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JUDICIAL BACKLOG AND DELAY IN JUSTICE DELIVERY IN INDIA

-AMIR BASHIR KAZI

When Justice Waits, Society Pays

"Justice delayed is justice denied." These timeless words resonate deeply in India, where millions of cases remain pending before courts. The judiciary, often regarded as the guardian of constitutional rights and the rule of law, faces one of its greatest challenges the ever-growing judicial backlog. Delayed justice affects not only litigants but also the economy, governance, and public confidence in the legal system.

India's judicial system operates through the Supreme Court, High Courts, and subordinate courts. While these institutions play a crucial role in safeguarding rights and resolving disputes, they are burdened by an enormous number of pending cases. Civil disputes frequently take years, and sometimes decades, to conclude, while criminal trials often leave accused persons and victims waiting indefinitely for justice.

Why Do Cases Remain Pending?

Several factors contribute to judicial delays in India.

Shortage of Judges: India's judge-to-population ratio remains considerably lower than that of many developed nations. Vacant judicial posts increase the workload on existing judges, resulting in slower disposal of cases.

Frequent Adjournments: Repeated requests for adjournments by parties and lawyers significantly prolong litigation. What should require a few hearings often stretches into years.

Government as the Largest Litigant: A substantial proportion of pending cases involve government departments, many of which continue litigation even in matters where the legal position is already settled.

Infrastructure Constraints: Although the e-Courts project has modernized many courts, several district courts still face shortages of courtrooms, staff, and digital infrastructure.

Complex Procedures: Lengthy procedural requirements, numerous interim applications, and multiple appellate remedies often delay the final resolution of disputes.

The Human Cost of Delay

Judicial delay is not merely a legal issue it is a human issue.

Thousands of undertrial prisoners remain incarcerated for years before their guilt or innocence is determined. Families involved in prolonged litigation suffer emotional stress, financial hardship, and social uncertainty. Witnesses lose interest, evidence deteriorates over time, and justice itself becomes increasingly difficult to achieve.

For businesses, delayed resolution of commercial disputes discourages investment and affects India's economic competitiveness. Investors prefer legal systems that guarantee speedy and predictable dispute resolution.

Judicial Response and Legal Developments

The Supreme Court has repeatedly emphasized that the **right to a speedy trial** forms an essential part of the right to life and personal liberty under Article 21 of the Constitution.

Landmark decisions such as **Hussainara Khatoon v. State of Bihar (1979)** recognized speedy justice as a constitutional guarantee and highlighted the plight of undertrial prisoners. Subsequent judgements have consistently urged judicial reforms, improved infrastructure, and better case management.

Recent criminal law reforms under the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** also introduce timelines for various stages of criminal proceedings with the objective of reducing unnecessary delays.

TECHNOLOGY AS A GAME CHANGER

The Indian judiciary has embraced digital transformation through the **e-Courts Mission Mode Project**.

Key initiatives include:

- E-filing of cases
- Virtual and hybrid hearings
- Online payment of court fees
- AI-assisted legal research tools
- Digital translation of judgements
- National Judicial Data Grid (NJDG) for monitoring case pendency

These reforms have improved accessibility and transparency, although their benefits are yet to reach every district court uniformly.

Alternative Dispute Resolution

Courts alone cannot eliminate the backlog. Alternative Dispute Resolution (ADR) mechanisms such as **mediation, arbitration, conciliation, and Lok Adalats** have emerged as effective alternatives.

The **Mediation Act, 2023** has further strengthened mediation as an efficient method for resolving disputes without lengthy litigation. Every dispute settled outside the courtroom reduces pressure on the judicial system while providing faster and less expensive justice.

The Road Ahead

Reducing judicial backlog requires a comprehensive strategy:

- Filling judicial vacancies without delay
- Strengthening court infrastructure
- Increasing budgetary allocation to the judiciary
- Encouraging digital courts and paperless proceedings
- Promoting mediation and other ADR mechanisms
- Discouraging unnecessary adjournments
- Adopting efficient case management systems

Judicial reforms must focus not only on increasing the number of judges but also on improving efficiency, accountability, and accessibility.

