalance between communities and recognizing that the "illegal immigrant" narrative serves political purposes rather than reflecting reality. The Myanmar military coup in 2021 led to an influx of refugees, which has been manipulated to create fears about demographic changes. Though these refugees pose no real demographic threat to Manipur, the government has conflated political refugees with “illegal migrants”. The Kuki-Zo communities' humanitarian assistance to Myanmar refugees has made them vulnerable to accusations of harboring "illegal migrants".[221] This manufactured perception has become a tool for justifying discrimination and violence against the Kuki-Zo community while obscuring deeper issues of resource distribution, political representation, and social justice.

While acknowledging the historical significance of identity-based movements in resisting projects of nationalist assimilation, the inherent limitations and potential dangers of identity politics, particularly when divorced from fundamental issues of poverty and economic inequality, are laid bare in the book[222]. Identity-based assertions have become dangerous tools manipulated by a diverse range of stakeholders, including governments, military factions, insurgent groups, corporations, and drug cartels, often serving to mask underlying power struggles and economic interests[223]. The book details the rise of the strong Meitei identity movement, its profound impact on the minority communities within Manipur, and exposes how the Meitei community's

[221] Greeshma Kuthar, 'Myanmar Refugees in Manipur: Caught Between War and Lies' (2024) https://frontline.thehindu.com/politics/myanmar-junta-civil-war-crisis-manipur-refugee-camps-fake-news/article68417244.ece accessed 11th November 2024.
[222] Newsclick Team, 'Manipur Crisis: Identity Politics Must Stop - Interview with Nandita Haksar' (2023) https://www.newsclick.in/manipur-crisis-identity-politics-must-stop-nandita-haksar accessed 28th February 2025.
[223] ibid.

dominance in decision-making and discourse-setting processes has created systemic inequalities. While other Northeast Indian states have negotiated greater autonomy and constitutional protections for their tribal populations, the tribal communities in Manipur were denied similar safeguards, fostering deep-seated resentment and a sense of injustice[224]. Tribal regions in Manipur are designated as Scheduled Areas, but they do not fall under the Sixth Schedule, which grants significant autonomy and self-governance[225]. Instead, the administration of Manipur's hill areas is handled by Article 371C, which mandates a committee composed of members elected from these hill areas to the state legislative assembly[226].

The book also challenges simplistic ethnic categorisations, revealing the inherent diversity within the Meitei community itself, for instance, the dominant practice of lumping together various distinct ethnic groups, such as the Zou, Thadou, Vaiphei, and Paite, under the single umbrella term "Kukis". Identity politics, while ostensibly championing group rights, often serves the interests of powerful elites rather than the common people and it is essential to delve into the crucial economic underpinnings in Manipur. A closer look at who truly benefits from the ongoing conflict, and how those on the front lines are often "pawns in a much larger game," potentially hints at economic interests related to land and resources[227]. The lack of equitable development and the historical neglect of the hill regions by successive state governments have created a fertile ground for discontent and resentment[228]. The limited economic opportunities and the lack of viable alternatives have, for some communities, led to involvement in the lucrative but illicit poppy cultivation, further complicating the socio-economic landscape[229]. The migration of youth from rural areas to urban centers in search of employment not only disrupts traditional social structures, it creates new forms of vulnerability and competition, exacerbates existing

[224] Willem van Schendel, *The Politics of South Asian Borderlands* (2005).
[225] Dr. Manglien Gangte and Jelot Duhlian, 'Article 371 (C) of The Indian Constitution and Its Impact on Manipur's Hill Districts' *The Academic – International Journal of Multidisciplinary Research* vol 2, issue 9 (September 2024) https://theacademic.in/wp-content/uploads/2024/10/68.pdf accessed 2 January 2025.
[226] Ngaranmi Shimray, 'Facts about Article 371 C Part 3' *E-Pao* (6 March 2024) https://e-pao.net/epSubPageExtractor.asp?src=news_section.opinions.Opinion_on_Manipur_Integrity_Issue.Facts_about_Article_371_C_Part_3_By_Ngaranmi_Shimray accessed 2 January 2025.
[227] Newsclick (n 11).
[228] Planning Commission, *Draft Vision Document for the Development of North Eastern Region* (2016).
[229] Kipgen (n 6).

