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**CORPORATE SOCIAL RESPONSIBILITY: A STEP TOWARDS SUSTAINABLE
GROWTH WITH SPECIAL REFERENCE TO SJVN- A PUBLIC SECTOR
UNDERTAKING**

- Dr. Pushpanjali Sood*

- Gaurav Sood**

“Businesses cannot be successful when the society around them fails.”

- Paul Polman, former CEO of Unilever

ABSTRACT

Business and society are interconnected in a way that business provides for the requirements of society, while society provides business with the resources it requires. Although creating, producing, and offering customers goods and services is a business's fundamental objective, it cannot ignore its obligation to society. Business must operate in a way that will serve society as a whole in addition to accomplishing its financial goals. To achieve this goal, concept of Corporate Social Responsibility (CSR) was incorporated through legislation. India became the first country in the world to make corporate social responsibility mandatory through an amendment to the Companies Act, 2013¹. In the first part of the research paper importance of CSR has been discussed. Second part focuses on the legal framework of CSR in India which incorporated the mandatory provision in the Companies Act, 2013 to achieve those goals which resonate with the 2030 agenda for Sustainable Development Goals (SDGs). Lastly, in the form of a case study the paper has discussed the role of SJVN in promoting CSR in India as well as in Himachal Pradesh specifically.

Keywords: Corporate Social Responsibility, Company law, SJVN, CSR activities, SDGs, Himachal Pradesh

I INTRODUCTION

In current times, Corporate Social Responsibility (CSR) has become a medium to bridge the divide between affluent corporations and underprivileged communities. In developed countries, CSR is highly valued, and CSR-related issues garner a lot of attention. The main goal of CSR is to give back to the society. In order to secure their success and sustainability, businesses nowadays incorporate activities for social welfare under CSR. The definitions of CSR range from very simple, detailing a range of activities to complex ones focusing on social and environmental sustainability. *The World Business Council for Sustainable Development* defined Corporate Social Responsibility as “the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life”². The *United Nations Industrial Development Organization* defines “Corporate Social Responsibility as a business

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¹ The Companies Act, 2013, s 135.

² World Business Council for Sustainable Development, “The Business Case for Sustainable Development: Making a Difference towards the Earth Summit 2002 and Beyond” 9(3) *Corporate Environmental Strategy* 226 (2002).



management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders”³. Major international organizations such as the UN, the ILO, the World Bank and the OECD have now institutionalised the promotion and monitoring of CSR initiatives within their portfolios⁴. CSR is generally understood as a method through which a company achieves a balance of economic, environmental and social imperatives, while at the same time addressing the expectations of shareholders and stakeholders⁵. It includes workers, shareholders, investors, institutions of public governance, community members and civil society groups.⁶ The CSR activities require continuous monitoring to make sure that programs are meeting the objectives that were planned for and that funds are being used as planned, among other things.⁷

II THE ORIGINS OF CORPORATE SOCIAL RESPONSIBILITY

The idea of Corporate Social Responsibility originated in philanthropy and developed to include obligations towards employees, their families and society at large. “The Corporate Social Responsibility has evolved from being limited to the generation of profit to include a broader set of responsibilities to the latest belief that the main responsibility of corporates should be the generation of shared value”⁸. Ancient Roman law serves as the foundation for the social welfare component of corporate behaviour. Throughout the Middle Ages, academic, governmental, and religious institutions continued to use English law to uphold the idea that businesses were social enterprises. Later, it expanded during the 16th and 17th centuries under the influence of the English Crown, which viewed companies as a tool for social welfare. This idea of the social component of corporations swiftly spread to American colonies as well once the English Empire expanded to other states. The idea of such consideration towards communities rather than a sole focus on extracting maximum profit is also credited to Industrial Revolution in late 18th to early 19th century⁹.

³ “What is CSR”, United Nations Industrial Development Organization, available at <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr> (last visited July 26, 2023).

⁴ Suzanne Benn and Dianne Bolton, *Key Concepts in Corporate Social Responsibility*, 59 (SAGE publications, New Delhi, 2011).

⁵ Hency Thacker, “What is CSR?” *The CSR Journal* (2020) available at <https://thecsrjournal.in/what-is-csr-corporate-social-responsibility/> (last visited July 19, 2023).

⁶ Seema Sharma, “Gandhian Trusteeship & CSR” 54(2) *Indian Journal of Industrial Relations*, 215(2018).

⁷ Taxmann, *Corporate Governance*, 524 (Indian Institute of Corporate Affairs, 2015).

⁸ Aguinis, H., & Glavas, A. “What we know and don’t know about corporate social responsibility: a review and research agenda” 38 *Journal of Management* 932(2012).

⁹ Agudelo, Mauricio & Johannsdottir, Lara & Davidsdottir, Brynhildur, “A literature review of the history and evolution of corporate social responsibility” (2010) available at:



The phrase Corporate Social Responsibility was first used in 1953 by American economist Howard Bowen in his book “Social Responsibilities of the Businessman”, who is also referred to as the father of CSR. According to Bowen, “social responsibility refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society.”¹⁰ The term CSR was popularised in the 60’s and over the years has become a formidable part of business operations.

Corporate Social Responsibility (CSR) in India

The philosophy of giving back to the society has been an integral part of the Indian culture and ethos, which has also been imbibed in traditional Indian businesses since time immemorial. Our sacred texts uphold the value of contributing to society and these values motivates individuals to work toward the more important goal of ensuring the welfare of all stakeholders. One can see the concept of CSR during Mauryan era when philosophers like Kautilya underlined the significance of upholding moral standards in business. Giving to the poor and disadvantaged was the traditional definition of CSR in ancient India.

Corporate Social Responsibility (CSR) in India has been evolving over the past few decades, with an increasing number of companies recognizing the importance of CSR and taking steps to implement it in their operations. There are many reports which shows the rich tradition of charity by Corporates in India. The earliest industrialists of the 19th Century launched the practices of corporate giving via trusts, and endowed institutions controlled by members of business families. In India, Jamshedji Tata explained his vision in 1885 as follows: “We do not claim to be more unselfish, more generous or more philanthropic than other people. But we think we started on sound and straightforward business principles, considering the interests of the shareholders our own, and the health and welfare of the employees, the sure foundation of our success”.¹¹ He provided his workers and their families with maternity leave and occupational health benefits. In addition, “he constructed and provided funds for hospitals, museums, universities, and schools. Tatas always believe that every firm has an obligation to the people of the area in which it is located and in which its employees and their families reside,

https://www.researchgate.net/publication/330563745_A_literature_review_of_the_history_and_evolution_of_corporate_social_responsibility, (last visited July 26, 2023).

¹⁰ Matthias S. Fifka, “Towards a More Business-Oriented Definition of Corporate Social Responsibility: Discussing the Core Controversies of a Well-established-Concept”, *Journal of Service Science and Management* 313(2009) available at https://www.researchgate.net/publication/240318093_Towards_a_More_Business-Oriented_Definition_of_Corporate_Social_Responsibility_Discussing_the_Core_Controversies_of_a_Well-Established_Concept (last visited July 27, 2023).



these infrastructures were also accessible to the populations living close to his plants. The idea that business must be profitable, just, humane, efficient, and dynamic has therefore been broadened from the narrower philanthropic concept”.¹²

Mahatma Gandhi introduced the concept of trusteeship and urged the industrialists to act towards nation building and socio-economic development. Gandhiji's words on trusteeship “I must know that all wealth does not belong to me; what belongs to me is the right to an honourable livelihood, no better than that enjoyed by millions of others. The rest of my wealth belongs to the community and must be used for the welfare of the community”¹³. The idea of Corporate Social Responsibility (CSR), which many companies now practice, has its roots in Gandhi's concept of trusteeship. Since companies use resources from society, they have a responsibility to give back to the community.

The definitions of CSR prior to the mandate varied from positioning CSR as an aid to business; a marketing strategy; a brand building exercise; a benevolence which would ultimately impact the bottom line of the business. Only a few looked at CSR as an ethical commitment. The development of CSR in India can be traced back to the early 2000s when the Indian government first introduced legislation mandating CSR for certain companies. India adopted inclusive growth strategy in the 11th five-year plan and formulated CSR concept as a tool for co-ordinating the efforts for attaining the sustainable development goals. As a first step, the voluntary guidelines on CSR were issued by Ministry of Corporate Affairs (MCA) in 2009. These voluntary guidelines were refined further by the addition of recommendations of the Parliamentary Standing Committee on ‘finance’ in 2009. Thus, “in July 2011, MCA released the modified guidelines as ‘National Voluntary Guidelines (NVG) on Social, Environmental and Economic Responsibilities of Business, 2011’¹⁴. National Voluntary Guidelines (NVG) on Social, Environmental and Economic Responsibilities of Business is essentially a set of nine principles that offer Indian businesses an understanding and approach to inculcate responsible business conduct. However, “taking into account the national and international developments in the arena of sustainable business since 2011, the NVGs have been updated and released as

¹² A. Sood and B. Arora, *The Political Economy of Corporate Responsibility in India* (United Nations Research Institute for Social Development, 2006) available at <https://research.aston.ac.uk/en/publications/the-political-economy-of-corporate-responsibility-in-india/> (last visited August 1, 2023).

¹³ Bidyut Chakrabarty, *Gandhi's Doctrine of Trusteeship: Spiritualizing Interpersonal Relationship* (Nabakrushna Choudhury Centre for Development Studies, Bhubaneswar, 2017) available at <https://ncds.nic.in/sites/default/files/WorkingandOccasionalPapers/WP67NCDS.pdf> (last visited August 1, 2023).

¹⁴ C D Neetha Rose and Aparna Radhakrishnan, “Evolution and Current Status of Corporate Social Responsibility Regulation in India” (2020) available at SSRN <http://dx.doi.org/10.2139/ssrn.3740564> (last visited August 1, 2023).

‘National Guidelines on Responsible Business Conduct’ (NGRBC) in March 2019 to reveal alignments with the United Nations Guiding Principles on Business & Human Rights (UNGPs), UN Sustainable Development Goals (SDGs), Paris Agreement on Climate change etc which provides a framework for the companies to grow in an inclusive and sustainable manner while addressing the concerns of stakeholders”¹⁵.

III LEGAL FRAMEWORK OF CSR IN INDIA

In India, CSR is not only a voluntary activity but also a mandatory obligation under the Companies Act, 2013. The Companies Act of 2013 was the first legislation to mandate CSR in India. Chairman of the CSR Committee while proposing the Corporate Social Responsibility Rules under Section 135 of the Companies Act, 2013, defined CSR as “CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies”¹⁶. Thus, CSR is not merely charity but a way of conducting business, through which corporates can contribute to the social good.

- Under Section 135 of the Act, companies, including CPSEs crossing thresholds, i.e.,
 - Net Worth of INR 500 crore or more; OR
 - Turnover of INR 1000 crore or more; OR
 - Net Profit of INR 5 crore or more, are required to discharge the obligations of CSR.
- At least 2% of the average net profits of the company made during 3 immediately preceding financial years are to be spent on CSR activities every year.
- ‘**Net profit**’ for computation of CSR spends is to be computed as per Section 198 of the Act and is ‘**Profit Before Tax**’ (PBT).
- Such companies have to constitute a CSR committee of the Board, comprising of three Directors or more with at least one Independent Director.

Activities Specified in Schedule VII of the Companies Act, 2013

Activities which might be included by companies in their Corporate Social Responsibility Policies are as per the following¹⁷:

- Eradicating hunger, poverty and lack of healthy sustenance, advancing health care including preventive health care and sanitation [including commitment to the Swachh

¹⁵Ministry of Corporate Affairs, Government of India, National CSR portal available at <https://www.csr.gov.in/content/csr/global/master/home/aboutcsr/history.html> (last visited August 1, 2023).

¹⁶Synergy Steels, Corporate Social Responsibility Policy, available at <https://sam1.in/assets/img/company-policy/csr-policy.pdf> (last visited August 1, 2023).

¹⁷The Companies Act, 2013, Schedule VII.

Bharat Kosh set-up by the Central Government for the Central Government for the advancement of sanitation] and making available safe drinking water.

- Promoting education, including special education and employment enhancing job aptitudes especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- Promoting gender equality, empowering women, setting up homes and hostels for women and vagrants; setting up maturity homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically in reverse gatherings.
- Ensuring environmental supportability, ecological balance, protection of widely varied vegetation, creature welfare, agro forestry, conservation of normal resources and keeping up quality of soil, air and water
- Protection of natural heritage, workmanship and culture including restoration of structures and sites of historical importance and works of art; setting up public libraries; promotion and development of customary craftsmanship and handicrafts.
- Measures for the benefit of armed forces veterans, war widows and their dependents.
- Training to promote rural sports, nationally recognized games, Paralympics sports and Olympic sports.
- Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled tribes, other backward classes, minorities and women.
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government.
- Rural development projects.
- Slum area development.

Activities outside the Purview of CSR¹⁸

- The CSR projects or programs or activities that benefit only the employees of the company and their families
- One-off events such as marathons/ awards/ charitable contribution/ advertisement/sponsorships of TV programmes etc.

¹⁸ The Companies (Corporate Social Responsibility Policy) Rules, 2014.



- Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.)
- Contribution of any amount directly or indirectly to any political party
- Activities undertaken by the company in pursuance of its normal course of business.

Contributions flowing out of budgetary resources, profits or from the balance sheets of CPSEs to PMNRF.

Tax Concessions

- No specific tax exemptions have been extended to CSR expenditure *per se*.¹⁹
- Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure.²⁰
- While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income Tax Act, 1961.

Amendments in the Companies Act (2021)

The Ministry has notified the amendments in Section 135 of the Act as well in the CSR Rules on 22nd January 2021 with an aim to strengthen the CSR ecosystem, by improving disclosures and by simplifying compliance. The amendment of 2021 in the Companies Act brought some changes in the Act related to CSR implementation, expenditure, reporting, CSR committee, website disclosure and transfer of unspent CSR. Corporate Social Responsibility is now defined under Section 2(d) to refer to activities undertaken by a Company in pursuance of its CSR obligation under the Companies Act. The amended rule further identifies certain activities which do not qualify towards CSR requirement of companies and also activities that can now be included as CSR. For the first time, CSR rules have allowed international organisations to assist and play a role in the CSR ecosystem. The rules define “international organisation as one that is notified under the United Nations (Privileges and Immunities) Act, 1947 which covers entities

¹⁹ 37. (1) Any expenditure (not being expenditure of the nature described in section 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession”.

²⁰ Finance Act 2014 (2014-15 was fiscal year from which CSR was made mandatory u/s 135 of the Indian Companies Act 2013) had made it clear that “CSR Expenditure” shall not be allowed as “Business Expenditure” under section 37 of Income Tax Act, 1961. However, CSR expenditure which is allowed as deduction under other sections shall be permissible.

such as the International Labour Organization, the World Health Organization, the Food and Agriculture Organization of the World Bank, the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the International Monetary Fund, among others”.²¹

IV CORPORATE SOCIAL RESPONSIBILITY IN SJVN: A CASE STUDY

Recently SJVN has been honoured with Gold Award at 16th Exceed CSR Awards 2024 for its outstanding achievements in Corporate Social Responsibility in Power Sector category.²² It has been also conferred CIDC Vishwakarma Awards 2024 for its Corporate Social Responsibility Contribution which shows its commitment to social welfare through CSR.²³ SJVN is a joint venture Central Public Sector Enterprise under the administrative control of Ministry of Power, Government of India with its head office in Shimla, Himachal Pradesh. Established in 1988, SJVN now has a project portfolio of more than 55,000 MW and presence across India and also in neighbouring country of Nepal. It's a fully diversified company in power sector with businesses in Hydro power, Solar, Wind, thermal, transmission, consultancy.

SJVN presently has two hydro projects and five renewable energy projects under operation in Himachal Pradesh, Gujarat, Maharashtra and Uttar Pradesh. It also has five hydro power projects under construction, one thermal power project and eight solar projects are also under construction in various states in the country.

The company has vision “to be best-in-class Indian Power Company globally admired for developing affordable clean power and sustainable value to all stake holders”.²⁴ One of the objectives of the organisation is, “Fulfilling social commitments to the society. Achieving constructive cooperation and building personal relations with stakeholders, peers, and other related organization”²⁵

The company has always been a torch bearer in environment and community friendly hydro power generation. Like with any business, especially manufacturing units to be successful, it is essential that the local community does not get against the project. SJVN has done an excellent job in this regard with even World Bank recognising the work done by SJVN in

²¹ The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

²² “SJVN wins Gold Award at 16th Exceed CSR Awards 2024” *PSU Connect*, August 5, 2024, available at [https://www.psuconnect.in/news/sjvn-wins-gold-award-at-16th-exceed-csr-awards-2024/43687#:~:text=New%20Delhi%3A%20SJVN%20Limited%20honored,inclusive%20of%20Renewables\)%20Sector%20category](https://www.psuconnect.in/news/sjvn-wins-gold-award-at-16th-exceed-csr-awards-2024/43687#:~:text=New%20Delhi%3A%20SJVN%20Limited%20honored,inclusive%20of%20Renewables)%20Sector%20category) (last visited August 23, 2024).

²³ “15th CIDC Vishwakarma Awards 2024 honour SJVN for its Corporate Social Responsibility Contribution”, Press Release by Ministry of Power, April 5, 2024, available at <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2017217> (last visited May 14, 2024).

²⁴ SJVN, “Vision and Mission” available at <https://www.sjvn.nic.in/visionmission/22> (last visited July 25, 2023).

²⁵ *Ibid.*

benefitting the local communities and protecting the environment during the execution of its 412 MW Rampur Hydro Power Project.²⁶

CSR Implementation Structure

Committee of Directors

At the Board of Directors' level, there is a Committee of Directors consisting of three independent directors. One of the independent directors acts as the Chairperson of the Committee. This committee formulates and recommends to the Board, an annual action plan which includes:²⁷

- (a) the list of all CSR programmes that are approved to be undertaken in accordance to Schedule VII of the Act;
- (b) the procedure for implementation of such projects or programs;
- (c) the manner of utilisation of funds and project schedules;
- (d) monitoring and reporting mechanism; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company.

CSR Trust

SJVN has established a trust by the name of 'SJVN Foundation' which acts as the implementing agency. This trust is registered under Section 12 A and 80 G of the Income Tax Act, 1961. The Trust is also registered with Ministry of Corporate Affairs, Government of India. The Trust comprises of seven members with Director (Personnel) as the Chairman. The trustees are senior officials from the organisation with five permanent trustees from different departments of the corporate office of the company and two members are from various projects on rotational basis for two years.

The trust holds periodic meetings generally every quarter. The proposal from various projects for CSR expenditure or requests from various organisations like NGOs, trusts, local bodies, government, etc are placed before the Trust. The annual plan along with budget for CSR activities are also placed before the trust at the start of every year. The Trust after due deliberations and in the light of statutory provisions, rules and the policies of SJVN decides to approve or reject the proposals placed before it.

²⁶World Bank, "Rampur Hydropower Project: Improving Social Development" available at <https://www.worldbank.org/en/news/video/2015/02/03/rampur-hydropower-project-improving-social-development> (last visited July 25 ,2023).

²⁷The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, Rule 5, Sub-rule 2.

CSR department

At Corporate office, SJVN has a full-fledged CSR department under the HR function. Each of the projects or power stations of the company also has a separate CSR department. Earlier, organisations did not use to have a separate CSR section or department and the personnel from some other department used to handle the CSR related activities. Now, with the increase in CSR budget and the focus of the Government of India on CSR activities along with increased awareness among the local communities, an organisation would not be able to do justice to its CSR function.

These departments in the organisation receive the requests from various bodies like NGOs, local bodies, other trusts or organisations working in social sector for grant of funds under CSR budget. These departments act as the first level of filter by examining the genuineness of the organisation making a request, checking their credentials, screening the proposal with respect to the provisions of the Companies Act, 2013, the rules laid by the government, policies and priorities of SJVN and SJVN Foundation.

CSR Policies

SJVN has formulated a well-defined and elaborate ‘Corporate Social Responsibility and Sustainability Policy’ with the approval of its Board of Directors. This policy was first formulated in the year 2014 and since has been revised 4 times. The Corporate Social Responsibility and Sustainability Policy of SJVN was developed in accordance with the guidelines issued by the Ministry of Heavy Industries and Public Enterprises, Government of India and the Companies (Corporate Social Responsibility Policy) Rules 2014, which were notified by the Ministry of Corporate Affairs in accordance with the Companies Act, 2013, and various amendments/clarifications issued from time to time.

The objective of the SJVN’s Corporate Social Responsibility and Sustainability Policy asserts that SJVN is dedicated to addressing the issues raised by its stakeholders and will work to uphold high standards of Corporate Social Responsibility (CSR) and Sustainability throughout all aspects of its operations. In order to uphold this promise, SJVN will respect the law, local communities, and society at large and will actively work to improve environmental sustainability and quality of life through its CSR and Sustainability programs.²⁸

²⁸ SJVN, Corporate Social Responsibility and Sustainability Policy, Revision IV (22-12-2022) available at https://sjvnindia.com/UploadFiles/Page/1721228444_PageDocument_Corporate%20Social%20Responsibility%20and%20Sustainability%20Policy%20Revision-IV%20Final.pdf (last visited August 1, 2023).

This policy lays down in detail charter for implementing agency i.e., SJVN Foundation, strategy for execution of CSR works, budget allocation, reporting, provisions for monitoring, evaluation and impact assessment, etc. The policy document has also annexed to it a comprehensive CSR compliance check list which is required to be submitted for any proposal under CSR. The check list acts as a sort of guide for anyone seeking to submit request for funds under CSR scheme of SJVN.

Verticals and budget allocation

SJVN has developed verticals in accordance with Schedule VII of the Companies Act 2013 to address social requirements based on the Millennium Development Goals, human rights, and national agenda. Each vertical's financial allocation is given to all the relevant projects and used for a variety of CSR initiatives. The budget provision is examined and reframed on an annual basis depending on the needs under various segments.

SJVN has chosen following broad verticals for implementation of their CSR activities:

- i. "Healthcare and Hygiene,
- ii. Education and Skill Development,
- iii. Sustainable Development,
- iv. Preservation and promotion of culture/sports,
- v. Rural Infrastructure and community development,
- vi. Empowerment of vulnerable Section & Measure for benefit of War widow, and
- vii. Assistance during Natural Disasters"²⁹

SJVN started allocating separate budget for its CSR activities since 2010-11, much before the introduction of mandatory CSR through the Companies Act, 2013. CSR budget of the organisation has increased around thirteen times since 2010-11 from when it was around Rs. 4.5 crores to Rs 59.84 Crores in 2022-23.³⁰

Table: CSR and Sustainability expenditure of SJVN since 2010-11

Financial year	Yearly Budget (Rs in Cr)	Statutory Budget (Rs in Cr)	Expenditure (Rs in Cr)	Percentage utilization of Statutory Budget
2010-11	4.5	4.5	4.5	100%

²⁹ SJVN, "Corporate Social Responsibility and Sustainability Annual Report 2022-23" 7 (2023).

³⁰ SJVN, "Corporate Social Responsibility and Sustainability Policy Revision -IV, 2023 available at https://sjvnindia.com/UploadFiles/Page/1799609046_PageDocument_CSR%20Policy%20Revision-IV.pdf (last visited August1,2023).