CONCLUSION

The effectiveness of any democracy depends upon the timely administration of justice. Delayed decisions weaken public trust, undermine constitutional values, and increase the social and economic costs of litigation.

India has already begun significant reforms through technological innovation, procedural modernization, and institutional strengthening. However, lasting success will require sustained commitment from the judiciary, legislature, executive, legal profession, and society alike.

A justice system that delivers timely, affordable, and accessible justice is not merely an institutional necessity; it is the foundation of constitutional governance and the rule of law. As India continues its journey toward judicial modernization, the ultimate objective must be to transform the familiar phrase "**tareekh pe tareekh**" into "**timely justice for every citizen.**"

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CHILDREN'S RIGHTS IN CYBERSPACE: EMERGING THREATS AND REGULATORY CHALLENGES

-Vaishnavi Mahendra Patil

Protecting Young Minds in the Digital Age

The internet has become an inseparable part of children's lives. From online classrooms and educational videos to social media, gaming, and virtual friendships, digital technology offers unprecedented opportunities for learning, creativity, and communication. Today's children are often described as "**digital natives**" because they grow up surrounded by technology and navigate the online world with remarkable ease.

However, the same digital environment that empowers children also exposes them to serious risks. Cyberbullying, online sexual exploitation, identity theft, privacy violations, misinformation, gaming addiction, and harmful online content have emerged as significant threats to children's safety and well-being. As technology evolves faster than legal systems, ensuring children's rights in cyberspace has become one of the most pressing challenges of the twenty-first century.

A New Dimension of Children's Rights

The **United Nations Convention on the Rights of the Child (UNCRC)** recognizes every child as a rights-holder entitled to protection, development, participation, and survival. These rights are equally relevant in digital environments.

Children should not be viewed merely as passive recipients of protection. They are active participants in the digital world, capable of learning, expressing opinions, creating content, and contributing to society. Therefore, modern digital governance must strike a balance between safeguarding children from online harm and respecting their autonomy and freedom of expression.

Opportunities Offered by Cyberspace

Digital platforms have transformed education and communication in remarkable ways.

Children today can:

- Access quality educational resources from anywhere.
- Develop digital literacy and technological skills.
- Express creativity through blogs, videos, artwork, and coding.
- Connect with peers across geographical boundaries.
- Participate in social awareness campaigns and civic discussions.
- Explore career opportunities and entrepreneurial skills at an early age.

For many children living in remote or marginalized communities, the internet has become a gateway to knowledge and opportunities that were previously inaccessible.

Emerging Threats in the Digital World

Despite these benefits, cyberspace presents several serious challenges.

Cyberbullying- Social media has increased incidents of online harassment, trolling, intimidation, and public humiliation. Unlike traditional bullying, cyberbullying can continue around the clock and often leaves lasting psychological effects on children.

Online Sexual Exploitation- Children are increasingly targeted through grooming, exploitation, child sexual abuse material (CSAM), and online trafficking. Anonymous digital platforms and encrypted communication make such crimes difficult to detect and prosecute.

Privacy and Data Protection- Many websites and mobile applications collect children's personal information without meaningful consent. Excessive data collection raises concerns regarding surveillance, profiling, and commercial exploitation.

Harmful Content- Children can easily encounter violent, explicit, misleading, or age-inappropriate content. Algorithm-driven recommendations may further expose them to harmful material.

Screen Addiction and Mental Health- Excessive use of digital devices has been linked with anxiety, sleep disorders, reduced physical activity, social isolation, and declining mental well-being among children.

Regulatory Challenges

Regulating cyberspace is far more complex than regulating the physical world. Digital platforms operate across national borders, making jurisdiction and enforcement difficult. Social media companies, gaming platforms, and online intermediaries often control enormous volumes of user-generated content, requiring effective mechanisms to remove harmful material while preserving freedom of expression. Another challenge lies in balancing child protection with children's participation rights. Excessive restrictions may unintentionally prevent children from accessing educational opportunities and expressing themselves online.

India's Legal Framework

India has introduced several legal measures to address cyber risks affecting children.

