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Sports Law	Construction Law and energy
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We particularly welcome submissions relating to more recent and emerging topics of the legal arena including arbitration, cyber-crime, speedy justice, technology and law.

Papers should be between 5,000-10,000 words in length, although shorter papers relating to landmark case analysis and debate will be considered. The peer review process and decision on publication will normally be completed within 60 days of receipt of submissions. The Editors also welcome proposals for Special Issues and Guest Editorships.

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2. **Collaborative Submissions –** A submission could be a collaborative work of a maximum of three authors.
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4. **Abstract –** Submission of research papers and articles must be accompanied with an abstract of not more than 200 words.
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For the body of manuscript:

Font	:	Times New Roman
Font size	:	12 pts.
Line spacing	:	1.5
Alignment	:	Justified
For Footnotes:		
Font	:	Times New Roman
Font Size	:	0 pts.
Line Spacing	:	1

Footnoting: For all the categories of submissions, proper footnotes are mandatory. Submissions should not contain any hyperlinks.

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Submit your paper via **email to submissions@theijj.com** with the subject as "Submission of (mention the category) for the IJJ (Issue 3 Vol.3)".

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A STUDY ON IMPACT OF BAIL IN THE CRIMINAL JUSTICE SYSTEM

AUTHOR:
DELICIA A, Advocate

INTRODUCTION

The idea of bail may be traced lower back to 399 BC, while Plato attempted to create a bond for the discharge of Socrates[1]. The contemporary-day bail gadget advanced from a sequence of legal guidelines originating withinside the center a while in England[2]. There existed an idea of circuit courts at some stage in the medieval instances in Britain. In The Magna Carta, in 1215, step one turned into granting rights to citizens[3]. It stated that no guy may be taken or imprisoned without being judged through his friends or the regulation of the land. Then in 1275, the Statute of Westminster was enacted which divided crimes as bailable and non bailable[4]. It additionally decided which judges and officers should make selections on bail. In 1677, the Habeas Corpus Act turned into the Right Of Petition of 1628, which gave the proper to the defendant the proper to be instructed of the costs towards him, the proper to recognize if the costs towards him had been bailable or not. The Habeas Corpus Act, 1679 states, "A Magistrate shall discharge prisoners from their Imprisonment taking their Recognizance, with one or extra Surety or Sureties, in any Sum consistent with the Magistrate's discretion, except it shall seem that the Party is devoted for such Matter offenses for which through regulation the Prisoner isn't always bailable." The software for bail will be filed earlier than the Magistrate, who's engaging in the trial[5]. The software after being filed is typically indexed the following day. On this type of day, the software can be heard, and the police shall additionally give the accused in court. The Justice of the Peace might also additionally ship such orders, as he thinks fit. The elements such as, preceding behavior and conduct of the accused withinside the Court, the duration of detention of the accused and health, age and intercourse of the accused additionally can be taken into consideration on the time of provide of bail. Recently, the Supreme Court underlined that “there's an urgent need” for reform withinside the regulation associated with bail and known as at the authorities to not forget framing a unique regulation at the traces of the regulation withinside the United Kingdom[6]. The author attempts to analyze whether a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.A bench of Justices A M Khanwilkar and J B Pardiwala set aside a bail condition imposed by the Allahabad High Court to seal the premises of Mohammad Ali Jauhar University at Rampur while granting bail to senior Samajwadi Party leader and former Uttar Pradesh minister Azam Khan[7].The court said it was disturbed by such orders. It also pointed out a separate bench last week passed directions, setting aside a similar order. The top court had on July 18 stayed the adverse remarks and proceedings initiated by a Karnataka High Court judge against the state's Anti Corruption Bureau and its head in a bail matter, saying those observations were "irrelevant

1 Plato, *Crito*, in which Socrates' friends arrange for his escape from prison, which he refuses. See generally, I.A. Richards, *Plato's Republic* (Cambridge University Press 1966).

2 Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (2nd edn, Cambridge University Press 1968) vol 2, 584–89.

3 Magna Carta 1215, cl 39. (The original 1215 version, though later reissued, is the foundational text for this principle).

4 Statute of Westminster 1275 (3 Edw 1), ch 15.

5 Habeas Corpus Act 1679 (31 Cha 2 c 2), s 2.

6 Satender Kumar Antil v. Central Bureau of Investigation 2021 SCC OnLine SC 922, para 24.

7 Mohammad Azam Khan v. State of Uttar Pradesh, Order dated 26 July 2022 in Special Leave to Appeal (Crl.) No(s). 5691/2022 (Supreme Court of India).

and detrimental" to the fair trial for the accused in a bail matter[8].On July 14, the court had similarly set aside a Patna High Court's order that summoned Sahara group chief

Subrata Roy in an anticipatory bail case completely unrelated to him[9]. On Friday, after hearing senior advocate Kapil Sibal for Khan, the bench said, "This is yet another matter where we find the HC has referred to matters which are unrelated to prayer for bail in respect of crime. The High Court ought to have dealt with only those aspects which were related to bail and not venture into unrelated issues, much less to impose conditions much beyond what is required to ensure presence of accused during investigation and trial[10]." The High Court by its interim order on May 10, 2022, the High Court granted bail to Khan in an alleged case of grabbing of enemy property for the construction of the University[11]. It had directed the Rampur District Magistrate to take possession of the property attached to the campus of Jauhar University by June 30, 2022, and raise a boundary wall with barbed wire around it. Rationality and visibility are intricately tied to a discussion on equity in bail decision making. Rationality requires a direct link between the criteria for decision making and the intended bail outcome. However, where money bail is the predominant mode of securing bail in a legal system, a determination on bail and corresponding period of detention, as well as the factors driving it are 'low visibility' occurrences,as the ability to furnish bail is entirely dependent on the financial strength of the accused person, Equity demands that similarly situated accused persons are treated alike in terms of both process and outcome. This leads us to the principle challenge of identifying the driving factor behind a bail decision. Should a positive bail outcome depend solely on the financial capability of the accused? Alternatively, are factors like seriousness of the charge, community ties and circumstances of the accused more relevant? However, this is a difficult determination in any legal system in the absence of consensus on the main purpose behind a bail decision or a framework by which competing values may be weighed and In performing the balancing act between crime control and due process concerns while making bail decisions, three challenges of ensuring equity, rationality and visibility are evident,Higher courts in India have also failed to engage with the competing purposes of a bail decision, despite having upheld the cardinal rule of 'bail not jail' on more than one occasion. As under-trials are legally presumed innocent with little evidence to suggest guilt, any time spent in prison deserves justification. Excessively long prison time, even prior to establishing guilt of the detainee, is a matter of individual and societal concern due to its long-term debilitating effects on a person's health, income and employability, as well as costs to the family and the society at large and In its 268th Report, while reviewing the definition and purpose of bail in India, the Law Commission noted that "The current scenario on bail is a paradox in the criminal justice system, as it was created to facilitate the release of accused person but is now operating to deny them the release". However, despite the lament, the Law Commission failed to weigh competing principles or values that guide bail decision making and suggest an analytical framework[12].

OBJECTIVES:

1. To analyze whether a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.
2. To determine whether in case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.
3. To examine whether the purpose of bail is to help

8 State of Karnataka v. Uma Hiremath, Order dated 18 July 2022 in Special Leave Petition (Crl.) No. 5886/2022 (Supreme Court of India).

9 Subrata Roy Sahara v. State of Bihar, Order dated 14 July 2022 in Special Leave to Appeal (Crl.) 2022 (Supreme Court of India).

10 Mohammad Azam Khan v. State of Uttar Pradesh, Order dated 26 July 2022 in Special Leave to Appeal (Crl.) No(s). 5691/2022 (Supreme Court of India), para 4. [This quotes the Supreme Court's reasoning from the specific order in the Azam Khan case.]

11 State of U.P. v. Mohammad Azam Khan, Interim Order dated 10 May 2022 in Criminal Misc. Bail 2022 (Allahabad High Court)

12 The Legal Framework – Re-Imagining Bail Decision Making,Centre for Law & Policy Research.

ensure that a person accused of a crime does not leave town or miss specified trial dates in court.

4. To ascertain whether the bail is fair and it doesn't punish the poor and temporarily exonerates the rich.

LITERATURE REVIEW:

1. In some jurisdictions there is a presumption in favor of bail, even a right to bail . However, such a presumption or right is not universally accepted and in some jurisdictions there is a presumption against bail in certain situations and pretrial detention has effectively become preventative detention. (Bröder 2002)
2. Bail will, for example, be curtailed where there is a risk that the defendant will fail to appear at later court proceedings, will commit crimes, will interfere with the proceedings or poses a risk to victims or the safety of the public (Hannaford, n.d.)
3. It is hardly surprising that the information used by magistrates may predict which offenders are most likely to offend while on bail, rather than which offenders will fail to attend their hearing (Morgan and Henderson, 1998).
4. Psychologists contend that bail legislation is vague, constructs are ill-defined and silent on exactly what information magistrates should use and how that information should be weighted and integrated (Goldkamp and Gottfredson 1979).
5. While magistrates do not necessarily follow the legislation strictly, researchers have found that they generally apply the relevant provisions (Hucklesby, n.d.).
6. Nevertheless, inconsistencies found among magistrates that cannot be fully explained by the differences in the relevant cases, suggest that extra-legal factors may play a role (Gordon et al. 1988).
7. At one level this is inevitable because bail decision-making involves the exercise of discretion and subjective factors will therefore play a role. (Clifford and Wilkins 1976). This can be due to what Nagel calls bench bias, that is the tendency of particular magistrates “to prefer some kinds of outcomes to others regardless of case characteristics”.
8. However, inconsistencies between magistrates could also be due to social bias that involves the systematic discrimination against a specific group or groups of people. It is the latter that is of the greatest concern in the case of bail, personal characteristics such as age, gender, demeanor and race of defendants have been identified as factors that may play a role. (Bernat 1985)
9. Other factors that may influence bail decision-making include social status, community ties, familial relationship, and geographical location, such as whether the relevant court is situated in an urban or rural area. However, the findings in respect of some of these factors are not consistent(Unnever, n.d.)
10. From a social psychological perspective it would not be surprising if magistrates whose large caseloads force them to make fast decisions, make biased decisions. Under such conditions people tend to use mental shortcuts and focus on a minimum of information, usually one or two factors. (Rieskamp and Hoffrage 1999)
11. The use of fast and frugal heuristics may, at least partly, explain why the opinion of the prosecutor has, independent from other factors, consistently been shown to be strongly predictive of judicial bail decisions. (Bamford, King, and Sarre 1999)
12. Another possible explanation for the strong relationship between magistrates’ bail decisions and the opinions of police and prosecutors, is that the bulk of bail decisions are made at a very early stage of the judicial process when most of the available information will be coming from the police. Especially when defendants are unrepresented they are often so confused, distressed or ignorant that they fail to provide information that could influence the decision the magistrate makes. The sequence in which information is presented in a typical bail application may not be conducive to effective decision-making. **(Astor, 1986)**
13. Nor do magistrates have much opportunity to learn from experience because they receive no formal, and little informal, feedback about the appropriateness of their bail decisions. (Scraton 2007)
14. The factors that may influence the processes

and rates of adult remand in custody which may contribute to variation in remand rates in jurisdictions. They compared Victoria, South Australia and WA and found that there were significant differences between these jurisdictions. They were, however, not able to isolate any single factor that explains this difference. **(King, 1973)**

15. Detained remandees are more at risk of physical and sexual assaults and of contracting communicable diseases **(Barry, 1997)**. For example, people who are remanded in custody for the first time, display a higher prevalence of self-harm and suicide.
16. Being in custody reduces the likelihood that defendants will be able to afford legal representation, but even those defendants on remand in custody who can afford legal representation will be disadvantaged. The fees of a lawyer will likely be higher when the defendant is in prison as additional time and costs are involved in, for example, traveling to prison to consult the defendant. The lawyer will often also have to undertake tasks, such as finding witnesses, that a remandee on bail could see to personally **(Friedland, 1965)**.
17. Detention is stigmatizing and can erode remandees' family and community ties. The impact is likely greater for Indigenous people who may be "remanded in custody far from home, community, and even Language and Skin group" **(Fitzgerald & Marshall, 1999)**.
18. The discussion of the features of the bail system covers pretrial options of the court and potential adverse consequences of the bail system, and the analysis of the functions of the bail system focuses on factors that predict appearance, factors that predict pretrial criminal activity, and the effect of bail amount on pretrial behavior. Following a review of research literature bearing upon factors that judges use in setting bail, methodology and results are reported from this study's use of two research approaches in determining factors that influence bail decision making. **(Vladimir, 1982)**
19. A number of bail provisions have been identified by academics, community organizations, and court workers as having unintended consequences on vulnerable populations. For instance, reverse onus provisions, which place the responsibility on the accused for proving why they should be released, were noted as challenging for those with mental health issues or those that are not represented by counsel. **(Rogin, 2017)**
20. Concerns have been voiced with the increased focus placed on risk avoidance and risk management within the bail system. A risk averse mentality has influenced key decision makers, police officers, and the courts. This has limited the use of decision-maker's discretion and contributed to the practice of not releasing accused who present non-trivial levels of risk to re-offend, even those who allegedly committed minor offenses**.** (Webster 2015)
21. In cases of bailable offenses, bail can be requested as a matter of law and is almost never denied; however, in cases of non-bailable offenses, a request for bail can be made in good faith, and the courts' tendency to grant bail in most cases emphasizes the importance of this right in the individual context. ("Website," n.d.)
22. The right to liberty is the legal term for bail in criminal law. Articles 19 and 21 of the Indian Constitution provide the essential right to liberty, and this is related to that, which is universally recognized. The right to bail allows the accused to be freed from prison, enabling individuals to go about their everyday lives. This is strengthened by classifying charges as either bailable or non-bailable. When it comes to bailable offenses, the right to bail is usually granted; on the other hand, when it comes to non-bailable offenses, it's possible to request bail in good faith, and the courts usually grant it, which shows how important this right is in individual cases. (Scott-Hayward and Fradella 2019)

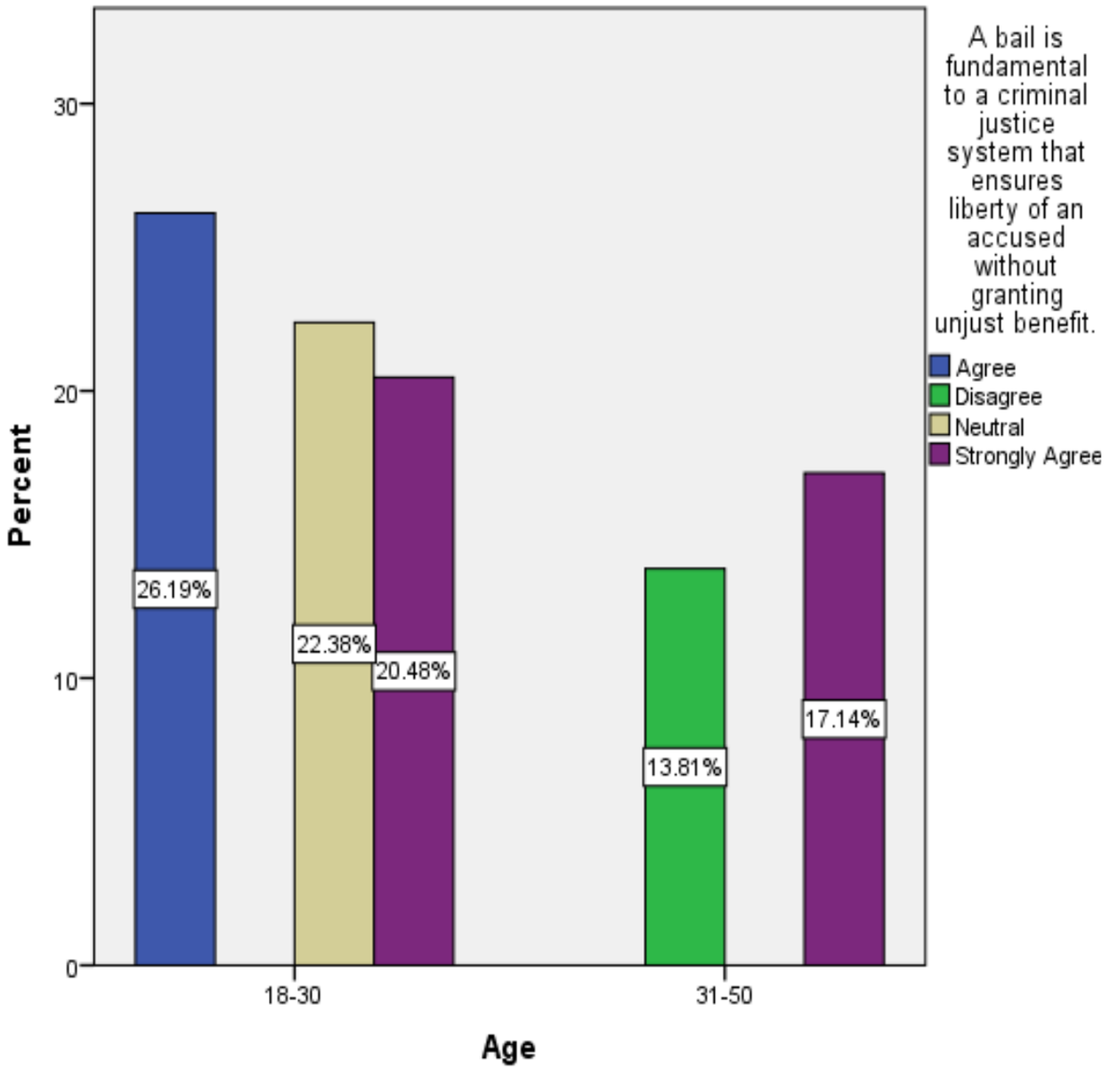
METHODOLOGY:

The method of research used in this study is Empirical research and This study is based on primary and secondary data,the primary data for this research has been collected through a questionnaire and the secondary data is through books,journals and various other research papers.the primary data has a respondent sampling of about 200 sample .the sampling method used in this research paper

is simple random sampling method and the instrument used in this is a well structured questionnaire with independent variables and dependent variable.The independent variable has the demographic information such as the age of the respondent,gender of the respondent,educational qualification of the respondent.