2011-12	7.84	7.84	7.84	100%
2012-13	16.03	16.03	16.03	100%
2013-14	13.68	13.68	13.68	100%
2014-15	25.79	25.79	24.83	96.27%
2015-16	30.46	30.46	28.87	94.76%
2016-17	33.94	33.94	37.15	109.46%
2017-18	37.50	37.50	38.76	103.36%
2018-19	34.85	34.85	40.25	115.49%
2019-20	35.43	35.43	36.35	102.60%
2020-21	46.67	36.00	52.87	146.86%
2021-22	58.45	39.44	51.67	131.00%
2022-23	59.84	36.46	59.84	164.13%
Total	404.98	351.92	412.64	117.25%

Details of CSR Schemes of SJVN

Vertical I: Health and Hygiene

‘Health and Nutrition’ was declared as the ‘Annual CSR theme’ for the year 2022-23 by the Department of Public Enterprises (DPE) under Ministry of Finance, Government of India.³¹ As per DPE Guidelines, 60 % of the annual CSR budget has to be spent on the annual CSR theme declared by the DPE.³² SJVN has almost all its projects in far off and remote locations with very little health facilities or very little awareness about health and hygiene. Under its CSR schemes, SJVN has focused on building health infrastructure by supporting the state governments, various hospitals, project hospitals for use of local community. Also, under the Swachh Bharat Abhiyaan and Swachh Vidyalaya Abhiyan, efforts have been made to boost the sanitation and cleanliness in the local areas and also in schools in various states.

One of the flagship schemes of SJVN has been Satluj Sanjeevani Sewa, under which ambulances are deployed in the rural project areas with a MBBS doctor, pharmacist, social protection officer along with basic diagnostic medical equipment. At present thirteen ambulances have been deployed in the states of Himachal Pradesh, Uttarakhand, Bihar and Maharashtra. The scheme was first introduced in 2012 and since then has provided medical

³¹ Department of Public Enterprises, ‘Alignment of CSR Expenditure of CPSEs with national priorities – reg’. Office Memorandum No. CSR No. O8-0002-2018-Dir(CSR).

³² Department of Public Enterprises, Guidelines for CSR expenditure of CPSEs, Office Memorandum No. CSR-08/00021/2018-Dir (CSR) Dated 10th December, 2018.

treatment to more than 12.3 Lakhs people. HelpAge India is the implementing agency for this scheme. In Bihar, a tie up has been made with Dhanush Foundation for running and maintenance of 6 such ambulances. In addition to providing healthcare facilities at doorsteps, these ambulances are used for spreading health awareness, organising general and special health camps with the help of HelpAge India.

SJVN has also been organising various Ayurveda Awareness Camps, Dental health care camps, physiotherapy camps, cancer screening and awareness camps, camps for distribution of aids and assistive devices to disabled persons, etc. It also extended support to Indian Association of Muscular Dystrophy to the tune of Rs. 5.78 Crores, financial aid for the construction of Cancer Sarai, support for construction of gymnasium, senior citizens home, etc.

SJVN has actively participated in Swachh Bharat Abhiyaan and Swachh Vidyalaya Abhiyaan of the Government of India. Under the Swachh Bharat Abhiyan, Swachhta Pakhwada is organised every year for 15 days as per dates conveyed by the Government. SJVN engaged in a number of activities during the Pakhwada to spread the word about swachhta, including awareness campaigns, a special push to encourage eco-friendly materials rather than plastic, tree planting campaigns, the installation of dustbins in public areas and the cleaning up of rivers close to the Projects area, the distribution of sanitization/personal hygiene materials in local communities, competitions, and awareness raising. SJVN won the First position in Swachhta Pakhwada Awards 2023 given by Ministry of Power, Government of India for its innovative ways to spread awareness about cleanliness.

SJVN built 2420 toilets in H.P., UK, Bihar, and Arunachal Pradesh as part of the Swachh Vidyalaya Abhiyan in order to raise awareness and offer a sanitary environment in government schools. Later, SJVN undertook a third-party survey of all 2421 toilets built by SJVN under the Swachh Vidyalaya Abhiyaan on the direction of the Ministry of Power, and 253 toilets were found to be inoperable.

In response, repairs were made to the 253 broken toilets. As of March 31, 2023, 184 toilets had been fixed and given to the appropriate municipal authorities. The remaining 69 toilets in Arunachal Pradesh were being renovated. Prior to this, SJVN provided lump sum annual maintenance amounts up to Rs 5000/- for the general upkeep of these toilets, including repairs, replacement of the cistern, seat, tap, wash basin, doors, water tanks, and other sanitary fittings, as well as whitewashing and painting.



Vertical II: Education and Skill Development

SJVN has been executing a variety of education and skill development projects under CSR in its operational areas, adhering to the belief that investing in young people's education and skill development will make them self-sufficient in future. SJVN has done a lot to better the lives of the locals, whether it's through the provision of infrastructure for building, educational assistance, or awarding scholarships to deserving students to develop the skill set of youths.³³

SJVN has been nominating local students from their project areas for technical trainings to make them capable for employment. Under the scheme, a monthly stipend of Rs 2000/- to each candidate is provided along with sponsoring the course fee. As per the scheme, the nominees are sent to Government Industrial Training Institutes for trades like fitter, electrician, mechanic, etc. Till now, SJVN has sponsored 874 candidates for such technical trainings.

For developing infrastructure for technical and vocational trainings, in 2016, SJVN adopted 6 Industrial Training Institutes in the state of Himachal Pradesh and granted a sum of Rupees One Crore to each of these institutes.³⁴

One of another flagship programmes of the company is 'SJVN Silver Jubilee Merit Scholarship Scheme'. The scheme was introduced in 2012-13 to commemorate the silver jubilee foundation celebrations of the company. The program's goal is to instil in pupils a competitive spirit that will inspire them to pursue higher education in a variety of fields. The program is open to all deserving students in the States of Himachal Pradesh, Uttarakhand, and Bihar who received at least 60 percent marks or an equivalent grade in the 12th grade under the State Education Boards, CBSE, or ICSE in the previous academic session. The chosen students receive a scholarship of Rs. 2000 every month until their particular course is finished. More than 1800 students have been benefitted till date under this scheme.

Through skill development in the fields of new agricultural technology and cutting-edge scientific ways of cultivation, SJVN has been giving farmers a platform to master new approaches of scientific farming. By providing farmers with up-to-date information and skills, the goal is to improve their farming practices and productivity, which will subsequently result in higher income. SJVN in collaboration with CSK Himachal Pradesh Agriculture University Palampur and Dr YS Parmar University of Horticulture and Forestry, Nauni is providing skill development training to farmers of Himachal Pradesh. Around 8500 farmers have received training under this programme known as Deen Dayal Upadhyay SJVN Krishi Kaushal Yojana.

³³ SJVN, "Annual Report on Corporate Social Responsibility and Sustainability 2020-21 & 2021-22", 20 (2022).

³⁴ SJVN, "Corporate Social Responsibility and Sustainability Annual Report 2016-17" 28 (2017).



In addition to above, SJVN has been conducting many skill development and vocational trainings to the people in the vicinity of its projects through various organisations such as Construction Industry Development Council, HIMCON, etc. Also, the company has been active in supporting the local schools, NGOs, local bodies with financial assistance for development of school buildings, hostels, laboratories, etc.

Vertical III: Sustainable Development

The Company is also committed to achieve United Nations' SDG goal 7 which is to ensure access to affordable, reliable, sustainable and modern energy for all.³⁵ As part of its sustainable development measures, SJVN has been actively supporting installation of Solar lights, LED lights and high mast lights for energy conservation. In last few years, SJVN has provided funds for installation of more than 7000 solar lights throughout the state of Himachal Pradesh and its project affected areas. SJVN has also got installed 23000 dustbins throughout the state for a cleaner environment and better waste disposal.

Under its CSR schemes, SJVN has focused on water conservation and water harvesting. Due to water runoff in hilly locations brought on by the high topography, ground water recharge is not possible. Additionally, there are natural water sources such as 'Bavdis' and 'Piyau' in hilly places, but they frequently become blocked by silt, landslides and other disasters. Over the years, SJVN has assisted locals around its project sites in building tanks and renovating existing water sources like springs, ponds, etc. to address this issue. SJVN has also provided support for construction of multi-purpose dams on small rivulets and renovation of community water bodies for rain water harvesting.

As an awareness measure, SJVN conducts State Level Painting Competition in the state of Himachal Pradesh under the aegis of Bureau of Energy Efficiency, Ministry of Power, Government of India. It is organised as a part of National Awareness Campaign. Students of all the schools in the state of Himachal Pradesh are eligible to participate. Each participating school organises the painting competition in its school and sends the selected students for state level competition. SJVN organises the state level competition and the top 3 winning students further participate in the National Level Painting Competition. Theme of the competition is generally related to energy conservation, energy efficiency, environment and protection. More than 10 Lakhs students from Himachal Pradesh have participated in these competitions since 2011.

³⁵United Nation Department of Economic and Social Affairs, Sustainable Development Goal 7 available at <https://sdgs.un.org/goals/goal7> (last visited August 5, 2023).

For the purpose of establishing a Biodiversity Park at Vigyan Dham, Dehradun, SJVN Foundation is providing financial support to Uttarakhand State Council for Science and Technology, Dehradun. The project will have a total financial impact of Rs. 49,65,140. Surface dressing of the area, building of drainage systems, horticulture and landscaping, irrigation system, building of pond with fountain and lighting system, building of greenhouse, etc. are some of the park development activities. SJVN has also supported a bio-diversity park in Municipal Corporation area of Shimla for preservation of local flora and fauna.

Vertical IV: Empowerment of Vulnerable Sections

In order to provide the newly born children with a nutritious diet, SJVN launched the “SJVN Silver Jubilee Women and Child Development Scheme” in 2012–2013. Under this programme, Below Poverty Line (BPL) women living in SJVN project areas are eligible for a financial benefit of Rs 10,000 in two instalments of Rs 5,000 each during the antenatal and post-natal period. These BPL women also receive a gift package worth Rs. 1000 that includes nourishing food items, soaps, and other hygiene-related things required for the care of the new-born. Around 984 women have reaped the benefits of this scheme till now.

The Department of Social Justice and Empowerment of HP, operates a school for children who are deaf or blind in Dhalli, Shimla H.P. The school was outdated and only had a small population of students. On the request of the State Government, SJVN Foundation entered into a Memorandum of Understanding with the Director of the Directorate for the Empowerment of Schedule Castes, Other Backward Classes, Minorities, and Specially-Abled to provide financial assistance of Rs 827.99 Lakhs for the construction of a school-cum-home for the speech, hearing, and visually impaired children. The works are underway. In addition to the support for infrastructure, SJVN is also financially supporting the children studying in this school.

SJVN foundation is working to improve the skill sets of local kids and young women of slums in order to raise their employability. They receive instruction in practical trades like cutting, tailoring, computer literacy, etc. Since 2018, 540 local youngsters from poor areas have received these skill development trainings. SJVN has also financially supported construction of senior citizens home at Palampur; construction of hostel for tribal children at Shimla; skill development trainings to youth of tribal areas.

*Vertical V: Infrastructure Development and creation of Community Assets*

Infrastructure is the skeleton of economies, societies, and communities, comprising a variety of physical and social systems. Infrastructure development is a key component of CSR, representing the commitment of businesses to significantly support the communities in which they operate. Companies are accepting the obligation to invest in infrastructure projects that improve quality of life, promote sustainable development, and have long-lasting good effects as they become more aware of the interdependence between their success and the well-being of communities. The “Infrastructure and Community Development” CSR vertical of the SJVN Foundation promotes infrastructure development initiatives such as establishing community halls, paths, schools, hospitals, highways, bridges, public restrooms, bus stops, public parks, playgrounds, etc.

In last two years, SJVN has supported construction of average 100 community assets per year. The construction of some of the assets spill over to next financial year. In the past few years, SJVN Foundation has financially supported the construction of Ambulance roads in villages, toilets for girls in schools or hostels, construction of hostel cum mediation centre, construction of community centres in villages, construction of rain shelters, construction of retaining walls to support other infrastructure, assistance to local police for construction of gumtias, installation of benches for use by local people, construction of shops as per request of local administration, construction of sheds etc for cow shelters, construction of children parks, etc.

Vertical VI: Preservation and Promotion of Local Culture and Sports

The SJVN Foundation is committed to protecting and advancing sports, local traditions, and culture. They consider it their duty as a good corporate citizen to improve the well-being of the areas in which they do business. Their CSR programmes also place a strong emphasis on preserving and promoting the vibrant cultural history and athletic traditions of the surrounding areas. They work to uphold traditions, strengthen local communities, and promote a sense of pride and unity by actively promoting sports, regional heritage, and culture.

The construction and redevelopment of Sh. Badrinath Dham as Spiritual Smart Hill Town has been started by the Government of Uttarakhand in order to realise the noble vision of the Hon’ble Prime Minister of India. Millions of pilgrims visiting the shrine will benefit from the activities in terms of comfort and safety, and their lives will be enriched by extraordinary religious and spiritual experiences. Accordingly, an MOU for the construction and redevelopment of Sheshra Lake at Badrinath Dham totalling Rs. 1199.00 Lakhs was signed on March 16, 2021 by SJVN Foundation and Shri Kedarnath Utthan Charitable Trust. Another

MOU for development of Pilgrim Accommodation Blocks at Kedarnath town has also been signed between the two.

In addition to organising cleaning campaigns in iconic locations, SJVN has provided financial support for the renovation, building, and repair of the Bhimakali Temple Complex in Sarahan and the Tara Mata Temple Complex in Shimla in order to save and preserve their rich cultural legacy.

As part of the “Apni Dharohar Apni Pehchan” initiative of the Government of India, the Government of Himachal Pradesh had asked SJVN to take on the development of a select cultural heritage sites in Himachal Pradesh that were of national significance. Out of the 29 identified sites, SJVN adopted four as heritage sites as a result. On February 25, 2019, SJVN Foundation and the Department of Language and Culture, Himachal Pradesh, inked an MOU for the development of the following four locations, which will cost a total of Rs 25 Lakhs each- 1. Sapni Fort, Sangla, Kinnaur 2. Parshuram Temple Complex, Nirmand 3. Kalka-Shimla Railway heritage, Kalka, and 4. Chhitkul village, Kinnaur.

Under this vertical, SJVN has actively supported the repair, maintenance and upgradation needs of the historically significant sites including temples and religious places. Additionally, support for organising the annual religious and cultural festivals by local authorities or the community is also regularly given by the Foundation.

Similarly, SJVN has keenly funded development of sports infrastructure and sports activities mainly in the areas around its projects. For Sports like Kabaddi, badminton, boxing, cricket, Judo, wrestling, shooting, hockey, SJVN has funded creating infrastructure in schools, colleges, villages and also has given funds for purchase of equipment. It has also sponsored the organisation of various sports tournaments.

Vertical VII: Assistance during natural disasters

SJVN has long been offering prompt aid during calamities like earthquakes, floods, draughts, forest fires, etc. in order to lessen the suffering of natural disaster victims and its impacts. Support is generally given in the form of relief supplies, direct infrastructure assistance for the victims, or monetary contributions to the Chief Minister’s relief fund. However, off late, contribution to CM’s Relief Fund is now not being given under CSR.

Covid 19 caused a havoc of unprecedented measures on the entire world. The downtrodden and weaker sections of the society suffered the worst. The medical and health infrastructure got stretched beyond the limits. SJVN alive to the situation, actively contributed in the efforts. Rs 20 Crores were donated to the PM CARES Fund by SJVN under CSR. The company

actively engaged its own manpower in providing relief to the sufferers. Project hospitals made extra beds ready with adequate supplies of oxygen and other medicine. Covid vaccination camps were organised by SJVN for the people around its operational areas. SJVN donated and financially supported procurement and installation of ICU, ventilators, Oxygen concentrators, semi-fowler beds, medicine, PPE kits, etc

Disaster Management Department of Uttarakhand requested SJVN to extend financial support to the State's CSR Fund for "Uttarakhand State Disaster Management Authority," which is a registered agency for carrying out CSR activities as per Ministry of Corporate Affairs, Government of India, order dated 28.10.2021 to lessen the loss and damages caused to the public and private infrastructure by a high magnitude earthquake that occurred in Uttarakhand on 17-18 October 2021. SJVN Foundation gave the Disaster Management and Rehabilitation Department, Government of Uttarakhand, a financial contribution of Rs 50.00 lakhs.

SJVN has been proactively contributing to Disaster funds set up by State governments to mitigate the damages suffered due to natural disasters in the state of Bihar, Uttarakhand, Himachal Pradesh, etc.

Analysis

SJVN started as a Hydro power construction and generation company in 1988 with construction of India's biggest 1500 MW Nathpa Jhakri Hydro Power Station near Rampur, Himachal Pradesh. During and after the commissioning of this project in 2004-05, the area has seen tremendous transformation due to increase in commercial activities in the area with the influx of large number of manpower involved in the construction of the project and also due to the benevolent practices of SJVN in taking interest in the development of the area in a mutually beneficial way. The World Bank observed that village of Bayal, which is located closest to the Rampur Hydro power plant of SJVN, received a new hospital, a post office, street lights, irrigation channels, concrete mountain pathways, a new road, and a bridge over the river. SJVN works with the philosophy that making local people stakeholders in their company is very important for them.³⁶

As already observed that even before the notification of CSR Policy under the Companies Act, 2013, SJVN had initiated its CSR activities. Till 2022-23, SJVN had spent more than Rs 412

³⁶ World Bank Feature Story, "A Hydropower Project brings Development to Himalayan Villages" available at <https://www.worldbank.org/en/news/feature/2014/07/16/a-hydropower-project-brings-development-to-himalayan-villages> (last visited August 9, 2023).



Crores on its CSR expenditure and except for two financial years, the company has spent 100% or more of the CSR budget annually.

The ‘Satluj Sanjeevani Sewa’, the door step ambulance and medical facility programmes has touched the lives of more than a 1.2 million people and provided the essential medical services to them. More than 8000 farmers have received skill development trainings with the aim of increasing their incomes. Under its Silver Jubilee Merit Scholarship Scheme, thousands of students have got the scholarships to pursue higher education and not be a burden on their families.

Recognising the CSR programmes of SJVN, many organisations have awarded SJVN with awards and trophies. SJVN was conferred with the 13th CIDC Vishwakarma Awards 2022 in the categories of ‘Corona Warriors Award’ and ‘Partners in Progress’.³⁷ Ministry of Power, Government of India, recognising the efforts of SJVN during Swachhta Pakhwada 2023, awarded the first prize to it among all the power sector Central Public Sector Enterprises.

V CONCLUSION

For a nation like India, corporate social responsibility is a crucial driver of development. Due to its diversity and long history of socioeconomic issues, India offers several opportunities for profitable corporations to contribute a portion of their earnings to development. With the help of CSR implementation, the distinction between the haves and have-nots is slowly blurring. In order to ensure that enterprises and companies contribute to the development of their surroundings, CSR obligations must be complied with; nevertheless, this is not sufficient, and firms must always go above and beyond. Example of SJVN has sufficiently proved that implementation of mandatory CSR by profit making organisations is a win-win step both for the society as well as the organisations. CSR initiatives of SJVN to promote renewable energy sources such as solar and wind power, which is also one of the SDGs, were achieved by investing in renewable energy projects, promoting clean energy technologies, and supporting policy reforms that incentivise the adoption of renewable energy is highly appreciable. While it becomes easier for an organisation to establish itself in a local community if the CSR programmes of that organisation are really helpful for the community, the community in return gets to increase its living standards and provide better life and opportunities to their youth and children.

³⁷ PTI, “SJVN spent over Rs 340 crore on CSR activities since inception” *The Economic Times*, April 8, 2022.



THE NEXT LEAP FOR E-COURTS PROJECT: LEVERAGING BLOCKCHAIN FOR A TRANSPARENT FORENSIC ECOSYSTEM IN INDIA

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ABSTRACT

The e-Courts Project in India has proved to be a decisive step in reimagining judicial processes through digital transformation. Yet, its reliance on conventional digital infrastructures has revealed persistent vulnerabilities, particularly with respect to delays in evidence verification, risks of data tampering, and opacity in forensic handling. The Indian judiciary has increasingly emphasized the integrity of evidence, as reflected in landmark rulings on electronic records and forensic preservation. However, challenges in maintaining the chain of custody, securing digital evidence, and ensuring accountability of investigative agencies continue to erode trust in adjudication. This paper argues that the next leap in this reform trajectory lies in integrating blockchain technology to construct a transparent, tamper-resistant forensic ecosystem. Blockchain, with its distributed ledger and immutability features, offers the possibility of re-conceptualizing the management of forensic data by guaranteeing verifiable timestamps, decentralised authentication, and secure audit trails. Not only that, the adoption of blockchain in the justice system resonates with the constitutional promise of fairness and due process under Article 21. The paper, in essence, situates blockchain not as a technological panacea but as an instrument to enhance procedural justice, transparency, and public confidence.

Keywords: Blockchain, e-Courts Project, Forensics, Evidence, Judicial Process

I INTRODUCTION

The technological innovations of the 21st century have marked their presence in every segment of society. Today, there is seldom a sector or segment of society untouched by the marvels of technology, be it agriculture or silviculture, aviation or defence, tools for near and distant communication, income-tax assessments, or policing; all have witnessed the *Midas* touch of technology. These developments undoubtedly involve multiple stakeholders with their foreseen or unforeseen stakes duly impacted by these developments. For a common person, technological marvels bring the world a step closer, with key public and private services just a click away. For private entities, technological advancement of a society brings perks like a growing consumer base, an increase in disposable income of individuals, skilled human resources, larger, swifter, and in-depth reach of their services at low cost, etc.¹ The major stakeholder in these technological developments is the ‘State’, denoting all its organs, i.e., executive, legislature, judiciary, and lately, media, as the fourth pillar².

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¹ Avi Goldfarb and Catherine Tucker, “Digital Economics” 57 *Journal of Economic Literature* (2019).

² Daniel Bell, “The Coming of Post-Industrial Society” 40 *The Educational Forum* 574 (1976).

Today, it won't be an exaggeration to state that all the 'state' organs are heavily reliant on technological means and modes for their primary tasks. Further, the enactment of the IT Act, 2000³, and other legislations under the Digital India legislation stack⁴, legitimise the use of technological means for performing their primary tasks. The publication of rules, bye-laws, orders, etc. in e-gazette, holding paper-less legislative sessions, launching platforms for e-services, call for public opinions and inputs for government policies through online means, Digital Public Infrastructures⁵ becoming mainstay for day-to-day tasks of common populace, emphasis on virtual courts, e-filing at courts, real-time translation of court judgements, etc., set the digital stride of the state.⁶ With more and more primary services of the state transitioning to virtual platforms, multiple national and international organisations have recognised access to the internet⁷, smartphones, and performing basic tasks using the internet as part of basic human rights⁸. This not only furthers the hope of the masses with respect to accessibility to basic services offered by state organs, but also makes the state duty-bound to realize the right for one and all in an alike manner.

To walk the talk, the legislature and executive in India initiated programmes like Digital India⁹, Common Service Centre (CSCs)¹⁰, Nyaya Mitra¹¹, Digital Public Goods (DPGs), MyGov Initiative, National e-Governance Plan (NeGP), Bharat Broadband Network, BHIM¹², Crime

³ The Information Technology Act, 2000 (Act 21 of 2000).

⁴ The key legislations looking over India's digital landscape are- The Information Technology Act, 2000; The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (updated in 2023); and Digital Personal Data Protection Act, 2023.

⁵ Digital Public Infrastructure (DPI) consists of secure, interoperable, and accessible foundational digital systems that enable public and private services to be delivered at scale, fostering economic growth, inclusion, and efficient governance. Key components include digital identity systems (like Aadhaar), digital payments (like UPI), and digital document systems (like DigiLocker), which are built on open technologies and facilitate data exchange and interoperability.

⁶ NITI Aayog, "India's Digital Public Infrastructure: A Framework for Transformative Governance" (Government of India, 2023).