Important legal protections include:

- **Information Technology Act, 2000**
- **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**
- **Protection of Children from Sexual Offences (POCSO) Act, 2012**
- **Juvenile Justice (Care and Protection of Children) Act, 2015**
- Digital privacy protections recognized by the Supreme Court as part of the **right to privacy**.

Indian courts have also emphasized intermediary responsibility and online child protection through significant judicial decisions concerning digital platforms and cybercrime.

Strengthening Children's Digital Rights

Creating a safer digital environment requires collective responsibility.

Some important measures include:

- Introducing comprehensive digital literacy education in schools.
- Encouraging responsible online behaviour from an early age.
- Developing child-friendly reporting mechanisms for cybercrime.
- Strengthening parental awareness without excessive surveillance.

- Holding digital platforms accountable for harmful content.
- Improving cybersecurity infrastructure and law enforcement capacity.
- Bridging the digital divide by ensuring equitable internet access for rural and disadvantaged children.
- Involving children in discussions relating to digital policies that directly affect them.

The Way Forward

Children should not be seen only as vulnerable internet users requiring constant supervision. They should also be recognized as responsible digital citizens capable of contributing meaningfully to online communities. Future cyber laws must adopt a **child-centric and rights-based approach** that balances protection, participation, privacy, and access. Governments, educational institutions, parents, technology companies, civil society organizations, and children themselves must work together to build an internet that is both safe and empowering. Technological innovation should never come at the cost of children's dignity, security, or fundamental rights.

CONCLUSION

Cyberspace has become an essential part of childhood in the digital era. While it offers extraordinary opportunities for education, creativity, and social participation, it also exposes children to evolving cyber threats that demand urgent legal and policy responses. Protecting children's rights online requires more than stricter laws. It demands digital literacy, responsible technology governance, stronger institutional coordination, and meaningful participation of children in shaping the digital future. Only through a balanced and collaborative approach can we ensure that cyberspace remains a place where every child can learn, grow, and thrive safely.

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CLINICAL LEGAL EDUCATION IN INDIA:

OPPORTUNITIES AND CHALLENGES

-Ovi Tulshidas Gosavi

Bridging the Gap Between Legal Theory and Practice

Legal education is not merely about studying statutes, memorizing judicial precedents, or understanding constitutional principles. It is about preparing future lawyers to solve real problems, represent clients ethically, and uphold justice. In India, however, one of the persistent criticisms of legal education is the disconnect between classroom learning and practical legal training. Many law graduates possess sound theoretical knowledge but lack the professional skills required for effective legal practice. This gap has brought **Clinical Legal Education (CLE)** into the spotlight. By combining legal theory with practical experience, CLE seeks to prepare students for the realities of the legal profession while promoting access to justice. As legal education continues to evolve, clinical training is increasingly recognized as an essential component of producing competent, ethical, and socially responsible lawyers.

What is Clinical Legal Education?

Clinical Legal Education is a method of teaching law through **experiential learning**. Instead of relying solely on lectures and textbooks, students participate in practical activities that mirror real legal practice. These include legal aid clinics, moot courts, internships, client counselling, drafting legal documents, mediation exercises, and simulated trials. The philosophy behind CLE is simple: **students learn law best by applying it**. Through supervised practical work, they develop professional skills, ethical awareness, problem-solving abilities, and confidence qualities that cannot be acquired through examinations alone.

The Evolution of Clinical Legal Education in India

The foundations of Clinical Legal Education in India can be traced to the **legal aid movement of the 1970s**, which emphasized access to justice for marginalized communities. Visionaries such as **Prof. N. R. Madhava Menon** argued that legal education should combine academic excellence with professional training. The establishment of the **National Law School of India University (NLSIU)** in 1987 marked a turning point. Its innovative curriculum introduced compulsory internships, legal aid programmes, and moot courts, inspiring similar reforms across the country. Subsequently, the **Bar Council of India (BCI)** made clinical components mandatory through its Rules of Legal Education, requiring law colleges to offer:

- Legal Aid Clinics
- Moot Courts
- Internships
- Drafting, Pleading and Conveyancing
- Professional Ethics and Bench-Bar Relations

These reforms reflected a shift from purely theoretical legal education toward experiential learning. Clinical Legal Education benefits not only students but also society.