ANALYSIS:

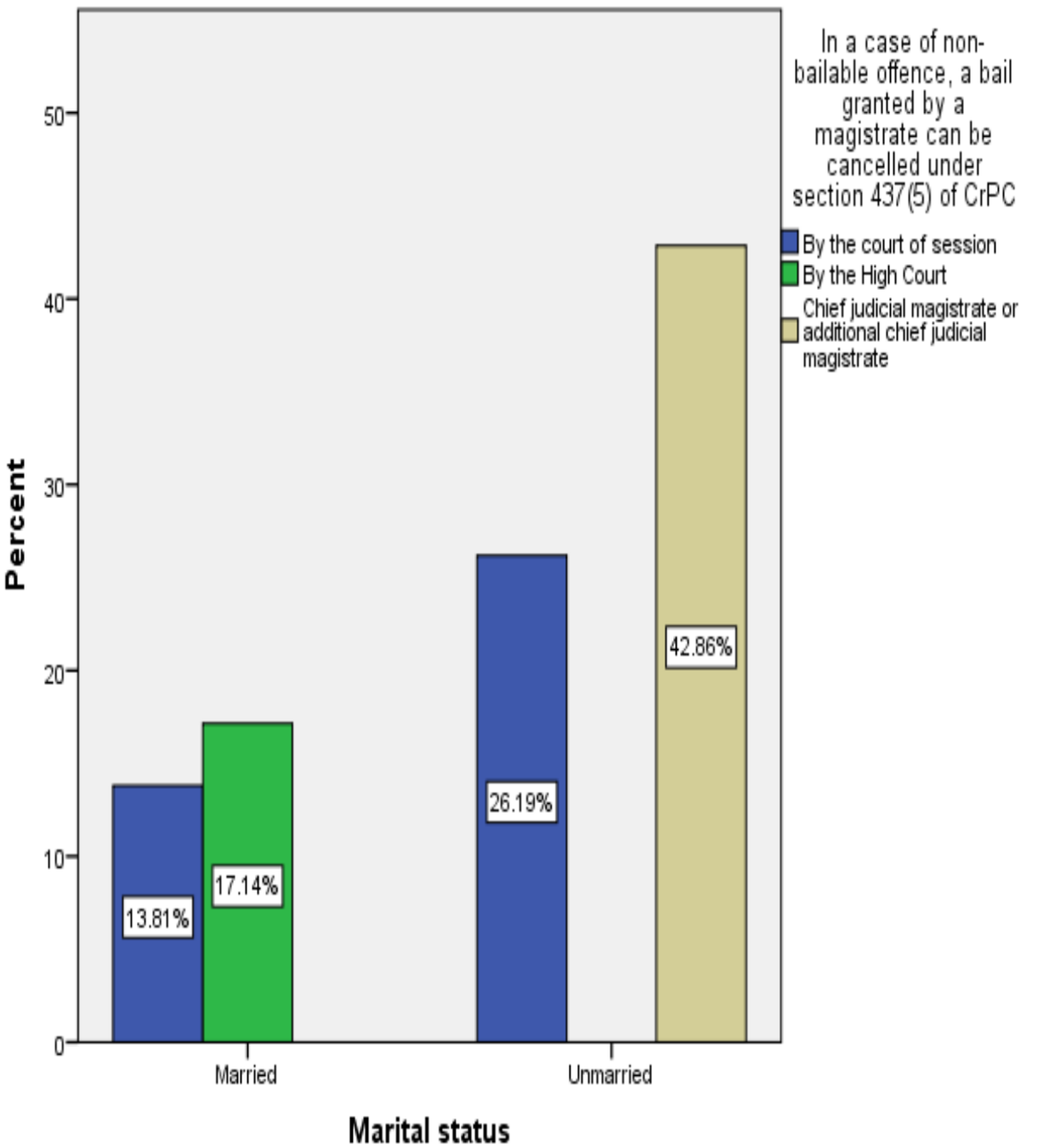
Figure 1:



Legend:

This graph shows the significant difference between age and bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.

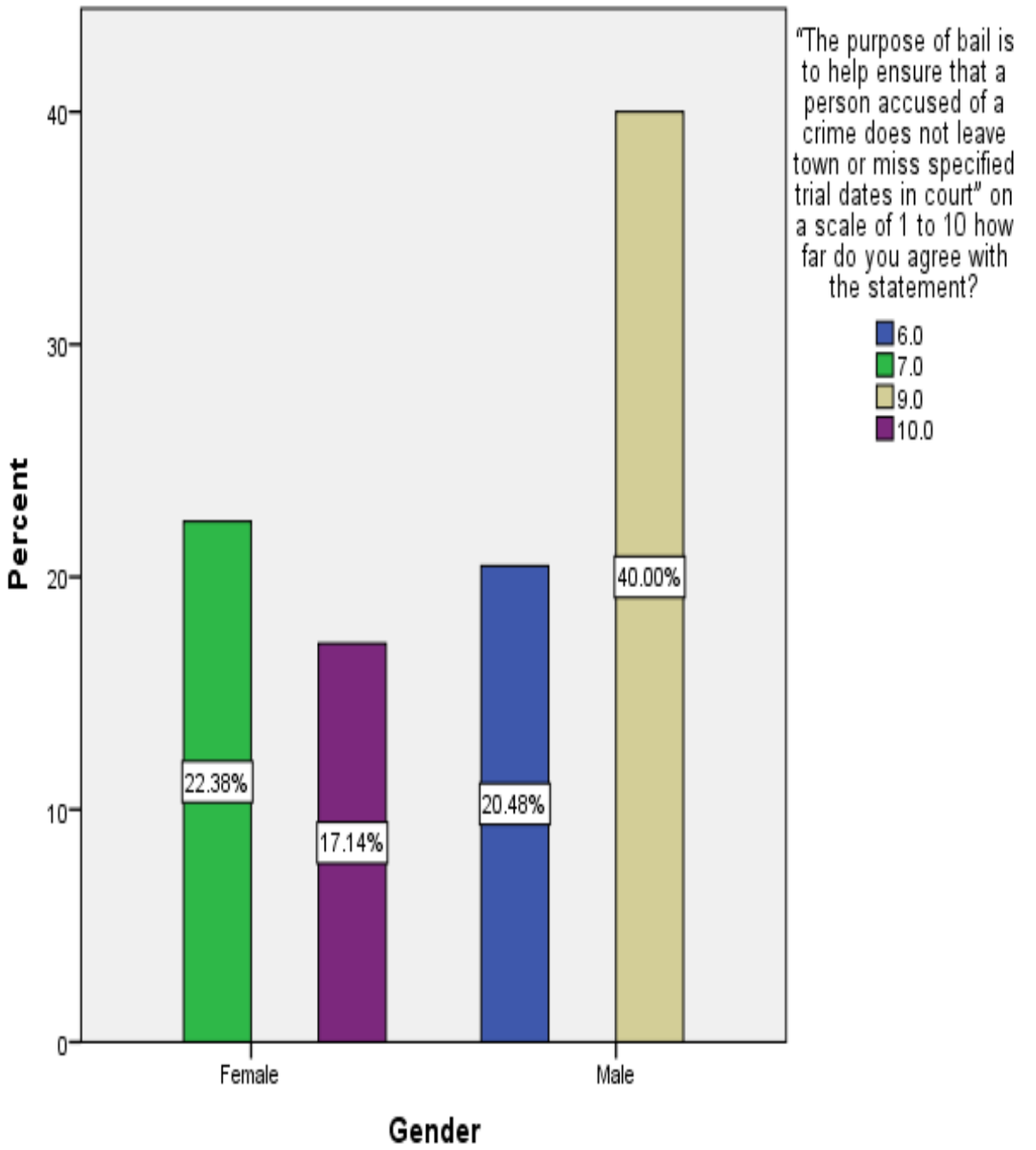
Figure 2:



Legend:

This graph shows the significant difference between marital status and in case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.

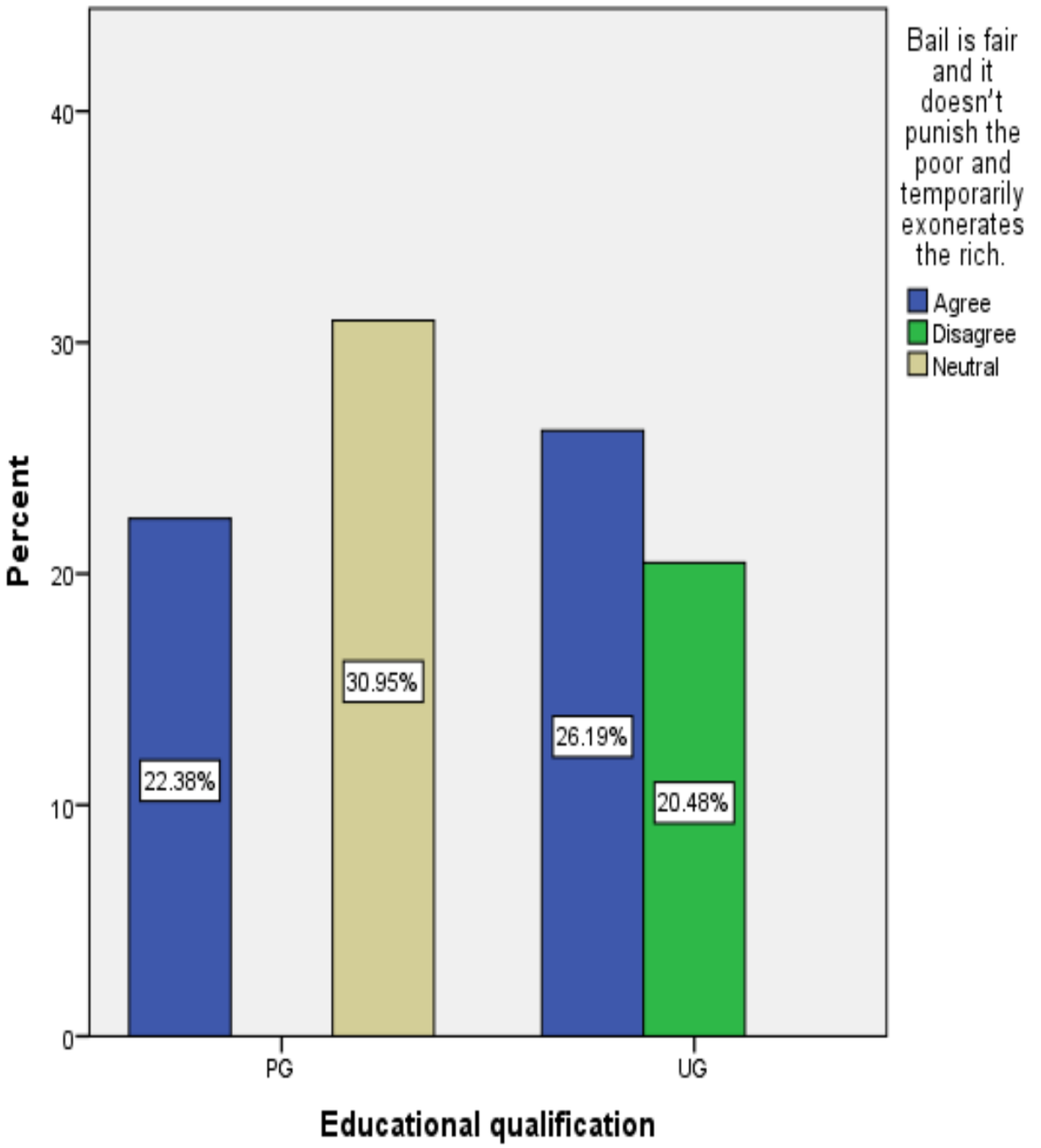
Figure 3:



Legend:

This graph shows the significant difference between gender and the purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court.

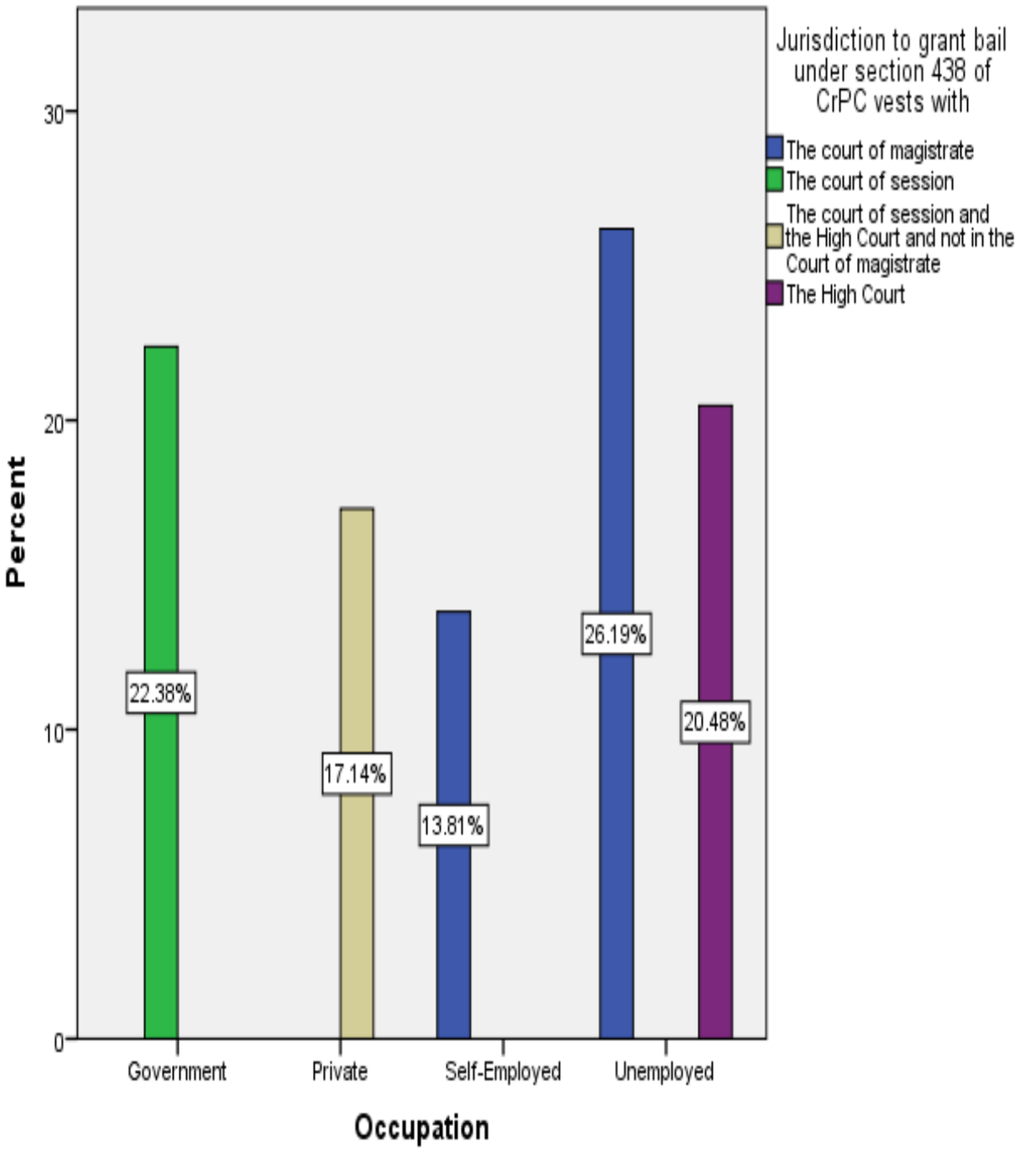
Figure 4:



Legend:

This graph shows the significant difference between educational qualification and bail is fair and it doesn't punish the poor and temporarily exonerates the rich.

Figure 5:



Legend:

This graph shows the significant difference between occupation and jurisdiction to grant bail under section 438 of CrPC vests with.

A STUDY ON IMPACT OF BAIL IN THE CRIMINAL JUSTICE SYSTEM

Figure 6:

Age * "The purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court" on a scale of 1 to 10 how far do you agree with the statement? Crosstabulation

Count

		"The purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court" on a scale of 1 to 10 how far do you agree with the statement?				
		6.0	7.0	9.0	10.0	Total
Age	18-30	43	47	55	0	145
	31-50	0	0	29	36	65
Total		43	47	84	36	210

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	121.154[a]	3	.000
Likelihood Ratio	151.595	3	.000
N of Valid Cases	210		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.14.

Legend:

This table shows the chi-square test to find significant differences between the dependent variable; the purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court compared with the independent variable age of the respondent.

Figure 7:

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	121.154[a]	3	.000
Likelihood Ratio	151.595	3	.000
N of Valid Cases	210		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.14.