⁷ Brooking, "The Internet as a Human Right", available at: <https://www.brookings.edu/articles/the-internet-as-a-human-right/> (last visited on Aug. 29, 2025); see also, UNGA A/HRC/32/L.20, available at: https://www.article19.org/data/files/Internet_Statement_Adopted.pdf (last visited on Aug. 29, 2025).

⁸ *Anuradha Bhasin v. Union of India* AIR 2020 SC 1308(1) and *Faheema Shirin RK v. State of Kerala* AIR 2020 KERALA 35.

⁹ Ministry of Electronics and Information Technology, *Digital India Programme: Policy Framework and Vision Document* (Government of India, New Delhi, 2015).

¹⁰ Ministry of Electronics and Information Technology, *Common Service Centres (CSC) - Digital India e-Governance Services* (Government of India, New Delhi, 2009).

¹¹ Department of Justice, *Nyaya Mitra Scheme: Access to Justice Programme* (Ministry of Law & Justice, Government of India, New Delhi, 2017).

¹² National Payments Corporation of India (NPCI), *BHIM (Bharat Interface for Money)*- (Government of India / NPCI, 2016).

and Criminal Tracking Network and Systems (CCTNS)¹³, Digital Sansad¹⁴, etc. These initiatives brought millions of people on the virtual board, ensuring doorstep delivery of basic government services, promoted cashless transactions, plugged loopholes in benefits of social services schemes, enhanced accountability, reduced red-tapism, and hastened the overall governance in the nation.¹⁵

The paper while limiting its scope to digital evidence management through blockchain technology seeks to integrate the said technology in the existing framework of e-courts project. Further to investigate the same, the paper adopts a doctrinal legal analysis method under which the existing forensics framework has been critically analysed from the perspective of transparency, efficiency and reliability. Progressing on a technological assessment of blockchain technology for evidence identification, collection, acquisition, validation, extraction and analysis, the efficacy of said technology has been assessed for suitability under the e-courts project.

II E-COURTS PROJECT: A BRIEF INTRODUCTION

To match the strides of the executive and legislature, the judiciary also initiated numerous steps to leverage technological advancements. The first major initiative came with NeGP 2006¹⁶, with the first mention of the e-Courts project under the Department of Justice, Ministry of Home Affairs.¹⁷ Later, taking the reins from MHA, the Hon'ble Supreme Court of India initiated the e-Courts Project with full vigour, putting forward ambitious policy action plans and vision documents. The e-courts project was initially planned to be carried out in three phases, with phase- I the focus was on the creation of basic ICT infrastructure in High Courts and Supreme Court, judicial portal, e-mail service, customised software application, Digitisation of Legal Tools, and training of Judges and Administrative staff in courts.¹⁸ With Phase-II (ongoing), the emphasis shifted to scanning, digitization, and digital preservation of case records, video-conferencing for courts and jails, capacity building measures, workflow,

¹³ National Crime Records Bureau, *Crime and Criminal Tracking Network and Systems (CCTNS) Project Overview* (Ministry of Home Affairs, Government of India, New Delhi, 2009).

¹⁴ Ministry of Parliamentary Affairs, *Digital Sansad* (Official Portal, Government of India, New Delhi, 2022).

¹⁵ Centre for Internet and Society & International Development Research Centre, "Digital Identity and Inclusion: The Aadhaar Experiment" (IDRC Working Paper, Delhi, 2021).

¹⁶ Ministry of Electronics and Information Technology, *National e-Governance Plan (NeGP), 2006: Programme Overview* (Government of India, New Delhi, 2006).

¹⁷ E-Courts Mission Mode Project, available at: <https://ecommitteesci.gov.in/project/brief-overview-of-e-courts-project/> (last visited on Aug. 31, 2025).

¹⁸ *Ibid.*

and process automation tools and measures, Judicial knowledge management system, and re-engineering of judicial process.¹⁹

The vision document for phase- III, laid out in September 2022, focuses on “An Ecosystem Approach” to support scale, speed, and sustainability for the e-Courts Project.²⁰ Under this approach, the vision document laid down four broad goals, i.e., Installation of relevant hardware, Adopt Data Governance, Create the Digital Infrastructure, and enable access to Critical Services. Under the goal of “Creation of Digital Infrastructure” committee on e-Courts project, among others, put ‘Make Documents Machine Readable & Secure’ as one of the key aspects.²¹ Further elaborating on this goal, the vision document laid down the goal is “...supported and fulfilled by necessary processes and technology such as blockchain to secure the court records from tampering and to secure their integrity.”²²

III THE NEED FOR NEW APPROACH IN FORENSICS

Undoubtedly, to maintain the sanctity of ‘Judicial Process’, the role of evidence and court records is inalienable. The impact of their credibility determines the outcome of the judicial process, affects the future course of action of both parties, and lastly, acting as a precedent, it casts an indelible mark on society at large. The issues like establishing the truth, admissibility, burden of proof, fairness & due process, presumption of innocence, witness credibility, expert testimony, etc., hinge entirely on the credible evidence and court records.

The new criminal law (Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023) provides for a mandatory visit to the crime scenes by a forensic expert²³ and the collection of forensic evidence for offenses punishable with more than seven years of imprisonment²⁴. The Sanhita further encourages the use of audio-visual means of recording to record the various steps of investigation, including the searching²⁵ using a smartphone (the preferred use of smartphones was recommended in the Sanhita itself). Clearly, the inclusion of the above-mentioned provision was in line with the directions issued by the Supreme Court in *Shafhi Mohammad v. The State of Himachal Pradesh*²⁶, wherein the court directed the Ministry of Home Affairs and

¹⁹ *Ibid.*

²⁰ E-committee, Supreme Court of India, “Digital Courts Vision & Roadmap e-Courts Project Phase III” (2022), available at: <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2023/04/2023042088.pdf> (last visited on Aug. 31, 2025).

²¹ *Ibid.*

²² *Id.* at 58.

²³ Sec. 176(3), Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

²⁴ *Ibid.*

²⁵ Sec. 185, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

²⁶ (2018) 5 SCC. 311.

states to develop facilities for the videography of crime scenes during investigation at the levels of police stations. While the use of videography of crime scenes using audio-visual tools ensured the preservation of evidence, proper documentation of crime scenes, transparency, reconstruction of crime scenes, accountability, and training and education of personnel of law enforcement agencies.²⁷ But once the videography of the crime scene has been carried out and other physical evidences are collected and secured by the police, the real problem often arises only after that.

The law enforcement agencies at the stage of trial and at times later as well often face issues like evidence tampering, withholding of evidence, mishandling of evidence, fabrication, and selective production of evidence. These issues often arise out of unintentional dereliction of duty on the part of personnel or improper training and education. But at times, these issues are deliberate and planned on the part of personnel of law enforcement agencies, thereby derailing the entire judicial process and finally leading to miscarriage of justice.²⁸ To address these challenges, numerous initiatives are undertaken on the part of both law enforcement agencies and the judiciary. While law enforcement agencies embarked on strategies like commissions and committees for police reforms, internal oversight, body cameras, training & education, independent oversight, and transparency in handling evidence, etc.²⁹ On the other hand, the judiciary gave directions from time to time to plug the issues with corrupt evidence.³⁰

The role of cutting-edge technology in the collection and preservation of evidence is still at a nascent stage, with few Forensic Science Laboratories (FSL) relying on these technological tools.³¹ Recently, Delhi FSL started using Blockchain Technology to ensure critical evidence and samples collected from a crime scene remain free of human interface or interference³². Blockchain technology will help in automating the forensic workflow from police to FSL, and

²⁷ Max M. Houck and Jay A. Siegel, *Fundamentals of Forensic Science* (Academic Press/Elsevier, London, 4th edn., 2021).

²⁸ Michael J. Saks & Jonathan J. Koehler, "The Coming Paradigm Shift in Forensic Identification Science" 309 *Science* 892 (2005).

²⁹ Police Training and Reforms, available at: <https://prsindia.org/policy/report-summaries/police-training-and-reforms> (last visited Aug. 31, 2025).

³⁰ *Kattavellai @ Devakar v. State of Tamil Nadu* (Criminal Appeal No. 1672 of 2019); see also, Preservation Of Exculpatory Evidence Is Of The Utmost Sanctity For Ensuring Fair Trial: Delhi High Court, available at: <https://www.verdictum.in/court-updates/high-courts/delhi-high-court/sohail-malik-v-state-of-delhi-2025dhc6718-preservation-exculpatory-evidence-fair-trial-article-21-constitution-1588282> (last visited Aug. 31, 2025).

³¹ Xavier Chango, Omar Flor-Unda, *et.al.*, "Technology in Forensic Sciences: Innovation and Precision" 12 *Technologies* (2024).

³² "FSL integrates systems with blockchain for 'tamper-proof' evidence recording", available at: <https://timesofindia.indiatimes.com/city/delhi/fsl-integrates-systems-with-blockchain-for-tamper-proof-evidence-recording/articleshow/102816149.cms?from=mdr>. (last visited Aug. 31, 2025).

any entry made at any point will be made without disclosing the details like names of parties in the FIR, thereby ensuring confidentiality. Undoubtedly, the integration of technology will aid common people in accessing justice fairly. Before delving into the benefits that technology will provide to different stakeholders, a closer look at the functioning of the technology as such is important.

IV BLOCKCHAIN TECHNOLOGY AND DIGITAL FORENSICS

Blockchain technology consists of tamper-proof and tamper-evident digital ledgers that are implemented as a distributed system and frequently without a central authority, such as a government, a bank, or a corporation. It enables community members to keep transactions in a shared ledger inside that community. Further, when these transactions are published in the regular functioning of the blockchain network, they cannot be modified. Blockchain is a distributed, immutable ledger system that records transactions over a network of computers. A blockchain is, at its heart, a chain of blocks, each carrying a set of transactions.³³ These transactions are divided into blocks, which are sequentially and chronologically added to the chain. Importantly, the blockchain is spread across various nodes (computers) that participate in the network rather than being kept on a single central server or database. Decentralisation means that no single party has total control over the blockchain, which improves security and dependability.³⁴

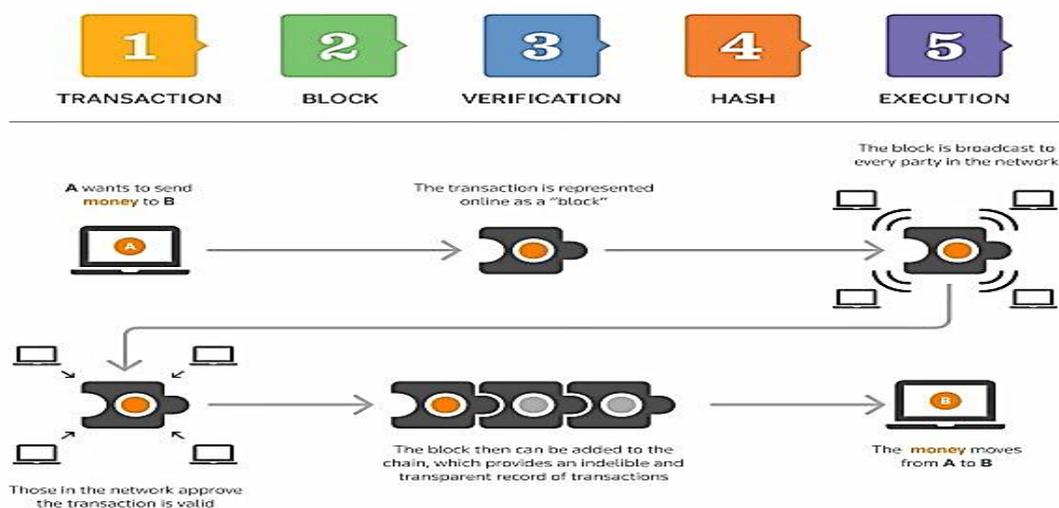


Fig. 1. How Blockchain Works?³⁵

³³ Centre for Excellence in Blockchain Technology, "Blockchain Technology- A mechanism for revolutionizing multiple sectors, elicit accountability and eliminating errors", available at: https://blockchain.gov.in/Documents/blockchain_informatics.pdf (last visited on Sept. 1, 2025).

³⁴ *Ibid.*

³⁵ Dr Gary Fox, "How Blockchain Works Infographic", available at: <https://www.garyfox.co/how-blockchain-works-infographic/> (last visited on Sept. 1, 2025).



Cryptographic techniques are used to ensure the blockchain's integrity and security. Each block carries a reference to the preceding block, forming a chain that connects all of the blocks. In addition, each block includes a cryptographic hash of its data, including transaction details. This hash serves as the block's unique digital fingerprint. If any data within a block is changed, even by a single character, the hash of the block changes, causing the chain to break. Because of its immutability, it is incredibly difficult for anybody to tamper with the data stored on the blockchain.³⁶ To add a new block to the chain, network members must achieve an agreement via a specified process (such as proof of work or proof of stake), ensuring that all participants agree on the authenticity of transactions before they are added to the ledger. This consensus mechanism improves the blockchain's integrity and dependability. Blockchain technology has been used by the state of Andhra Pradesh for the digitisation of land records, for KYC purposes by leading banks, and for the issuance of e-identities by various states.

In the global arena, Dubai and Estonia have exemplified the distinct governance paradigms for blockchain adoption. To illustrate, Dubai focuses on a "Smart City" ecosystem, including the Dubai Land Department's for real estate asset transfers and DIFC Courts, "Court of the Block" which facilitates cross-border judgment enforcement *via* a shared chain.³⁷ On the other hand, Estonia prioritizes national security and data provenance, employing Keyless Signature Infrastructure (KSI) to secure its "e-Republic". Immutable cryptographic audit trails for the "e-File" judicial system and electronic health records are created by KSI, which ensures that unauthorized data access and evidence tampering are unattainable.³⁸

Digital forensics is a subset of forensic science. It deals with electronic evidence collection, preservation, analysis, and scientific reporting of results that should be accepted in court. The whole life cycle of evidence collecting and analysis must closely follow the standard process specified by law. Any departure in the process might render the entire evidence and its findings inadmissible during the court trial.³⁹ Further, the electronic evidence is information gathered from different digital gadgets and information technology equipment that is suspected of being utilized in a crime. Laptops, desktop computers, cell phones, tablets, servers, network

³⁶ *Supra* note 32.

³⁷ DIFC Courts & Smart Dubai, Court of the Blockchain: Joint Taskforce Report on Blockchain-Enabled Cross-Border Dispute Resolution (DIFC Courts, Dubai, 2018), *available at*: <https://www.difccourts.ae/2018/08/01/difc-courts-and-smart-dubai-launch-worlds-first-court-of-the-blockchain>, (last visited on Sept. 1, 2025).

³⁸ Estonian Information System Authority, "How Does Estonia Protect Government Data? - KSI Blockchain" (E-Estonia, Tallinn, 2024), *available at*: <https://e-estonia.com/solutions/security-and-safety/ksi-blockchain/> (last visited on Sept. 1, 2025).

³⁹ Venkatesh Vijayaraghavan and Sameer Singh, "Look But Don't Touch: A Critique of the Indian Position on Evidence Illegally Obtained Through Tape Recording" 12 *National Law School of India Review* (2000).

equipment, cloud storage, hard discs, memory sticks, and so on are examples of some of the electronic devices. Digital evidence is employed not just in the prosecution of cybercrime, but also in the prosecution of all other sorts of crimes.

The following are the key steps in digital forensics:⁴⁰

- Evidence Identification
- Evidence Collection
- Evidence Acquisition
- Evidence Validation
- Evidence Extraction and Analysis
- Reporting

V CHALLENGES WITH DIGITAL FORENSICS

The digital forensics and investigative processes adhere to tight rules. During evidence seizure, extraction, and analysis, forensic examiners encounter several difficult scenarios. Every case necessitates the collection of electronic evidence from diverse sources by the investigator. The total volume of electronic evidence is enormous. Law enforcement organisations face evidence management challenges while collecting and storing terabytes of electronic evidence for various cases.⁴¹ The presence of several organisations and forensic examiners makes preserving the chain of custody difficult. The evidence should be handled with extreme caution to ensure its safety, security, validity, and integrity. Let us go through the major concerns with evidence management and chain of custody in detail.

The typical evidence management strategy is impractical when dealing with digital evidence. The amount of data created every day in today's modern world is mind-boggling. HD photos, videos, and surveillance camera recordings generate massive amounts of data. When researching a case, the investigator may need to gather evidence from a variety of sources. It might be a smartphone, a personal computer, social media accounts, CCTV camera video, and so on. Collecting and storing gigabytes of data connected to a single case presents hurdles for law enforcement organisations. The evidence repository system must secure the evidence from

⁴⁰ Mark Reith, Clint Carr, *et.al.*, "An Examination of Digital Forensic Models" 1 *International Journal of Digital Evidence* (2002).

⁴¹ digitalevidence.ai, "Digital Evidence Management Overview" (DigitalEvidence.ai blog, 2024), available at: <https://digitalevidence.ai/blog/digital-evidence-management-overview>, (last visited on Sept. 1, 2025).

contamination and ensure the evidence's safety and security against unauthorised access. Electronic evidence is highly volatile. Once polluted, evidence cannot be decontaminated.⁴² Another challenge is that the investigators must document every action in the chain of custody from the start of the inquiry. It chronologically chronicles the actions taken by the forensic examiner throughout the seizure of evidence, transfer, analysis, and disposition.⁴³ The chain of custody ensures that established processes are followed. If the legitimacy of evidence is called into question in court, a chain of custody can be utilised to defend it.⁴⁴ Along with the chain of custody, it is also a good idea to keep track of how evidence was gathered and what tools, techniques, methodologies, and processes were employed during the investigation. Lastly, when evidence is held on a blockchain, it might be difficult to maintain an unbroken chain of custody, which is an essential requirement in forensics. Demonstrating the chain of custody's integrity in a blockchain setting may necessitate additional documentation and certification.⁴⁵ It is to address these challenges, Blockchain technology needs to be incorporated with forensics.

VI BLOCKCHAIN AND MANAGEMENT OF DIGITAL FORENSICS

Blockchain differs from standard data storage methods, such as a ledger or a relational database, in various ways.

The key advantages of blockchain that led to its integration with the judicial apparatus are:

- **Efficiency:** A shared ledger, which is a single version of agreed-upon data, is provided via blockchain. It speeds up job processing and settlement by reducing verification times.
- **Reliability:** The blockchain is more trustworthy and fault-tolerant since it is distributed among nodes. It also increases the system's scalability and robustness.⁴⁶
- **Immutable:** The data in the blockchain is unchangeable. The hash value of each block in the blockchain connects it to the preceding block. Data modification or alteration will affect the hash value of the block, resulting in the hash value mismatch of all

⁴² Jan Gruber, Christopher J. Hargreaves, *et.al.*, "Contamination of digital evidence: Understanding an underexposed risk" 44 *Forensic Science International: Digital Investigation* (2023).

⁴³ Tommaso D'Anna *et al.*, "The Chain of Custody in the Era of Modern Forensics: From the Classic Procedures for Gathering Evidence to the New Challenges Related to Digital Data" 11 *Healthcare* 634 (2023).

⁴⁴ Premanand Narasimhan and Dr. N. Kala, "Ensuring the Integrity of Digital Evidence: The Role of the Chain of Custody in Digital Forensics", 10 *International Journal of Scientific Research in Computer Science Engineering and Information Technology* (2024).

⁴⁵ *Ibid.*

⁴⁶ Dylan Yaga, Peter Mell, *et.al.* "Blockchain Technology Overview" *National Institute of Standards and Technology Internal Report* (2018).

remaining blocks on the blockchain. Blockchain ensures the immutability of all processes by keeping data or transaction records in chronological order. That is, once a new block is introduced to the chain of ledgers, it cannot be withdrawn or amended.⁴⁷

- Provenance: Blockchain technology has provenance characteristics. The term ‘provenance’ is derived from the French phrase ‘*venir de*’ (to come from). One of the most essential characteristics of blockchain technology is the provenance function, which provides an immutable audit trail for the origin of data or documents and their modifications over time.⁴⁸
- Security: Hackers’ jobs are made more difficult by storing data on scattered nodes across the network. Only if the majority of machines in the network are hacked, only then can fraudulent transactions and data be added to the blockchain (no evidence of hacking of such kind has been reported to date). It is nearly impossible for hackers to infiltrate the bulk of the network’s nodes (computers).⁴⁹
- Transparency: Blockchains are distributed ledgers. Every user (node) in the corporate network may see any data alteration or addition. It increases the overall transparency of the system. Nothing can be concealed from users, and nothing can be added to the blockchain without their approval.⁵⁰

Blockchain technology thus holds the potential to buttress the digital forensics investigation process in a variety of ways. The examination of digital forensics is a multi-stage procedure. However, with multiple agencies and expert examiners frequently involved in a single case inquiry, the possibilities of evidence tampering and mishandling may arise.

⁴⁷ Frank Hoffman, Simone Wurster, *et.al.*, “The immutability concept of blockchains and benefits of early standardization” 2017 *ITU Kaleidoscope: Challenges for a Data-Driven Society (ITU K)* (2017).

⁴⁸ Mifta Ahmed Umer, Luis Borges Gouveia, *et.al.*, “Provenance blockchain for ensuring IT security in cloud manufacturing” 6 *Frontiers in Blockchain* (2023).

⁴⁹ Baodong Wen, Yujue Wang, *et.al.*, “Security and privacy protection technologies in securing blockchain applications” 645 *Information Sciences* (2023).

⁵⁰ Harold Nwariaku, Busola Fadojutimi, *et.al.*, “Blockchain technology as an enabler of transparency and efficiency in sustainable supply chains” 12 *International Journal of Science and Research Archive* (2024).

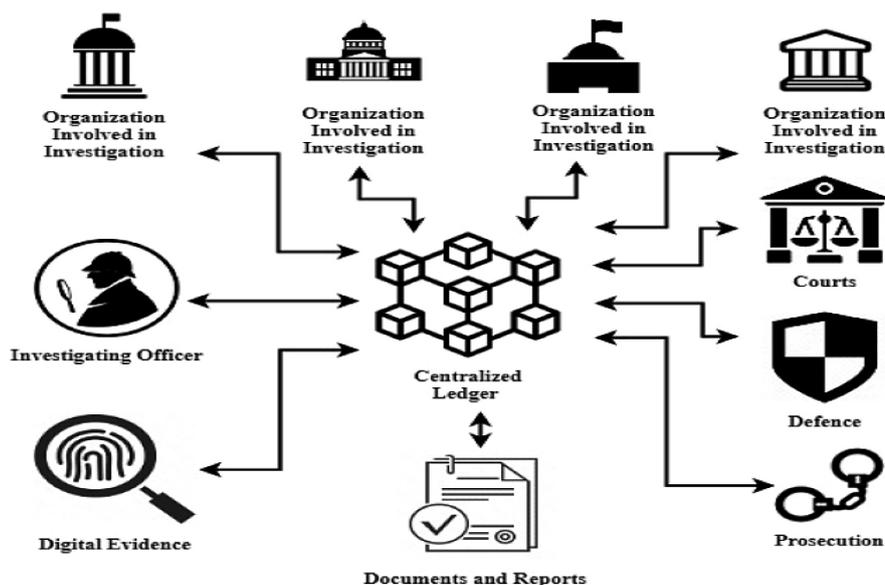


Fig. 2. Blockchain-based digital forensics investigation framework⁵¹

As a normal practice, each organisation and expert participating in the inquiry must check and confirm the evidence. The involvement of various organisations and forensic professionals in the investigative process makes maintaining the chain of custody and preserving the integrity of evidence challenging. Overall, at times it lengthens the inquiry time. At the inception, every technological innovation provides a potential solution to existing challenges that a system was facing at that point in time. But the integration of these innovations uncovers a range of challenges, which, in case went unaddressed, can plague the entire system. Further, when it comes to forensic sciences, which adds to the credibility to the evidence, the need for a fool-proof mechanism increases manifold.⁵² The blockchain technology came up with assurances to address the challenges in the judicial system, in particular delays in the production of evidence, mishandling of evidence, tampering, and corruption of evidence.⁵³ Undoubtedly, blockchain technology holds the potential to address the challenges, but the question pertinent to answer at this stage is “What is the use of a technology that in itself suffers from numerous unaddressed issues?”