Developing Practical Skills

Students learn essential professional competencies such as:

- Client interviewing
- Legal research
- Drafting pleadings
- Negotiation
- Advocacy
- Alternative Dispute Resolution (ADR)
- Professional ethics

These skills improve employability and ease the transition from law school to legal practice.

Promoting Access to Justice- Legal aid clinics enable students to assist economically weaker sections under faculty supervision. By participating in legal awareness camps, Lok Adalats, and community outreach programmes, students contribute to the constitutional vision of equal justice while gaining practical experience.

Building Professional Responsibility- CLE instils empathy, accountability, and ethical decision-making. It reminds students that the legal profession is not only a career but also a public service.

Challenges Facing Clinical Legal Education- Despite regulatory support, effective implementation remains uneven across Indian law schools.

Limited Infrastructure- Many institutions lack dedicated legal aid clinics, interview rooms, digital research facilities, and adequate funding. Clinical programmes often exist only to satisfy regulatory requirements.

Shortage of Trained Faculty- Teaching practical law requires experienced mentors who can supervise students, provide constructive feedback, and connect legal theory with real-life practice. Unfortunately, many institutions face a shortage of faculty with clinical experience.

Theory-Practice Divide- Traditional legal education continues to focus heavily on examinations and classroom lectures. As a result, students often graduate without handling real clients, drafting legal documents, or participating meaningfully in dispute resolution.

Internship Quality- Although internships are compulsory, their educational value varies significantly. In many cases, students perform administrative tasks rather than engaging in substantive legal work, limiting their professional growth.

Regulatory Compliance Without Meaningful Change- Several institutions comply with mandatory requirements on paper but fail to create vibrant clinical programmes. Legal aid clinics, moot courts, and internships may exist formally but lack active participation, structured supervision, and measurable outcomes.

Emerging Opportunities- Despite these challenges, Clinical Legal Education in India is undergoing significant transformation.

Technology-Driven Learning- Digital platforms have expanded opportunities for experiential learning through:

- Virtual legal aid clinics
- Online client consultations
- E-research databases
- AI-assisted legal research
- Virtual moot courts
- Online mediation sessions

Technology enables students to engage with legal practice beyond traditional classrooms.

Interdisciplinary Learning- Modern legal problems often involve economics, technology, public policy, environmental science, and psychology. Collaborating with experts from different disciplines helps students develop holistic solutions to complex legal issues.

Community Engagement- Many law schools now organize legal literacy programmes, awareness campaigns, prison visits, consumer rights initiatives, and village legal aid camps. These activities expose students to grassroots legal issues while strengthening community engagement.

Research-Based Clinics- Some institutions have expanded clinical education beyond traditional legal aid by encouraging students to conduct policy research, investigate human

rights issues, and contribute to public interest advocacy. Such initiatives demonstrate that clinical education can generate both academic learning and meaningful social impact.

The Road Ahead- Strengthening Clinical Legal Education requires coordinated efforts from educational institutions, regulatory bodies, and the legal profession.

Important reforms include:

- Improving infrastructure for legal aid clinics.
- Providing specialised training for clinical faculty.
- Strengthening partnerships with courts, NGOs, legal services authorities, and law firms.
- Ensuring meaningful supervision during internships.
- Integrating technology into clinical teaching.
- Developing systems to assess the impact of clinical programmes.
- Encouraging interdisciplinary collaboration and policy research.

Clinical education should become an integral part of legal education rather than a peripheral requirement.

Conclusion

The future of legal education lies in preparing students not only to understand the law but also to apply it effectively and ethically. Clinical Legal Education bridges the gap between legal theory and professional practice by equipping students with practical skills, ethical values, and a commitment to social justice. India has already laid the foundation through regulatory reforms and innovative institutional models. The challenge now is to ensure that every law student receives meaningful experiential learning, regardless of the institution they attend. A strong legal education system produces more than successful advocates it nurtures responsible professionals, informed citizens, and defenders of justice. By embracing Clinical Legal Education, Indian law schools can transform classrooms into spaces where learning meets service and knowledge becomes action.