Chi-Square Tests

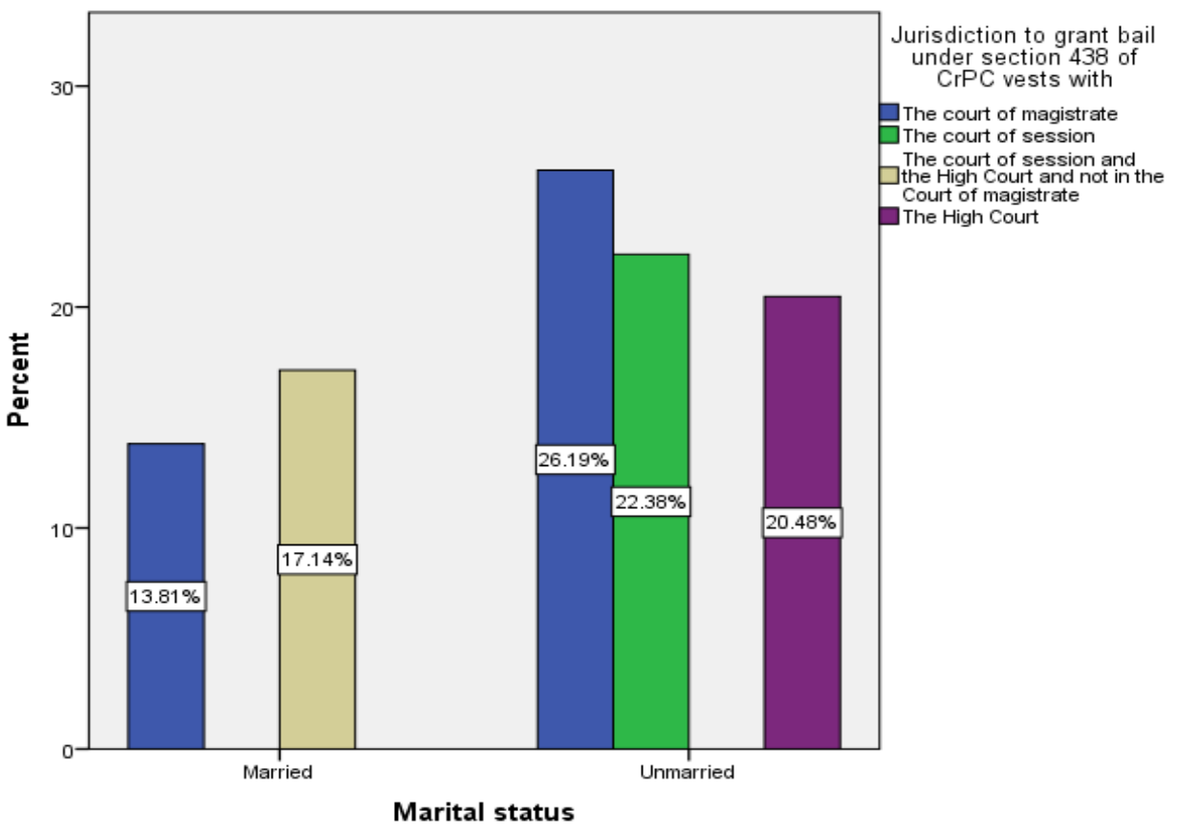
	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	36.777[a]	2	.000
Likelihood Ratio	51.706	2	.000
N of Valid Cases	210		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 17.00.

Legend:

This table shows the chi-square test to find significant differences between the dependent variable; bail is fair and it doesn't punish the poor and temporarily exonerates the rich compared with the independent variable gender of the respondent.

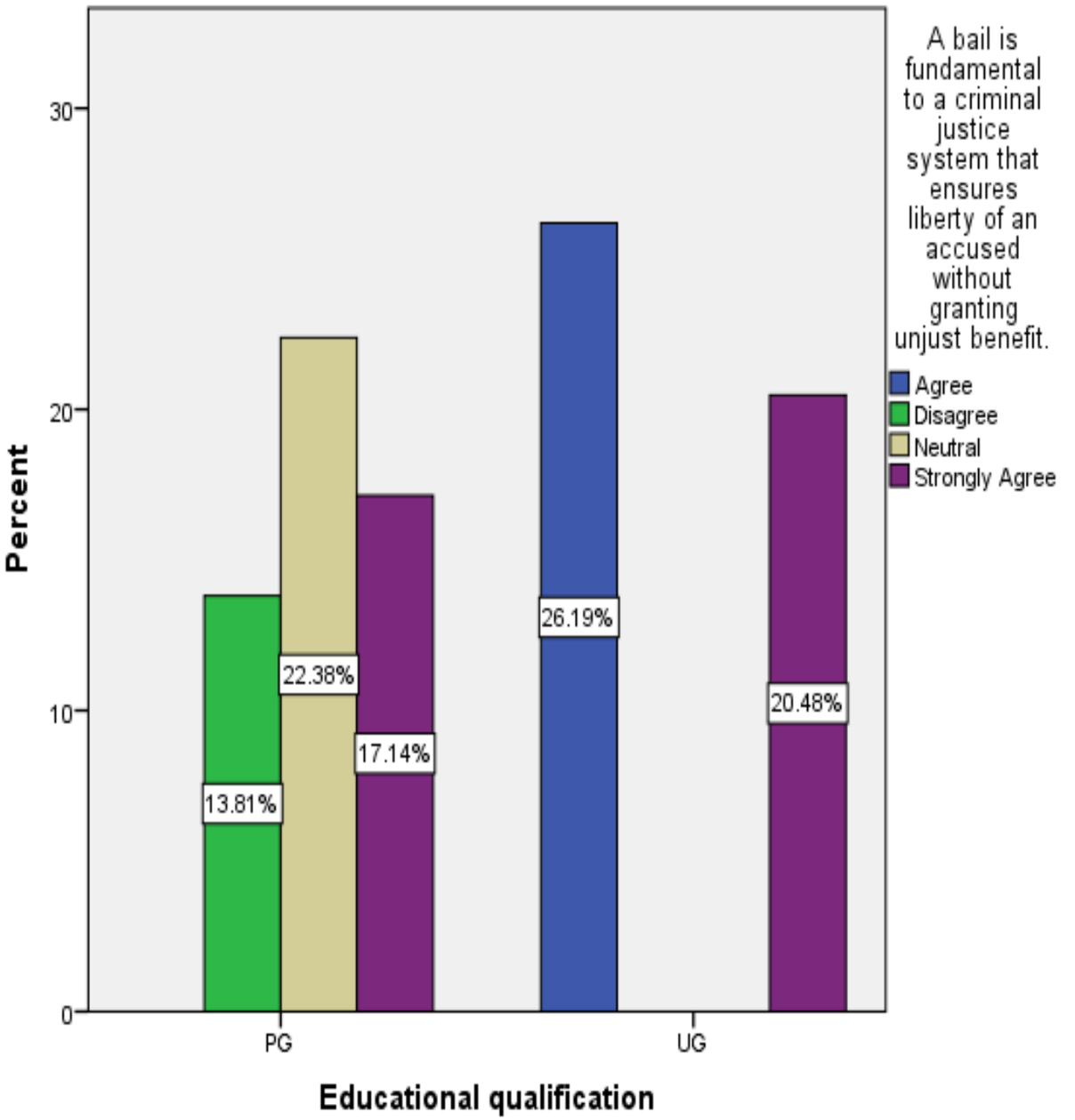
Figure 8:



Legend:

This graph shows the significant difference between marital status and jurisdiction to grant bail under section 438 of CrPC vests with.

Figure 9:

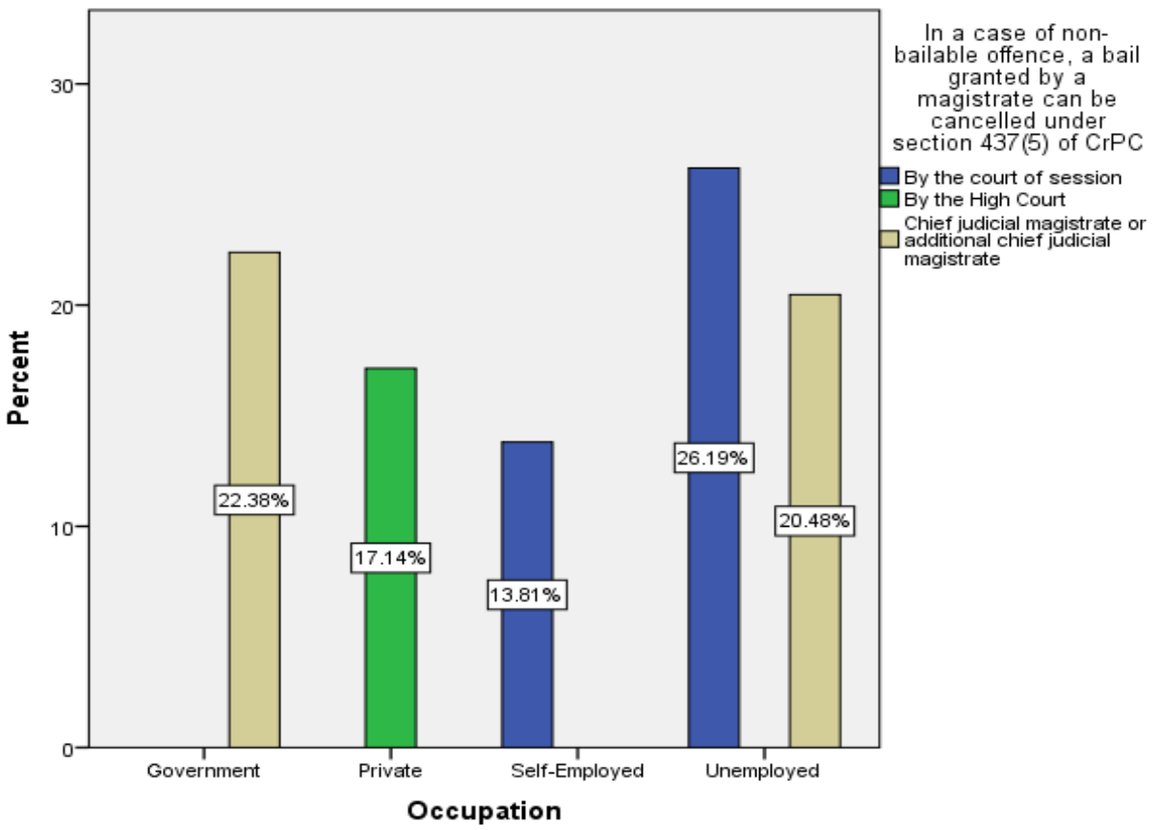


Legend:

This graph shows the significant difference between educational qualification and bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit.

A STUDY ON IMPACT OF BAIL IN THE CRIMINAL JUSTICE SYSTEM

Figure 10:



Legend:

This graph shows the significant difference between occupation and in a case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.

RESULT:

Figure 1: Most of the respondents of the age group belonging to 18-30 years have agreed and most of the respondents of the age group belonging to 31-50 years have strongly agreed that a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. **Figure 2:** Most of the married respondents have chosen " by the High Court" and most of the unmarried respondents have chosen Chief Judicial Magistrate or Additional Chief Judicial Magistrate that in a case of non-bailable offense, a bail granted by a Magistrate can be canceled under section 437(5) of CrPC. **Figure 3:** Most of the girl respondents have selected 7 on the dimensions and the male respondents have selected nine on the dimensions that the motive of bail is to assist make sure that someone accused of a criminal offense does now no longer depart metropolis or omit unique trial dates in court. **Figure 4:** Most of the PG respondents are neutral and the UG respondents have disagreed that bail is fair and it doesn't punish the poor and temporarily exonerates the rich. **Figure 5:** Most of the government employees have chosen the court of session, private employees have chosen the court of session and the High Court and not the court of magistrate, self-employed respondents have chosen the court of Magistrate and the unemployed respondents have also chosen the court of Magistrate that jurisdiction to grant bail under section 438 of CrPC vests with. **Figure 6:** $P<0.05$, the value of chi-square is .000 it is lesser than P value, Null hypothesis is rejected and Alternative hypothesis is accepted, there is no significant association between

independent variable and dependent variable. **Figure 7:** P<0.05, the value of chi-square is .000 it is lesser than P value, Null hypothesis is rejected and Alternative hypothesis is accepted, there is no significant association between independent variable and dependent variable. **Figure 8:** Most of the married respondents have chosen the court of session and the High Court and not in the court of Magistrate and most of the unmarried respondents have chosen the court of Magistrate that has jurisdiction to grant bail under section 438 of CrPC vests with. **Figure 9:** Most of the PG respondents are neutral and the UG respondents have agreed that a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. **Figure 10:** Most of the government employees have chosen Chief Judicial Magistrate or Additional Chief Judicial Magistrate that in a case of non-bailable offense, a bail granted by a magistrate can be canceled under section 437(5) of CrPC.

DISCUSSION:

From figures 1 and 2 Most of the respondents of the age group belonging to 18-30 years have agreed and most of the respondents of the age group belonging to 31-50 years have strongly agreed that a bail is fundamental to a criminal justice system that ensures liberty of an accused without granting unjust benefit. Most of the married respondents have chosen " by the High Court" and most of the unmarried respondents have chosen Chief Judicial Magistrate or Additional Chief Judicial Magistrate that in a case of non-bailable offense, a bail granted by a Magistrate can be canceled under section 437(5) of CrPC. Most of the female respondents have chosen 7 on the scale and the male respondents have chosen 9 on the scale that the purpose of bail is to help ensure that a person accused of a crime does not leave town or miss specified trial dates in court. Most of the PG respondents are neutral and the UG respondents have disagreed that bail is fair and it doesn't punish the poor and temporarily exonerates the rich. Most of the government employees have chosen the court of session, private employees have chosen the court of session and the High Court and not the court of magistrate, self-employed respondents have chosen the court of Magistrate and the unemployed respondents have also chosen the court of Magistrate that jurisdiction to grant bail under section 438 of CrPC vests with. Most of the married respondents have chosen the court of session and the High Court and not in the court of Magistrate and most of the unmarried respondents have chosen the court of Magistrate that has jurisdiction to grant bail under section 438 of CrPC vests with.

LIMITATIONS:

Many of the students at the secondary level lag behind on elementary-level competencies. I do not have extensive experience in primary data collection, there is a great chance that the nature of implementation of data collection method is flawed. My sample size is too small, so statistical tests would not be able to identify significant relationships within the data set. The importance of sample size is greater in quantitative studies compared to qualitative studies.

CONCLUSION:

Courts have greater discretion to grant or deny bail in the case of persons under criminal arrest. The law lexicon1 defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation. What is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court". The Criminal Procedure Code, 1973, does not define bail, although the terms bailable offense and non-bailable offense have been defined in section 2(a) Cr.P.C. as follows: " Bailable offense means an offense which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforced, and non-bailable offense means any other offense". Further, ss. 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr.P.C. Thus, it is the discretion of the court to put a monetary cap on the bond.

A STUDY ON IMPACT OF BAIL IN THE CRIMINAL JUSTICE SYSTEM

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JUSTICE: WHAT'S THE RIGHT THING TO DO? BY MICHAEL J. SANDEL

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I-THE MORAL MAELSTROM

In 1884, four English sailors were at sea when their yacht, the Mignonette, went down. Dangling there without food for weeks, they made a desperate choice: they killed and consumed the cabin boy, who was sick and feeble. They survived, but when they were picked up at sea, they were charged with murder. This is an extreme example that brings us to the essence of moral philosophy: Is it ever justifiable to take one life to save three?[1]

Michael Sandel's "Justice: What's the Right Thing to Do?" is not an arid academic overview but a stimulating, guided tour of the intellectual arguments that fuel such conundrums. It touches the essential work of public philosophy, skillfully rendering difficult ideas palatable, criticizing the dominant, myopic emphasis on individual rights, and forcing its readers to come face-to-face with their most fundamental assumptions regarding justice and the good life.[2]

Sandel's procedural genius is his pedagogical strategy. He rejects a conventional, abstruse exposition of philosophical theses in favor of using powerful, concrete instances such as the Mignonette to present and explain abstract philosophical principles. The "case-study" methodology is the key to the success of the book, compelling readers to consider the facts at a visceral, personal level before entering into the teleological and deontological frameworks that seek to solve them. He does not just tell us what philosophers wrote; he makes us see, in these arresting stories, why their thoughts are still important. This makes the book not merely an intellectual work, but a moral one.[3]

II- THE PHILOSOPHICAL TRADITIONS: AN INTELLECTUAL CONFLICT

A. Utilitarianism: The Greatest Good

Sandel's search for philosophical tradition starts with utilitarianism, whose central proponents are Jeremy Bentham and John Stuart Mill. The central theory of this system is simple: the most ethical action is the one which brings about the greatest overall happiness or "utility." The calculus model of ethics argues that what we should do is to simply count up the pleasures and pains caused by an action, with the right decision being the one which generates the most net happiness for the most people.[4]

But Sandel's critique of utilitarianism is trenchant as well as persuasive, and this is where his pedagogical approach is at its best. His using the example of the case of Mignonette where the taking of one life to save three seems to maximize overall happiness in a horrifying manner illustrates how such a strategy can result in actions that ignore our most basic intuitions regarding human dignity and individual rights. A more traditional test, the trolley problem, similarly challenges us to define the moral boundaries of purely quantitative solutions to justice. The thought experiment sets up a situation in which

1 *R v. Dudley and Stephens*, (1884) 14 Q.B.D. 273 (Eng.), https://www.bailii.org/ew/cases/EWCC/CCR/1884/1.html (last visited Aug. 26, 2025).

2 Michael J. Sandel, *Justice: What's the Right Thing to Do?* (2009), https://justiceharvard.org/justice-whats-the-right-thing-to-do (last visited Aug. 26, 2025).

3 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789), https://www.gutenberg.org/ebooks/60850 (last visited Aug. 26, 2025).

4 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789), https://www.gutenberg.org/ebooks/60850 (last visited Aug. 26, 2025).

one is forced to decide whether to allow a trolley to kill five or pull a lever to steer it into one person, killing just one. A hard-line utilitarian would turn the lever, yet most of us recoil at deliberately causing death, even to save others.[5]

Sandel also introduces Mill's effort to purify Bentham's more brutal articulation. Mill tried to save utilitarianism from its detractors by making a distinction between "higher" and "lower" pleasures and claiming that happiness in quality is as important as its quantity. For Mill, the enjoyment of reading poetry is better than the enjoyment of an ordinary game. Sandel finds this defense ultimately unsuccessful because Mill's differentiation necessitates an appeal to a value standard independent of utility itself—a value standard of human dignity not derived from mere pleasure but from some a priori conception of the good. This action, Sandel contends, quietly subverts the very basis of utilitarianism.[6]

B. Libertarianism: Justice as Freedom

Central Figures: Robert Nozick and Friedrich Hayek.

Central Idea: A just society honors and preserves individual liberty, emphasizing self-ownership and property rights. The role of government is minimal, sometimes limited to a "night watchman."