The evidentiary value of a piece of evidence may be raised multi-fold by making use of blockchain technology in its collection, sorting, digitisation, and storage.⁵⁴ But at the same

⁵¹ Prof. Renuka B S, Kusuma S, “Blockchain-based Digital Forensics Investigation Framework”, 8 *International Research Journal of Engineering and Technology* (2021).

⁵² Gautam Negi and Rishav Dogra, “Jurisprudence Of Forensic Science In India: Analyzing The Parameters Comparatively With Reference To Forensic Evidence” 13 *International Journal of Creative Research Thought* (2025).

⁵³ *Supra* note 28.

⁵⁴ *Supra* note 43.

time, such evidence can be disregarded due to unaddressed technicalities associated with blockchain technology.

The key challenges associated with blockchain, holding the potential of discrediting the entire evidence, are mentioned below:⁵⁵

Privacy Concerns:

Although blockchain technology allows users to control their own data without depending on other parties, this feature may violate user privacy. Public blockchains, which are decentralized in nature, allow any node to view user transactions, events, and activities. Also, the data that has been uploaded to the blockchain cannot be changed or erased. While this is advantageous for preserving the integrity of forensic evidence, it may also pose a privacy risk if sensitive or incorrect information is stored on the blockchain. Lastly, blockchain transactions frequently use pseudonymous addresses rather than real-world identities. However, with enough work and new data sources, it may be able to de-anonymize blockchain users, which again has the potential to jeopardize privacy. Blockchain transactions can be linked together in some cases, possibly revealing patterns of behaviour or affiliations that individuals may want to keep hidden.⁵⁶

Complex Mechanism to execute proof-of-storage (PoSt)

It is critical to find a compromise between the benefits of proof of storage in assuring data integrity and the implementation obstacles, especially in circumstances where simplicity and accessibility are critical for investigators and legal procedures. Implementing and administering PoSt systems sometimes necessitates a high level of technical knowledge, significant computational and storage capacity.⁵⁷ Forensic investigators and institutions may lack the essential knowledge to set up and manage such systems, perhaps leading to vulnerabilities or mistakes. Additionally, PoSt techniques may differ between blockchain platforms and decentralised storage systems. It can pose difficulty to ensure interoperability and compatibility between various systems, especially if evidence is held on several platforms.

⁵⁵ Catalin Daniel Morar and Daniela Elena Popescu, "A Survey of Blockchain Applicability, Challenges, and Key Threats" 13 *computers* (2024).

⁵⁶ *Ibid.*

⁵⁷ Gautami Tripathi, Mohd Abdul Ahad, *et.al.*, "A comprehensive review of blockchain technology: Underlying principles and historical background with future challenges" 9 *Decision Analytics Journal* (2023).

Lack of regulation and central regulatory authority

Till today, there exists a legislative vacuum when it comes to the regulation of blockchain, artificial intelligence, and algorithms. It is often cited as a boon for the advancement of these technologies, but the absence of timely checks and balances on these technologies may provide another case of ‘Collingridge Dilemma’⁵⁸, wherein technology surpasses the stage of regulation and has so many facets to bring under regulation. Additionally, legal uncertainty over their development, application, and evolution further complicates the usage of these technologies. Also, issues like protection of stakeholders, data protection, right to be forgotten, cross-border transactions, interoperability, innovation and investment, and security and stability remain unresolved.⁵⁹ Like cryptocurrency, an application of blockchain technology went rogue; other applications can follow the course in the absence of a regulatory framework. Ultimately, it is the common people who face the brunt of the misuse of these technologies, which culminates in a travesty of justice.⁶⁰

Embedded complexity

In a traditional setup, the crimes against individuals are taken up as crimes against society, and it is the state that becomes one of the parties to the case. In this case, physical evidences are brought by the public prosecutor to substantiate their argument, and the opposite party attacks the credibility of such evidence. In the entire process, even a layman can understand why evidence is taken up in the first place, why its credibility was attacked by the opposite party, what procedural issues led to its inadmissibility, etc.

But in the context of evidence presented using blockchain technology, a commoner having an interest in the ongoing case may encounter a topsy-turvy ride during the entire case, particularly at the trial stage. Just after the occurrence of a crime, the interested party won’t have any understanding of any stage of proceedings, let alone control. Earlier, in a traditional set-up, where there are chances of rectification, the immutable character of blockchain technology doesn’t permit easy and swift rectifications. As mentioned above, while even forensic experts are facing difficulties in accessing, efficient utilisation and producing PoSt, the case of commoner stands nowhere. While there are chances that, in a traditional set-up of physical evidence, admissibility or inadmissibility of evidence, which eventually led to a favourable or

⁵⁸ Audley Genus and Andy Stirling, “Collingridge and the dilemma of control: Towards responsible and accountable innovation” 47 *Research Policy* (2018).

⁵⁹ Michael Veale, *et.al.*, “When data protection by design and data subject rights clash”, 8 *International Data Privacy Law* 107 (2018).

⁶⁰ *Supra* note 28.

non-favourable decision, can be understood by the interested party. Use of technological marvels in judicial processes may have brought laurels for engineers, FSL staff, and court administration, but these marvels certainly provide a blinding effect to the common person as of now.⁶¹

Apart from the above-mentioned issues, the other potential issues that can derail the efficient and effective integration of blockchain technology with the judicial process are security vulnerabilities, resource constraints for grassroots implementation, lack of global collaboration, data localization, and digital divide. Any approach to integrate with blockchain technology with the judicial process with addressing the above-mentioned issues, will definitely be a half-measure in this direction.

VII E-COURTS PROJECT AND BLOCKCHAIN: THE NEEDFUL

The enabling ecosystem approach as outlined for phase III of e-Courts project, laid down emphasis on all the stakeholders of judicial system. Starting from the police, to practitioners, prison and legal aid authorities, to judicial officers. The approach includes adoption frameworks which comprise behavioural nudges, adequate training, and skill set development, feedback loops, along with the requisite mandate of law.⁶²

Apart from the two uses that the vision document highlights, blockchain technology can be used for multiple purposes in the administration of justice, which not only promotes the swifter access to justice, but also instil trust and faith in the judiciary among the masses. The other purposes can be:

- A. **Access to Justice:** Blockchain can let citizens create safe, self-sovereign digital identities, making it easier for them to access and interact with the e-Courts system. This is particularly the case for remote and marginalised people, for whom courts always remained a distant institution.⁶³
- B. **Case Management:** The immutability and transparency of blockchain can assist in streamlining case management by providing a clear and unalterable record of case updates, filings, and judgments. Users may monitor the status of their cases in real-time.⁶⁴

⁶¹ Byunguk Lee, “Technology or Phenomenon: Why Blockchain Is Not a Technology” 15 *administrative sciences* (2025).

⁶² Center of Excellence in Blockchain Technology, “Blockchain Technology in Judiciary”, available at: <https://blockchain.gov.in/Documents/JudiciaryChain.pdf> (last visited on Sept. 3, 2025).

⁶³ *Ibid.*

⁶⁴ *Ibid.*

- C. **Document Verification:** Blockchain technology may be used to produce secure records of court papers, preserving their integrity and legitimacy. Users, such as judges, attorneys, and litigants, may readily check the authenticity of papers, lowering the possibility of falsified or manipulated documents in court processes.⁶⁵
- D. **Public Access to Records:** Ledgers can be created using a blockchain system to create a unified ledger for a case, started for district court up to hon'ble Supreme Court of India. Thus, instead of carrying bulky and torn-out physical documents for years, a single point ledger system ensures swift recall of documents at all stages of the case. Also, being tamper-proof, with a time and device stamp, the authenticity of these documents won't be questioned again and again. Least but not last, the delays related to translations, verifications, etc. won't be there ensuring swifter justice delivery and reduce the case burden on courts.⁶⁶

While the vision document incorporates the needs of police, jail authorities, legal aid authorities, judicial staff, and judges but the key stakeholder, i.e., the litigant, somehow remained missing from this lofty vision. It is true that in the end, the entire process is for the better access to justice for the litigant, but it would be helpful if same was reflected in the document. There can be provisions like creation and integration of litigant profile with single ledger system of blockchain system, from which he/she can get routine updates of case without interfering with records. With states using blockchain technology for land and personal records, there can be provision wherein personal and land record ledger of an individual be integrated with ledger created for judicial purpose, thereby limiting duplicity efforts. Summing it up, undoubtedly vision document is laudable, but certainly with spaces for improvement, which, if addressed promptly, can put the e-courts project on a higher pedestal, just like other digital public infrastructures.

The integration of blockchain technology under the e-courts project does not limit to mere record keeping as discussed above. The roadblock here is not technical, rather legal and future research must look into this arena. Firstly, the current law under section 65B of the Indian Evidence Act requires certification for electronic evidence. Thus, future research can look into automated evidentiary standards wherein the blockchain hash itself works as the "certificate of

⁶⁵ Eid M Alotaibi, Hussein Issa, "Blockchain-based conceptual model for enhanced transparency in government records: a design science research approach" 5 *International Journal of Information Management Data Insights* (2025).

⁶⁶ Shuaiqi Liu and Qingxiao Zheng, "A study of a blockchain-based judicial evidence preservation scheme" 5 *Blockchain: Research and Applications* (2024).



authenticity” and keeps the human out of the certification process. Secondly, with the growth of Decentralized Autonomous Organizations, entities devoid of a central legal personality will be involved as parties in a dispute in the India Courts. The legal status of such entities must be defined in future research under the corporate law. Lastly, further research is needed on ‘Self-executing Code’ that holds potential of being legally binding through amendments to the IT Act, for swifter settlement of smaller claims.

VIII CONCLUSION

It is well said that it’s the vision that ensures one’s success. The vision for phase III of the e-Courts project is truly laudable. Often, courts are blamed for their reluctance to integrate emerging technologies into their functioning, but the vision document for e-courts phase III sheds these shackles of bygone days by incorporating cutting-edge technologies. The impact that emanates from the judiciary doesn’t limit itself to one concerned citizen only, but has wide foreseen and unforeseen ramifications on society at large. This calls for additional safeguards when it comes to the use of blockchain by the Indian judiciary.

The paper, while underscoring the positives of the use of blockchain technology in the judiciary, cautions against the associated pitfalls. It is desired that only after addressing these pitfalls, the integration will be meaningful for the masses. Thus, blockchain with its features of efficiency, reliability, immutability, provenance and transparency holds a pathway for better access to justice, case management, document verification, public access to records, better safe keeping of evidence and protection from evidence tampering and will supplement the current system. The e-courts project in its third stage, once executed would help us understand and analyse its position better and pave the way for future research on the integration of technology with the Indian Judicial System.



UNSETTLED BOUNDARIES: COPYRIGHT PROTECTION OF CINEMATOGRAPH FILM TITLES AND SOUND RECORDINGS IN INDIAN CINEMA

- Shagun Lal*

ABSTRACT

The Copyright Act, 1957, while providing a comprehensive protection mechanism for authors as well as owners of original works, leaves out certain aspects pertaining to intellectual property protection within the film industry in a state of obliqueness. Despite their commercial and socio-cultural significance, the title of a cinematographic film does not enjoy explicit statutory recognition under the Indian copyright regime. Therefore, producers have often resorted to either industrial bodies such as the Film and Television Producers Guild seeking protection or filing of copyright infringement suits involving film titles. Concurrently, music composers in India have consistently suffered due to the inequality that persists between the bargaining power enjoyed by the dominant music labels in contrast to them. Adding to the tussle, the upsurge of the remix culture has further sparked fresh debates revolving around the scope of the threshold of originality, the extent of copyright protection and the rights of composers in a digitalized generation. Although the 2012 amendment defines the term “cover version” it is still silent on the definition of the term “remix”. This article examines two unsettled areas of paramount importance – copyright protection with regards to the title of cinematograph films and remixing of sound recordings highlighting how the absence of a clear statutory protection mechanism can lead to unfair competition, artistic dilution, and disputes within the industry. This article proposes a nuanced approach towards the interpretation of the copyright provisions while proposing reforms that are imperative to achieve equilibrium between creative freedom of the original author, the moral rights incidental to it and the complexities that arise due to derivative works within the purview of the Indian cinema industry.

Keywords: Copyright, Indian Cinema Industry, Cinematograph film title, Film & Producer’s Guild, Sound recording, Remix culture, Composer.

I INTRODUCTION

The copyright law protects the rights of creators and owners of creations by preventing unauthorized use of their original works. It has been well settled that one of the most valued assets to the film industry is the intellectual property within it. Cinema possesses within itself the capacity to move people. The Indian Cinema has proved to be a continual source of information, entertainment and education. Modern day cinema serves as a mirror to society, while at the same time, functioning as a cultural agent of change.

The first thing that catches the eye of a critic and a consumer is the title of the cinematograph film. The title of a work plays a conspicuous role in grabbing the attention of the target audience. It is for this reason that film producers tend to seek protection for such titles under Copyright Act, 1957 or through Film and Television Producers Guild. As a result, the practice of filing of copyright infringement suits involving film titles has become a recurring trend even

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though the current copyright law does not explicitly provide protection to titles of cinematograph films. This article aims at establishing that the issue of subsistence of copyright in film titles, though not a novel issue, continues to be a point of debate amongst the film industry, IP experts and the judiciary. The researcher aims at establishing that there may arise circumstances where the lack of relevant protection of titles of films can lead to unfair competition.

The term “copy” is frequently used in conjunction to the term “infringement” in regards to copyright issues pertaining to cinematograph films. The term “copy” is not *per se* defined in the Indian Copyright Act and therefore continues to be subjected to varied interpretations adopted by the court and qualifies as another subject of debate. In a recent controversy, the producer of the film Baadshaho was restricted by the Bombay High Court from using the song “Socha Hai”, which appeared to be a *bastardized* recreation of the song “Keh Doon Tumhe” from the acclaimed film “Deewar”. Another heated controversy relates to the remixing of the sound recording “Masakali” from the film *Delhi 6*. The Masakali 2.0 remake has been produced by T-Series, which is also the same record label that produced the original Masakali sound recording. A.R. Rahman, being the composer/author of the original musical work, vehemently condemned this remake in his tweets on X. This paper aims at exploring the issue of indiscriminate remixing of pre-existing sound recordings in a highly digitalized world and its impact upon the special rights/ moral rights of a music composer which exist independently of the assignment of economic rights.

II ANALYSIS OF PROVISIONS REGARDING REMIXES OF ORIGINAL MUSICAL WORK

NATIONAL CONTEXT: THE COPYRIGHT ACT 1957

Copyright subsists in different kinds of works which are exhaustively defined in the Copyright Act of 1957. The nature of work maybe be musical, dramatic, artistic or literary. The work may also be a sound recording or a cinematograph film. In order to comprehend the scope of copyright protection available to sound recordings in the Indian context, it is imperative to bifurcate between the different subject matters of copyright that exist within a sound recording. For the purpose of extending copyright protection to a sound recording, it needs to be categorized as a “work”¹, as defined by the Copyright Act.

¹ The Copyright Act, 1957, Sec. 2(y).

A sound recording consists of various works within itself which qualify as valid subject matters capable of being protected by copyright law. The lyrics qualify as dramatic works under Sec 2(h) of the Act. It is interesting to note that lyrics do not qualify as literary works because the intention behind the creation of the lyrics is to be sung or performed to a tune or a melody. By the virtue of Section 2(d)(i), the copyright owner of these lyrics is the lyricist. The tune or melody to which these lyrics are sung to qualifies as musical work under Section 2(p). The fixation of this music in the form of graphical notations is not a requisite for copyright protection. In the case of *Sawkins v. Hypersion Records*², it was held that although graphical notations of musical works are essential, yet they do not qualify as the only determinant of what is heard. Any action or word that is intended to be performed, sung or spoken is not included within the definition of the term musical works. The composer of the tune is the copyright owner of the musical work by the virtue of Section 2(d)(ii) of the Act. The singer who sings these lyrics by putting them into a tune or a melody is a performer. Hence, the singer is bestowed with performer's right for upto fifty years from the year in which he first gives his performance, by the virtue of Section 38(2) of the Act. The rights of the performer are independent of the rights of the composer or the lyricist. A performer is permitted to produce a sound or even video recording of his performance. He may sell the recordings made by him, or give them on rent and communicate them to the public. The performer has a right to reproduce the visual or sound recordings of his performance and store them in any medium, including electronic medium. This above is made possible due to the exclusive rights granted to performers by the virtue of Section 38-A of the Act. From the above discussion, it is clear that sound recordings are a valid subject matter of copyright law. Musical works and sound recordings embodying music are considered as two distinct copyrightable subject matters. Although the copyright in music is vested in the composer, at the same time the copyright in the music recorded is vested in the producer (of the sound recording) who undertakes the task of recording the music.

To put it alternatively, a recording of music can be understood as follows: When a melody, which may or may not be reduced to graphical notations by the composer, is performed by the same composer, then two distinct copyrights are brought to existence, one for the music and the other one for the sound recording.

ILLUSTRATION: - To further simply the issue of copyright ownership:

²(2005) RPC 47,67-61.



X is a music composer, while Y is a lyricist. They work together towards creating a sound recording with both music and lyrics sung to the music. They then approach a recording studio to record their sound recording. In such a scenario, X will retain copyright in her musical work that will be in the form of a tune, melody or harmony while Y will retain copyright in the lyrics of the sound recording. At the same time, the recording studio will retain the copyright in the recorded sound recording. The aforementioned illustration lays down the crux of the issues addressed by this article which primarily concerns itself with the sound recordings that are incorporated in cinematograph films. In lieu of the above, it can be concluded that incidental rights are available in respect of sound recordings.

This article further demonstrates that a contractual waiver of the proviso of Sec 17 cannot be authorized by law because it would prove to be contrary to what the legislature had wanted to remedy and that the decision of Court in the case of *Indian Performing Rights Society v. Eastern Indian Motion Pictures Ltd*³ is no longer binding or is rather per-incuriam. The decision of Justice Jaswant in the case of *IPRS v. EIMPAA*⁴ is flawed due to the following reason as iterated in the following judicial precedents:

- The judgment of the court fails to acknowledge that the term “musical work” is not expressly mentioned in Section 17 proviso (b), yet the decision falsely extends the provision to commissioned musical works which leads to an absurd conclusion. According to the judgment, even though a musical composition is not created under a contract of service, but is commissioned by a cinematograph film producer, the first owner of copyright in such musical works would be the producer of the film and absurdly enough, not the music composer, unless there exists any contact to state otherwise.

The issue of first ownership of copyright is discussed at length in Section 17. In light of the 2012 addition to the act, the proviso to Section 17 makes it clear that the first owner of any work, including musical work that is incorporated in a sound recording, which is further incorporated in a cinematograph film, will be the author of the original work. This makes it clear that unless a contract of service exists between the music composer and the cinematograph film producer, the copyright of the works incorporated into the making of the sound recording would belong to the author of the work and not the producer. Hence, the first owner of the music composition would be the composer.

³ (2005) RPC 47,67-61.

⁴ AIR 1997 SC 1443.



- The court also erroneously applied the provisions of Sec 17 proviso (c) according to which the employer who employs the author of the works under a contract of service assumes the position of the first owner of the copyright in the works, unless there exists an agreement to state otherwise. This further leads to the question as to whether the relationship between the composer and the producer be characterized as a contract of service. The answer is negative due to the following reasons as iterated in the following judicial precedents:

The Court in the case of *Dhrangadhra Chemicals Works Ltd. v. State of Saurashtra*⁵ held that the determination of a master–servant relationship is conditional upon the prima facie test of the right of the master to supervise as well as control the work produced by the servant during his course of employment. The master exercises control over not only assigning the work to the servant but also dictating the manner in which it would be performed.

In the case of *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu*⁶, the Court held that the extent of control is a crucial factor in determining whether the master servant relationship exists. Minimal supervision or control will not be enough evidence to establish the master servant relationship; the control and supervision shall be substantial. Another essential factor to determine the existence of such relationship is the continuity of service. In the case of professional work, the sole determining weight is not vested in the control tests but rather two additional tests are prescribed; the integration test as well as the organizational test. The integration test determines “*whether the person was fully integrated into the employer’s concern or remained apart from and independent of it.*”⁷ The organisation test concerns as to whether the worker works within the employer’s premises or organisational structure.⁸

In the light of the above precedents, it can be concluded that the court erroneously concluded that the contract between the producer and the composer is a contract of service. If a composer has a contract with the producer for a limited number of projects to produce a limited set of compositions, then the integration test cannot be satisfied as the composer is not fully “*integrated into the employer’s concern*”. The organizational test is also not satisfied because usually, the composer is not reliant upon the premises of the producer’s firm, rather he works independently using his own tools and logistical support. Additionally, the control test is also

⁵ AIR 1957 SC 274.

⁶ (2004) 3 SCC 514.

⁷ *Ram Singh v. UT of Chandigarh*, (2004) 1 SCC 126.

⁸ *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu*, (2004) 3 SCC 514.



not satisfied because the producer only exercises remote or partial supervision over the work produced by the composer and the composer is relatively free to choose the way in which he chooses to compose his music.

Composers in India have suffered due to the inequality that persists between the bargaining power enjoyed by the dominant music labels in contrast to them. The sympathetic stance adopted by the legislature towards the plight music composers is reiterated in the statement of objects and reasons of the amendments made in 2012. A more nuanced introspection of object clause 3(vii) reveals that the legislature intended to provide independent rights to the authors of musical works that are incorporated in a cinematograph film via a sound recording. While clause 3(x) reveals the intention of the legislature to provide the right to receive royalty to the authors of the literary or musical works incorporated in a sound recording which is further incorporated into a cinematograph film for such works to be exploited commercially.⁹ Also by the virtue of Section 13(4), it is further clarified that the copyright in separate works incorporated in a film shall not be affected in anyway because of the subsistence of copyright protection in that film.

Hence, it can be concluded that the contractual waiver of the first ownership in musical works cannot be authorized by law. Similarly, it would be irrelevant whether the sound recording incorporated in the film was produced before the 2012 amendments because the second proviso was inserted to remedy the injustice that was prevalent in the act and would therefore have a retrospective effect.

The aspect of retrospective effect of a provision is reiterated in the case of *BCCI v. Kochi Cricket*¹⁰ where the Court decided on the issue of the ambiguity surrounding Sec 26 of the Arbitration and Conciliation Act 1996 and held that if an amendment brings into existence a legislative provision in order to remedy the unjustness prevailing in an Act, then it must be given retrospective effect to ensure that the injustice caused in the first place is not allowed to continue. The decision of the IPRS case¹¹ is therefore per- incuriam as it fails to correctly interpret the term contract of service in the context of music composer and producer and is delivered in ignorance of stance adopted by the coordinate bench of the Supreme Court under the numerous aforementioned cases.

⁹ Amendment Act 27 of 2012, Statement of Objects and Reasons, The Copyright Act 1957.

¹⁰ SLP(C) No.19545- 19546 of (2016) SC.

¹¹ AIR 1997 SC 1443.