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DIGITAL PERSONAL DATA PROTECTION ACT, 2023 & PRIVACY JURISPRUDENCE IN INDIA

-BHAVANA NILESH BORATE

Balancing Innovation, Privacy, and Constitutional Rights

The digital revolution has transformed everyday life in India. From online banking and digital payments to e-commerce, social media, and government services, personal data has become one of the most valuable resources in the modern economy. Every online search, mobile application, and digital transaction leaves behind information that can reveal a person's identity, preferences, and behaviour. While digital technology has made life more convenient, it has also increased concerns about privacy, surveillance, and misuse of personal information. The importance of privacy received constitutional recognition in **2017**, when the Supreme Court, in the landmark ***Justice K.S. Puttaswamy v. Union of India*** judgement, declared the **right to privacy** a fundamental right under the Constitution. The Court

emphasized that privacy is closely connected to dignity, liberty, and individual autonomy, making it an essential part of democratic governance. This judgement laid the foundation for India's first comprehensive data protection legislation the **Digital Personal Data Protection Act, 2023 (DPDP Act)**.

Why Was the DPDP Act Needed?

India is home to one of the world's largest digital populations. Millions of people use smartphones, digital payment platforms, online education, healthcare applications, and government portals every day. As digital interactions increased, so did incidents of data breaches, identity theft, online fraud, and unauthorized sharing of personal information. Before 2023, India lacked a comprehensive legal framework governing how personal data should be collected, stored, processed, and shared. The DPDP Act was enacted to fill this gap by establishing rules that protect personal data while supporting innovation and the digital economy.

Key Features of the DPDP Act

The Act introduces several important principles for handling personal data.

Consent-Based Processing

Organizations collecting personal data must obtain the individual's consent before using it. Consent should be clear, informed, and voluntary, ensuring that people understand why their information is being collected and how it will be used.

Rights of Individuals

The Act grants individuals several important rights, including:

- Access to their personal data.
- Correction of inaccurate information.
- Erasure of data that is no longer required.
- Grievance redressal against misuse of personal information.

These rights aim to give citizens greater control over their digital identities.

Responsibilities of Data Fiduciaries

Companies and government bodies that process personal data known as **Data Fiduciaries** must:

- Maintain reasonable security safeguards.
- Prevent data breaches.
- Notify authorities and affected individuals when breaches occur.
- Process data only for lawful purposes.

Larger organizations handling significant volumes of personal data are expected to comply with stricter regulatory obligations.

Constitutional Significance- The DPDP Act is closely connected with the constitutional principles laid down in the **Puttaswamy** judgement. The Supreme Court held that restrictions on privacy must satisfy the tests of legality, necessity, proportionality, and accountability. By introducing statutory protection for personal data, the Act marks a significant step toward fulfilling this constitutional mandate. It recognizes that privacy is no longer merely a personal concern but a democratic necessity in the digital age.

Areas of Concern- Despite its importance, the DPDP Act has attracted criticism from legal scholars, technology experts, and civil society.

Broad Government Exemptions- One of the most debated features is the power granted to the Central Government to exempt certain public authorities from parts of the Act for reasons such as national security and public order. Critics argue that such broad exemptions may weaken constitutional privacy protections if not accompanied by adequate safeguards and independent oversight.

Limited Individual Rights- Unlike some international data protection laws, the DPDP Act does not provide certain rights such as:

- Data portability.
- Protection against fully automated decision-making.
- Greater transparency regarding algorithmic profiling.

As artificial intelligence becomes increasingly common, these omissions may become more significant.

Regulatory Independence- The Act establishes a **Data Protection Board of India** to address complaints and enforce compliance. However, since appointments are made by the Central Government, questions have been raised about the Board's institutional independence and its ability to regulate both public and private entities impartially.

Learning from Global Practices- Many countries have already adopted comprehensive privacy frameworks. The **European Union's General Data Protection Regulation (GDPR)** is considered the global benchmark. It provides stronger individual rights, stricter obligations on organizations, and independent regulatory authorities. Similarly, the **United Kingdom's Data Protection Act** emphasizes transparency, accountability, and protection against automated decision-making. India's DPDP Act represents an important beginning, but future amendments may draw inspiration from these international models to strengthen privacy protections.