Sandel's Critique: Refute the notion of absolute self-ownership. Apply Sandel's radical examples, like the discussion on consensual cannibalism or kidney-selling, to undermine the boundaries of personal freedom. Reason that Sandel employs these extreme examples to illustrate that libertarianism's a priori insistence on individual rights may be oversimplified and ignores our responsibilities for each other as society.[7]

C. Kant: Justice as a Categorical Imperative

Sandel introduces Immanuel Kant as a powerful intellectual foil to both utilitarianism and libertarianism. With Kant, morality is neither maximizing happiness nor safeguarding abstract rights; it is instead acting out of a sense of duty. The central concept of his moral philosophy is the categorical imperative, according to which a moral action is one we would wish to be a universal law for everyone. One of the central beliefs of this system is that human beings are ends in themselves, never a means to an end. This influential concept gives universal rights and human dignity a strong philosophical basis, in that it asserts that some actions, such as lying or killing, are wrong in themselves irrespective of their effects.[8]

In recognizing the strength of Kant's system as an imperfect justification of human dignity, Sandel's criticism hinges on one central question: is a formal and abstract theory of justice good enough to tackle the substantive moral issues of the good life? Sandel contends that Kant's philosophy, in its strict delineation of the right from the good, has nothing to say about what a good or admirable life is. He doubts whether it is conceivable to reason about justice in abstracto, independent of reference to the moral ends we aim at. Sandel is suggesting that Kant's dependence on a priori reason alone might not be enough, and that a full theory of justice should include the values and purposes that give meaning to our common lives.[9]

D. Aristotle: Justice, Virtue, and the Common Good

Sandel brings his intellectual journey with Aristotle to a conclusion, offering his own philosophy not so much as another historical school but as an attractive framework he finds himself especially convinced by. For Aristotle, justice is teleological; it's about assigning individuals what they're owed, and what they're owed is necessarily connected to the purpose, or "telos," of a social practice. He insists that we cannot specify the right allocation of goods, offices, or honors until we first deliberate about the inherent purpose of the activity in question. Also, just society must intentionally foster virtue among its

5 Id. at 8–9, https://www.gutenberg.org/ebooks/11224 (last visited Aug. 26, 2025)

6 Judith Jarvis Thomson, *The Trolley Problem*, 94 Yale L.J. 1395 (1985), https://digitalcommons.law.yale.edu/ylj/vol94/iss6/6 (last visited Aug. 26, 2025).

7 Robert Nozick, *Anarchy, State, and Utopia* (1974), https://archive.org/details/anarchystateutop00nozi (last visited Aug. 27, 2025).

8 Michael J. Sandel, *Justice: What's the Right Thing to Do?* 261–63 (2009), https://justiceharvard.org/justice-whats-the-right-thing-to-do (last visited Aug. 27, 2025).

9 Friedrich A. Hayek, *The Constitution of Liberty* (1960), https://archive.org/details/constitutionofli-00haye (last visited Aug. 27, 2025).

citizens because human purpose is to live a virtuous life.[10]

This is where Sandel's own communitarian sympathies are most apparent. He utilizes the complicated, real-life controversy over affirmative action in order to make Aristotle's point. A debate about who belongs at a leading university always raises the question about the role of a university itself. Is its role to be a meritocracy that rewards scholarly achievement, or is it to contribute to the common good by creating diversity and producing leaders for the future? Sandel contends that we cannot resolve the question of who enters without first asking what the institution is for. This stands in stark contrast to Kant's and the libertarians' deontological and procedural approaches, which attempt to solve such dilemmas without appeal to the moral goals being sought.[11]

Sandel's support for an Aristotelian solution implies that justice is not simply a question of just procedures or universal rights, but a material discussion of the meaning and purpose of our common lives. He finally espouses a public philosophy that reconnects to questions of virtue and the good life, contending that a healthy and strong democracy needs its citizens to freely deliberate about what makes a just and thriving society. For Sandel, this is the very essence of the idea of a just and good society.[12]

III. SANDEL'S CONTRIBUTION AND CRITIQUE OF LIBERALISM

Sandel's magisterial achievement is a powerful critique of modern liberalism. According to him, political philosophy under the influence of Immanuel Kant and John Rawls has become excessively preoccupied with procedural justice and individual rights at the cost of substantive moral inquiries about the common good. This tradition, which he refers to as the "procedural republic," makes a priority of the right over the good, seeking to establish a neutral system of law and rights within which individuals are at liberty to make their own conceptions of the good life. In Sandel's view, this vision mistakenly supposes that justice can be defined independently of the moral purposes it serves.

The "procedural republic" is a regime characterized by rights and rules, yet one which shuns public discussion of the moral aims of its institutions or the virtues it demands of its citizens. Sandel thinks that this is to create a moral and civic emptiness. By pushing considerations of virtue and the common good out of public discourse, this type of liberalism has neither engendered a sense of commonality and reciprocal duty nor encouraged citizens to seek the truth about their community and themselves. He argues that this intellectual and moral vacancy makes us vulnerable to extremism and ill-prepared to face difficult moral questions such as the meaning of marriage, the duties of citizenship, or the mission of a university. For Sandel, an authentically just society is not possible without a strong and continuous public discussion on virtue, the common good, and the very reason for our institutions.[13]

IV. CONCLUSION: THE LASTING LEGACY OF A BOOK AND A PROFESSOR

In "Justice: What's the Right Thing to Do?", Michael Sandel takes us on a fascinating tour of the central traditions of political philosophy and displays their virtues as well as their vices. He critically examines utilitarianism for its inability to secure individual rights and to respond to the qualitative distinctions among pleasures. He next attacks libertarianism by pointing to the questionability of the moral boundaries of consent and the idea of unconstrained self-ownership. Then he examines Kantian morality, praising its strong defense of human dignity but raising the question of whether a strictly abstract approach can adequately tackle the substantive issues of the good life. Lastly, he introduces Aristotle as a promising alternative,

10 Michael J. Sandel, *The Procedural Republic and the Unencumbered Self*, 12 Pol. Theory 81 (1984), https://www.jstor.org/stable/1914694 (last visited Aug. 27, 2025).

11 Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785), https://www.gutenberg.org/ebooks/5682 (last visited Aug. 27, 2025)

12 John Rawls, *A Theory of Justice* (1971), https://archive.org/details/theoryofjustice0000rawl (last visited Aug. 27, 2025).

13 Id. at 36–38, https://www.gutenberg.org/ebooks/5682 (last visited Aug. 27, 2025).

proposing a teleological conception of justice that is inherently connected with virtue and the common good.

Finally, "Justice" is a singular and necessary work of public philosophy, skillfully bringing complex concepts to life and within reach of our everyday concerns.[14] Sandel's actual aim is not to offer a final, one-size-fits-all solution to the question of justice. Rather, his legacy is in his ability to re-commit the public to a crucial, long-slumbering discussion of the meaning of justice and the moral conditions of our common life. [15]The book's lasting value is in its ability to challenge thought and encourage public participation, to press us into examining our own assumptions and more fully engaging in the shared endeavor of creating a just society. It reminds us that a democratic society needs us to constantly deliberate on the question of what makes for a good and just life, not merely for ourselves, but for all of us.[16]

14 Cass R. Sunstein, *The Anticaste Principle*, 92 Mich. L. Rev. 2410 (1994), https://repository.law.umich.edu/mlr/vol92/iss8/17 (last visited Aug. 27, 2025).

15 John Rawls, *A Theory of Justice* (1971), https://archive.org/details/theoryofjustice0000rawl (last visited Aug. 27, 2025).

16 Aristotle, *Nicomachean Ethics* bk. V (Terence Irwin trans., 2d ed. 1999), https://archive.org/details/nicomacheanethic0000aris (last visited Aug. 27, 2025).

DE JURE VS. DE FACTO EQUALITY: A STUDY OF GENDER JUSTICE IN MODERN INDIA

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INTRODUCTON

India's pursuit of gender equality is a complex and multifaceted journey, defined by a powerful interplay between a progressive legal framework and a deeply rooted socio-cultural reality. The Constitution, with its guarantees of non-discrimination, has provided a strong foundation, which has since been bolstered by landmark legislation such as the Hindu Succession (Amendment) Act, 2005, and the Protection of Women from Domestic Violence Act, 2005. These statutes, along with judicial pronouncements and international commitments, establish a clear legal ideal: a society free from gender-based injustice where women can exercise their rights to property, safety, and dignity. However, a critical analysis reveals a persistent and often profound gap between these legal provisions and their on-the-ground implementation. The effectiveness of law is frequently challenged by patriarchal social norms, systemic biases, and entrenched cultural practices that continue to dictate the daily lives of women across various spheres—from the family and workplace to education and politics. This paper will examine the dimensions of this enforcement gap, analyzing how social norms, economic disparities, and administrative shortcomings diminish the transformative potential of India's gender-focused laws. By exploring the disconnect between legal reform and lived experience, this analysis highlights the need for a comprehensive approach that extends beyond statutory change to address the cultural and systemic barriers that perpetuate gender injustice.

RESEARCH QUESTIONS

1. To what extent has the Indian legal system addressed gender inequality in various spheres of society?
2. In what ways has the court contributed to the advancement of women's rights, and in what ways has it failed?
3. What interactions exist between legal frameworks and cultural and social norms that perpetuate gender inequality?
4. What changes are required to close the gap between substantive and formal equality?

LITERATURE REVIEW

Though frequently with a fragmented emphasis, gender disparity in India has been the subject of numerous studies and reports.

- Legal and constitutional academics such as Flavia Agnes[1] and Upendra Baxi[2] draw attention to the ways in which judicial interpretations and private laws perpetuate patriarchy.
- Research on property rights (SSRN papers[3]): Studies reveal that, in spite of the Hindu Succession Amendment Act, women frequently do not assert their rights because of pressure from their families and obstacles in the legal system.

1 Minority Identity and Gender Concerns,Vol. 36, Issue No. 42, 20 Oct, 2001*Flavia Agnes*

2 (Rocher et al., 1993).

3 Bueter, 2024, Kleiber et al., 2017, Verdonk et al., 2008

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- Literature on workplace inequality: Analysis of the Equal Remuneration Act[4] and the POSH Act[5] reveals systematic underreporting, lax enforcement, and the exclusion of informal workers.
- International viewpoints: UN Women[6] studies and CEDAW[7] reports emphasize India's advancements while also highlighting ongoing disparities in political representation, healthcare, and education.
- Literature on digital harms: More recent studies highlight online gender-based violence as a growing area of injustice that is not adequately covered by current IT regulations.

This examination shows that although there is a lot of research on areas, there isn't much thorough doctrinal work linking many types of gender injustice under a single legal framework. This study attempts to close that gap.

LEGAL FRAMEWORK: CONSTITUTIONAL & STATUTORY PROTECTIONS

Constitutional guarantees

- Article 14 – Equality before law and equal protection of laws.
  This is the cornerstone of equality, requiring both formal and substantive equality. Courts have interpreted Article 14 not merely as preventing arbitrary discrimination, but as mandating fairness, reasonableness, and non-arbitrariness in State action (E.P. Royappa v. State of Tamil Nadu, 1974[8]).
- Article 15 – Prohibition of discrimination on grounds of sex.
- The Constitution's Article 15 forbids sex-based discrimination by the State and permits special measures for women's advancement. Although declaratory, courts have read Article 15 broadly to allow for both affirmative action and the repeal of discriminatory laws.
- Article 16 – Equality of opportunity in public employment.This ensures that sex cannot be a ground of discrimination in State employment. However, occupational segregation remains a challenge in practice.
- Article 21 – Right to life and personal liberty. The Supreme Court has expansively interpreted Article 21 to include rights to dignity, health, livelihood, reproductive autonomy, and protection from sexual harassment (Vishaka v. State of Rajasthan, AIR 1997 SC 3011[9]; Suchita Srivastava v. Chandigarh Administration, AIR 2010 SC 235[10]).
- Directive Principles of State Policy (DPSPs). Articles 39(a) and (d) call for equal right to livelihood and equal pay for equal work; Article 42 directs provision of maternity relief; Article 51A(e) places a duty on every citizen to renounce practices derogatory to the dignity of women. While non-justiciable, DPSPs guide policy-making and judicial interpretation.

Key statutes and judicial developments

- Hindu Succession (Amendment) Act, 2005: Women were given equal coparcenary rights in joint family property from birth by the Hindu Succession (Amendment) Act of 2005, which made them coparceners alongside sons in the same manner. By outlawing discriminatory practices, giving daughters the same inheritance rights as sons, and establishing gender-neutral guidelines for property distribution, this law revolutionized the inheritance of property. Additionally, it guaranteed equal shares in the intestate succession of Hindu men who passed away by granting women Class I heir status. In Vineeta Sharma v. Rakesh Sharma (2020)[11], the Supreme Court clarified that daughters have rights by birth, regardless of whether the father was alive when the amendment came into effect. This judgment closed loopholes left by earlier

4 Act No. 25 of 1976
5 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Act No. 14 of 2013, [22nd April, 2013]
6 UN Women
7 Guthridge et al., 2022
8 AIR 1974 SC 555
9 AIR 1997 SC 3011
10 AIR 2010 SC 235
11 AIR 2020 SUPREME COURT 3717, AIRONLINE 2020 SC 676

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decisions (Prakash v. Phulavati, 2016[12]). Despite this, implementation remains weak, with many women deterred by family pressures.

- Protection of Women from Domestic Violence Act, 2005 (PWDV) — It recognizes domestic abuse beyond physical violence and provides relief mechanisms such as protection/residence orders. Despite its progressive wording, enforcement and awareness limitations remain.
- Sexual Harassment of Women at Workplace Act, 2013 (POSH Act) : The POSH Act empowers women to achieve equal rights by establishing a safe, respectful, and fair work environment that is free from sexual harassment, supported by its mandatory measures for the prevention, prohibition, and resolution of complaints, along with the formation of an Internal Complaints Committee (ICC)[13] and a comprehensive policy framework. The Act safeguards women's fundamental rights to equality and dignity as outlined in the Indian Constitution, offers an official process for lodging complaints, and enforces penalties for non-compliance, thus promoting a culture of respect and fairness.
- Equal Remuneration Act, 1976: The Equal Remuneration Act of 1976 contributed to women's rights by requiring that employers provide equal pay to men and women performing the same or similar jobs, thus reducing wage discrimination based on gender. It also banned discriminatory practices in hiring, transfers, training, and promotions, enabling women to advocate for equitable pay and treatment. The legislation established a legal framework with penalties, including fines, for those who do not comply, and mandated that employers keep records, thereby promoting accountability and fostering a just working environment for women.
- Dowry Prohibition Act, 1961: The main intention of the Act was to stop the menace of dowry in India. It completely prohibited the giving and taking of dowry. It also aims to protect women who want to get married but aren't able to because of frivolous dowry demands from the prospective groom's side.
- Internationally, India is a party to core human rights instruments that provide standards for elimination of discrimination against women, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[14], which underpins domestic obligations to pursue substantive equality.
- Maternity Benefit Act, 1961 (amended 2017): This law provides maternity leave[15] (26 weeks post-2017 amendment) and crèche facilities[16] in establishments with 50+ employees. While progressive on paper, it has been criticized for discouraging employers from hiring women of reproductive age.

Analysis: Dimensions of Gender Injustice

1. Property injustice

Legal reform vs lived reality: The Hindu Succession (Amendment) Act (2005) along with the Supreme Court's interpretation in Vineeta Sharma (2020)[17] has provided daughters with equal rights as coparceners — an important formal solution to historical exclusion. However, traditional practices, inadequate registration, patriarchal family influences, and dowry-related transactions still prevent many women from having genuine control over property. Therefore, although the law now acknowledges formal equality, informal social pressures[18] (such as family coercion and hesitant control transfers) and procedural challenges weaken the effectiveness of this remedy.

Legal gaps and enforcement issues: Property ownership and control frequently reside with male family members; women may encounter lengthy

12 AIR 2016 SUPREME COURT 769, 2015 AIR SCW 6160, 2016 (1) ABR 83, 2016 (2) AJR 391

13 HE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013." *The Gazette of India, Extraordinary*

14 Committee on the Elimination of Discrimination against Women (CEDAW)." *United Nations Office of the High Commissioner for Human Rights*

15 Municipal Corporation of Delhi v. Female Workers (Muster Roll), (2000) 3 SCC 224

16 Bahra University v. Dr. Pooja Bhardwaj and Others, Civil Revision No. 250 of 2021 (Himachal Pradesh High Court)

17 AIR 2020 SUPREME COURT 3717, AIRONLINE 2020 SC 676

18 Sudesh Chhikara vs. Ramti Devi (2022)

legal battles or feel hesitant to claim their rights out of concern for family estrangement[19]. Administrative actions (such as raising awareness, streamlining registration and claim processes, and promoting access to legal aid) are necessary to put statutory rights into practice.

2. Day-to-day discrimination and male dominance

Social norms embedded in law's shadow: Daily discrimination[20]- It ranges from imbalanced domestic responsibilities to limitations on mobility which might not always result in legal penalties, yet it perpetuates gender-based disadvantages. The law's emphasis on individuals (penalizing specific behaviours) finds it challenging to tackle systemic, ingrained inequalities that are passed down through familial and community customs. While constitutional and legal safeguards are essential, they alone are inadequate without broader societal transformation.

Family as a site of socialization. Gender roles are taught early; children internalize hierarchical models (male authority, female submissiveness) through everyday practices in families(like being told "kitchen is a place for women only") and schools. This formative socialization normalizes male dominance and legitimizes discriminatory behaviour across public and private spheres.

3. Family practices

Early family lessons, such as distinct expectations, chore distribution, and reinforcement of protective/seclusive norms, prepare girls to adopt subservient behaviour, according to psychological and sociological literature (backed by socio-legal research). This has an impact on vulnerability to domestic abuse, willingness to assert rights, and bargaining power in adult relationships. The PWDV Act helps survivors, but prevention calls for gender equality education and changes in family norms.

4. Unequal marriages and dowry-related injustices

Dowries continue to be a social practice that systematically disadvantages women and encourages violence (harassment, dowry deaths) despite the Dowry Prohibition Act (1961). Preventive measures including increased public awareness, economic empowerment, and tougher enforcement are still underutilized; criminal and matrimonial remedies (dowry/IPC laws, divorce remedies) are available but reactive. Gaps between the statutory ideal and actual conditions are frequently exposed by high-profile cases.

5. Workplace discrimination

When someone is treated unfairly or differently because of their gender, this is known a gender discrimination in the workplace. This can take many different forms, such as unequal compensation, discriminatory recruiting procedures, and a dearth of prospects for advancement. Such prejudice affects both people and organizations and is against the law.

There are several legal safeguards and enduring loopholes. Frameworks for pay equity and workplace safety are provided by the Equal Remuneration Act (1976) and the POSH Act (2013), respectively.