Another momentous controversy addressed by this article is the impact of the remixing culture in a highly digitalized era upon the dilution of the moral rights of the owner of the original sound recording, also known as the author's special rights or "*droit moral*". The moral right of an author of a work empowers him to restrict any modification, distortion, alteration or mutilation of his work if the above acts prove to be prejudicial to his reputation or his honor¹². Strictly speaking, the creation of a secondary work by utilizing the elements present within a work that is already in existence is violative of the right to communication to public¹³ and the right to reproduction¹⁴, vested in the owner of the copyright. Although the 2012 amendment defines the term "cover version" but it is still silent on the definition of the term "remix". The ambiguity continues with heavy dependency on judicial interpretations to decide on the issue whether a certain remix can qualify as a new work in the form of a "derivative work". Essentially a remix can be understood as a modified version that is created by utilizing an already existing sound recording. Pre-existing sound recordings are redecorated or improvised by adding a different tune or a melody to the lyrics of a popular song.

The decision of Apex Court in the case of *Mannu Bhandari v. Kala Vikas Pictures*¹⁵ was one of the very first judgments that recognized the importance of the moral right of an author of a work. The scope of these rights was further broadened in the case of *Amar Nath Sehgal vs. Union of India*¹⁶ where the Court held that the soul of an author is vested in the moral rights granted to him. The Court held that the moral rights of an author shall extend to requiring third parties to protect, preserve and respect the honour of an author and the cultural rights of the country to which he belongs.

In the light of the above discussion it can be understood that even a contract of assignment cannot impede upon the special rights/ moral rights of an author as they exist independently of the assignment of the economic rights. However, it needs to be established that the intent behind the moral rights guaranteed under Section 57 is not to restore all original rights of copyright to the original author and completely obliterate the original bargain concluded amongst the parties but to reserve the right of the original author to prevent degradation of his work.

¹² The Copyright Act, 1957, Sec 57.

¹³ The WIPO Copyright Treaty, Art.8.

¹⁴ The Berne Convention, Art.9.

¹⁵ AIR 1987 Delhi 13.

¹⁶ (2005) 30 PTC 235.

With the advent of the digital era, the remix culture has hit its peak and has made it increasingly convenient to produce cheap, distasteful and vulgar remixes of the original versions at the comfort of one's home. The internet is flooded with varied remixes that at several occasions completely change the context of the original sound recording and may cause a detrimental effect upon the reputation of the original author. The existence of digital platforms like Soundcloud play a significant role in harbouring this amateur creativity while at the same time running the risk of outraging the honour of the original author. This unconsented remixing of original versions impacts the special rights of the original author.

In context of remixing of original sound recordings, a recent controversy sparked keen interest of musical composers, cinematograph film producers and IP experts. A sound recording Masakali 2.0 remake was produced by T-Series, which is also the same record label that produced the original sound recording Masakali. A.R. Rahman, the composer/author of the original musical work, vehemently condemned this remake in his tweets on the Twitter. The controversy revealed a debatable question which was whether this remix prejudicially affected the moral rights of A.R. Rahman in the musical composition which was incorporated into the remixed sound recording. The question can definitely be answered in the affirmative. The new remixed version was ridiculed amongst the music industry and the remix was labelled as "*insensitively utilized*"¹⁷ and a "*bastardization of the old song*"¹⁸. The remix was reduced to a meme and endlessly jokes were cracked at its expense. In such a scenario, it cannot be denied that the remix did in fact have detrimental effect upon the original musical composition of composer A.R. Rahman.

III ANALYSIS OF PROVISIONS FOR PROTECTION OF TITLES OF CINEMATOGRAPH FILMS UNDER VARIOUS ACTS

National Context

The first thing that catches the eye of a critic and a consumer is the title of the cinematograph film. The title of a work plays a conspicuous role in grabbing the attention of the target audience. It is for this reason that film producers tend to seek protection for such titles under The Copyright Act, 1957 or through Film and Television Producers Guild. As a result, the practice of filing of copyright infringement suits involving film titles has become a recurring trend even though the current copyright law does not explicitly provide protection to titles of

¹⁷ LawJournalToday, "*Copyright law must evolve with digital culture,*" *Twitter* (Feb. 11, 2025), (last visited March 8, 2025).

¹⁸ *Id.*



films. The issue of copyrighting film titles, though not a novel issue, continues to be a point of debate amongst the film industry, IP experts and the judiciary.

The Copyright Act, 1957 does not treat cinematograph film titles as a valid subject matter for copyright protection. The U.S. copyright law also does not treat film titles as a valid subject matter of copyright as it does not fulfil the criteria of “*minimum amount of authorship*”¹⁹. In the case of *Krishna Lulla v. Shyam Vithalrao Devkatta*²⁰, the Supreme Court held that cinematograph film titles could not be classified as work under Section 13 because they are incomplete within themselves and are dependent on the work they represent. The Indian copyright regime does not confer copyright protection to titles²¹. Section 44 allows for titles and names of works to be included into the register of copyright. However, the attitude of the Indian copyright regime is to reduce the importance of film titles to a mere identifier of the work. This article addresses the inefficiency of the copyright law to categorize cinematograph film titles as a valid subject matter of copyright subsistence and posits that such insufficiency should be effectively remedied with due to the following reason:

Section 13 confers copyright protection to original literary works. For a film title to be treated as a valid subject matter of copyright law, it is a prerequisite to establish that titles satisfy the criteria of originality under copyright law. The Copyright Act 1957 does not interpret original in the literal sense. The requirement of originality can be met with by establishing that there exists some creative efforts on the part of the author to bring the literary work into existence. According to the doctrine of modicum of creativity, as developed in the case of *Eastern Book Company v. D.B. Modak*²², it is not necessary to establish that a literary work satisfies the criteria of novelty or non-obviousness in order to be categorized as original, but the work should be able to showcase a minimal threshold of creativity. A duty is cast upon the Courts to interpret the term *originality* as it remains undefined within the Act.

An analysis of the aforementioned provisions leads to the conclusion that if the title of a cinematograph film is capable of reflecting the threshold of minimal authorship on the part of the author, then it would be fair to treat it as a valid subject matter of copyright protection. The intention of the legislature behind excluding titles within the ambit of copyrightability is an attempt to prevent monopoly over words or combinations thereof, in turn protecting the content

¹⁹ U.S. Copyright Office, *Home*, U.S. Copyright Office, available at <https://www.copyright.gov/> (last visited March 8, 2025).

²⁰ (2015) 129 CLA 000.

²¹ *Sunil S/o. Darshan Saberwal v. Star India Private Limited & Ors*, (2024) 236 BHC.

²² (2008) 1 SCC 1.



that should belong to public domain. However, the above explanation does not justify why unique film titles that exhibit creative intellect and efforts are not protected by the copyright regime. A film title that is unique like “*Anhedonia*” which means the inability to feel pleasure, showcases the ability to satisfy the criteria of minimum authorship. The uniqueness of the title serves as an attraction for the audience and triggers curiosity amongst the public to watch the particular film. The author of a unique film title spends extensive labor and efforts to come up with a distinctive original title, by crafting a specific juxtaposition of words which aptly convey the intended meaning and for same reason, such title shall qualify as a valid subject matter for copyright protection as the primary rationale behind the copyright regime is to prevent third parties from unjustly reaping the fruits from the labor of others.

It is a common practice for producers of cinematograph film to submit their titles for registration in producer’s guild like the Film and Television Producers Guild of South India, in hopes to protect their titles from misappropriation by third parties but this registration proves futile and redundant as it is not legally binding.²³

The inadequacy of the copyright regime is sought to overcome by the Trademark Act 1999. The Nice Classification provides for the registration of trademarks for services that fall under the head of entertainment under Class 41. The titles of cinematograph films are not per se specified as an entry in Class 41 as a service yet it has become a common practice by producers and production entities to file applications for registration of title under Class 41. Another theoretical problem which arises is that a singular film does not qualify as a service per se. The treatment afforded to titles in trademark law is similar to that of trademarks of commercial goods. The intention behind this to ensure that a potential audience is not left confused as to the source or the affiliation of the cinematograph film. Hence, the two laws that afford protection to titles are unfair competition law as well as trademark law.²⁴

Another issue comes to the surface when discussing registration of a single literary work. The Supreme Court created a distinction between “Title of series of literary works” and “Title of single literary work” in the case of *Kanungo Media (P) Ltd. v. RGV Film Factory*.²⁵ It was iterated that series of periodicals, newspaper or books function as trademarks as they have the capacity to designate the source of each edition when such editions are coming from the same source. The buyers can identify the terms utilized in the title of the series and use it to

²³ *M/s Lyca Productions v. J. Manimaran*, (2018) SCC Online Mad 597.

²⁴ 138 (2007) DLT 312.

²⁵ *Id.*



distinguish it from other sources. Due to this reason, the court has found it appropriate to allow titles of a series to be registered as trademark. There are a number of instances where series of films have been successfully registered as trademark, for example, The Matrix, Hera Pheri, Golmaal, Die Hard and Tanu Weds Manu. The logic behind registration of the above titles is that in case the same title is allowed to exist for a different film that does not belong to the same source, the audience may be fooled, actual confusion need not be proved as long as there exists a likelihood of confusion, and the subsequent user of the title would yield benefits out of the reputation acquired by the original user of the title.

Hence, registration of titles of single literary works is not per se permitted by law unless the requirement of secondary meaning is met by such a title. A literary title may be inherently distinctive, fanciful or arbitrary in nature, yet it would not be permitted to be registered unless consumer recognition can be established.

The test of secondary meaning for literary titles is essentially one of determining whether, in the minds of a significant number of people, the title in question is associated with a single source of the literary work. That is, are people likely to assume that defendant's work is connected in some way with the producers of plaintiff's literary effort? The association need be only with a single, anonymous source. That is, the consumer need not know the trade name of the source, but is entitled to assume that all works or goods under that title are controlled by some single source²⁶

A practical problem surfaces due to the requirement of *secondary meaning* in the registration of single literary film titles as trademark. In order to satisfy this prerequisite of *secondary meaning* small-scale production houses find themselves handicapped as they are unable to bear the extravagant publicity costs required to reach the audience through release of film's music, posters, newspapers and websites.

In the *Kanungo case*, the plaintiff had won several national and international awards including the Bangkok International Film Festival award, Pusan International Film Festival award, Palm Springs International Film Festival award, and yet found himself disabled in protecting his film title "Nishabd" against the defendant as the defendant had incorporated a star cast including Amitabh Bachchan and Jia Khan and incurred exorbitant expenses in promoting this film titled

²⁶ J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (3 Clark Boardman Callaghan, 1995).



“Nishabd”. The extravagant nature of the publicity incorporated by the defendant defeated the valid claim of the plaintiff unjustly.

This highlights the shortcoming of the Court in distinguishing between the “*Title of series of literary works*” and “*Title of single literary work*”. The complexity of the issue lies in the incapacity of single cinematograph film titles to qualify for registration under the trademark regime which would further provide for the common law remedy of passing off²⁷. Simultaneously the common law action of passing off would be difficult to prove since it requires the plaintiff to establish that the mark used by him has the ability to identify his business and the defendant would be illegitimately benefited by the use of an identical or similar mark as it could link the business/goods of the defendant to that of the plaintiff and cause confusion amongst a relevant section of the public. The only remedy left for these unregistered film titles to prevent their unfair and illegitimate use is to establish the existence of *secondary meaning* which is appears to be discriminatory. This enables the opulent amongst the film industry to hijack the film titles of small-time producers who either fail to commercially release their films due to financial constraints or fail to compete with extravagant promotions.

An additional burden is cast by the trademark regime on the owners of registered trademark. The owner is obligated preserve the quality of the mark and to reasonably monitor the use of his mark in order to prevent illegitimate use of the mark in the course of trade and commerce, otherwise it would amount to acquiescence of the rights of the trademark owner.²⁸ This also burdens small scale production houses. This dilemma would not arise if titles were to be provided with copyright protection, since copyright subsists as soon as the subject matter comes into existence. That is to say that the owner of the copyright in film title would have the right to prevent infringement of his title as soon as it is created and it would not be needed to be monitored in order to uphold his rights over the intellectual property created by him. A number of countries including Canada, France and Argentina provide copyright protection to film titles as long as they satisfy the criteria of originality and the same stand should be adopted by India as well.²⁹ A broad interpreting of the term literary works under the Berne Convention³⁰

²⁷ The Trade Marks Act, 1999, s 134(c).

²⁸ The Trademark Act, 1999, s 33.

²⁹ UNCTAD–ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press, 2005).

³⁰ The Berne Convention, Art. 2(1).

would enable the Indian regime to incorporate film titles within the definition of literary works under the Copyright Act 1957.³¹

The 10-year protection provided by the Trademark regime in India to cinematograph film titles also proves to be inadequate and insufficient in contrast to the 60-year protection provided by copyright regime. Unnecessary burden is cast onto the owner of the trademark of film titles to renew their trademarks after the expiry of 10 years and payment of an affixed fee is required to the registrar. This reoccurring fee casts undue burden on small scale production houses. Such renewal would not be required if such titles were treated as a valid subject matter of copyright protection and no addition burden is cast on the owner of the copyright holder.

IV CONCLUSION AND SUGGESTED REFORMS

1. In consonance to the above analysis, it can be concluded that a contractual waiver of the second proviso of Section 17 would restrict the right of the composer to be the first owner of copyright his composition, provided that it was commissioned by the film producer which is the opposite of the intention of the legislature. Section 17 consists of several clauses that expressly allow the parties to enter into “*agreement(s) to the contrary*”³² but no such terminology is used in the second proviso to Section 17. This makes it clear that the legislature intended to not include the option of a contractual waiver and intended for the composer to continue to be the first owner of copyright in a composition incorporated in a cinematograph film. Hence, A.R Rehman would continue to be the first owner of his original composition in the sound recording titled Masakali and by the virtue of the proviso, no contract to the contrary can be executed. Even a contract of assignment cannot impede the special rights/ moral rights of an author and they exist independently of the assignment of economic right. The intent behind the moral rights guaranteed under Section 57 is not to restore all original rights of copyright to the original author and completely obliterate the original bargain concluded amongst the parties but to reserve the right of the original author to prevent degradation of his work.

Hence, in order to remix a sound recording, it is imperative to obtain the legal consent of the original author of the musical work as this directly encroaches upon the moral rights of the composer. A producer who commissioned the original sound recording to be incorporated in the cinematograph film cannot be permitted by law to undertake to remix the original work without the consent of the original author of the musical work. In the

³¹ The Copyright Act, 1957, s 2(o).

³² The Copyright Act, 1956, Sec. 17.



present case scenario, it was in bad faith and also in contravention of law for the record label T series and the producer to not obtain prior permission from A.R Rahman before remixing his original music composition.

2. The purpose of copyright law is to stimulate creativity whereas the purpose of trademark law is to prevent confusion among consumers. There is no reason why fanciful, arbitrary, inventive and unique film titles that originate from the creativity, skill and labor of the author should not be protected under Copyright law. The doctrine of modicum of creativity is wide enough to include fanciful cinematograph film titles as literary works. The uncertainty of protection granted to film titles under the trademark law can be remedied by utilizing both trademark as well as copyright law to adequately protect film titles from infringement and offer suitable remedies. The courts in India should adopt the stance for allowing titles that are sufficiently original and unique to qualify as a subject matter of copyright. This in turn would not only ensure increased creativity, which is the cornerstone of copyright law, but also ensure a wider array of titles of cinematograph film in India. Also under Section 44, the Indian Copyright Act allows for titles of films to be entered into the Register of Copyright by the Registrar which reflects a need for change in the attitude of courts to look at film titles as mere "*identifier of a body of work*".



E-PHARMACIES AND THE THREAT TO DATA PRIVACY

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ABSTRACT

Post Covid-19 era has seen an upsurge in use of technology in our everyday lives. Technology has become an integral part of mankind, enhancing convenience and efficiency. E-pharmacies exemplify this reliance, offering online platforms for ordering medications and providing doorstep delivery, even in remotest places of the country. Our dependence on such tech underscores its transformative impact on healthcare accessibility and consumer convenience in the modern era. Although universal access to medicines aided by e-pharmacies might appear utopian, careful examination of working of these e-pharmacies might reveal a dark underbelly to this seemingly idealistic trade. The critical problem that emerges is the severe threat to consumer's right to privacy due to operations of these e-pharmacies. Existing literature regarding privacy, does not extend to specific study of e-pharmacies and the contemporary threat to user privacy, by reason of their business. This paper, through doctrinal study, analyzes current Indian laws with-respect-to data protection and consumer's privacy, and compares it with foreign legislations to reveal ambiguities in Indian laws regulating e-pharmacy operations. The paper further scrutinizes privacy policies of reputed e-pharmacies in the country, to highlight the shortcomings of such policies in protecting consumer privacy. Findings underscore the necessity for specific legislation to address these emerging challenges. While e-pharmacy's presence is undeniable, a balanced legislative framework is imperative. This paper advocates for robust legal measures to safeguard consumer rights, especially that of privacy, amidst technological advancements.

Keywords: E-Pharmacies, Privacy, Consumer-Rights, Data-protection, Balanced-regulation.

I INTRODUCTION

Recently, over 20 online pharmacies received show cause notices ("SCN") by the Central Drugs Standard Control Organisation ("CDSCO") enquiring about their business operation and compliance with respect to sales of drugs in adherence with Drug and Cosmetic (Amendment) Act, 2008¹ and rules made thereunder.² The government's main concern with the operation of e-pharmacies is consumer data and privacy-related perils. The government fears leaking or misusing sensitive data such as medical records, Consumer's name, weight, medical history, and medicine prescriptions³.

E-Pharmacy or an online pharmacy, is a web-based platform that enables customers to place order for prescription medicines, entitling them to get their medication swiftly and easily in

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¹ The Drugs and Cosmetics (Amendment) Act, 2008 (Act 26 of 2008).

² Update on E-Pharmacy Platforms, available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1946709> (last visited on December 24, 2024).

³ Timsy Jaipuria, "From Threats to Trends: Navigating cyber resilience", *CNBC-TV18*, February 10, 2023, available at: <https://www.cnbcv18.com/healthcare/cdsc-issues-show-cause-notice-to-over-20-online-pharmacies-for-violation-of-drug-regulations-15909721.htm> (last visited on December 23, 2024).

their homes⁴. Examples of e-pharmacies include Tata 1mg, Netmeds, Practo, Apollo Pharmacy, etc.

The All-India Origin Chemists and Distributors (“AIOCD”) repeatedly requested the Government to ban online pharmacies, because these pharmacies could be hazardous to public health⁵. The threat to user privacy due to operation of these e-pharmacies was recognized by the AIOCD because the actions of e-pharmacies could expose personal health data and was against the data policy of National Rural Health Mission (“NRHM”)⁶.

In India, e-pharmacies work on the ‘Inventory-based Model’ or the ‘Market-based Model’⁷. In the Inventory-based Model of e-pharmacy, the e-pharmacy owns the directory of drugs and medicine stored at warehouses or fulfilment centres across the country, and the delivery of the goods is direct, that is from warehouse to Consumer⁸. In the market-based e-pharmacy model, e-pharmacy acts as a facilitator between pharmacists and customers. It acts as an aggregator. The e-pharmacy website or the app enlists the registered pharmacies and their products; the Consumer places the order for medicines by uploading the valid prescription, and the pharmacy verifies the prescription, and then the e-pharmacy delivers the order to the customer⁹. Most of the registered e-pharmacies in India operate on the market-based model and act as intermediaries¹⁰.

II RIGHT TO DATA PRIVACY

Right to privacy has been a very controversial topic in constitutional law discourse. Invasion of privacy in the digital era has taken the route of breach of personal data. Instances of data breach have been consistently increasing in India. Not long ago, telegran’s automated accounts was alleged for sharing sensitive personal data like Aadhaar and passport information of people

⁴ Desai, Chetna, “Online Pharmacies: A boon or bane?” 46 *Indian Journal of Pharmacology* 615 (2016)

⁵ Teena Thacker, “India’s retail chemists ask BJP to include the banning of e-pharmacies in its manifesto”, *The Economic Times*, March 29, 2024, available at: <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/indias-retail-chemists-ask-bjp-to-include-the-banning-of-e-pharmacies-in-its-manifesto/articleshow/108884311.cms?from=mdr> (last visited on December 24, 2024).

⁶ “E-pharmacies under radar; Centre likely to initiate stern action”, *Livemint*, February 17, 2023, available at: <https://www.livemint.com/news/india/epharmacies-under-radar-centre-likely-to-initiate-stern-action-11676587508512.html> (last visited on December 24, 2024).

⁷ E-Commerce Business Model, Ministry of Commerce & Industry, Government of India (2019).

⁸ Parth Parikh, “e-Pharmacy business and models”, *FinShiksha*, September 24, 2021, available at: <https://finshiksha.com/e-pharmacy-business-models/> (last visited on December 23, 2024).

⁹ *Ibid.*

¹⁰ Top Online Pharmacies & Wellness Marketplaces in India, Ginesys, available at: <https://browntape.com/top-online-pharmacies-wellness-marketplaces-india-2021/> (last visited on December 24, 2024).

registered on CoWIN portal.¹¹ Moreover, a data leak uploaded on Github asserts to hold data from multiple government as well as private educational institutions, this also included BSNL's customer's data and information of Employee's Provident Fund Organisation.¹²

Increasing demand and sale of personal data on the dark web provides huge incentive for companies to play around with customer's data. In 2021 it was alleged that wallet data information and payments of 110 million users of payment platform Mobikwik was up for sale on a hacker's website on the dark web. This incident raised serious concern over India's data security and information regime as the alleged database up for sale contained credit card details, Aadhaar number, mobile number attached with Mobikwik wallets and KYC documents.¹³

Right to privacy is a vested right against non-state entities as well¹⁴. From *Kharak Singh vs. State of U.P.*¹⁵ to *K.S. Puttaswamy vs. Union of India*¹⁶ to *Navtej Singh Johar vs. Union of India*¹⁷, Supreme Court of India has been actively guarding citizens privacy right but with digitalization of work and personal information, protection and detailed regulations need to come from the legislation for shielding its people from data privacy threats from private corporation, whether Indian or just foreign, operating in India.

To tackle with the technological advancements and increasing data protection threats, multiple countries, long ago had introduced legislation safeguarding data privacy like UK's Data Protection Act, 1998¹⁸ and United States Electronic Communication Privacy Act, 1986¹⁹. The EU Charter of Fundamental Rights²⁰ is one of the first in the world to give Right to Protection of personal data, a flavour of Fundamental Right.²¹ The particular article of the charter which

¹¹“Cowin Data ‘breach’: Opposition demands investigation, questions minister on ‘previous breach’”, The Indian Express, June 13, 2023, *available at*: <https://indianexpress.com/article/india/cowin-data-breach-opposition-demands-investigation-questions-minister-on-previous-breach-8659588/> (last visited on May 2, 2025).

¹² “Cert-In investigating claims of alleged big data breach”, The Indian Express, Feb. 21, 2024, *available at*: <https://indianexpress.com/article/business/economy/cert-in-investigating-claims-of-alleged-big-data-breach9172067/> (last visited on May 2, 2025).

¹³ “MobiKWik database of 10 crore users leaked on Dark Web; company denies data breach”, The Indian Express, March 30, 2021, *available at*: <https://indianexpress.com/article/technology/tech-news-technology/mobikwik-database-leaked-on-dark-web-company-denies-any-data-breach-7251448/> (last visited on May 3, 2025).

¹⁴ “Right to privacy must be protected against state, non-state actors, says Justice Sanjay Kaul in verdict”, Firstpost, Aug. 24, 2017, *available at*: <https://www.firstpost.com/india/right-to-privacy-must-be-protected-against-state-non-state-actors-says-justice-sanjay-kaul-in-verdict-3970713.html> (last visited on Jan. 23, 2025).

¹⁵ AIR 1963 SC 1295.

¹⁶ AIR 2017 SC 4161.

¹⁷ 2019 (1) SCC (CRI) 1.

¹⁸ Data Protection Act, 1998 c. 29 (UK).

¹⁹ Electronic Communication Privacy Act, 1986, 18 U.S.C. § 2701 et seq. (USA).