The Road Ahead

Technology evolves far more rapidly than legislation. Artificial intelligence, facial recognition, biometric authentication, and algorithmic decision-making are creating new privacy challenges that require continuous legal reform. To strengthen India's digital privacy framework, several measures deserve consideration:

- Narrowing government exemptions through judicial oversight.
- Strengthening the independence of the Data Protection Board.
- Expanding individual rights over personal data.
- Improving transparency in the use of artificial intelligence.
- Enhancing public awareness regarding digital privacy and cybersecurity.

Protecting privacy is not solely the responsibility of governments or technology companies. Every citizen must also practise responsible digital behaviour by safeguarding passwords, reviewing privacy settings, and being cautious while sharing personal information online.

CONCLUSION

The **Digital Personal Data Protection Act, 2023** marks a historic milestone in India's journey toward protecting digital privacy. It provides a long-awaited legal framework for regulating personal data and reflects the constitutional vision established in the **Puttaswamy** judgement.

However, privacy protection is an evolving process rather than a one-time legislative achievement. As technology continues to transform society, the law must evolve to ensure that innovation does not come at the cost of constitutional freedoms. A robust, transparent, and rights-based data protection framework will be essential for building public trust and ensuring that India's digital future remains both secure and democratic. In the digital age, protecting personal data is not simply about technology it is about protecting individual dignity, freedom, and the values on which our Constitution is founded.

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LEGAL ACCOUNTABILITY OF SOCIAL MEDIA PLATFORMS IN INDIA UNDER THE NEW DIGITAL GOVERNANCE FRAMEWORK

-AAKASH L. GOSWAMI

Introduction

Social media has transformed the way people communicate, learn, conduct business, and participate in public life. Platforms such as Facebook, Instagram, X (formerly Twitter), YouTube, and WhatsApp have become integral to modern society, allowing billions of users to create, share, and access information instantly. In India, the rapid expansion of internet connectivity, affordable smart phones, and initiatives like *Digital India* have made social media an indispensable part of everyday life.

However, this digital revolution has also created significant legal and regulatory challenges. Fake news, hate speech, cyber bullying, online fraud, deep fakes, privacy violations, and misinformation spread at unprecedented speed, often causing serious social and political consequences. The enormous influence of social media has therefore raised an important question: **Should digital platforms simply provide a space for communication, or should they also be legally responsible for the content they host?**

India's answer to this question has evolved considerably over the last decade. Through the Information Technology Act, 2000, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and the Digital Personal Data Protection Act, 2023, the country has moved towards a regulatory framework that places greater responsibility on digital intermediaries while attempting to preserve freedom of expression.

From Limited Liability to Greater Responsibility

When the Information Technology Act was enacted in 2000, social media platforms had not yet become global digital giants. The law primarily focused on electronic commerce, cybercrime, digital signatures, and electronic records. One of its most significant provisions, **Section 79**, introduced the principle of **Safe Harbour**, under which intermediaries would not

be held liable for third-party content, provided they acted as neutral platforms and complied with prescribed legal obligations.

This principle enabled social media companies to facilitate online communication without facing immediate legal consequences for every post made by users. However, as digital platforms became increasingly influential in shaping public opinion, elections, commerce, and social behaviour, concerns emerged regarding the misuse of these platforms for spreading misinformation, hate speech, online harassment, and unlawful content.

The traditional Safe Harbour framework was no longer considered sufficient in an era where algorithms could amplify harmful content to millions of users within minutes.

The IT Rules, 2021: A New Era of Digital Governance

Recognising these challenges, the Government of India introduced the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**. These Rules significantly transformed India's digital regulatory landscape by imposing greater accountability on intermediaries while introducing clearer compliance obligations.

Under the Rules, social media platforms are required to publish transparent privacy policies, user agreements, and community guidelines. They must establish effective grievance redressal mechanisms, appoint Grievance Officers, and remove unlawful content upon receiving valid legal directions.