6. Social and Cultural Norms

Gender inequality is rooted in social and cultural norms. Stereotypes that men make decisions & women take care of others are maintained by patriarchal traditions and are frequently instilled in children through family lessons. Women's economic and social subjugation is exacerbated by customs like favoring boys, dividing domestic work unevenly, and limiting their freedom of movement. Despite the Constitution's guarantees of equality (Article 14) and prohibition of sex-based discrimination (Article 15), the effectiveness of legal rights is limited by the continued existence of such practices. The Supreme Court has also acknowledged in various judgments (e.g., Joseph Shine v. Union of India, 2018[21], striking down adultery law) that entrenched cultural stereotypes can translate into discriminatory legal frameworks.

In many communities, women's mobility and sexuality are tightly controlled. Practices like honor killings, condemned by the Supreme Court in Shakti Vahini v. Union of India (2018)[22], reflect how patriarchal norms dictate women's life choices.

19 Vineeta Sharma v. Rakesh Sharma (2020)

20 Arun Kumar Agrawal v. National Insurance Company (2010)

21 (2019) 3 SCC 39

22 AIR 2018 SUPREME COURT 1601

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7. Sports

In India, gender bias is ingrained in sports. Compared to their male counterparts, female athletes frequently experience less funding, a lack of infrastructure, less training chances, and less media attention. Inequitable resource distribution endures in spite of India's commitments under Article 15 (promoting equality) and the Right to Profession under Article 19(1)(g). Although there has been some recent progress, such as the acknowledgment of female cricket players under the BCCI's[23] pay structure, compensation inequities and a lack of sponsorship are still widespread. In contrast to workplaces where the Equal Remuneration Act is applicable, sports lack robust statutory protections for equal chances, indicating a regulatory vacuum.

8. Education

Gender disparities in access, dropout rates, and quality of education still exist even though children are guaranteed free and compulsory education under the Right to Education Act (2009)[24] and Article 21-A of the Constitution. Due to early marriage, safety concerns, or domestic duties, girls are frequently pulled out of school. Inequality is further exacerbated by discriminatory indoctrination in schools, such as gendered subjects or biased instruction. In cases like Mohini Jain v. State of Karnataka (1992)[25] and Unnikrishnan v. State of Andhra Pradesh (1993)[26], judicial recognition affirmed the State's obligation to provide fair education by establishing education as a component of the right to life under Article 21. Legal recognition alone, however, is insufficient for effective enforcement; affirmative action (scholarships, hostels, and assistance with menstrual hygiene) is required to lower barriers.

9. Health Care

Inadequate reproductive health services for women, underreporting of injuries from domestic abuse, and prejudice in medical research (where male health norms predominate) are just a few examples of how gender inequity manifests in healthcare. Although sex-selective practices were curbed by laws like the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, poor sex ratios and female foeticide still exist. Furthermore, even though the right to life guaranteed by Article 21 has been construed by courts to encompass the right to health (Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996[27]), maternal health continues to get little funding. Women, who already have limitations in their mobility and ability to make decisions, are disproportionately impacted by the unequal distribution of healthcare resources between rural and urban locations.

In Suchita Srivastava v. Chandigarh Administration (2009)[28], the Supreme Court recognized reproductive autonomy as part of Article 21. However, stigma and lack of access continue to restrict women's choices.

10. Law and Politics

Gender inequality is still reflected in political and legal structures. Despite having equal political rights under Articles 325 and 326 of the Constitution, women are nevertheless disproportionately underrepresented in legislative bodies. The acknowledgement of the systemic obstacles women encounter in politics is shown in the long-pending Women's Reservation Bill, which was ultimately passed as the Nari Shakti Vandan Adhiniyam in 2023 and reserves 33% of seats for women in the Lok Sabha and state assemblies. Despite progressive rulings, women are still underrepresented in the judiciary as judges and attorneys. Additionally, inferior courts' patriarchal interpretations of the law frequently weaken women's rights, illustrating the disconnect between judicial practice and constitutional objectives. Additionally, cultural stigma, internet harassment, and violence all hinder political involvement and require more robust legal remedies.

EMERGING THEMES AND ADDITIONAL POINTS

In addition to the deeply entrenched issues of gender injustice, this paper also acknowledges several emerging themes and additional points of consideration that will define the future of gender

23 The official website of the Board of Control for Cricket in India (BCCI)

24 The Right of Children to Free and Compulsory Education Act, 2009, Act No. 35 of 2009

25 1992 SCR (3) 658

26 (1993) 1 SCC 645

27 (1996) 4 SCC 37 or AIR 1996 SC 2426

28 (2009) 14 SCR 989, (2009) 9 SCC 1

justice in India. While legal reforms and judicial precedents have focused on traditional forms of discrimination, new and complex challenges are constantly emerging.

1. Digital Gendered Harms: The New Frontier of Injustice

The rapid digitization of Indian society has given rise to a new and insidious form of gender injustice: digital harms. This includes online harassment, non-consensual intimate image sharing, and gendered disinformation campaigns. While existing laws like the Information Technology Act, 2000 and sections of the Indian Penal Code can be partially applied, they were not designed to address the scale, speed, and anonymous nature of these crimes. This creates significant legal lacunae, leaving victims of cyberbullying, doxxing, and online shaming with limited recourse.

The landmark case of Suhas Katti v. State of Tamil Nadu (2004)[29], while an early example, established a crucial precedent by convicting an individual for online harassment, demonstrating the applicability of existing laws to new-age crimes. More recently, in cases like Shaviya Sharma v. Squint Neon & Ors (2024)[30], the Delhi High Court has taken a progressive stance by issuing directions to social media platforms like 'X' for the removal of doxxing and other harassing content, recognizing the severe professional and personal harm caused to women. This shows that while the legal framework is still evolving, courts are beginning to use existing powers to hold digital platforms accountable.

2. Gender Injustice in Sports

While the paper touches upon discrimination in sports, it is a crucial area deserving of further attention. Despite notable achievements by Indian women athletes on the global stage, systemic gender bias persists. This includes unequal pay, insufficient funding, and a lack of proper infrastructure and training facilities for female athletes. Furthermore, female athletes often face gender stereotypes, body shaming, and sexual harassment, which go unaddressed due to inadequate grievance redressal mechanisms.

The case of Santhi Soundarajan, an Indian athlete who was subjected to a humiliating gender verification test, highlights the human rights violations that can occur within sporting bodies due to discriminatory policies. A more recent example is the case against the former President of the Wrestling Federation of India, Brij Bhushan Sharan Singh, which has brought to the forefront the systemic failures of sports federations in addressing sexual harassment. These instances demonstrate the urgent need for robust implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, within sports federations and the establishment of independent, victim-centric grievance redressal committees.

3. The Intersectional Nature of Injustice

The paper's analysis of gender injustice must also be seen through an intersectional lens. The experiences of women are not uniform; they are shaped by their caste, class, religion, disability, and geographical location. A Dalit woman in a rural village, for instance, faces a compounded form of injustice that a woman from an urban, privileged background may not. Legal frameworks often fail to account for these layered forms of discrimination, leading to a "one-size-fits-all" approach that can be ineffective.

The Supreme Court of India has begun to formally recognize this principle. In Patan Jamal Vali v. State of Andhra Pradesh (2021)[31], the Court explicitly adopted an intersectional lens to evaluate how the intersecting identities of a blind woman from a Scheduled Caste community placed her in a uniquely disadvantageous position, leading to a more comprehensive view of the violence she faced. This landmark judgment marks a shift towards a more nuanced understanding of discrimination, moving beyond a single axis to acknowledge how multiple forms of oppression operate cumulatively.

INTERNATIONAL LEGAL FRAMEWORK

India's commitment to gender justice is reinforced by several key international instruments, which provide both normative guidance and interpretative support for domestic law and policy.

The Universal Declaration of Human Rights

29 Case No. 4680 of 2004

30 CS(OS) 134/2024 & I.A. 3999/2024 & I.A. 4000/2024

31 AIR 2021 SC 2190 or 2021 SCC OnLine SC 343

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(UDHR), 1948[32], affirms that all individuals are born free and equal in dignity and rights, explicitly prohibiting discrimination based on sex. Although non-binding, it has significantly influenced global and Indian human rights jurisprudence.

The International Covenant on Civil and Political Rights (ICCPR, 1966)[33] and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)[34] codify obligations to eliminate sex-based discrimination in civil, political, economic, social, and cultural spheres. India's ratification of these treaties requires alignment of domestic laws with their principles.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)[35], ratified by India in 1993, is often called the "international bill of rights for women." It obliges states to eliminate discrimination through legislative, policy, and educational measures. India, however, entered reservations on family law provisions. Despite this, CEDAW has guided judicial interpretation and legislative reform in areas such as property rights, domestic violence, and workplace protections.

The Beijing Platform for Action, 1995, though non-binding, has been instrumental in shaping national policies, emphasizing gender mainstreaming, women's empowerment, and elimination of structural and cultural barriers.

Collectively, these international frameworks provide benchmarks for equality, inform legislative reforms, and offer interpretative support for the judiciary, ensuring that India's domestic efforts towards gender justice are aligned with global standards.

32 UN General Assembly, Resolution 217 A (III), Universal Declaration of Human Rights, 10 December 1948

33 United Nations, Treaty Series, vol. 999, p. 171

34 International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966)

35 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

RECOMMENDATIONS (LEGAL & POLICY)

1. Operationalize Property Rights

a. Implement the Hindu Succession (Amendment) Act, 2005 more aggressively by creating streamlined administrative procedures for inheritance claims.

b. Introduce presumptive registration aids for daughters in ancestral property.

c. Establish legal-aid clinics specializing in property disputes and conduct awareness campaigns on women's coparcenary rights.

d. Scholarly analyses (e.g., SSRN working papers on inheritance and gender justice) emphasize that awareness and simplified processes are critical to ensuring substantive equality.

2. Strengthen Workplace Protections (POSH & Equal Remuneration)

a. Extend regulatory obligations of the POSH Act, 2013 and Equal Remuneration Act, 1976 into informal and gig sectors.

b. Create portable grievance mechanisms for platform workers and mandate employer-funded training modules.

c. Government agencies such as the Department of Expenditure can issue compliance-linked financial directives, tying wage parity and workplace safety to funding and contracts.

d. India Code provides the statutory basis for POSH and Equal Remuneration, but further delegated legislation is needed for gig-economy enforcement.

3. Preventive Family and School-Based Interventions

a. Integrate gender-equality pedagogy into school curricula.

b. Integrate gender-equality pedagogy in school syllabi to deconstruct male dominance and women's submissiveness from childhood.

c. Teacher training modules emphasizing sensitivity to gender-based stereotypes.

d. conduct community-level awareness programs to deconstruct cultural norms that normalize male dominance and women's submissiveness.

e. Incorporate training modules for teachers, like child rights sensitization, so that gender equality becomes part of early education.

4. Address Dowry Culture

a. Enhance the monitoring and enforcement of the Dowry Prohibition Act, 1961, to ensure a more robust response to dowry-related complaints.

b. Initiate social-behavioral interventions at both community and local self-government levels to address the underlying cultural norms that perpetuate dowry.

c. Prioritize dowry-related cases in criminal and matrimonial courts to reduce significant delays and ensure timely justice for victims.

d. Conduct comprehensive awareness campaigns that not only highlight the criminal nature of dowry but also provide essential rehabilitation and support for victims of dowry harassment.

5. Digital Protections

a. Legislate clearer remedies for online gender-based harms, including doxxing, cyberstalking, and non-consensual image sharing.

b. Mandate rapid content takedown mechanisms and introduce penalties for digital intermediaries that fail to act promptly.

c. Promote digital literacy campaigns focusing on women, particularly in rural areas, to empower victims with knowledge of rights and remedies.

6. Intersectional Legal Aid

a. Develop legal outreach programs that specifically address compounded discrimination faced by marginalized groups (e.g., SC/ST, disabled women, religious minorities, LGBTQ+).

b. Legal aid authorities should partner with NGOs to provide targeted, culturally sensitive support.

c. Special benches or fast-track cells could be considered for cases involving intersectional vulnerabilities.

7. Data & Research Mandate

a. Require the government to collect and publish sex-disaggregated data on property transfers, workplace discrimination complaints, domestic violence cases, and dowry prosecutions.

b. This mandate could be implemented via policy directives and linked with accountability mechanisms for ministries.

c. Such data would also enable academia and policy bodies (e.g., SSRN research repositories, NITI Aayog reports) to evaluate the impact of reforms and identify gaps.

Gaps Between Law and Practice

- The study reveals that while India's legal system is progressive in theory, its practical implementation is often ineffective. This gap is due to a combination of factors, including:
- **Implementation Shortcomings:** There are pervasive deficiencies in the enforcement of laws designed to protect women, such as unequal safeguards in laws against domestic abuse, dowry, and workplace sexual harassment (POSH), as well as in the enforcement of property rights.
- **Cultural Resistance:** Deeply ingrained patriarchal values and social norms continue to influence conduct and often take precedence over legal requirements, thereby undermining the law's effectiveness.
- **Institutional Weaknesses:** The lack of gender sensitivity within courts, law enforcement, and administrative agencies frequently results in delayed or inadequate remedies for victims.
- **Emerging Challenges:** The current legal frameworks are ill-equipped to address modern issues like exploitation in the gig economy and digital abuse, highlighting a regulatory vacuum.
- These disparities underscore the need for a multifaceted approach that extends beyond legal reform to include comprehensive social, cultural, and policy initiatives.

FINAL OBSERVATIONS

In India, the pursuit of gender equality is a complex, multi-faceted, and deeply ingrained challenge. While a progressive legal framework exists to provide a supportive environment, achieving true equality hinges on robust systemic enforcement, cultural transformation, and consistent policy interventions.

The research paper underscores that gender inequality is not an isolated issue but a systemic problem that pervades all areas of life, including labor, education, health, family dynamics, property

rights, and digital platforms. The study emphasizes that legal remedies, while crucial, are insufficient on their own. They must be complemented by fundamental social change, strategic policy actions, and widespread awareness campaigns.

Ultimately, a society where women are genuine partners in the family, economy, governance, and community can only be realized through a holistic strategy. This requires data-driven initiatives that are sensitive to intersectionality, acknowledging that different identities can lead to compounded forms of discrimination. Therefore, bridging the gap between formal legal equality and substantive, lived equality demands a sustained commitment from lawmakers, organizations, communities, and citizens alike. Only then can India fulfill its constitutional promise of empowering all women and promoting gender fairness and dignity.

CONCLUSION

This paper set out to critically examine the pervasive issue of gender injustice in India, analyzing its manifestations across various societal domains and exploring the persistent gap between the nation's progressive legal frameworks and the lived reality of its women. By addressing the key research questions, this analysis reveals that India's journey towards gender justice is a dual-front struggle.

First, the Indian legal system has indeed provided a commendable constitutional and statutory framework to combat gender inequality. Landmark statutes, such as the Hindu Succession (Amendment) Act, 2005, and the Protection of Women from Domestic Violence Act, 2005, establish a clear legal foundation for women's rights. Courts have contributed significantly to the advancement of women's rights through landmark judicial decisions, which have expansively interpreted the Constitution to include rights to dignity, health, and protection from sexual harassment. For example, the Supreme Court has clarified the coparcenary rights of daughters in

Vineeta Sharma v. Rakesh Sharma (2020) and included reproductive autonomy as part of the right to life in Suchita Srivastava v. Chandigarh Administration (2009). However, as the paper has shown, the judiciary has at times failed to consistently apply these principles, with patriarchal interpretations in lower courts often undermining these rights.

Second, the central challenge lies in the complex interaction between these legal frameworks and the deeply ingrained social and cultural norms that perpetuate gender inequality. The full transformative potential of laws is consistently undermined by patriarchal norms, such as the persistence of the dowry system despite its prohibition and the relinquishing of property rights under family pressure. These social realities demonstrate that legal reform alone is insufficient without complementary social and policy interventions. The paper's analysis of discrimination in the workplace, sports, and education further illustrates this gap, highlighting how deeply rooted biases and practices limit the effectiveness of statutory protections.

Finally, to close the gap between substantive and formal equality, a holistic strategy is required. This involves not only creating more laws but also ensuring their substantive and effective implementation. This strategy must combine legislative reforms with broad social-behavioral interventions, including gender-sensitive education from childhood, and a determined effort to collect data and hold institutions accountable. By addressing the institutional weaknesses and cultural resistance that hinder legal enforcement, and by legislating for emerging challenges like digital gendered harms, India can hope to bridge the gap between its progressive legal ideals and the lived reality of its women. Only then will the nation fulfill its constitutional commitment to empower all women and promote true gender fairness and dignity

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INTRODUCTION

The rise of IP into the sphere of global governance is one of the greatest legal and political processes of the late twentieth century. After being limited to statutory regimes at domestic level, the logics of proprietary as the IP were finally internationalized via the institutions, WTO and World Intellectual Property Organization (WIPO), where the logics of proprietary were entrenched in the global trade law and development policy. TRIPS, especially, constitutionalized a Western idea of IP by solidifying minimum standards of protection between the states of the union. They are based on the liberal, individualist and market-oriented rationales, rewarding inventors, encouraging individual innovation, and allowing capital flows across the borders and assuming their universal applicability. This has been done not only on a technical level by raising IP to the position of world norm but much more fundamentally normative as it instils a particular worldview to fit the economic needs of the highly industrialized economies.[1]

However, the same genericity that TRIPS and other regimes are purportedly promoting masks inherent contradictions between the concerns of the Global North and the developmental policy concerns of the Global South. In the case of developing nations and especially Global South nations, wholesale importation of Western-centric IP norms can be in conflict with the demands of public health, the need to build technological capacity and distributive justice. Introducing tough IP regulations threatens to limit entry to lifesaving medicines, to curtail knowledge dissemination, and to favor foreign patent holders at the expense of national creators.[2] The case of India illustrates such tension as India has both had to reconcile its laws with its TRIPS commitments,

1 Lokesh Vyas, *Whither Global South's Copyright Scholar(ship): Lost in the "Citation Game"?*, 56 IIC International Review of Intellectual Property & Competition L. 501 (2025).

2 *Id.*

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and has also been able to marshal both doctrinal creativity and statutory accommodations to place access and the common good first. This incongruity highlights the crucial issue that lies at the core of the international IP regulation, whether it is possible to balance the interests of the commercial interests of Global North with the requirements of development, the imperatives of social welfare, and the traditions of epistemology of the Global South.