²⁰ Charter of Fundamental Rights of the European Union, 2012/C 326/02 (EU).

²¹ Khushi Chopra and Surya Pratap Kasaudhan, “From Constitutional Rights to Data Protection: Article 21 and Comparative Perspectives on Privacy” Manuparta Articles, Jul 2, 2024, *available at*: <https://articles.manupatra.com/article-details/From-Constitutional-Rights-to-Data-Protection-Article-21-and-Comparative-Perspectives-on-Privacy> (last visited on May 7, 2025)

gives this right is Article 8²², which states that “Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.”²³

The courts have also actively demonstrated the importance of data privacy in judgements like *Commission v. Germany*²⁴ and *Commission v. Austria*²⁵, where they did not even let National Data Protection Authorities escape the responsibility and consequences of data breach.

First step towards to strengthening data protection rights is its recognition as a constitutional or fundamental right and not just rely on courts. The constitutional catalogue in Sweden, through amendment includes now protection of data against unwarranted data infringement. India in its step to strengthen data protection framework has brought Digital Personal Data Protection Act, 2023²⁶ (“DPDP”). The DPDP Rules, still not implemented and still out for consultation focuses on digital data including personal information and anonymous data with identifier data.

Good thing about the DPDP Act is that its jurisdiction extends to digital information processed within India, irrespective of processor’s site. The Act also applied to information processed out of India if good or services are rendered to Indian resident. E-pharmacies might sometimes contain sensitive medical information about a customer and which later can be send or sold to companies outside India. The DPDP Act attempts to tackle this through two-step protection: Purpose Control and Data Dwindling, the former establishing that personal digital information can only be processed for established legitimate objects, while the latter stipulates that only necessary information is collected, that does not extend to breach of data identity.

III ANALYSIS OF PRIVACY POLICIES OF E-PHARMACIES

When a user first orders medicines through E-Pharmacies like Tata 1mg, Netmeds, etc., he has to first accept the terms and conditions as well as the privacy policy. The user has no option but to accept it for him to use online services. Upon careful reading of policies of these E-Pharmacies, it is evident that almost all of them have similar privacy policies.

²² Charter of Fundamental Rights of the European Union, 2012/C 326/02 (EU) at art. 8.

²³ Federico Fabbrini, “The EU Charter of Fundamental Rights and the Rights to Data Privacy: The EU Court of Justice as a Human Rights Court” *iCourts Working Paper Series, No. 19* (2019).

²⁴ *Commission vs. Germany* (2010) Case C-518/07, ECR I-1885.

²⁵ *Commission vs. Austria* (2012) Case C-614/10, ECLI:EU:C:2012:631.

²⁶ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).



One such policy that is examined here is that of Netmeds²⁷ owned by Reliance Industries Ltd. Policies of such kind provide a clause where the users are allowed to withdraw their consent from having their data collected. However, even if users withdraw their consent, the E-Pharmacies can still process the information based on the consent given, prior to their withdrawal²⁸.

Further examination of the policy reveals the sharing of user information. The policy states that these E-Pharmacies can disclose or transfer the user information with third parties²⁹. However, it is unknown in these policies as to whom specifically is the user information shared with. Moreover, it is unknown to users if these third parties are trustworthy, since they are unaware as to who these third parties are.

The users cannot further object sharing of such information to third parties after giving their consent. The policy also reserves a right for the E-Pharmacies to disclose or transfer information outside of our country³⁰. By mere using of such websites, the user is deemed to have given his consent in sharing of such information outside the country³¹. Thus, users cannot be relieved that their information is completely safe because it's being shared with other unknown parties which even extends to parties outside of the country.

Another significant E-pharmacy is the Tata1mg and is worth examining in the present context. Their policy states the manner in which user data is collected³². They not only collect user's Information when they user provides it, but also automatically collect it from other third-party websites and websites of other Tata group entities³³. They further collect data automatically through "Cookies" and "Pixels" when the user uses their concerned website³⁴.

Similar to how data is collected from other Tata Group Entities, the policy also reserves the right of Tata1mg to share it with other Tata group entities to "facilitate the operation" of their business³⁵. They can also share user data with their partners and other service providers. This is definitely a trade-off between consumer's privacy and efficiency of E-pharmacy business.

²⁷ Netmeds Privacy Policy - Safeguarding Your Information, *Netmeds*, available at: <https://www.netmeds.com/privacy-policy> (last visited on November 28, 2025).

²⁸ *Id.* at cl. 1.4.

²⁹ *Id.* at cl. 4.3.

³⁰ *Id.* at cl. 4.6.

³¹ *Ibid.*

³² Tata1mg: Privacy Policy | *Tata1mg*, available at: <https://www.1mg.com/labs/PrivacyPolicy?wpsrc=Google+Organic+Search> (last visited on March 24, 2025).

³³ *Id.* at cl. 3.F.

³⁴ *Id.* at cl. 3.B.

³⁵ *Id.* at cl. 8.B.



All policies of these E-Pharmacies state that the sharing and use of user data will be subject to the provisions of applicable laws in force³⁶. Such a clause in their policies is well appreciated, however, unfortunately, there is no modern law governing these E-Pharmacies and they are normally subject to outdated laws which are not concerned with user privacy. Thus, these privacy policies prove to be an actual threat to consumer health privacy.

IV EXAMINATION OF EXISTING LAWS

Legislation governing the Consumer's rights, the Consumer Protection Act, 2019³⁷ ("the Act"), lays down Consumer's rights in sub-section 9 of section 2. However, it does not recognize the 'consumer's right of data protection' as one of its rights³⁸. Moreover, the Act does not provide a redressal mechanism in case of information leaks or data misuse by e-commerce platforms. The Drugs and Cosmetics Act, 1940³⁹ ("D&C Act"), read with the Drugs and Cosmetics Rules⁴⁰ ("D&C Rules"), and the Pharmacy Act⁴¹, are key legislations regulating the manufacture, sale, and distribution of pharmaceuticals and cosmetics products in India. Even though these acts do not prohibit the sale of drugs through online platforms, there exists no provision explicitly regulating the same.⁴²

The Digital Personal Data Protection Act, 2023⁴³ ("DPDP Act") promises to strengthen and overhaul India's data protection regime significantly. The DPDP Act provides for the duties of the data fiduciary (persons and companies who keep and process data)⁴⁴ thereby affecting the handling operations of customer's personal data by e-pharmacies.

Further, the Digital Personal Data Protection Rules, 2025⁴⁵ that came into effect from November 13, 2025, require e-pharmacies, as data fiduciaries, to provide a clear, standalone notice at the time of data collection, detailing the specific purposes for which personal data will be processed, the goods/services offered, as well as easy means for the user to withdraw consent or make complaints.⁴⁶ Consent must be verifiable and mechanisms should exist for users to

³⁶ Netmeds Privacy Policy, *supra* note 34 at cl. 11.1.

³⁷ The Consumer Protection Act, 2019 (Act 35 of 2019).

³⁸ *Id.* at s. 2(9).

³⁹ The Drugs and Cosmetics Act, 1940 (Act 23 of 1940).

⁴⁰ The Drugs and Cosmetic Rules, 1945 (Acts of Parliament) 1945.

⁴¹ The Pharmacy Act, 1948 (Act 08 of 1948).

⁴² Centre mulls regulations, stringent action against e-pharmacies amid concerns over data privacy, malpractices – The Economic Times, *available at*:

<https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/centre-mulls-regulations-stringent-action-against-e-pharmacies-amid-concerns-over-data-privacy-malpractices/articleshow/98614059.cms?from=mdr> (last visited on March 25, 2025).

⁴³ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).

⁴⁴ *Id.* at s. 2 (i).

⁴⁵ The Digital Personal Data Protection Rules, 2025 (Acts of Parliament) 2025.

⁴⁶ *Id.* at s. 3.

review, manage, or easily withdraw their consent at any time.⁴⁷ These obligations significantly raise the standard for transparency in e-pharmacy operations.

Under DPDP Rules, there is also an obligation on data fiduciaries to maintain comprehensive logs of consent and notice provision for at least one year, including systems enabling grievances to be raised and addressed by the responsible data protection officer.⁴⁸ There are also other such similar measures that are classified as ‘Reasonable security safeguards’ under the DPDP Rules.⁴⁹

Section 5(2) of the DPDP Act states that if the customer’s consent is given before the commencement of this Act, the data fiduciary has to further provide a digital notice to the user about the purpose of processing the personal digital data and how the user can withdraw their consent⁵⁰, thereby effectively protecting transactions entered into, before the commencement of the Act.

Section 6(4) permits the Data Principal (the user) to withdraw their consent to process personal data by the Data Fiduciary⁵¹. Further, section 6(5) states that once the consent of the user is withdrawn, the data fiduciary will cease to process the user’s data, including the data given before the withdrawal of consent⁵². On the contrary, as observed earlier in the essay, the privacy policies of e-pharmacies state that, even if the user withdraws consent, the e-pharmacies can still process the data given before withdrawal.

The DPDP Rules also require data fiduciaries to erase personal data once the purpose is no longer served or consent is withdrawn, with prior intimation to users regarding impending erasure.⁵³ Data may only be retained for legitimate interest periods or as required by law, and data fiduciaries are obligated to implement security safeguards including encryption, access controls, and breach notification protocols.⁵⁴ As data fiduciaries, e-pharmacies have significant obligations under the existing law. Therefore, e-pharmacies are yet to amend their privacy policies to comply fully with the existing legal framework.

Moreover, the DPDP Rules establish the role of a consent manager, who is responsible for facilitating the management of user consent in a transparent manner.⁵⁵ The consent manager

⁴⁷ *Ibid.*

⁴⁸ *Id.* at s. 6.

⁴⁹ *Ibid.*

⁵⁰ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023) s. 5 (2).

⁵¹ *Id.* at s. 6 (4).

⁵² *Id.* at s. 6 (5).

⁵³ The Digital Personal Data Protection Rules, 2025 (Acts of Parliament) 2025, s. 8.

⁵⁴ *Id.* at s. 7.

⁵⁵ *Id.* at s. 4.

must maintain verifiable records of consent transactions, provide mechanisms for users to review and update their consent choices, and promptly communicate any changes or withdrawals to the relevant data fiduciaries.⁵⁶ This mechanism ensures accountability and empowers consumers in managing their personal data with e-pharmacies.

The Information Technology Act, 2000⁵⁷ (“IT Act”) provides for the regulation, keeps checks on electronic commerce, and is used by many Market-Based Models of e-commerce platforms to escape liability. Due to this, most e-pharmacies in India are based on market-model operations. Hence, they tend to qualify as “Intermediaries” under Section 2(1)(w)⁵⁸ of the IT Act. Accordingly, an intermediary such as an e-pharmacy, is exempt from liability for any third-party information, data, or communication link made available or hosted by it under section 79 of the IT Act. This may also include any information supplied by the individual sellers or transactions made by the sellers on such a platform.⁵⁹

In the case of *Kunal Bahl vs. State of Karnataka*⁶⁰, the Hon’ble Karnataka High Court summarized the role played by the intermediaries by distinguishing them from the actual seller. The matter pertains to criminal proceedings initiated against Snapdeal (e-commerce platform), its directors, and the actual seller using Snapdeal to sell tablets, which violated Section 18(c) of the D&C Act⁶¹. The Court quashed the proceedings, citing the safe harbor given to intermediaries under the IT Act. The Court pointed out that even though Snapdeal owned and operated the platform, the actual seller was selling the prohibited tablets on the platform⁶². Therefore, in light of section 79 of the IT Act, Snapdeal and its directors acted as intermediaries and are exempted from criminal proceedings⁶³.

Therefore, it is evident that existing domestic legislations, even the recent ones, such as the DPDP Act, have not been able to safeguard consumer privacy effectively. Though substantially, they do provide some safeguard to consumers, the defective implementation of these laws will render them ineffective.

⁵⁶ *Id.* at sch. 1.

⁵⁷ The Information Technology Act, 2000 (Act 21 of 2000).

⁵⁸ *Ibid.* at s. 2(1)(w).

⁵⁹ *See Ibid.* at s. 79.

⁶⁰ MANU/KA/0929/2022.

⁶¹ The Drugs and Cosmetics Act, 1940 (Act 23 of 1940), s. 18(c).

⁶² *Kunal Bahl v. State of Karnataka (Snapdeal case) supra* note 58.

⁶³ “Karnataka High Court Quashes Criminal Case Against “Snapdeal” For Sale Of Drugs Without License”, LiveLaw 16 Mar 2022, available at: <https://www.livelaw.in/news-updates/karnataka-high-court-quashed-criminal-case-snapdeal-drugs-and-cosmetics-act-194306> (last visited on March 23, 2025).



V INTERNATIONAL DEVELOPMENTS

In making a firm data protection system, developments around the world become significant sources of information to build more effective laws which ensure that consumer's right to privacy isn't compromised.

Canada governs data collection, usage, and sharing under Personal Information Protection Act, 2000⁶⁴. All organizations, including online pharmacies, are subject to this Act. The use of the data is severely limited, with specific criteria established for its application. A few instances of these grounds include when the individual has acted in contravention of the laws of Canada⁶⁵, or when it has to do with Canada's national security⁶⁶.

Currently, Canada is undergoing legislative reforms with the upcoming Consumer Privacy Protection Act (CPPA), which imposes stricter data breach notification requirements and greater accountability for organizations handling sensitive data, including e-pharmacies, thereby enhancing consumer protections.⁶⁷

The Act also establishes regulations for the use of the data in research. According to paragraph 7(2)(c) of the Act, the information must be used in a manner that would maintain its confidentiality, it is impractical to acquire consent, and the organization notifies the Commissioner of the use before the information being used⁶⁸. Adhering to such strict protocols prior to data use guarantees that the information is not misused.

The British Columbia Court of Appeal in Canada applied the provisions of the Act in the case of *B.M.P. Global Distribution Inc. vs. Bank of Nova Scotia*⁶⁹. In the case, a bank released information about the plaintiff's business and accounts to another bank claiming that the plaintiff had acted in contravention of the laws of Canada⁷⁰. The Court stated that the disclosure must be made only by an "Investigative Body" who is authorized to do so. Since the banks weren't authorized, they violated the provisions of the Act by disclosing information⁷¹.

⁶⁴ The Personal Information Protection and Electronic Documents Act, SC 2000, c 5.

⁶⁵ *Id.* at s. 7(2)(b).

⁶⁶ Legislative Services Branch, "Consolidated Federal Laws of Canada, Personal Information Protection and Electronic Documents Act", (2019), available at: <https://laws-lois.justice.gc.ca/eng/acts/p-8.6/page-1.html> (last visited on December 24, 2024) at s. 7(3)(c.1)(i).

⁶⁷ Innovation, Science and Economic Development Canada, "Consumer Privacy Protection Act" (Innovation, Science and Economic Development Canada, 2023) available at: <https://ised-isde.canada.ca/site/innovation-better-canada/en/consumer-privacy-protection-act> (last visited November 26, 2025).

⁶⁸ *Id.* at s. 7(2)(c).

⁶⁹ [2009] 1 SCR 504.

⁷⁰ *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, [2009] 1 SCR 504.

⁷¹ *Ibid.*



It is worthwhile to consider the regulations of e-pharmacies in the European Union (“EU”). The General Data Protection Regulation (“GDPR”)⁷² is the primary law governing data management in the EU. Art. 9 of GDPR prohibits processing and revealing of data relating to health and medical records⁷³. Nevertheless, it is subject to clear-cut exceptions. Processing would be allowed, for instance, if it was required to safeguard the subject’s or any other natural person’s vital interests⁷⁴. Such exceptions eliminate any possibility of doubt by guaranteeing that any alternative justification for processing not complying with the exceptions is illegal.

Since March 2025, the European Health Data Space (EHDS) Regulation has supplemented GDPR to specifically regulate the safe exchange and use of health data.⁷⁵ It grants patients the ability to limit or opt-out of their data being used for secondary purposes, while mandating that data access requests are approved by Health Data Access Bodies (HDABs).⁷⁶ Thus, the enhanced regulatory framework protects prescription data handled by e-pharmacies.

In *Doorstep Dispansaree Ltd. vs. Information Commissioner (DDL)* case⁷⁷, the government body fined the pharmacy, DDL for violating the provisions of the GDPR. DDL stored data of its clients like their names, insurance numbers, prescriptions, etc. However, it was found that around 47 crates of clients’ data were stored in an insecure area which exposed documents to damage⁷⁸. Since DDL failed to reasonably protect the personal data of its clients, and it couldn’t take defense of any exceptions under the GDPR, it was fined a sum of 275,000 GBP⁷⁹.

Recent enforcement actions under GDPR highlight increasing fines on online pharmacies for data privacy violations. For example, a Finnish pharmacy, Yliopiston Apteekki, was fined over €1 million in 2025 for improperly sharing users’ health-related online activity and IP addresses with third parties like Google and Meta without adequate security measures or consent.⁸⁰

⁷² The General Data Protection Regulation (GDPR) Regulation 2016/679.

⁷³ *Id.* at art. 9.

⁷⁴ *Ibid.*

⁷⁵ Sarah Van Drumpt et al., “Secondary use under the European Health Data Space: setting the scene and towards a research agenda on privacy-enhancing technologies,” 7 *Frontiers in Digital Health* 1602101 (2025).

⁷⁶ “Reuse of health data - Public Health - European Commission,” 2025 available at: https://health.ec.europa.eu/ehealth-digital-health-and-care/reuse-health-data_en (last visited November 26, 2025).

⁷⁷ *Doorstep Dispansaree Ltd. vs. Information Commissioner (DDL)* [2023] UKUT 132 (AAC).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ “Finnish SA: pharmacy company Yliopiston Apteekki issued administrative fine for online shop data protection shortcomings, European Data Protection Board, available at: https://www.edpb.europa.eu/news/national-news/2025/finnish-sa-pharmacy-company-yliopiston-apteekki-issued-administrative-fine_en (last visited November 26, 2025).



The GDPR⁸¹ further identifies the rights of a ‘data subject’⁸². For instance, the data subjects have a right to be informed about the personal data being retrieved from them and the period for which it will be stored (Art. 13)⁸³. In addition, they have the right to restrict processing of personal data (Art. 18)⁸⁴, to object to processing (Art. 21)⁸⁵, and to have their personal data destroyed, often known as the ‘Right to be Forgotten’ (Art. 17)⁸⁶. The subject also has recourse to effective remedies for any violation of his privacy (Chapter 8)⁸⁷.

Such explicit provisions protect the rights of the data subject effectively, and thus international legislations are able to safeguard consumer health privacy effectively. Clear and unambiguous laws ensure that the privacy of citizens is not interfered with⁸⁸. The Indian legal system must enact and enforce laws similar to the GDPR.

VI CONCLUSION AND RECOMMENDATIONS

It is crucial to acknowledge the importance and versatility of e-pharmacies. E-pharmacies had already proven their fibre during the COVID pandemic when access to medicine and medical devices was severely affected; it had benefited the public at large, especially people based in Tier-II/ Tier-III cities and remote locations, where finding authentic and affordable healthcare is complicated, to say the least. With better internet facilities and improved infrastructure, e-pharmacies will play a pivotal role in establishing a public healthcare system.

It is evident from the analysis of policies of these E-Pharmacies that there is a significant threat to Consumer Privacy by these industries. Further, from the analysis of Right to Privacy, it is clear that Users being the persons of inherence can enforce it against the E-Pharmacies and thus, e-pharmacies are bound to respect Consumer’s privacy.

Examination of existing laws regulating e-pharmacies also reveals the areas where the law lacks in. The legislations don’t focus on user privacy which must change. Greater emphasis on Consumer’s consent is needed, at least in situations where sensitive information of users is at stake. It is also required that laws made must be implemented properly. Keeping in mind the international developments, a practical law which deals with user’s concerns must be drafted.

⁸¹ General Data Protection Regulation (GDPR) – Official Legal Text, GENERAL DATA PROTECTION REGULATION (GDPR), available at: <https://gdpr-info.eu/> (last visited on December 23, 2024).

⁸² See *Ibid.* at art. 4(1).

⁸³ *Id.* at art. 13.

⁸⁴ *Id.* at art. 18.

⁸⁵ *Id.* at art. 21.

⁸⁶ *Id.* at art. 17.

⁸⁷ *Id.* at Chapter 8.

⁸⁸ Jed Rubenfeld, “The Right of Privacy”, 4 Harvard Law Review 737 (1989).



India must also consider the laws in other jurisdictions, taking several facets of their laws regarding privacy.

Furthermore, it must be ensured that clear and transparent process of obtaining informed user consent must be implemented by E-Pharmacies, so that customers are completely aware of the data being collected, and the purpose for which it is used.

The information collected must further be divided into two types, necessary data and optional data. The consumers may opt to share or not to share the “optional data” with these e-pharmacies, while they must share the “necessary data”. This is similar to the cookies system used by most websites today, which is usually classified into necessary and optional cookies. The use of the data being collected, must further be clearly communicated to the consumers to avoid any potential misuse.

Another suggestion would be to anonymise consumer data to avoid any concerns of privacy violations. This may be done through removal or encryption of personal identifiers of users, in such a manner that the data so collected becomes anonymous.

E-pharmacies must also be encouraged to adopt modern cybersecurity practices, such as encryption, firewalls, and intrusion detection systems, which aids in protection of sensitive consumer data. Consumers must also be made aware about the potential risks and misuse of their data. They must be empowered to make well-reasoned decisions concerning their data.

Therefore, the only thing needed right now is well-implemented, clear rules and regulations from the Union, keeping in mind the safeguards against consumers’ personal information. A balanced regulation that can put all the concerns to rest is what one expects from the Government.

PRINCIPLED DEFECTION OR PARTY BETRAYAL? RE-EVALUATING THE GREY AREA UNDER THE TENTH SCHEDULE

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“In democracy, dissent is an act of faith”.

- J. William Fullbright

ABSTRACT

In Indian politics, the word “defection” often brings to mind images of betrayal and political instability. But what if, sometimes, crossing party lines isn’t just about power grabs, what if it’s about principles? This article takes a close look at the Xth Schedule of the Constitution of India, the law meant to prevent political defection, and explores the grey areas that surround it. While the law was designed to bring stability and discipline to politics, it has also raised serious concerns, especially when it punishes dissenting voices that may actually be acting out of conscience or ideological conviction. By introducing the idea of “principled defection,” the article challenges the black-and-white approach of the current system. It dives into real-life cases, examines the role of the Speaker, and questions how political motivations often influence legal outcomes. Ultimately, it calls for a more thoughtful and balanced understanding of defections, one that protects democratic values while still holding politicians accountable.

Key Words: Tenth Schedule, Anti-Defection Law, Principled Defection, Indian Politics, Legislative Disqualification

I INTRODUCTION

“Freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties”¹ and is the mother of all liberties. Being the largest democracy in the world while limiting the right of the legislators to express their conscience in the parliament is one of the most critical scenarios which could prevail. It is often said that incomplete knowledge is one of the most dangerous forces in any society, especially when it influences how laws are understood and applied. When statutes and legal provisions leave grey areas, they create confusion and open a Pandora’s box of divergent interpretations. This not only leads to legal uncertainty but also creates room for unintended and potentially harmful applications, ones the legislature may never have envisioned.

It’s been more than 40 years since the law against defection was introduced in India through the Xth Schedule of the Constitution for curbing political opportunism and upholding party discipline. While its aim was to safeguard democratic stability, its application has often strayed into ambiguous territory, raising questions about both its effectiveness & ethical implications.

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¹ ANI, “Delhi court dismisses complaint against Kerala MLA Jaleel over alleged remark on Kashmir” *The Print*, November 12, 2022, available at:

“<https://theprint.in/india/delhi-court-dismisses-complaint-against-kerala-mla-jaleel-over-alleged-remark-on-kashmir/1213332/>” (last visited on March 6, 2025).