A notable innovation is the distinction between ordinary **Social Media Intermediaries (SMIs)** and **Significant Social Media Intermediaries (SSMIs)**. Platforms with more than fifty lakh registered users in India are classified as SSMIs and are subject to additional obligations because of their greater influence over public discourse.

These enhanced obligations include appointing a **Chief Compliance Officer**, a **Nodal Contact Person**, and a **Resident Grievance Officer**, all of whom must be based in India. Significant intermediaries are also required to publish monthly compliance reports detailing user complaints, content removals, and actions taken to ensure transparency.

Due Diligence: More Than Mere Compliance

The cornerstone of the 2021 Rules is the concept of **due diligence**. Social media companies are no longer expected to act merely as passive intermediaries but must actively ensure that their platforms are not misused.

They are required to inform users about prohibited content, including material that is defamatory, obscene, sexually explicit, misleading, or threatens national security and public order. Platforms must also respond promptly to lawful takedown requests and cooperate with law enforcement agencies during investigations.

Failure to comply with these obligations may result in the loss of Safe Harbour protection, exposing intermediaries to direct legal liability for unlawful content hosted on their platforms.

This shift reflects an important policy change from providing legal immunity to demanding responsible digital governance.

Balancing Freedom of Speech and Platform Accountability

One of the most challenging aspects of regulating social media is maintaining an appropriate balance between **freedom of expression** and **public safety**.

Article 19(1)(a) of the Constitution guarantees every citizen the right to freedom of speech and expression. At the same time, Article 19(2) permits reasonable restrictions in the interests of sovereignty, security, public order, decency, morality, and other constitutionally recognised grounds. The Supreme Court's landmark judgement in ***Shreya Singhal v. Union of India (2015)*** significantly strengthened online free speech by striking down Section 66A of the Information Technology Act as unconstitutional. The Court held that vague restrictions on online expression could have a chilling effect on democratic discourse. While the judgement reinforced constitutional protections, it also recognised that genuinely unlawful content could still be regulated through appropriate legal mechanisms. The challenge today lies in ensuring that content moderation protects users from genuine harm without becoming a tool for arbitrary censorship.

Privacy, Traceability and Digital Rights

Another controversial feature of India's digital governance framework is the **traceability requirement** applicable to certain messaging platforms. The Rules require significant intermediaries, under specific legal circumstances involving serious offences, to identify the originator of messages. Supporters argue that traceability is essential for investigating terrorism, child sexual abuse, organized crime, and misinformation campaigns. Critics, however, contend that such requirements may undermine end-to-end encryption and weaken the constitutional right to privacy recognised by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India (2017)*. The debate illustrates the broader constitutional challenge of balancing national security with individual privacy in an increasingly interconnected digital society.

The Digital Personal Data Protection Act, 2023

The enactment of the **Digital Personal Data Protection Act, 2023** marked another milestone in India's digital governance framework. The Act establishes rules governing the collection, processing, storage, and use of personal data. It introduces principles such as informed consent, purpose limitation, data minimization, and accountability of data fiduciaries. Social media companies must now adopt stronger privacy safeguards while ensuring greater transparency regarding the use of personal information. The legislation complements the IT Rules, 2021 by strengthening users' rights and encouraging responsible handling of digital data.

Artificial Intelligence and the Next Generation of Challenges

The rapid growth of Artificial Intelligence has created entirely new regulatory concerns. Deepfake videos, AI-generated images, synthetic voices, and automated misinformation campaigns have demonstrated how emerging technologies can be misused to manipulate public opinion and damage reputations. The increasing use of recommendation algorithms has also raised concerns regarding transparency, algorithmic bias, and online radicalization. Recent regulatory initiatives have therefore focused on improving transparency in AI-generated content, encouraging platforms to label synthetic media and strengthen automated detection systems. As technology continues to evolve, digital governance will increasingly

require collaboration between lawmakers, technology companies, civil society, and the judiciary.