Heading the list in rethinking IP regimes within the Global South, the UNCTAD Technology and Innovation Report, 2025 also emphasized the leading role of India in expanding its national IP filings, which rose 4,77,533 in 2020-21 to 6,89,991 in 2024-25 by 380% compared to 2,00,000, with a 3,38,000 total of AI patents & strong growth in AI total of 3,38,000.[3] The India AI Mission (2024) supported by legal history, Indian Council of Medical Research ethical standards on data safety and privacy, and with $1.4 billion in AI investment in the country in 2023 and 13 million developers on GitHub (second globally, 36% better than 2022-23), this legal trend places India at rank 36 on the Frontier Technologies Readiness Index (a 48-place improvement since 2022).[4] The innovation ecosystem in India is sustained by scalable Digital Public Infrastructure (DPI) serving more than 1 billion people, strategic alliances such as Google-Armman in developing AI in healthcare (3.6 million women served by 30% engagement boosts), and IIT-based centers of excellence, but challenges Western-centric IP stories such as the dominance of multinational tech giants (Alphabet, Amazon, and Microsoft controlling more than 66% of cloud markets and 90% of GPUs), leading to the AI divide (118 Global South countries omitted by major governance initiatives, risks deskilling in low-wage data annotation (under $2/hour), and hinders local value capture in global value chains, urging flexible IP policies for open data and inclusive AI to foster equitable development and counter corporate-led monopolies.[5]

HISTORICAL AND LEGAL TRAJECTORY OF IP IN INDIA

The Indian IP regime has long been consciously developed in opposition to the British template of the Patents and Designs Act, 1911, which favored foreign commercial interests and embedded monopolistic market structure in a way that was ill adapted to Indian developmental realities. The Act was a duplicate of the urban schemes that was not sensitive to the local industry or population health, which is effectually a reinvention of the foreign patent holders to the nascent industries in India. After independence, the legislature emphatically parted with such a heritage with the Patents Act, 1970, which substituted product patents in vital industries like pharmaceuticals with a process patents regime. Such a recalibration, which has since been upheld by later judicial interpretation, was symbolic of an expressly welfare-idealized conception of IP that attempted to achieve a trade-off between technological development and fair access. The Act contributed to the emergence of the strong Indian generic pharmaceutical sector and legal philosophy opposed the commoditization of basic commodities solely in the form of proprietary rights.[6]

With the advent of the TRIPS era, which the admission of India to the WTO in 1995 brought about, pressures to comply with western-centric models of patent protection surfaced anew, creating a tense legal landscape in which national welfare interests

3 United Nations Conference on Trade and Development (UNCTAD), Technology and Innovation Report 2025: Inclusive Artificial Intelligence for Development (UNCTAD/TIR/2025), Geneva (Apr. 7, 2025).

4 Press Information Bureau, *Government of India, IndiaAI Mission Calls for Proposals in Second EoI Round to Drive Ethical and Responsible AI Innovation* (Dec. 20, 2024) (Release ID 2086605).

5 Aparna Taneja & Milind Tambe, *Using ML to Boost Engagement with a Maternal and Child Health Program in India*, Google Research Blog (Aug. 24, 2022), https://research.google/blog/using-ml-to-boost-engagement-with-a-maternal-and-child-health-program-in-india/.

6 S. Sidhartha Narayan, Malavika Ranjan & Madhumitha Raghuraman, *Comparing Intellectual Property Policy in the Global North and South - A One-Size-Fits-All Policy for Economic Prosperity?* (2021).

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clash with international demands. The role of judicial interventions came into the limelight in the process of mediating these tensions, predominately in *Novartis AG v. Union of India*,[7] the decision of the court to refuse to patent a modified version of the cancer drug imatinib mesylate under the anti-evergreening provision, Sec. 3(d) reiterated the principle and embedded practicality principle of raising health concerns over the broad claims of a patent. The ruling crystallized the Indian middle-path stance, adherence to TRIPS in substance, but flexibility on the basis of access protection. Modern trends continue this two-fold line, and India has extended protections to software and digital IP, and developed mechanisms, as with Traditional Knowledge Digital Library (TKDL) to counter biopiracy, yet its courts and legislature still take a careful approach to guarantee that IP does not preclude developmental goals. The course of action therefore indicates long-term opposition between imported legal ideals and the constitutional obligation of India to distributive justice.

INDIA'S INNOVATION ECOSYSTEM

The pharmaceutical industry in India is a case of the conflict between the protection of IP and developmental concerns, which explain its reputation as a pharmacy of the Global South. The jurisprudence of the Indian courts has always underlined the public health as a constitutional requirement in Art. 21. As an example, in *Bayer Corporation v. Union of India*,[8] court overturned this saying that compulsory license given to Natco on behalf of Bayer on cancer-related drug sorafenib was justified since high prices hampered the availability of life-saving drugs. This decision has defined how India interpreted flexibilities of TRIPS, such that affordability and accessibility (as opposed to monopoly rights) are paramount in the interpretation, becoming a pattern to guide subsequent discussions on compulsory licensing. In addition, the court in *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*[9] emphasized that there is a need to balance the enforcement of patent rights and the interests of the population in the pharmaceutical sphere and thus the jurisprudential adherence of India to the moderate course of action, contrary to maximalist tendencies of the West in patent protection.

Another place where India has not been a victim of wholesale transplantation of Western IP paradigms is the IT and software industry. Indian copyright law, especially the post-Amendment, 2012, has attempted to negotiate the interface between proprietary software paradigm and open-source practices, by virtue of the hybrid nature of the Indian digital economy. Court involvement, in *Tata Consultancy Services v. State of Andhra Pradesh,*[10] the commodification of digital innovation was indirectly influenced & court accepted software as a good on the grounds of taxation. However, India is yet to progress towards being able to recognize software patent in a broad sense as that observed in the US but in the process, it has created room to facilitate and adopt service-oriented innovation. The judiciary has been careful not to grant broad software patenting as a sign of sensitivity to the socio-economic distribution of the IT sector in India that is based on service outsourcing, process innovation, and a comparatively open ecosystem, as opposed to controlling IP.

On the ground, the innovation economy in India predicts the virtue of frugality, local knowledge, and community invention that is sometimes outside of the conventional IP construct. Judicially and legislatively approved recognition of community rights, such as the Protection of Plant Varieties and Farmers Rights Act, 2001, is reflected in legal mechanisms and has not been embraced by pure corporate centered IP regimes. Although litigation in this domain is less salient, judicial support of biodiversity and traditional knowledge safeguards is reflected in its interpretative approach to constitutional obligations to conserve natural resources. TKDL is an initiative to thwart biopiracy in advance, and in effect, to establish a sui generis defensive protection against inappropriate patenting in other nations. The above measures point to how India is moving out of the individualized authorship paradigm, in which collective custodianship is favored over innovation, which itself questions the philosophical underpinnings of

7 13 S.C.R. 148.

8 AIRONLINE 2019 DEL 1712.

9 RFA(OS) 92/2012.

10 AIR 2005 SUPREME COURT 371.

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Western IP discourses.

Moreover, the role of government policy, e.g. Make in India, Startup India, & Atal Innovation Mission are incorporated in a legal-institutional framework that aims simultaneously at incentivizing entrepreneurship and protecting access. Courts have been invited to resolve conflicts that have emerged as a result of tensions between encouraging innovation and controlling monopoly. In *Shree Vardhman Rice & Gen. Mills v. Amar Singh Chawalwala*,[11] the court warned of zealous IP protection that would result in the impediment of competition and consumer interest. These decisions echo the overall developmental agenda of the state, to encourage industrialization without imitating exclusionary Western IP regimes. Although not directly creating innovation policy, the judiciary has played a consistent role in enhancing the constitutional balance between economic growth, the general interest and fair access, thus creating an ecosystem that is entrepreneurial, inclusive, and hostile to Western-centric IP orthodoxy.

INDIA'S CHALLENGE TO WESTERN-CENTRIC IP NARRATIVES

The IP jurisprudence of India has long been expressed in terms of a struggle against Western-centric histories that glorify individual authorship and market monopoly. On a philosophical basis, Western IP-regime is situated on Lockean theories of labor and utilitarian reasoning, wherein protection is explained as stimulus to innovation & individual profit. The constitutional promises to the access to public health, access, and distributive justice have been repeatedly prefigured in Indian legal discourse. For instance, in *Bayer Corporation v. Union of India*,[12] the IP Appellate Board affirmed the grant of the compulsory license in relation to the cancer drug sorafenib on the basis that patent should not be surrounded with the sense of invulnerability against the greater good. This jurisprudence is an intentional rejection of market-based exclusivity and the transfer of IP rights to more general developmental objectives and communal demands, hence opposing the blind exportation of Western legal orthodoxies.

The Indian IP law places emphasis in its normative orientation on the equilibrium between incentivizing creators and protecting access by the society. In contrast to the western model of maximalist protection, India statutory architecture, especially in the form of Sec. 3(d) and 84 of Patents Act, 1970 incorporates welfare-based controls over evergreening and non-working patents. *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*[13] indicated this equilibrium even as patent validity is upheld, in which court rejected interim injunctions to prevent production of a generic copy of a life-saving medication, expressly considering the societal interest in the availability of affordable medicine. These cases reflect a jurisprudential ethic that treats IP not as absolute, but as a conditional privilege subject to yielding in case of fundamental rights and socio-economic justice concerns, and undermines the universality of Western, individualistic models.

At the global level, India has established itself as a norm-entrepreneur in WTO negotiations, and continuously resists TRIPS-Plus commitments sought by developed countries. Its opposition lies in the fact that standardized, high IP criterion does not consider developmental asymmetries. India has also joined Brazil and South Africa to oppose proposals that undermine flexibilities in TRIPS particularly concerning the aspect of compulsory licensing and parallel imports. The *Pharmaceuticals (India) v. USTR*[14] wrangles & WTO controversy point to India not being willing to subject its health needs to the orthodoxy of the global markets. This position is not only defensive but also positive, it promotes a pluralist vision of IP governance; where differentiated standards are justified as the solution to substantive equality between North and South.

This leadership of India was further reinforced during the COVID-19 pandemic, as, together with South Africa, it was at the forefront of the proposal

11 FAO (O) No. 138 of 1996.

12 AIRONLINE 2019 DEL 1712.

13 RFA(OS) 92/2012.

14 *Setting The Record Straight: Ustr Claims Vs India's Medical Device Policy*, Business Standard, https://www.business-standard.com/economy/analysis/setting-the-record-straight-ustr-claims-vs-india-s-medical-device-policy-125040700952_1.html (last visited Sept. 7, 2025).

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at WTO to temporarily waive TRIPS commitments on vaccines and other key medical technologies. The waiver proposal has highlighted the ineffective Western-based IP paradigms in responding to world crises, revealing the structural inequalities of monopolistic pharmaceutical regimes. Although the waiver was met with vehement opposition by developed countries, it did provoke Global South cohesion and civil society activism, and left India on a central position in the re-politicization of IP law. Even the partial achievements of such diplomatic effort bolster the ability of India to destabilize long-standing accounts of IP as untouchable means of innovation and recast it as a mechanism that should be receptive to the needs of world population health.[15]

In addition, India has been the first to implement alternative knowledge governance regimes challenging the epistemic hegemony of Western IP categories. One such systemic attempt to defend the knowledge systems of the communities and indigenous people is the TKDL which was created to fight against biopiracy which is the patenting of common sense and local knowledge in foreign countries. Courts acknowledging that biodiversity and indigenous innovation need to be preserved as they have been in D*ivya Pharmacy v. Union of India*,[16] is not out of step with these institutional innovations, where collective custodianship of knowledge is appreciated. Similarly, the Indian enthusiastic promotion of open-source software and commons-based innovations in the digital sphere corresponds to a larger reconsideration of innovation outside ownership schemes.

CRITICAL ASSESSMENT

The greatest success story in India IP journey has been in the capacity to protect access to essential medicines without violating the TRIPS provisions. Decision in *Novartis AG v. Union of India*[17] is the jurisprudential hallmark., which codified Sec. 3(d) of the Patents Act, 1970 as an antitrust to evergreening. Such a provision highlights a different legal philosophy, in which the emphasis is placed more on public health and distributive justice rather than incentives of monopoly. The strong application of compulsory licensing, in *Natco v. Bay*, indicates the readiness to exercise TRIPS flexibilities in a manner that reflects constitutional obligation to the right to health. Such interventions have not merely safeguarded access within the nation but have also established the image of India as the pharmacy of the Global south to interfere with Western discourses that equate the strong IP protection with innovation and development.[18]

Other than pharmaceuticals, India has promoted an ecosystem of innovation that flourishes despite its conscious opposition to maximalist IP regimes. The development of its information technology industry, with its strong dependence on service models and open-source systems, demonstrates the feasibility of the innovation channels that do not depend on the broad-based proprietary rights. Jugaad and low-end innovation, which frequently exist outside the legal framework, is a phenomenon that can be used to question the epistemic superiority of Western IP law that gives preference to codified inventions as compared to informal and collective innovation. This shows that dynamic technological and social innovation may co-exist, indeed, thrive under, legal minimalism in IP.

India has also taken an unusually high position in global IP diplomacy by placing itself as an alternative to western leadership in norm-setting bodies. Its WTO-TRIPS Council leadership in the HIV/ AIDS crisis and, more recently, in the proposal of the COVID-19 vaccine waiver (alongside South Africa) is indicative of an unwavering campaign in favor of equitable access to knowledge and technology. India has challenged the universality of the TRIPS-Plus standards promoted by bilateral and plurilateral trade agreements by marshaling South-South solidarities. India has, in this regard, played not only a defensive role but also a norm entrepreneur role, trying to redefine the ideological landscape of world

15 K. Beiter, *Access to Scholarly Publications in the Global North and the Global South* (Am. Univ. Wash. Coll. of L., Program on Info. Justice & Intell. Prop. Research Paper No. 2021-02, 2021), https://digitalcommons.wcl.american.edu/research/1141/.

16 Writ Petition (M/S) No. 3437 of 2016.

17 13 S.C.R. 148.

18 Christopher Foster, *Intellectual Property Rights and Control in the Digital Economy*, 40 Info. Soc'y 1 (2024).

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IP by foregrounding developmental asymmetries and primacy of human rights.[19]

However, the status of India is full of contradictions. Although the US has expressed such commitment to the country with regard to the interests of the people, under the banner of constitutional and diplomatic obligation, the country continues to be pressurized by the US in the form of Special 301 Reports, which portrays India as the defiant violator of IP. At the same time, the emergence of big-box national industries in the areas of pharmaceuticals, biotechnology, and digital platforms has produced in-house lobbying of tougher IP protections, undermining the normative role of the state in distributive justice. In addition, traditional knowledge holders, grassroots innovators and indigenous communities, are still unequally safeguarded despite the efforts, including TKDL. The continued presence of bio-piracy controversies (e.g., neem, turmeric, basmati rice) highlights the insufficiency of existing legal frameworks to protect the non-Western epistemologies, and indicates that India IP regime is simultaneously both resistant and complicit towards hegemonic orders.

India has dilemmas on maneuvering the second generation of IP questions. The digital economy creates complicated questions about software patents, artificial intelligence, and ownership of data, the areas where current legal systems are inadequately developed or biased in favor of business. It will take long-term legal creativity to balance the commitments under both multilateral and bilateral trade agreements with constitutional commitment to equitable development. The risk is to recreate new exclusions, in which marginalized innovators become marginalized by new IP regimes in favor of digital capital and multinational platforms. Whether India can continue to be an international model of pluralistic IP governance or be swallowed by the homogenizing logic of Western-centric IP orthodoxy will depend on its capacity to develop a subtle legal pathway that both resists maximalist pressures and also meets the gaps in protection of grassroots and digital innovation.

CONCLUSION

The IP path of India reflects a deep conflict between compliance and commitment to international and pursuing a more developmental jurisprudence that challenges a normative hegemony of western-centric IP paradigms. Although TRIPS compliance has required major legal changes, India has persistently used the constitutional principles of social justice and social interest to curb exclusivist pressures, visible being its treatment of pharmaceutical patents and pharmaceutical access. This stance highlights one notable legal philosophy: IP has no termination but a conditioned tool that can be subjected to greater constitutional and developmental requirements. Defying the universality of the Western innovation-incentive paradigm, India presents itself as a norm entrepreneur in the discourse of global IP, to promote a pluralistic order that honors differentiated capacities, communal knowledge practices, and demands of fair access. The Indian experience thus shows that other legal paths in the Global South are not only responsive to Western impositions, but can be a form of positive and principled reconstruction of IP governance.

19 *Id.*

A PROSPECTUS ON LIVE IN RELATIONSHIPS IN INDIA

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LEGALITY OF LIVE IN RELATIONSHIPS

Live-in relationship between consenting adults is not considered illegal under the Indian law. In 2006, in the case of "Lata Singh v. State of U.P," it was held that a live-in relationship between two consenting adults of opposite sex, though perceived as immoral, does not amount to any offence under the law. In another important case "Khushboo vs Kanaimmal and another," the Supreme Court observed "Though the concept of live-in relationship is considered immoral by the society, but is definitely not illegal in the eyes of the law. Living together is a right to life and therefore it cannot be held illegal.