Over the passage of time, politicians have found diverse ways to manoeuvre around its provisions, at times rationalising their actions by claiming ideological shifts or moral compulsions. This has resulted in surging tension between the letter of the law and the spirit of democratic representation.

This article explores the delicate balance between party loyalty and individual conscience, dissecting the grey areas within the law and examining how the idea of “principled defection”² has shaped the contours of contemporary Indian politics.

II MEANING & DEVELOPMENT OF ‘ANTI-DEFECTION LAW’

The term ‘defection’ derives its genesis from the Latin word *‘defectio’*, which means “an act of abandonment of a person or a cause to which such person is bound by reason of allegiance or duty, or to which he has wilfully attached himself.”³ According to a study conducted by the Ministry of Home Affairs, defection is officially defined as the act of a legislator transferring their allegiance, among other possibilities, from one political party to another, or to a distinctly identifiable political group.⁴ But this is sometimes confused with ‘dissent’, which is essential for a democratic institution, which is referred to as principled defection in this paper.

The evolution of the anti-defection jurisprudence in India can be traced back to the early years of the Indian Republic. In the years following independence from the colonial regime, the Indian National Congress enjoyed overwhelming support and maintained a near-monopoly over political power. However, the stability of this political order began to erode even before the mid-1960s. The earliest instance of defection was noted during British times, when Shyam

² “Principled defection is a phenomenon in democratic governance where an elected representative consciously decides to break away from the political party that supported their election based on a strong ideological or moral conviction. Rather than viewing defection solely as an act of betrayal, proponents argue that such a departure can serve as a vital corrective mechanism, enabling legislators to act in alignment with the evolving interests of their constituents and with broader democratic values. In essence, principled defection is not driven by transient political expediency or personal gain but by the imperative to uphold ethical standards when a party’s stance contradicts the legislator’s conscience or the public mandate. Critics, however, contend that any deviation from established party discipline can weaken the collective mandate on which electoral victories are based, thereby undermining government stability and the cohesion of political parties. From this perspective, the notion of principled defection risks being reduced to a myth, a rationalisation for individual dissent that may, in practice, lead to fragmentation within legislative bodies.”

³ “G.C Malhotra, *Anti-Defection law in India and the Commonwealth* (Metropolitan Book Co. Pvt. Ltd, Delhi, 1st edn., 2005).

⁴ “Diya Sarkar & Prafulla C. Mishra, “An Analytical Study on the Politics of Defection in India”, *12 International Journal of Law and Political Science* 305 (2018).”



Lal Nehru⁵ and Hafeez Ibrahim⁶ defected⁷ to join hands with the British and the Congress⁸ respectively. Highlighting that the seeds of political defection had been sown long before independence.

The political landscape devolved into a chaotic struggle for power, where true political principles were disregarded. The primary focus shifted to a frantic, competitive pursuit of power and material gains. This situation worsened because non-Congress parties offered incentives, turning the political landscape into a system where personal desires were traded for positions of authority.⁹ This practice was perfectly exemplified by the infamous case of Haryana MLA Gaya Lal¹⁰, who swapped party allegiance 3 times in a day. His actions led to the popularisation of the phrase “*Aaya Ram, Gaya Ram*”, a term that has since become synonymous with defections in India.

Handgrave and Kochanek¹¹ observed that between 1967 and 1983, there were over 2,700 documented instances of defection in the State Assemblies. The Congress Party gained

⁵ Shyam Lal Nehru is widely cited as representing a foundational historical instance of political defection in India, preceding the post-1967 “*Aaya Ram Gaya Ram*” era. As a member of the Central Legislative Assembly (under the Montagu-Chelmsford Reforms), Shyam Lal Nehru was elected on the ticket of the Congress Party but subsequently crossed the floor to align with the British side. This act was not merely a shift in political stance but a fundamental change of allegiance from the national movement to the colonial government. Pandit Motilal Nehru, then the leader of the Assembly party, strongly condemned and expelled Shyam Lal Nehru for this action.

⁶ Hafiz Mohammed Ibrahim was initially elected to the Uttar Pradesh Legislative Assembly in 1937 on the ticket of the Muslim League. However, he soon executed a major political shift by defecting to join the Indian National Congress, a move that necessitated his resignation from the Assembly to seek re-election on a Congress ticket. This was a demonstration of political integrity that became less common in later defection eras. His decision to cross the floor and align with the Congress party marked a critical moment of Muslim political realignment in the build-up to partition. His subsequent political career was highly successful as he not only won the subsequent by-election on the Congress ticket but went on to serve as a Minister for Irrigation and Power in Prime Minister Jawaharlal Nehru’s Union Cabinet. His case illustrates that early instances of defection, while controversial, could lead to significant governmental appointments and reflect broader ideological or national shifts, unlike the later, purely opportunistic defections targeted by anti-defection legislation.

⁷ Sudarshan Aggarwal, “Anti-Defection Law in India”, 67 *The Parliamentarian* 22 (1986).

⁸ “G.C Malhotra, *Anti-Defection law in India and the Commonwealth* (Metropolitan Book Co. Pvt. Ltd, Delhi, 1st edn., 2005).

⁹ Diya Sarkar & Prafulla C. Mishra, “An Analytical Study on the Politics of Defection in India”, 12 *International Journal of Law and Political Science* 305 (2018).”

¹⁰ Gaya Lal was a Member of the Legislative Assembly from Haryana who holds a unique and central place in the history of Indian political defection, as his actions gave rise to the popular political idiom ‘*Aaya Ram, Gaya Ram*’. In a single day in 1967, during a period of intense political instability in the state, Gaya Lal dramatically changed his party allegiance three times. The political chaos was perfectly encapsulated when, after his second defection back to the Congress side, the Congress leader Rao Birender Singh brought him before the press and declared, ‘*Gaya Ram is now Aaya Ram.*’ This rapid, opportunistic switching of loyalties became the national symbol of political corruption, instability, and a lack of ideological commitment among elected representatives. The notoriety surrounding Gaya Lal’s actions provided the most compelling and urgent political justification for Parliament to enact the Tenth Schedule (the Anti-Defection Law) in 1985.

¹¹ Handgrave and Kochanek are Robert L. Hardgrave Jr. and Stanley A. Kochanek. They are two prominent American academics and political scientists renowned for their detailed, quantitative analyses of Indian politics. Their work on the period following the 1967 General Election provided the most compelling empirical evidence regarding the scale of political instability caused by defection. Their seminal finding, frequently cited in legal and academic texts concerning the Anti-Defection Law, documented more than 2,700 cases of defection in the State

significantly from this instability, benefiting from approximately 1,900 of those defections. Even more alarming was the fact that defection led to the collapse of 16 State Governments in the single year of 1968.¹² Due to the alarming frequency of defections in a short period, legislative action became clearly necessary. Consequently, in 1967, Parliament established a high-level committee, led by Shri Y. B. Chavan¹³, and composed of constitutional experts and political party representatives, to examine the problem of legislators 'floor-crossing'. This committee characterized defection as a 'national malady that was destroying the fundamental strength of our democracy.'¹⁴

The committee urged parties to agree on a shared, voluntary code of conduct overseen by a cross-party panel and to insist that MPs stay loyal to the symbol under which they were elected, keeping the government stable. It also said that from now on, only Lower House members can be PM or CM, defectors must sit out of ministerial or perk-bearing roles for a year (or until they win again), and cabinets should be kept small to curb inducements while dropping any idea of penalising parties that take in defectors.

To curb rising political instability from frequent defections, the Xth Schedule, known as the Anti-Defection Law of India, was introduced through the 52nd Amendment in the year 1985. Subsequent amendments, including the 61st, 65th, and 91st, refined the law by tightening loopholes, regulating mergers and splits, and reinforcing disqualification for defection to promote party discipline and deter opportunism.

Over the years, the courts, especially in cases like *Kihoto Hollohan v. Zachillhu*¹⁵, have backed the Anti-Defection Law but also pointed out the need to balance party discipline with an individual's right to speak up. While the law has helped control political defection, many feel

Assemblies between 1967 and 1983. Crucially, they quantified the resultant governmental instability, noting that 16 State Governments were brought down by defection in 1968 alone. Their research established the magnitude of the 'national malady' and provided the authoritative statistical basis that ultimately underscored the necessity of the Tenth Schedule (Anti-Defection Law) to protect the stability and integrity of Indian democracy.

¹² Csaba Nikolenyi, "The Adoption of Anti-Defection Laws in Parliamentary Democracies", 15 *Election Law Journal* 101 (2016).

¹³ Shri Yashwantrao Balwantrao Chavan was a prominent leader of the Indian National Congress and a senior politician who, in 1967, was appointed to head the high-level Committee on Defections. This committee was established by Parliament in direct response to the pervasive and destabilizing political 'floor-crossing' that followed the 1967 General Election, symbolized by the 'Aaya Ram, Gaya Ram' phenomenon. Comprising constitutional experts and representatives from various political parties, the Chavan Committee was the first formal body tasked with examining the issue. Its key contribution was formally defining defection and, more importantly, labeling the practice as a 'national malady which was eating into the very vitality of our democracy'. Although the Committee's recommendations for legislative action were not immediately adopted, its report provided the seminal diagnosis and the moral and intellectual foundation that was later drawn upon when the Parliament eventually enacted the Tenth Schedule (Anti-Defection Law) via the 52nd Amendment in 1985.

¹⁴ V.S. Ramadevi & S.K. Mendiratta, *How India votes: Election Laws, Practice and Procedure* (Lexis Nexis, New Delhi, 2nd edn, 2008)."

¹⁵ 1992 Supp (2) SCC 651 (India 1992).



it's sometimes misused to silence honest dissent and healthy debate within parties, which can hurt the spirit of democracy.

In a nutshell, India's anti-defection law has developed over time as a reaction to shifting political loyalties, indicating the country's ongoing effort to balance stable governance while protecting a lawmaker's right to speak and act freely.

III INSIDE THE XTH SCHEDULE

The Xth Schedule was introduced primarily to serve as a robust deterrent against opportunistic defection among elected representatives. By establishing stringent criteria and disqualification mechanisms for defection, the Schedule was designed to foster party discipline along with governmental stability, ensuring that political loyalty remains steadfast and that the integrity of the legislative process is sustained. The term 'defection' has nowhere been defined expressly in the Xth Schedule; nonetheless, the Xth Schedule under clauses (a) and (b) of Para 2(1) stipulates the acts which could be considered as an act of defection.¹⁶ A member of the House may be disqualified on the grounds of defection in two primary circumstances. 'Firstly, if the member voluntarily relinquishes their membership of the political party to which they belong.' 'Secondly, if the member votes or abstains from voting in the House contrary to the official direction issued by their political party or its authorised representative without obtaining prior approval.'

The two modes of defection can be classified and elaborated as -

Voluntary Defection

As already enumerated earlier, voluntary defection is specified in 'Para 2(1)(a) of the Xth Schedule' as 'voluntarily giving up his membership of his political party'. An act of voluntarily giving up their political party membership by a legislator is not restricted only to a formal, written resignation.¹⁷ A determination can be made based on the member's actions, which indicate they have abandoned their allegiance. An inference can be drawn from the conduct of a Member that he has voluntarily given up his membership of the political party to which he belongs.¹⁸ Hence, repeated conduct, public/press statements against one's own party and its leadership, and openly aligning with the rival political party, and activities of a similar nature,

¹⁶ D.D. Basu, 15 *Commentary on the Constitution of India*, (LexisNexis, New Delhi, 9th ed., 2017).

¹⁷ *Ravi S Naik v UOI*, AIR 1994 SC 1558 (para 11).

¹⁸ Viswajith Anand, "Anti-Defection Law: What Amounts To Voluntary Giving Up Of Party Membership Under Tenth Schedule Of Constitution?", *LiveLaw*, July 19, 2020, available at: <https://www.livelaw.in/know-the-law/anti-defection-law-what-amounts-to-voluntary-giving-up-of-party-membership-under-tenth-schedule-of-constitution-160114> (last visited on March 22, 2025).



may amount to voluntary giving up membership of one's own party.¹⁹ The act of writing to the Governor to request the opposing party's leader be called upon to establish a government, taken by defecting Members, is sufficient evidence to be considered a voluntary relinquishment of membership from the political party on whose mandate they were elected.²⁰ The act of being expelled from a political party does not cause a legislator to lose membership status within the party that sponsored their election candidacy. The individual remains affiliated with that original party, even when designated as 'unattached'. The anti-defection provisions are triggered only when the legislator makes a positive choice to affiliate with another political party.²¹

Defection by 'voting against the party whip' or 'abstaining from voting'

Para 2(1)(b) of the X Schedule includes 'the act of voting against the party whip' within the ambit of defection. This essentially includes both the acts to abstain from voting and voting against the 'direction' of the party to be considered as defection. In the landmark case of *Kihoto Hollohan v. Zachillhu*²², the Apex Court adopted a restrictive view of the 'direction' issued by a party, the violation of which may entail disqualification. The court went on saying that such direction should pertain to two matters, i.e., (a) a vote on motion of confidence or no confidence in the Government; (b) where the motion under consideration relates to a matter which is an integral policy and programme of the political party on the basis of which it approached the electorate.²³ Moreover, the Supreme Court also held that Para 2(1)(a) should be read as an addition to Para 2(1)(b) and not independently. However, such direction of the Hon'ble Supreme Court to make a restrictive interpretation of this provision is not in practice, as the current scenario prevailing in the parliament is that either the member of the political party acts as a puppet and votes in favour of the party decision or gets disqualified, in all scenarios. Neither the statute nor the judiciary is able to cure such an ailment arising out of the defection laws. A detailed explanation of this is provided in the following sections of the article.

IV GREY AREAS IN THE TENTH SCHEDULE

“Statutory ambiguity provides a convenient tool for political compromise, allowing legislators who disagree about the merits of specific policies to agree on an ambiguous provision that can

¹⁹ *Chandra Prasad Singh v. Sharad Yadav*, (2021) 13 SCC 794.

²⁰ D.D. Basu, 2 *Shorter Constitution of India*, (LexisNexis, New Delhi, 16th ed. 2021); *Rajendra Singh Rana v Swami Prasad Maurya*, AIR 2007 SC 1305 (paras 48 and 49), relying on *Ravi S Naik v UOI*, AIR 1994 SC 1558.

²¹ D.D. Basu, 2 *Shorter Constitution of India*, (LexisNexis, New Delhi, 16th ed. 2021); *G Vishwanathan v Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras*, AIR 1996 SC 1060.

²² 1992 Supp (2) SCC 651.

²³ D.D. Basu, 15 *Commentary on the Constitution of India*, (LexisNexis, New Delhi, 9th ed., 2017).

later be interpreted to satisfy their divergent goals”²⁴. The anti-defection statute under the Xth Schedule is such a tool in the hands of the legislators, which was meant to be a shield for a stable government, but has become a sword for the legislators to annexe the liberty of their party members, the reason being the ambiguous language of the anti-defection statute. The series of ambiguities in the lex commences from the quintessential definition of the word “anti-defection” itself.

Para 2 of the Xth Schedule attempts to determine the acts which constitute defection, as enumerated in the preceding section. The primary term ‘voluntarily giving up membership’ is left open for interpretation by the statute as it fails to confirm what all acts would constitute such giving up of the membership. Though judicial precedents have somewhere strived to define what the phrase actually means, nevertheless, it still lacks a precise definition and specific situations which would attract disqualification under the law. Additionally, the issue is not just about switching parties or defying the party whip; the crux becomes discerning when an individual cannot be deemed to have genuinely and voluntarily severed ties with their original political affiliation. As a consequence thereof, the anti-defection law finds itself caught in a web of uncertainties which has further led to introduction of an element of instability in the system, as lawmakers grapple with the intricacies of application of the law.²⁵ The noble intent of the legislature to stabilize the government has paradoxically been met with the vice of vagueness.

The other scenario which could invite defection proceedings is the ‘abstention from voting’ or ‘voting against the party whip by a member against the directions issued by the political party to which the member originally belongs’. As regards the issuance of the ‘party whip’, it may be highlighted that the 170th Report of the Law Commission of India, under the Chairmanship of Justice B. P. Jeevan Reddy²⁶, inter-alia had observed “whips may be issued only when the

²⁴ Mukesh Dosad, “Understanding Ambiguity in Statutory Language and Its Impact on Judicial Interpretation” (October 15, 2024).

²⁵ Anish Parhi, “Navigating the Grey: The Controversial Terrain of Anti-Defection Law in Contemporary Politics, Lawful Legal”, *Lawful Legal*, Dec. 17, 2023, available at:

“<https://lawfullegal.in/navigating-the-grey-the-controversial-terrain-of-anti-defection-law-in-contemporary-politics/>” (last visited on April 10, 2025).

²⁶ Justice B. P. Jeevan Reddy was a judge of the Supreme Court of India, whose contribution to the jurisprudence of the Anti-Defection Law is fundamental. He authored the pivotal majority judgment in the landmark case of *Kihoto Hollohan v. Zachillhu and others* (1992). In this ruling, the Supreme Court upheld the constitutional validity of the Tenth Schedule (the Anti-Defection Law, 52nd Amendment). Crucially, the judgment affirmed the expansive interpretation of “voluntarily giving up membership” (which goes beyond formal resignation) and established the Speaker/Chairman as the final adjudicating authority in defection cases. While the judgment did strike down paragraph 7 (which barred judicial review), it simultaneously upheld the rest of the law, cementing Justice Reddy’s opinion as the definitive legal framework under which anti-defection provisions operate in India

voting in the House affects the continuance of the Government and not on each and every occasion. Such a course would safeguard both the party discipline and freedom of speech and expression of the Members.”²⁷

Political Parties often issue whips in nearly every case, regardless of whether votes affect the government’s stability or not, to preempt dissent and ensure their control, reducing the practice to a tool for enforcing obedience rather than safeguarding governance. This situation grants political parties enormous power to suppress internal disagreement by using the threat of disqualification against their Members of Parliament (MPs) and Members of Legislative Assembly (MLAs). Elected representatives who challenge the party leadership risk losing their legislative seats for expressing differing views. The result is that the voices of these lawmakers are stifled on critical issues, as they prioritize retaining their seats over disagreeing with the party line.²⁸

This provision confers arbitrary power in the hands of party leaders to disqualify the members and places a blanket restriction on the Right of the elected representative of the party to ‘freely express his opinions in dissent to the party’ or ‘highlight the will of the people of his constituency’, if such will is not in consonance with the party beliefs as it will eventually lead to his disqualification. In the guise of a stable government, the quintessential purpose of the legislature, i.e., to discuss and debate the policies before formulating them is wholly being defeated as all the party members of a particular party would sing the same song while suffocating the independent view of the members.

Another contention which comes into picture is that dissent to the party whip does not always destabilize the government. It is evident from the situation where the dissenting member is from the opposition as the dissent from the party will not destabilize the government. Additionally, the Members of Rajya Sabha and State Legislative Councils do not have any role to play in forming the government, nevertheless, the anti-defection lex is also applicable to them, which holds to good logic. This makes it blatant that the applicability of the *lex* is less about providing stability to governments and more about strengthening the hands of the political party leadership in dealing with dissenting legislators.²⁹

today. His judgment solidified the state’s power to maintain party discipline and legislative stability over the individual legislator’s right to dissent.

²⁷ Dr Rup Narayan Das, “Anti-Defection Law in India: Contours and Concerns”, 104(4) *The Parliamentarian* 46 (2023).

²⁸ Chakshu Roy, “The Anti-Defection Law That Does Not Aid Stability”, *The India Forum*, Oct. 5, 2022, available at: “<https://www.theindiaforum.in/law/anti-defection-law-does-not-aid-stability/>” (last visited on April 10, 2025).

²⁹ *Ibid.*

To comprehend the deadlock better, one needs to understand the role of an MP in a democracy. There are majorly two broad schools of thought while assessing this role. First is the trustee model which contends that people expect their representative to exercise judgement on what is the best course of action. In other words, the MP has to evaluate the different policy options, and then make a decision. On the other hand, the delegate model advocates that the elected representative is essentially the mouthpiece for the constituency and should reflect their views in Parliament. The anti-defection statute subverts both these abovementioned notions, and forces the MP to be a delegate of the party. Taking an illustration, there is a Bill that an MP feels is not appropriate and hurts the interests of a large proportion of her constituents. However, the MP's party supports the Bill. Now herein, the MP can neither exercise independent judgement nor go according to the wishes of her electorate. The wishes of the party will trump all other considerations.

The law is seen as striking at the foundation of Indian democracy by undermining the system of checks and balances. Since the government, which holds a majority, can threaten its own MPs with disqualification, it can effectively eliminate internal dissent and ensure all decisions are passed without proper scrutiny. This has turned Parliament into an ineffective 'rubber-stamp'. Additionally, the accountability of elected representatives to their constituents is diminished. Unlike in other democracies (like the US, where voting records are scrutinized), Indian legislators can simply use the party's mandatory directive (diktat) as an excuse for their voting behavior, ultimately discouraging them from engaging in the difficult work of analyzing policy issues.³⁰

Madhu Limaye³¹ was a pioneer who stood against the dominant public opinion of the Anti-defection statute and warned the country against going ahead with this cure worse than the disease. In a series of articles (Law against Defections in The Times of India 1985), he

³⁰ MR Madhavan, "Anti-defection law doesn't work at crunch time. It needs to be scrapped", *Times of India*, July 2, 2022, available at:

"<https://prsindia.org/articles-by-prs-team/anti-defection-law-doesn%E2%80%99t-work-at-crunch-time-it-needs-to-be-scrapped>" (last visited on April 12, 2025).

³¹ Madhu Limaye was an influential Indian socialist leader, writer, and Member of Parliament whose tireless advocacy and legislative attempts significantly contributed to the eventual enactment of the Anti-Defection Law. Unlike the politicians who perpetuated the defection crisis (like Gaya Lal) or the jurists who interpreted the final law (like Justice Jeevan Reddy), Limaye represented the voice of political reform. Throughout the late 1960s and 1970s, Limaye persistently introduced Private Member Bills in Parliament specifically aimed at curbing the instability caused by 'floor-crossing'. His efforts kept the issue of defection, which he saw as a deep political corruption, at the forefront of the national debate long after the initial crisis, ensuring that legislative intervention remained a political imperative. Limaye's long struggle and detailed legislative proposals are crucial to understanding the political will and historical necessity that culminated in the passage of the Tenth Schedule (Anti-Defection Law) in 1985.

advocated that such an amendment struck at the core of parliamentary democracy. He summarized his contentions in three primary objections - (1) Parliamentary debates would become meaningless because the elected representatives would not be free to follow their conscience (2) The institution of 'whip' would encourage the dictatorship of party leaders (3) While this law might curb 'retail' defection, it would keep the doors open for 'wholesale' defections.³²

The Xth Schedule, in Para 4, contemplates that anti-defection law does not cover the cases of merger of the political parties. It is not always the case that if 2/3rd of the party members are defecting from the original party, they are defecting for a noble cause. This clause has created a room for the bureaucrats to do wholesale buying of the politicians and avoid getting the defecting members charged with defection by falling into the exception clause of Xth Schedule. This further suppresses the voice of those parties who have less number of representatives in the house, as it is easier to get 2/3rd members on one's side when the number of representatives are less. For example, a party has 10 members as representatives in the house and the task is to break away the support of 7 members from their original party to avoid getting the defecting members struck into anti-defection proceedings. Therefore, the purpose of providing protection to the cases of merger is wholly defeated by the political parties by exploiting a loophole in the statute.

V PRINCIPLED DEFECTION: MYTH OR DEMOCRATIC NECESSITY?