social tensions and contributes to a sense of marginalisation and disenfranchisement, particularly among youth from marginalised communities.[230]

LOOKING FORWARD: PATHWAYS TO PEACE

In its concluding pages, "Shooting the Sun" offers a sobering yet crucial look towards potential pathways to peace and reconciliation in Manipur. Drawing on a deep understanding of the conflict's complexities, it proposes several key approaches that move beyond superficial solutions and address the underlying historical grievances and structural inequalities. A central tenet of recommendations is the urgent need for the Meitei community to acknowledge its historical dominance in state politics and the systemic discrimination faced by the hill tribes in economic, political, and cultural spheres. That genuine reconciliation cannot occur without a frank acknowledgment of past injustices and a commitment to addressing the long-standing grievances of the marginalised communities directs the reader at recognising the historical disparities in budget allocation and development initiatives that have consistently favored the valley areas over the hill districts.

Haksar advocates for a fundamental shift towards more inclusive politics that transcends narrow identity-based divisions. She stresses the importance of creating a political system that ensures meaningful representation and agency for all communities in decision-making processes, moving away from the current system where the Meitei community wields disproportionate influence. She proposes the implementation of comprehensive socio-economic programmes that ensure a fair and equitable distribution of development funds between the valley and hill areas, and targeted initiatives to address the endemic poverty prevalent in the hill districts. Cultural recognition and autonomy are also highlighted as essential components of any lasting peace, and therefore, a vision that genuinely celebrates the cultural diversity, languages, and histories of all communities in Manipur is pertinent.

Without accountability and a commitment to justice, any attempts at reconciliation are likely to be superficial and unsustainable. Given the deep-seated divisions and mistrust between the communities, the involvement of neutral third parties as peace brokers may be necessary, while

[230] Babu P. Remesh, *Migration from North-East to Urban Centres: A Study of Delhi Region* (2012) *NLI Research Studies* Series.

also holding the government accountable for the crucial role it must play in actively engaging in finding just and lasting solutions. Finally, the book calls for fundamental structural reforms that move away from a politics that thrives on conflict and division. Alternative approaches to governance that genuinely respect the rights and aspirations of all communities need to be developed, leading to the creation of robust institutional mechanisms that ensure equitable development and prevent future marginalisation of the state in national politics, as well as within communities.

CRITICAL ANALYSIS AND CONTRIBUTION

"Shooting the Sun" stands as a significant and timely contribution to understanding the multifaceted crisis in Manipur. Its methodological strength lies in its rigorous commitment to factual accuracy, its weaving together of historical analysis with contemporary reporting, and its powerful amplification of marginalised voices. The book extends beyond a mere chronicle of the Manipur conflict, offering critical insights relevant to legal frameworks, policy reform, and broader ethno-political debates. There is a meticulous examination of the legal dimensions of the crisis, questioning the implications of the Manipur High Court order that ignited the violence and exposing the alarming institutional failures, such as the delayed response of the National Commission for Women (NCW) to horrific sexual assault complaints.

From a policy perspective, the book serves as a powerful indictment of governmental inaction and complicity. There is an urgent need for fundamental policy shifts, including transparent governance, equitable resource distribution between the valley and hill areas, and a commitment to genuine accountability for perpetrators of violence. The way in which state narratives on issues like poppy cultivation and illegal immigration have been weaponised necessitate policy reforms that prioritise justice over political expediency. The book significantly contributes to broader academic and public debates on ethno-political conflict, with its analysis of necropolitical indifference and the dehumanisation of minority communities resonating deeply with global discussions on state violence and marginalisation.

While the book offers a comprehensive and insightful analysis, readers might benefit from even more in-depth exploration of specific historical events or policy decisions. Nevertheless, it is a powerful and essential work that demands the attention of policymakers, scholars, and anyone

concerned with issues of social justice and human rights in India. It serves as a potent reminder that lasting peace can only be built on a foundation of justice, and a genuine commitment to addressing historical grievances and structural inequalities.

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