If live-in relationships continue for a long period of time and the couple present themselves to the society as husband-wife, they get recognized as being legally married. As early as 1978, in "Badri Prasad Vs Deputy Director Consolidation," observation was made that "If man and woman who live as husband and wife in society are compelled to prove, after half-a-century of wedlock by eye-witness evidence that they were validly married fifty years earlier, few will succeed. A strong presumption arises in favour of wed lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy. Same observation was made in "SPS Balasubramanian Vs Suruttayan", in which it was observed that where a man and a woman live together as husband and wife for long time, presumption under the law would be in favor of their being legally married to each other unless proved to the contrary and children born out of such live-in relationship would be entitled for inheritance in the property of the parents. If such relationship is only for sexual reasons, neither of the partners can claim benefits of a legal marriage. "Indra Sarma vs VKV Sarma" was another landmark case on the matter of livein relationship in which implications of different types of relationships were examined. If both the partners are unmarried and enter into a relationship mutually, it does not constitute any offence. Prior to 2018, domestic cohabitation of a married or unmarried man with a married woman constituted a criminal offence of "adultery," but for the man only, under Section 497 of Indian Penal Code (IPC). But this section was annulled by the Supreme Court of India in the case of "Joseph Shine vs Union of India" in September 2018, as the Court came to the conclusion that it was violative of the Article 14 of the Constitution of India. The section treated men and women unequally as only the man and not the woman is subject to prosecution for adultery. Moreover, it was only the husband of the concerned woman who could prosecute the man who was involved in the act and the woman cannot prosecute her husband for adultery. Though adultery is no longer a criminal offence, but the matter of cohabitation with any married man or woman may be a matter of civil issues constituting a ground of divorce, in which case it would be gender neutral. Similarly, cohabitation with sexual relations between two adult partners of same sex also constituted crime of unnatural offence under Section 377 of IPC prior to 2018. But the position was reversed in "Navtej Singh Johar vs Union of India". The Supreme Court annulled the Section 377, insofar as it criminalized the homosexual sexual acts of two or more adults in private who possess competency to consent. It was termed to be unconstitutional, irrational, indefensible and arbitrary, and being violative of Articles 14, 15, 19, and 21 of the Constitution. However, the Section 377 continues to be in the statute book as legally valid and applicable insofar as the Section 377 applies to the nonconsensual sexual acts between the two adults, to the sexual acts against minors and all acts of bestiality. Though consensual homosexual sexual acts were legalized, but the same sex marriages are not recognized in India, though performing a symbolic same sex marriage is not prohibited either.

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GRANT OF ALIMONY AND APPLICATION OF THE PREVENTION OF DOMESTIC VIOLENCE ACT, 2005

In US, the term "palimony" is used for granting relief in the live-in relationships. The term "palimony" was conceived during a celebrity divorce case of "Marvin vs Marvin" in California, US. In this case, the complainant was living with the man in a live-in relationship for a long period of time and thereafter she approached the Court to get financial compensation from her partner on break up. The word "palimony" is a combined form of worlds "pal" and "alimony." Though the suit was unsuccessful, the courts found that "in the absence of an express agreement, courts may look to a variety of other remedies to divide property equitably." It was observed that if there is cohabitation agreement for the couple before moving in together, the Court may consider grant of palimony. In India, the need for such relief was felt by Malimath Committee on Criminal Justice which recommended amendment in the definition of the word "wife" in Section 125 of the Criminal Procedure Code (Cr. P.C.) so as to include women who was living with the man as his wife for a reasonably long period of time. Section 125 of the Cr. P.C. provides for claiming maintenance by wives, children, and parents from a person on which they are dependent and are unable to maintain themselves. Though the amendment was not incorporated in the Cr. P.C., such relationships were brought into ambit of domestic relationship. Section 2(f) of Prevention of Domestic Violence Act, 2005 (PDV Act, 2005) defines domestic relationship as "a relationship between two persons who live or have lived together, at any point of time, in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family." According to this definition, live-in relationships which are in a nature of marriage, that is, the couples are living for a long period of time and presenting themselves as husband and wife come under the ambit of the PDV Act, 2005. Therefore, the woman in live-in relationship can take protection under Protection of Women from Domestic Violence Act, 2005 and can claim for maintenance also (D. Velusamy vs D. Patchaiammal). The question of application of the PDV Act, 2005 to the live-in relationships came into the consideration of the Supreme Court in the case of "Lalita Toppo vs State of Jharkhand." It was held that the victim, that is, the estranged wife or the live-in partner would be entitled relief under the Act in a shared household. While referring to this report in "Ajay Bhardwaj vs Jyotsna", the court awarded alimony under the PDV Act, 2005 to a woman in a live-in relationship. But it is only the woman who can claim maintenance under the PDV Act, 2005. Relief under the PDV Act, 2005 is not available to men in live-in relationships. In this connection, it is pertinent to mention that in the case of "Khushboo vs Kanniamal" the Court observed that "a live-in relationship is invariably initiated and perpetuated by men.

RIGHTS OF CHILDREN BORN OUT OF LIVE-IN RELATIONSHIP

In "Tulsa vs Durghatiya, the Supreme Court, while granting right of property to a child, observed that children born from live-in relationship would not be treated as illegitimate if their parents would have lived under one roof and cohabited for a considerably long period of time so as to be recognized as husband and wife and it must not be a "walk in and walk out" relationship. Section 16 of the Hindu Marriage Act, 1955 and Section 26 of the Special Marriage Act, bestow legitimacy to children born out of void and voidable marriages by providing those children born out of marriage, which is null and void or where a decree of nullity is granted in respect of voidable marriage, shall be legitimate or deemed to be legitimate, respectively. But according to Subsection (3) of the same sections of the Act, right of inheritance of such children is limited to the property of the parents only. Therefore, such children do not have the coparcenary rights in the property of the Hindu undivided family (HUF) if their parents were not legally wed to each other. Thus, the provisions of these sections of the Act have been applied to provide right of inheritance to the children born out of live-in relationship in the self-acquired property of the parents. But if their parents are not legally married to each other, they cannot claim the coparcenary rights in the property of the HUF of their father. Claiming maintenance under the Section 125 of the Cr. P.C is well within the rights of a dependent children born out of the live-in relationships, as the section itself

expressly mentions "both legitimate and illegitimate child." In the matter of deciding for the guardianship, mother is regarded as the natural guardian for such children.

PHYSICAL IMPLICATIONS OF LIVE-IN RELATIONSHIP.

In recent years, our country has witnessed drastic changes in the matter of relationships between opposite sex. The present generation perceives such relationships in a way different from what was perceived earlier. In the context of our sociocultural values, it was considered to be taboo for men and women to live together under the same roof without being legally married to each other. Similarly, the idea of having premarital sex was considered to be highly immoral. But these beliefs and taboos are gradually fading away and the society is opening up about the idea of premarital sex and live-in relationships. Freedom, privacy, profession, education, globalization, and other factors are responsible for this change in mindset. Points put in favour of such relationships are that such relationships are a way to understand the partners in a better way and to check if the partners are compatible to each other. Present generation, unlike their predecessors, considers it necessary for them to understand each other in a fairly reasonable way before entering into a formal wedlock. Once someone enters into a formal wedlock, the break up becomes very cumbersome, lengthy, complicated, and troublesome to all concerned if the partner finds that they are not at all compatible to each other. But living together for some time without entering into a legal marriage provides for an easy break up without the need of taking recourse to cumbersome legal procedures. But such relationship without any duties and obligations attached has its disadvantage as well. Such relationships are not binding upon the partners, whereas in a typical marriage, the partners are provided certain rights and bestowed with obligations and duties to be performed by both of them. The woman is often in a disadvantageous position in live-in relationships. A bench of Rajasthan State Human Rights Commission, in September 2019, even termed such relationship against the dignity of woman and made a recommendation to enact a Law against it. But the decision received widespread protest and criticism from human rights activists. Such relationships lead to multiple social as well as logistic problems in day-to-day living. They face legal hurdles of multiple types like opening a joint bank account, visas, insurance, visitation to hospitals, and so on. Children born out of the wedlock are exposed to mental trauma and have problems of smooth inheritance in property of the parents. As stated above, they have the rights of inheritance in their parents' properties, but they do not have coparcenary share in the HUF property. Two instances are described here to illustrate the difficulties faced by couples in live-in relationship without being legally wed. International chess player Anuradha Beniwal was peacefully living in with her partner in a live-in relationship without any objection from the family members, though the response of the society was like some sort of silent disapproval. Sometime later, her partner received a job offer at London and she decided to move along with him. Visa problem was anticipated as they were not married to each other in a legally acceptable way. To avoid these troubles, they had to get married in a rush.14 A couple in Kerala remained in live-in relationship for 40 years. They were against the social institution of marriage, holding the views that love did not need approval by the society and the sanctity of marriage. They had made the decision to live together forever and did it precisely for 4 decades of their life. But after such a long stint of live-in relationship, they decided to legalize their relationship, not out of personal compulsion but only to avoid legal and administrative problems faced by their grandchildren.

IMPORTANCE OF GOOD QUALITY RELATIONSHIP

Association between good-quality relationship and mental health cannot be overemphasized. Having goodquality, close, and positive relationships gives us a sense of purpose, meaning, and belongingness. Conversation with a good and empathetic listener in a face-to-face interaction helps in relieving stresses and also helps to process our emotions, including the uncomfortable ones. Interactions with a loved one leads to a range of pleasurable and positive experiences. People in good-quality relationship and social connectivity to family, friends, and the community are happier and have few mental health problems. Isolation and loneliness lead to multiple psychological problems and also poor physical health. Holt-Lunstad in their

meta-analytic study made important observation about the influence of lack of good-quality social relationship on the risk of death. It was found to be a significant risk factor comparable to some other well established risk factors such as smoking and alcohol and it was even greater than some other risk factors like physical inactivity and obesity. Stable and good-quality relationship has demonstrable benefit on both physical as well as mental health. Lower morbidity and mortality were found among those who were in stable and good-quality marital relationship. A long-running study on human behaviour was conducted at Harvard University to find out what makes people healthy. The study started in 1938 and continued for several decades with findings published in 2012. The result of the study showed that happiness and health are not the result of wealth, fame, or working hard, but come instead from our relationships. For persons with disabilities too, social relationships play important role and have been demonstrated to have beneficial effect on their mental health and well-being. In another meta-analytic review, it was found that poor-quality or unhappy relationships have a higher negative influence on physical and mental health than not being in a relationship. These days, social media has come to play important role in our life. People have started to devote their substantial time in online interactions via social media. But these online interactions, friendships, and relationships cannot have the same effect as those happening in the real life. Social media interactions cannot have the same healthy psychological and emotional response that happens in the real-life relationships. Face-to-face and real-life interactions between people always remain a satisfying and healthy means of communication and relationship, which contributes to a sense of belongingness and well-being. Moreover, online interaction via social media can also be damaging as it blurs the line between real friends and virtual friends and exposes people to unhealthy communications as well leading to developing prejudices and biased opinions, which may get rectified on witnessing things in real life. Therefore, it may be concluded that live-in relationship in a compatible couple is better than no relation at all. Living alone or remaining trapped in an unhappy marriage may lead various types of psychological problems.

SIGNIFICANCE OF MARRIAGE AS AN INSTITUTION

The social importance of marriage cannot be overemphasized, and it is one of the most important institutions in human civilization. Even greater significance is attached to it in the context of Indian culture. It not only serves to satisfy the fundamental biological need of sexual gratification through a socially acceptable way but also helps the individual to achieve a higher level of personality maturation. For most women in India, marriage is a onetime event in life, which is glorified and sanctified and is associated with much social approval. It is also the ultimate fulfilment for most women. The celebration of a marriage gives rise to moral and legal obligations as well, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. One of the most important consequences of marriage is reciprocal support and responsibility of maintenance of a common household. Various types of obligations and duties flow out of marriage, and it has its importance in the matter of inheritance of property, succession-ship, and so on. Marriage also provides strong familial and social support to the couple in different aspects of their life, be it physical, emotional, or economical support. Entering a marriage, either through the Hindu Marriage Act, 1955 or Special Marriage Act, 1954 or any other personal laws applicable to the parties, is entering into a relationship of “public significance,” since marriage being a social institution, many rights and liabilities flow out of legal relationship. The concept of marriage as a “civil right” has been recognized by various courts all over the world. A married couple must discharge legally various rights and obligations, unlike the case of persons having live-in relationship or marriage-like relationship or de-facto relationship. In our country, no solemnization of a relationship as marriage is regarded as social stigma. Social values, customs, traditions, and even legislation have attempted to ensure stability of marriage. It cannot be denied that problems occur in marriages and there may be unequal relationships in which one partner, most commonly women, is in a disadvantageous position. It is also true that on breaking down of relationships through marriage women suffer in far greater terms, especially in Indian context. But the

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importance of marriage as an institution cannot be denied.

CONCLUSION

Live-in relationships provide the couples a greater opportunity to know each other better together with a freedom to end the relationship as per their wish. But they have to face many social and legal hurdles. Such relationship puts women often in a disadvantageous position. The Supreme Court has issued guidelines for regulating such relationships and also for protecting the rights of women involved in the relationship and children born out of it, which has been described above. Social values and norms have changed for the new generation. Live-in relationship may be ok in some circumstances but the importance of the institution of marriage for maintaining the social order cannot be denied. From a psychiatrist point of view, what is more important is to get engaged into a positive, lovable, and meaningful relationship than to remain alone or remain trapped in an unhappy, negative, and troublesome relationship. To conclude, it is pertinent to say that There is always some madness in love. But there is also always some reason in madness.

—Friedrich Nietzsch.

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COMPARATIVE STUDY ON THE INSOLVENCY LAWS OF INDIA, USA AND UK

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INTRODUCTION

A nation's bankruptcy, insolvency system is one of the basic causes of economic stability, resilience of the credit system, and investor confidence. The healthy insolvency system maximizes recoveries to creditors, supports entrepreneurship, protects viable businesses, and provides for fair distribution of debtor assets. It is ensuring good lending and borrowing, leading to financial stability and minimizing systemic risk.

India, the United Kingdom, and the United States all have different legal models—India employs a mix of civil and common law, the UK employs an orthodox common law, and the US employs a federal common law. The aim of this research is to examine how each of these legal models approaches insolvency, approaches distressed assets, and protects stakeholder interests. It also examines how domestic frameworks interact with international standards, an appropriate consideration in today's globally integrated economy demanding coordinated solutions to cross-border insolvency.

There must be a comparative analysis of the systems in order to determine the advantages and disadvantages of various legal models. Such analysis is of tremendous value to nations that plan to reform their insolvency legislations. This article tries to offer a balanced overview of how legal systems influence insolvency outcomes and how certain reforms can improve efficiency and justice.

Due to the complex nature of insolvency law, this research combines various branches of knowledge such as legal analysis, economic theory, and regulation of business. Comparative methodology enables evaluation not only of procedural considerations but also of actual impact, e.g., speed of resolution, recovery for creditors, and maintenance of business value. In a more globalized economy, insolvency regimes need to be harmonized with international norms so as to promote investment and facilitate cross-border trade. This paper discusses those challenges and offers an insight into the new world order of insolvency regulation.

METHODOLOGY

This study uses a doctrinal legal approach in addition to comparative examination. Doctrinal approach involves close reading of primary and secondary legal materials, including statutes, case law, regulatory texts, and academic commentary. The key legislation tools are such as e.g., India's Insolvency and Bankruptcy Code, 2016, the United States Bankruptcy Code, and the United Kingdom Insolvency Act, 1986 are read thoroughly to ascertain structural divergence and functional convergence.

The secondary sources are law commission reports, academic literature, empirical studies, and reports of international organisations like the World Bank, the International Monetary Fund (IMF), and UNCITRAL. Secondary sources provide useful background and help in understanding the legal, social, and economic factors that bear on policy decisions. The study focuses on reforms implemented over the last two decades, which reflect the evolving priorities and responses of every country to evolving financial landscapes.

Comparative analysis is the second principal methodological tool, allowing side-by-side comparison of the legal principles and administration regimes used by the three states.

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Comparative analysis places emphasis on legislative form, creditor-debtor relations, solutions timetables, and institutional capacity. The research also uses a qualitative methodology of analysis of legal interpretation and judicial predisposition and offers an understanding of the working dynamics of insolvency law.

Furthermore, case studies are included to demonstrate how the principles of law operate in practical insolvency scenarios. The multi-level methodological framework enables comprehensive and well-rounded analysis to be accessible to make a contribution towards policymaking, as well as academic discussion.

Apart from conventional legal scholarship, the paper also draws on economics and financial theory expertise to examine how insolvency law affects measurable economic metrics, such as recovery rates and credit supply. The approach also uses comparative law theory—specifically functionalism and legal transplants—to examine the viability of transplanting effective foreign practices. Institutional growth, cultural factors, and judicial capacity are given particular emphasis to ascertain how these elements affect the effectiveness of crossborder legal reforms. This systematic, multi-disciplinary approach ensures the relevancy, validity, and context of the research.

HISTORICAL AND LEGISLATIVE FRAMEWORK

An Indian's development of insolvency law was tainted by inefficiency and procedural lag until the Insolvency and Bankruptcy Code (IBC) came into effect in 2016. India's insolvency law was fragmented and had overlapping legislations such as the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the Companies Act prior to the reform. These single-stand acts did not provide a single paradigm, which resulted in conflicting judgments, long court proceedings, low rates of recovery to creditors, and limited chances for restructuring. The IBC was passed with the objective to consolidate these divergent paradigms into one single comprehensive legal paradigm that would impart effect to individuals, partnerships, and firms.

In comparison of the, the United States has had a stable and harmonized insolvency regime since the Bankruptcy Code took effect in 1978. Based on constitutional authority over Congress to adopt uniform bankruptcy laws, the American regime is federal in character. It has been amended numerous times to accommodate changing financial circumstances, with significant reorganization under the Bankruptcy Abuse Prevention and Consumer Protection

Act of 2005. The American regime is one of rehabilitation and offers second opportunities to bona fide debtors, particularly through mechanisms like Chapter 11 corporate restructuring and Chapter 13 for wage earners.

The insolvency law of the United Kingdom is based on historical common law principles, and the law has been influenced by the Insolvency Act 1986. The act codified earlier law and established formalized procedures like administration, liquidation, and company voluntary arrangements. Subsequent reforms like the Enterprise Act 2002 aimed to promote a culture of corporate rescue by streamlining administration procedures and increasing the protection of unsecured creditors. The latest amendment was in the form of the Corporate Insolvency and Governance Act 2020, which implemented far-reaching reforms to try to counteract the impact of the COVID-19 pandemic.

Each of these legislative avenues reflects distinct socio-economic forces and legal philosophies. India's IBC is a revolutionary step towards creditor prerogative and stringent timelines. The U.S. model is debtor rehabilitation and accommodation-based, while the UK tries to find a middle ground between preservation of business and protection of creditors. Comparing these different developments serves to clarify how insolvency law evolves to meet judicial interpretation and economic needs.