In the Indian context, the concept of principled defection presents a critical challenge to the 'Anti-Defection Law'. The statute has been widely criticised for its inadequacy to distinguish between defection and dissent, thereby penalising legislators who vote against party lines, even on matters of conscience or public interest. The distinction between the two is vital in a parliamentary democracy where deliberation and diversity of opinion from the core values. This conflation of genuine ideological disagreement with political betrayal curtails essential democratic freedoms and undermines the foundational principle of representative responsibility.

"The right to dissent finds its existence in the Preamble to the Constitution of India in the form of liberty of thought, expression, belief, faith, and worship. Although the expression 'liberty' does not have fixed content and may not be easy to define, it is given content by Clauses (a) to

³² Yogendra Yadav, "One lone, brave voice stood up against anti-defection law in 1985. All his predictions came true", *The Print*, July 6, 2022, available at: "<https://theprint.in/opinion/one-lone-voice-stood-up-against-anti-defection-law-his-predictions-came-true/1027214/>" (last visited on April 12, 2025).

(c) of Article 19(1).”³³ These clauses guarantee the ‘freedom of speech and expression’,³⁴ ‘freedom to assemble peaceably and without arms’,³⁵ and the ‘freedom to form associations or unions’.³⁶ All the abovementioned freedoms act as the agent through which expression of dissent can be made. However, the Anti-Defection Law, by penalising dissenting votes, effectively limits these constitutional freedoms within the legislative sphere. This protection is reinforced by the values of liberty and plurality articulated in the Preamble and by judicial pronouncements in landmark cases such as ‘*Keshavananda Bharti v. State of Kerala*’³⁷ and ‘*Indira Gandhi v. Raj Narain*’,³⁸ “where democracy was declared a basic feature of the Constitution. Aside from unrestricted speech, the Constitution provides for free voting in Parliament.”³⁹

Courts typically view the act of voting by citizens as equivalent to protected speech, based on the premise that casting a vote functions as a mechanism for an individual to convey their sentiments, ideas, or political opinions.⁴⁰ The right to vote for the candidate of one’s choice is nothing but freedom of voting, and it is the essence of a democratic polity. While the right to vote is a statutory right, the freedom to vote is considered a facet of the fundamental right enshrined in Art. 19(1)(a).⁴¹ ⁴² Yet, within the legislature, this freedom is effectively curtailed under the whip system, where deviation attracts disqualification even when exercised for ethical or constituency-driven reasons. This situation fosters a chilling effect, discouraging legislators from voicing alternative viewpoints, even when doing so aligns with public welfare or the Constitution.

³³ Deepak Gupta, “The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta, *The Wire*, Feb. 24, 2020, available at: <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta>.” (last visited on April 12, 2025).

³⁴ The Constitution of India, Art. 19(1)(a).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ (1973) 4 SCC 225.

³⁸ (1975) 2 SCC 159.

³⁹ The Constitution of India, Art. 105(2).

⁴⁰ *Mian Bashir Ahmad v. State of J&K*, AIR 1982 J&K 26; *People’s Union for Civil Liberties v. Union of India*, (2004) 2 SCC 476, para 55.”

⁴¹ *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 69; *People’s Union for Civil Liberties. v. Union of India*, (2009) 3 SCC 200.

⁴² Kartik Khanna & Dhvani Shah, “Anti-Defection Law: A Death Knell for Parliamentary Dissent?”, 5 *NUJS Law Review* 103 (2012).

Few members of the Committee made for Defection, namely Prof. Bal Raj Madhok⁴³, Bhupesh Gupta⁴⁴, and Shri H. N. Kunzru⁴⁵, emphasised that dissent constitutes a fundamental aspect of a democratic system and must be distinguished from opportunistic defection. Prof. Madhok had argued that defections are often symptoms of a deeper issue- namely, the lack of ideologically coherent parties and inadequate political education, which leads to confusion between principled dissent and unethical party switching. Mr. Gupta reinforced this by stating that while many defections are driven by personal gain, others stem from ideological protest, citing, e.g. of Congress leaders who left the party in protest against its betrayal of ideals and encouragement of unwholesome practices, including the act of engineering defections. He advocated for introducing a recall provision, empowering the electorate to judge the legitimacy of such actions. Shri. Kunzru further insisted on differentiating between individual and group defections, arguing that group-level shifts based on ideology or principled disagreement should not be treated the same as solitary, self-serving defections. Collectively, they called for a more nuanced and democratic approach that respects ideological dissent and principled shifts, rather than treating all defections as unethical or illegitimate. These early voices remain profoundly

⁴³ Prof. Bal Raj Madhok was a prominent academic and politician, known for his association with the Jan Sangh (a precursor to the Bharatiya Janata Party, or BJP) and his tenure as a Member of Parliament. In the context of anti-defection, Madhok is significant for his role as a prominent voice in the national debate during the unstable post-1967 political period. While his positions were often framed by his party's specific political strategy, he was an active member of the legislative process attempting to address the floor-crossing epidemic. Specifically, he was a member of the high-level Committee on Defections (the Y. B. Chavan Committee) established in 1967. His participation underscores the fact that the crisis of defection was widely recognized across the political spectrum, from the Congress Party (Chavan) to the Jan Sangh (Madhok), as a fundamental threat to democratic functioning and legislative stability, thus building the necessary cross-party consensus for eventual legislative intervention.

⁴⁴ Bhupesh Gupta was a veteran communist leader and an influential voice in the Rajya Sabha for nearly three decades, representing the Communist Party of India (CPI). In the context of the Anti-Defection Law, Gupta is significant because he, like Madhu Limaye, was among the earliest and most persistent non-Congress members who recognized the threat posed by political defection. He consistently used his position to introduce and support legislative measures aimed at curbing the instability and corruption inherent in "floor-crossing," particularly in the aftermath of the 1967 General Elections. His proposals and detailed arguments in the Rajya Sabha were instrumental in building the legislative history and cross-party awareness necessary for the eventual passage of the Tenth Schedule (Anti-Defection Law) in 1985. His commitment helped frame defection not merely as a matter of party discipline, but as a critical threat to the parliamentary system itself.

⁴⁵ Shri Hriday Nath Kunzru was a distinguished statesman, veteran parliamentarian, and member of the Constituent Assembly of India. While his primary fame rests on his deep commitment to liberal values and constitutionalism, Kunzru is highly relevant to the context of anti-defection because he was a member of the Constituent Assembly's Sub-Committee on Fundamental Rights. More specifically, Kunzru's early legislative actions and observations highlighted the importance of individual conscience and the freedom of expression for elected representatives. During the debates of the early post-independence era, Kunzru raised concerns about any measure that might excessively bind the conscience of a legislator, often championing the independence of the elected representative. His perspective represents the counter-argument in the defection debate: the critical democratic tension between ensuring party discipline (the need for anti-defection laws) and protecting the freedom of speech and conscience of individual Members of Parliament, a tension that remains central to the judicial challenges of the Tenth Schedule today.

relevant today, especially as political parties continue to blur the lines between control and coercion.

Furthermore, in *Parkash Singh Badal*⁴⁶ Tewatia, J. opined that by literally interpreting the term ‘any direction’ mentioned in Para 2(1)(b), ‘the people’s representative becomes a completely political party’s delegate, which he is positively not.’⁴⁷ In essence, this interpretation risks transforming elected legislators into mere agents of party leadership, devoid of autonomous judgment. The Apex Court has on occasion opined that Paragraph 2(1) infringes on the rights and immunities exercised by the Members of Parliament and Legislative Assembly under Articles 105(1) and 194(1) respectively.⁴⁸ “The jurisdictions with anti-defection laws fall on one extreme of the spectrum, prioritising cohesion to the exclusion of the need for a multiplicity of voices in democratic decision-making.”⁴⁹ Anti-cross-voting legislation mandates that members of the legislature must adhere to and vote in the manner officially determined by their respective political parties.⁵⁰ When Members of Parliament (MPs) are required to follow their party’s dictates in their legislative conduct, political parties can no longer be seen as merely private or quasi-public groups. Instead, they must be recognized as legislative entities themselves. Even without specific laws mandating party-line voting, leaders often enforce strict discipline, which practically eliminates or severely limits internal dissent among their MPs.⁵¹ It could be attributed to the rise of norms and expectations among voters that make it ‘profoundly difficult to admire the legislator who takes his or her direction from the party leadership’.⁵² In such environments, fear of party reprisal often overrides a legislator’s commitment to constituent interests or personal convictions.

Anti-defection legislation can place severe constraints on legislators’ ability to exercise behind-the-scenes influence.⁵³ This is not merely because of the severity of the penalty (disqualification from parliament) but also because, in some cases, they enable leaders of the ruling party to enact legislation simply by issuing whips. Indeed, armed with a large majority,

⁴⁶ *Parkash Singh Badal v. Union of India*, I.L.R. 1 P&H 251.

⁴⁷ Apurva Mehta, “Anti-Defection Law: A Conflict Between the Right to Dissent and the Integrity of the Political Party”, 1 *Annual International Journal on Analysis of Contemporary Legal Affairs* 273-281, (2021).

⁴⁸ *Ibid.*

⁴⁹ Udit Bhatia, “What’s the Party Like? The Status of the Political Party in Anti-Defection Jurisdictions”, 40 *Law & Philosophy* 305-334 (2021).

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Russell Muirhead, *The Promise of Party in a Polarized Age* 178-179 (Harvard University Press, London, 2014).

⁵³ Udit Bhatia, “Cracking the Whip: The Deliberative Costs of Strict Party Discipline”, 23(2) *Critical Review of International Social and Political Philosophy* 272 (2020); Peter Dorey, “Policy Making in Britain: An Introduction” 41 (Sage Publishing, London, 2014).

a party can disqualify rebels and ensure safe passage for its legislation. Similarly, an opposition party can disqualify legislators who vote with the government, potentially blocking a law from attaining, say, a supermajority. This is significant insofar as backbenchers' ability to block their party's decisions alters leaders' incentive structure for engaging with backbenchers. In other words, by threatening them with disqualification from parliament, the anti-defection law significantly reduces legislators' ability to exercise influence over legislation.⁵⁴

Legislators must be adequately informed about diverse interests in society for a reasonable representation of their constituency. No individual or small group of individuals can possess all the pieces of information relevant for making laws. The power to make laws ought to lie, for this reason, in a 'large assembly consisting of hundreds of individuals, ranked roughly as equals'.⁵⁵ The insistence on the primacy of the legislature over the judicial branch in law-making can be seen as underpinned by the many minds principle.⁵⁶ Where law-making requires collective decision-making as a procedural necessity, legislative institutions must operate according to this principle. The anti-defection framework, however, undermines this very principle by silencing divergent perspectives and centralising decision-making in party leadership. As long as there remain institutionalised opportunities for critical contestation and the organisation's political culture permits their use, such deference can be seen as a form of division of labour rather than forfeiture of power.⁵⁷ Unfortunately, the current anti-defection regime forecloses these institutionalised opportunities, reducing Parliament to a mechanical majority rule system.

The democratic costs of rigid party discipline are stark. Data from PRS Legislative Research reveals that a significant number of bills are passed with little to no debate, and a large proportion of parliamentarians do not actively participate in legislative discussions.⁵⁸ This erosion of parliamentary deliberation is exacerbated by the misuse of party whips, even for matters that do not threaten government survival. Over time, this undermines the quality of

⁵⁴ *Id.* at 38.

⁵⁵ Jeremy Waldron, *Political Political Theory*, 116 (Harvard University Press, London, 2014).

⁵⁶ Adrian Vermeide, *Law and the Limits of Reason*, (Oxford University Press, England, 2008).

⁵⁷ *Ibid.*

⁵⁸ Vital Stats: Parliament in 2009, PRS Legislative Research, *available at*:

https://prsindia.org/files/parliament/vital_stats/1262663823--parliament%20in%2009.pdf (last visited on March 31, 2025); Vital Stats: M.P. Participation in Monsoon Session 2010, PRS Legislative Research, *available at*: <http://www.prsindia.org/administrator/uploads/general/1283599162~Vital%20Stats%20-%20MP%20participation%20in%20Monsoon%20Session%202010.pdf> (last visited on March 31, 2025); Vital Stats: Parliamentary Monsoon Session 2010, PRS Legislative Research, *available at*: http://www.prsindia.org/print.php?bill_id=1277&category= (last visited on March 31, 2025).

policymaking and fosters disengagement among both lawmakers and citizens. Such disengagement breeds political apathy and erodes trust in representative institutions.

While the Hon'ble Supreme Court, in '*Kihoto Hollohan v. Zachillhu*', upheld the constitutional validity of the Anti-Defection Law, it also acknowledged the vital role of dissent in shaping and modifying government policy. Real-world instances, such as Dr. Shashi Tharoor's public opposition to his party's stance on the privatisation of Thiruvananthapuram airport,⁵⁹ underscore the legitimacy and importance of principled defection. Tharoor's position, rooted in his commitment to his constituents, exemplifies how dissent can coexist with democratic accountability and enhance the quality of public discourse. His stand also catalysed debate in the media and civil society, showcasing how dissent by a public figure can amplify marginalised voices and prompt reevaluation of public policy. Such examples serve as compelling evidence that the anti-defection law must evolve to accommodate conscientious objection.

In conclusion, principled defection is not a myth but a democratic necessity. It safeguards the independence of legislators, enriches parliamentary debate, and reinforces accountability to the electorate. For Indian democracy to mature into a truly deliberative system, institutional space must be carved out for dissent, not suppressed in the name of stability.

VI IMPACT OF THE XTH SCHEDULE ON INDIAN DEMOCRACY

While the Anti-Defection statute has somewhat succeeded in curbing blatant defection and reinforcing party discipline, especially in coalition politics, its broad application has had adverse implications for the democratic ethos of parliamentary functioning.

In India, the party has become the central organisational pillar instead of the individual legislator.⁶⁰ The practice of democratic elections has not been accompanied by the development of democratic practices within political parties.⁶¹ The Anti-Defection *lex* entrusted the enforcement of discipline to party command structures. However, the question of whether party organisations were rooted in democratic legitimacy was left in the unregulated sphere, as it was difficult to monitor it beyond procedural propriety.⁶² Party leadership across the spectrum of

⁵⁹ Fatima K. “, Why participate in bidding, then question the game – Tharoor asks Kerala govt on airport”, *The Print*, July 11, 2021, available at: “<https://theprint.in/politics/why-participate-in-bidding-then-question-the-game-tharoor-asks-kerala-govt-on-airport-row/487855/>.” (last visited on April 18, 2025).

⁶⁰ Barun Mitra, “Anti-Defection: A Law Endangering Democracy”, *Mint*, Aug. 21, 2008, available at: “<https://www.livemint.com/Opinion/7ixDFllqfTwkR5tyL0cDjN/A-law-endangering-democracy.html>” (last visited on March 28, 2025).

⁶¹ Balveer Arora, “Can Democracy Flourish with Undemocratic Parties?”, *The Tribune*, Aug. 15, 2007, available at: “<https://www.tribuneindia.com/2007/20070815/independence/main3.html>.” (last visited on March 27, 2025).

⁶² *Ibid.*

Indian politics tend to be self-perpetuating oligarchies.⁶³ A similar problem was highlighted by the Law Commission,⁶⁴ where it noted that whips, which enforce party discipline, are unregulated and often overused. It recommended limiting whips to votes on motions of confidence, no-confidence, or party-core policies. Overuse of whips on every issue suppresses members' autonomy and stifles parliamentary debate. This creates a scenario where Members prioritise party loyalty over the democratic mandate of their electorate.

Furthermore, it was rightly observed in *Servants v. Osborne*⁶⁵ by Lord Shaw, which was also referred to in *the Kihoto Hollohan* case,⁶⁶ that subordinating a legislator's conscience to party commands contradicts the spirit of parliamentary democracy and undermines their accountability to their constituency. An essential characteristic of a real democracy is that 'an elected official remains accountable to their constituents even after being elected for office'. His constituents keep him accountable for their votes and actions during his next term re-election campaign. But the provisions only add fuel to the contrary. Also, Dr B.R. Ambedkar highlighted in the Constituent Assembly that the framers of the Indian Constitution deliberately chose the parliamentary system, prioritising accountability over stability.⁶⁷

An MP's loyalty lies with both their political party and the people they represent. While adherence to the whip shows party commitment, it must be balanced with the duty to constituents. Diverging opinions within a party shouldn't be seen as betrayal but as a healthy part of democratic discourse. Encouraging intra-party dissent and debate allows for more inclusive decision-making and strengthens intra-party democracy, provided party leadership is open to such expression.

Thus, while the law strengthens party cohesion, it simultaneously stifles dissent, raising critical questions about its compatibility with democratic values such as free speech, intra-party democracy, and legislative autonomy.

VII CHARTING THE PATH AHEAD

Even though the Hon'ble Supreme Court, in the case of '*Kihoto Hollohan v. Zachillhu & Ors.*', underscored the quintessential role of political parties in maintaining political stability and

⁶³ E. Sridharan, "Party System Fragmentation, Intra Party Democracy, and Opaque Political Finance, India in Transition", *Center for the Advanced Study of India*, 4 May 2009, available at: "<https://casi.sas.upenn.edu/iit/party-system-fragmentation-intra-party-democracy-and-opaque-political-finance>" (last visited on March 31, 2025).

⁶⁴ Law Commission of India, "170th Report on Reform of the Electoral Laws" (May 1999).

⁶⁵ [1910] AC 87 (HL).

⁶⁶ 1992 Supp (2) SCC 651.

⁶⁷ VII, *Constituent Assembly Debates*, 38.

social utility, there still persists a critical necessity to promote intra-party democracy. While this judicial reasoning highlights the requisite of maintaining a unified public image, it must be balanced against the democratic need for internal debate and the expression of dissenting views. The values of a representative democracy lie in the expression of diverse opinions. In a modern polity marked by digitalisation, globalisation, and increased public awareness, citizens are more informed and expect their elected representatives to echo their varied and nuanced concerns, even within the same political party.

Intra-party democracy allows for such diversity to be channelled constructively. Political parties should encourage internal debates and deliberations before arriving at a common consensus for public presentation. Such mechanisms would not only fortify democratic representation but also enhance the legitimacy and accountability of political decision-making. A robust democracy must curb the misuse of party whips by legally restricting them to free critical votes like confidence motions or key policy matters. Routine use of whips curtails legislators' autonomy and silences dissent, undermining parliamentary debate. A balanced approach, promoting intra-party democracy and regulating whip usage, can foster a more accountable, deliberative, and representative Parliament.

The judicial interpretations of the Tenth Schedule need to be refined, especially phrases like 'voluntarily giving up membership' and 'acting against party directions', which often ignore contextual or ideological nuances. As political dynamics evolve, judicial reasoning must shift to balance party unity with legislative independence and intra-party dialogue, aligning interpretation with the spirit of a modern constitutional democracy that values both collective responsibility and individual conscience.

Thus, a more progressive and purposive interpretation by the courts can help preserve the essence of representative democracy while upholding the constitutional mandate of political stability.

VIII RECONSTRUCTING THE TENTH SCHEDULE

A coherent distinction between dissent, principled defection, and opportunistic defection requires a structured doctrinal framework that can guide legislative reform and adjudicatory practice under the Tenth Schedule. A triple test may be adopted for this purpose.

The conduct component examines objective acts, such as formal resignation from party membership, acceptance of office or affiliation with another political party, or a sustained and unequivocal pattern of public alignment with a rival organisation. Isolated criticism or a single instance of disagreement should not trigger disqualification. The motive component evaluates

contemporaneous written explanations, constituency-based reasoning, and the legislative record to determine whether actions stem from conscience or ideological conflict (principled) or from personal advancement, inducement, or strategic advantage (opportunistic). The consequences component assesses whether the conduct is directed at destabilising the government or merely reflects disagreement on a non-core policy issue. To operationalise this framework, targeted legislative amendments are necessary. Whips should be restricted to confidence and no-confidence motions and budgetary or appropriation matters. The expression “voluntarily giving up membership” should be defined to include only resignation, acceptance of opposition party membership or office, sustained public realignment, or inducement-linked conduct. The Speaker should be mandated to issue reasoned decisions within a fixed period, such as 30 days, and members should be permitted to invoke a statutory “conscience-based defence” for dissenting votes supported by contemporaneous written justification.

A coherent understanding of “voluntarily giving up membership” and its limits has been shaped through several key decisions, each underscoring both the breadth of Para 2 and the constitutional space reserved for legitimate dissent. In *Rajendra Singh Rana*,⁶⁸ the Court observed that the anti-defection mechanism cannot operate as a barrier to honest political disagreement and clarified that disqualification is incurred at the moment a member voluntarily relinquishes party affiliation or defies a whip, rather than on the date of the Speaker’s decision. This position was reinforced in *Ravi Naik*⁶⁹ and later in *Sharad Yadav*,⁷⁰ where the Court held that “voluntarily giving up membership” is not confined to formal resignation; it may be inferred from conduct that demonstrates a clear abandonment of party allegiance, and such disqualification arises immediately upon the act constituting defection. Complementing this approach, *Balchandra Jarkiholi*⁷¹ drew a decisive line between dissent and defection by holding that loss of confidence in party leadership or government, or even departure from ministerial office, does not amount to deserting the party for the purposes of Para 2(1)(a). The Court emphasised that dissent remains outside the scope of defection and further clarified that Para 2(1)(a) and Para 2(1)(b) operate in distinct spheres governing abandonment of party membership and defiance of a whip respectively. Collectively, these decisions illustrate the need for a more precise doctrinal structure that can differentiate legitimate ideological disagreement from genuine acts of political defection.

⁶⁸ 2007 SCC OnLine SC 198 at pg. 296.

⁶⁹ 1994 Supp (2) SCC 641 at pg. 649, para 11.

⁷⁰ 2020 SCC OnLine SC 821 at pg. 800.

⁷¹ 2011 SCC OnLine SC 791 at pg.19.



These reforms can be strengthened through the recognition of Protected Legislative Dissent as a distinct category within the anti-defection framework. Such protection should apply where a legislator records dissent in the House or communicates written reasons to party leadership prior to voting, where the dissent is grounded in constitutional values, constituency interests, or identifiable ideological differences, and where there is no accompanying material inducement or subsequent affiliation with another political party. This category is consistent with the constitutional guarantees of expressive freedom and parliamentary independence under Articles 19(1)(a), 105, and 194. Its normative basis becomes clearer when assessed through a defined theory of democratic harm. Deliberative harm arises when excessive party control weakens legislative scrutiny and reduces the quality of debate. Representative harm occurs when party directives displace the preferences of constituents. Institutional harm results from the erosion of legislative autonomy and the consolidation of executive dominance. Chilling-effect harm emerges when the threat of disqualification deters lawmakers from participating fully or expressing legitimate dissent. Recognising Protected Legislative Dissent and refining the statutory framework accordingly would help maintain political stability while restoring the deliberative and representative character of parliamentary functioning.

IX CONCLUSION

The Anti-Defection Law was enacted with a noble cause of promoting political stability and preventing opportunistic shifts in allegiance. While it has somewhat succeeded in reinforcing party discipline, its rigid application has come at the cost of infecting intra-party democracy and legislative independence. The concept of principled defection challenges the notion that dissent within party lines is inherently destabilising. On the contrary, it argues for a more nuanced understanding, where dissent is seen as a reflection of conscience, ideological commitment, and accountability to constituents, rather than a betrayal of party loyalty.

To uphold democratic values in a real sense, there is a pressing need to reform both the legal and interpretative framework of the Tenth Schedule. Limiting the misuse of whips and encouraging internal party debate can ensure that political parties do not curtail the diversified opinions within a democratic society. Consequently, the judiciary must evolve towards a better contextual and evolving interpretation of defection, aligning with the democratic spirit of the Constitution. A system that allows space for conscience-based dissent, while maintaining party coherence, is essential for a more deliberative, participatory, and representative democracy.