Historical forces, in addition, have a major role to play in shaping the vision in both paradigms. India's colonial past and the earlier focus on state-led economic planning slowed the need for reform of insolvency. The 1990s liberalization and the bad loan crisis triggered far-reaching reforms, eventually leading to the IBC. In the United States, economic history like the Great Depression prompted a shift towards a more rehabilitative and humane system. In the United Kingdom, a robust tradition of protecting

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creditor rights was increasingly balanced through attempts to encourage business rescue. All these trends over time are replete with lessons on the evolution and sensitivity of insolvency regimes.

INSTITUTIONAL PROCEDURES AND PROCESSES

The institutional basis of insolvency law is very varied for India, the United States, and the United Kingdom, and is influenced by varying legal traditions, administrative authority, and judicial roles. In India, the Insolvency and Bankruptcy Board of India (IBBI) is the central regulating board, but insolvency professionals, information utilities, and professional agencies are regulated by it. Corporate insolvency cases are in the jurisdiction of the National Company Law Tribunal (NCLT), but cases relating to individuals and partnerships are in the jurisdiction of the Debt Recovery Tribunal (DRT). Despite such reforms, India remains plagued by delay due to tribunals that are congested and have poor infrastructure.

In the United States, bankruptcies are attempted under a formal, specialized system of bankruptcy courts. The U.S. Trustee Program, an agency of the Department of Justice, enforces compliance and appoints private trustees to manage cases. The model provides judicial expertise and consistency in the application of bankruptcy law. Chapter 11 allows debtors to continue to have control of business under restructuring, a feature that is designed to preserve company value and jobs.

The UK regime is regulated by the Insolvency Service—a ministerial department of the Department for Business and Trade—and the courts. The licensed insolvency practitioners regulate procedures like liquidation, restructuring, and administration. They are regulated by the Recognized Professional Bodies. The courts regulate supervision, though their intervention is not as proactive as in India and permits quicker, market-driven solutions.

The institutional design of both countries has its strengths and weaknesses. Indian centralization is to be anticipated but is undermined by problems of implementation because of insufficient resources. The U.S. has a rigid framework with set rules and specialist personnel, but this is expensive. The UK aims for procedural efficiency at the expense of judicial control but this could be at the expense of simplicity in complicated cases. These highlight the need to ensure institutional design facilitates objectives of speed, fairness, and transparency.

The experience and skill of lead stakeholders—judges and insolvency professionals—are essential to the success of institutions. India has witnessed greater involvement of insolvency professionals in company cases, even though the sector is still maturing. The U.S. and UK, however, have developed cadres of seasoned legal professionals and administrators.

Technology uptake is also uneven: India is slowly embracing digital frameworks, whereas the U.S. and UK have developed advanced legal tech infrastructure. As cross-border

insolvencies become increasingly complex, the ability of these frameworks to keep up and evolve in tandem will be what will make the difference between staying relevant and credible.

COMPARATIVE STUDY

INDIA

In India, the Insolvency and Bankruptcy Code, 2016 created a comprehensive institutional framework for dealing with insolvency. The key constituents are:

- Insolvency and Bankruptcy Board of India (IBBI): The IBBI is the highest regulating authority for enforcing the IBC. It regulates insolvency professionals, information utilities, and insolvency professional agencies. It also makes rules and guidelines to ensure effective enforcement of the Code.
- National Company Law Tribunal (NCLT): NCLT is the core judicial forum for insolvency resolution cases and liquidation cases of the company. NCLT also decides appeals against orders of the insolvency resolution professionals and orders of the committees of the creditors.
- Insolvency Professionals (IPs): Regulated and IBBI-approved IPs act as resolution professionals, liquidators, and trustees in case of insolvency. IPs are significant in the administration of the estate of the debtor and in the process of corporate insolvency resolution (CIRP).

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- Information Utilities (IUs): They are professional entities which gather, authenticate and hold financial information with the intention of decreasing disputes and make insolvency smoother.

Even as the institutional framework is clearly established, practicability issues like piling up of cases to NCLTs, misinterpretation, and non-availability of trained IPs have resulted in delay in disposal. Reforms to build capacity and digitization of insolvency institutions are ongoing.

UNITED STATES OF AMERICA

The US insolvency system is decentralized and federally controlled by the court system:

- United States Bankruptcy Courts: These are federal judiciary system courts that handle only bankruptcy cases. Each federal judicial district has a bankruptcy court, and the judges serve for 14 years.
- Office of United States Trustee (UST): Department of Justice reporting, the UST monitors bankruptcy cases and is the compliance enforcement administrator. The UST appoints and oversees private trustees that handle bankruptcy estates.
- Bankruptcy Trustees: Trustees dispose of the debtor's non-exempt property in Chapter 7 cases. They administer repayment plans in Chapter 13. In Chapter 11, a debtor will typically be responsible as a "debtor-in-possession," but the court may appoint a trustee in cases of fraud or mismanagement.

The American system is judicially governed, adversarial in adjudication, and very dependent on market mechanisms for resolution. Its maturity and depth of institutions have contributed to producing relatively predictable outcomes, albeit at the cost of high litigation expense.

UNITED KINGDOM

The institutional structure of the UK is informed by its common law and insolvency practice history:

- Insolvency Service: It is the non-ministerial executive arm of the Department for Business and Trade, regulating the profession of insolvency, dealing with complaints of malpractice, and managing bankruptcy estates where there is no private-sector insolvency practitioner.
- Insolvency Practitioners (IPs): Trained experts, often accountants or solicitors, are primarily in charge of the administration of insolvency procedures. IPs are overseen by Recognised Professional Bodies (RPBs) like the ICAEW or IPA.
- Courts: Cases of insolvency are typically handled by the High Court or County Courts, based on case complexity and importance.
- Companies House: It is not an insolvency authority in itself, but it helps by keeping statutory records of insolvencies by companies.

The UK system is based on tested process and relatively robust culture of enforcing creditor rights. Reform in the recent past aimed at simplifying and streamlining court procedure and strengthening the focus on business rescue rather than liquidation.

India's centrally conceived, code-based IBC model contrasts with the US and UK's judgedominated, more decentralized models. India's model has higher regulatory control but low capacity. The US model has higher legal predictability and institutional depth but fails on the grounds of excessive cost and complication. The UK model has judicial discretion and professional regulation with a balanced approach but needs periodic revision to keep in pace with economic change.

Understanding these institutional contexts highlights the significance of judicial education, capacity-building, and regulatory autonomy in delivering effective insolvency results.

Comparative practice is that there is no best model and hybrid models will be the best solutions.

CREDITOR-DEBTOR DYNAMICS AND RESOLUTION TIMELINES.

The creditor-debtor relationship and the speed with which insolvency procedures are handled are the key factors that decide the efficiency and equity of an insolvency system. They not only decide the fate of recoveries, but also the attractiveness of a jurisdiction as an investment opportunity and as a place to lend.

In India, the Insolvency and Bankruptcy Code (IBC) marks a paradigm shift towards a creditor-

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in-control regime. The moment a case is admitted by the National Company Law Tribunal (NCLT), management control of the assets of the debtor is taken away and vested in a resolution professional under the direction of the committee of creditors (CoC). The IBC envisages a 180-day period of resolution, extendable by 90 days, to ensure time-bound results. However, in reality, cases have usually been longer than this time due to judicial jams, delay in professional appointment, and litigations of long duration. However, even amidst such delays, the IBC has witnessed improved recovery rates for creditors when compared to the pre-IBC era. Empowerment of the financial creditors, particularly through their dominance in the CoC, has changed the dynamics of power in insolvency proceedings, albeit at the cost of raising the issue of marginalization of the operational creditors.

The United States has a debtor-friendly policy, particularly through its Chapter 11 provisions. The debtors can have control of the business as "debtors-in-possession" and are given sole authority to submit a reorganization plan within an original 120-day period. It provides a collective restructuring regime whereby the creditors will be encouraged to negotiate rather than litigate. Chapter 11 proceedings are however complex and costly, and time frames can take years to complete for large businesses. While such flexibility supports corporate recovery and job retention, it may be detrimental to unsecured creditors, particularly where the debtor's management is not credible or in cases of protracted negotiations.

In the UK, creditor-debtor balance is higher with emphasis on rescuing viable companies and protecting creditor interests. Administration and CVAs are available options with the power to effect reorganization through licensed insolvency practitioners. In 2020, the Corporate Insolvency and Governance Act implemented a new pre-insolvency moratorium and restructuring plan. This model is not like that in the United States as it does not give the debtors-in-possession management but guarantees professionalism in terms of restructuring guidance. Resolution periods are shorter and more fixed compared to India but longer compared to the U.S. whenever highly complex restructuring is involved.

By contrast, India's time-based organization remains aspirational but currently hindered by institutional inefficiencies. The U.S. system offers procedural flexibility but only at the cost of delay and legal cost, and the UK offers a mix of control and speed. They are the compromises in insolvency design: making creditors powerful may speed up the recovery of assets but perhaps at the cost of some participants; making debtors powerful may facilitate restructuring at the cost of creditor recoveries.

Aside from this, the involvement of appeals and judiciary to decide the resolution timelines cannot be overstated. Repeated appeals and interference by superior courts in India have a tendency to prolong insolvency case lifecycles. In contrast, special courts for bankruptcy in the US and minimum court interventions in the UK allow for smooth procedures. As insolvency regimes within various jurisdictions change, the weighing of creditor and debtor rights and speedy and equitable resolution is a shared policy interest. Speed is extremely critical as a determinant in measuring the effectiveness of any insolvency regime. It has substantial implications for recovery value of assets, confidence among creditors, and efficiency of the financial system. Resolution processes and their timeline differ significantly across India, the US, and the UK based on institutional capacity, legislative necessity, and process complexity.

In India, the Insolvency and Bankruptcy Code (IBC) requires a time-bound resolution process to provide speed and certainty. The CIRP has to be completed within 180 days, extendable to a maximum of 90 days, with the total time not exceeding 330 days including the period of litigation. In practice, the timeframe is repeatedly violated because of judicial delays, cases of complexity litigations, and the National Company Law Tribunal (NCLT) burden, which is limited. As per information released by the Insolvency and Bankruptcy Board of India (IBBI), the average timeline to settle a case is poised to be way past 400 days. Despite this, the IBC has revolutionized rate of resolution from pre-IBC days, with recoveries of up to as much as 43% of admitted claims in certain high-profile cases. Tools such as the Committee of Creditors (CoC) and Resolution Professionals (RPs) have institutionalized creditor-led processes, albeit with issues related to transparency and bidder behavior.

On the other hand, the United States boasts a

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debtor-friendlier and more flexible resolution regime, primarily under Chapter 11 of the Bankruptcy Code. There are no legislated deadlines for completing reorganization, although the debtor must file a reorganization plan within 120 days (exclusive period), extendable in the discretion of the court. Although flexibility enables negotiated settlements and sophisticated reorganization plans, it also enables prolonged proceedings, particularly in major corporate bankruptcies. Although longer, the U.S. system is more oriented to preservation of going concern value, usually with higher recovery rates. The debtor-in-possession (DIP) process and access to DIP financing are crucial in sustaining operations throughout reorganization. Empirical research discovers that larger companies will exit Chapter 11 with improved operating performance and lower debt levels, though smaller and mid-cap companies will experience high procedural costs.

The United Kingdom, with its efficient process and Company Voluntary Arrangement (CVA) procedures, prioritizes speed of resolution and continuity of business. Administration is intended to be completed within 12 months, but only with the permission of creditors or the court. The more recent inclusion of the restructuring plan under Part 26A of the Companies Act 2006 provides a flexible, court-monitored process, well placed to deal with complex financial restructurings. As compared to India, where the process is actively supervised by the courts, or the U.S., where court approval is the linchpin of each step, the UK system is more dependent on insolvency practitioners and pre-packaged administration. The process speeds up but has been decried as not being transparent and unsecured creditor exclusion.

Significantly, the Corporate Insolvency and Governance Act 2020 added a moratorium

period and a restructuring plan with a "cross-class cram down" option, moving UK law closer to the U.S. model while ensuring procedural economy.

Outcome measures in these jurisdictions also have mixed trends. India's IBC has had much higher recovery rates than its atomized predecessors but still lags international best practices. India's recovery rate in World Bank's 2020 Doing Business report was approximately 71 cents for every dollar, while in the UK it was 81 cents and in the US it was 80 cents.

Secondly, while the average duration to resolve insolvency in the UK and US is approximately a year or two, Indian cases drag on for far longer due to procedural inefficiency.

The other significant point of distinction is the treatment of various classes of creditors and resolution outcomes for debtors. The U.S. places a strong emphasis on rehabilitation, and liquidation is avoided by allowing companies to exit following successful bankruptcy. In India, liquidation is what most of the insolvency cases result in instead of successful resolution—raising the question of whether the system is effective enough in maintaining enterprise value. The UK has a balanced system with extensive use of pre-packs and CVAs to prevent liquidation and rescue businesses, especially in retail and services industries.

In summary, all three systems are attempting to balance creditors' and debtors' interests but differ in their approach to timelines and outcomes, revealing philosophical and institutional differences. India's model is ambitious and prescriptive but remains hindered by problems of implementation. The U.S. system is flexible and result-focused but might be costly and timeconsuming. The UK's style is procedurally efficient and creditor-dominated but at times, in the sacrifice of transparency. Each system's success therefore then depends not only on drafting legislations but also on institutional capability, judicial quality, and the overall economic setting within which insolvency law operates.

CROSS-BORDER INSOLVENCY COOPERATION

Multinationals' arrival on the global scene and financial integration have brought more challenges for efficient cross-border regimes of insolvency. Insolvency regimes themselves are not constructed in a manner capable of responding to complexity generated by assets, creditors, and procedural legal processes across borders. India, the United States of America, and the United Kingdom provide different models of cross-border regimes of insolvency, which have been influenced by their legal system, international treaties, and regulatory requirements.

India lacks a harmonized cross-border insolvency law so far, though the Insolvency and

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Bankruptcy Code (IBC), 2016, has provisions under Sections 234 and 235 to facilitate bilateral agreements with foreign countries and recognition of foreign proceedings. These are procedural provisions and are never used in practice because of the lack of signed treaties and detailed guidelines. Aware of this lacuna, the Ministry of Corporate Affairs has suggested the implementation of the UNCITRAL Model Law on Cross-Border Insolvency, which if implemented, would introduce uniform sets of cooperation, recognition, and assistance across borders. The absence of a robust mechanism is still the primary disadvantage for foreign creditors and international investors in Indian insolvency proceedings.

By contrast, the United States is a leader in the application of international best practices in cross-border insolvency. Chapter 15 of the U.S. Bankruptcy Code, adopted in 2005, is a verbatim adaptation of the UNCITRAL Model Law. Chapter 15 is a grant of recognition of foreign insolvency cases, cooperation between foreign and U.S. courts, and fair treatment of foreign creditors. Chapter 15 permits easier appointment of foreign representatives, grants automatic stays, and gives access to U.S. courts. Chapter 15 case law in the U.S. has evolved to make it and permit global restructurings, such as Lehman Brothers and Nortel Networks, headline cases.

The United Kingdom also has a strong cross-border insolvency regime. Before Brexit, it enjoyed the benefit of the EU Insolvency Regulation providing automatic recognition of insolvency judgments of the EU member states. Following Brexit, the UK switched back to the UNCITRAL Model Law, the Cross-Border Insolvency Regulations (CBIR) 2006, and common law provisions for recognition and aid. The UK courts have been a vanguard for advancing comity and cooperation around the world, going back often on precedent and equitable considerations in order to expand recognition and relief to foreign judgments, especially when reciprocity and equity are present.

In spite of differences of application, the new trend in the three jurisdictions is moving towards Model Law modes of cooperation, direct communication, and harmonization. Operational problems, however, persist. Inter-jurisdictional conflicts, differences of creditor rights, and forum shopping can make proceedings cumbersome. Successful cross-border insolvency regimes depend not just on harmonization of law but also on judicial cooperation, administrative capacity, and political will.

For India, the future is in institutional readiness, convergence of the law to international best practice, and the development of judicial capacity. Use of the UNCITRAL Model Law would be of utmost importance to boost India's attractiveness for foreign investors and the integrity of its insolvency system. For the U.S. and UK, additional development and judicial guidance in implementing their systems are necessary to place the world leaders in international insolvency law. The three nations together suggest the necessity of multilateral cooperation, legal harmonization, and shared responsibility in insolvency management in a globalized world.

CONCLUSION

This cross-cultural comparison of Indian, US, and UK insolvency and bankruptcy law highlights diversity and convergence of international insolvency regimes. All jurisdictions reflect the unique historical experience, legal culture, and economic imperatives of their respective locales, but they all are facing the same basic challenges: to facilitate effective resolution, maximize creditor recovery, preserve enterprise value, and promote economic stability.

India's Insolvency and Bankruptcy Code, while a recent development, is a courageous step towards creditor empowerment and systemic change. Its success, however, will hinge on the surmounting of procedural inefficiency, institution building, and all-embracing cross-border provision. The United States, with its mature and sophisticated regime, is an exemplar of the benefits of specialization, protection of debtors, and adaptability, but plagued by high procedural costs and lengthy timelines. The United Kingdom offers a highly balanced model that balances creditor rights and corporate rescue and is underpinned by professional oversight and relatively speedy proceedings.

Cross-border insolvency has become a frontier of utmost importance in such a situation. The U.S. and U.K. have been leaders in law harmonization and international cooperation, while India has to move swiftly in the application of international standards such as the UNCITRAL Model Law if it is to remain competitive. With business and financial

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systems increasingly integrated, national insolvency legislations have to change to be agents of not just domestic resolution but international coordination.

The study also reveals that insolvency reform is a continuous process that must keep up with changing economic circumstances, judicial views, and stakeholder expectations. Countries must balance efficiency and equity, certainty and law's flexibility, domestic control and international cooperation. Future reforms can strive to be more technology enabled, institution capacity building oriented, stakeholder inclusive, and aligned globally.

Lastly, the effectiveness of any insolvency regime hinges not on the language of its law but on its ability to deliver timely, fair, and economically rational outcomes. A comparative approach, as taken in this study, not only broadens our understanding of what succeeds and what does not but also provides a model for jurisdictions to build or create their insolvency climate. The nature of business requires insolvency law to be viewed as a dynamic tool of economic regulation—one that safeguards investment, preserves employment, and promotes sustainable economic growth across borders.

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