Persistent Challenges

Despite significant legal reforms, several challenges continue to affect the implementation of India's digital governance framework. One concern relates to the possibility of **over-regulation**, where broad governmental powers may unintentionally restrict legitimate expression or discourage innovation. Another challenge is the technical difficulty of moderating billions of pieces of user-generated content while respecting constitutional rights. Smaller digital platforms also face substantial compliance costs associated with appointing officers, maintaining reporting systems, and implementing sophisticated content moderation technologies. Ensuring uniform enforcement across both domestic and multinational companies remains equally complex. These concerns demonstrate that effective regulation must remain proportionate, transparent, and subject to adequate judicial oversight.

The Road Ahead

India's digital governance framework represents one of the most ambitious attempts to regulate social media platforms in the world. Future reforms should focus on strengthening regulatory transparency, enhancing judicial oversight, improving algorithmic accountability, and protecting user privacy while enabling innovation. Digital literacy among users is equally important. Laws alone cannot eliminate misinformation, cyber fraud, or online abuse unless citizens become informed and responsible participants in the digital ecosystem. Building trust in social media requires cooperation among governments, technology companies, civil society organizations, educational institutions, and users themselves.

Conclusion

Social media has fundamentally reshaped communication, commerce, governance, and democratic participation. With this immense influence comes an equally significant responsibility. India's evolving legal framework reflects a clear transition from limited intermediary liability towards greater platform accountability. The Information Technology Act, the IT Rules, 2021, and the Digital Personal Data Protection Act, 2023 collectively seek to create a safer and more transparent digital environment. Nevertheless, the success of this

framework will ultimately depend on maintaining a careful balance between regulation and constitutional freedoms. As India continues its digital transformation, the law must evolve alongside technology. The objective should not merely be to regulate social media but to create an online ecosystem that is innovative, accountable, secure, and respectful of the constitutional values of liberty, privacy, and freedom of expression.

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MARITAL RAPE: A CRITICAL LEGAL AND SOCIO-CONSTITUTIONAL ANALYSIS

-Piyali Ghosh

Between Marriage, Consent and Constitutional Morality

"Marriage is a partnership of equals, not a surrender of personal autonomy."

When 'I Do' Does Not Mean 'Always Yes'

Marriage has long been celebrated as one of the most sacred institutions in Indian society, symbolizing love, trust, companionship, and mutual respect. Traditionally, it has also carried an assumption that consent to sexual relations is automatically granted through marriage. However, in the twenty-first century, this assumption is increasingly being questioned.

Modern constitutional jurisprudence recognizes that every individual possesses an inherent right to dignity, bodily integrity, privacy, and personal liberty. These rights do not disappear after marriage. The debate surrounding marital rape therefore extends far beyond criminal law it challenges deeply rooted social norms while asking whether marriage can ever override an individual's right to refuse sexual relations.

At its core, the controversy represents a conflict between **tradition and constitutional morality, family privacy and state protection**, and **social customs and individual rights**.

❑ What is Marital Rape?

Marital rape is the act of non-consensual sexual intercourse by one spouse with the other. In most cases, it refers to forced sexual intercourse by a husband with his wife without her free and voluntary consent.

Unlike many democratic nations, India still retains a legal exception that generally prevents such acts from being prosecuted as rape when committed within marriage.

The Law in India

Under the **Bharatiya Nyaya Sanhita, 2023**, the offence of rape is defined comprehensively. However, the marital rape exception continues to provide legal immunity to a husband for

non-consensual sexual intercourse with his adult wife. Although women may seek remedies under the **Protection of Women from Domestic Violence Act, 2005**, these remedies are primarily civil in nature and do not criminalize marital rape. This legal position has become one of the most debated issues in contemporary constitutional law.

⚖️ **Constitution vs. Tradition**

The constitutional challenge to the marital rape exception rests upon three fundamental rights guaranteed by the Constitution of India.

Article 14 – Equality Before Law

The law currently treats two women differently merely because of their marital status. An unmarried woman is protected against rape, whereas a married woman is denied the same criminal protection when the offender is her husband. This distinction raises serious questions about equal protection of laws.

Article 19 – Freedom and Personal Choice

Freedom is meaningful only when individuals retain control over their own bodies and personal decisions. Marriage cannot extinguish a woman's freedom to decide whether or not to engage in sexual relations. If the right to refuse disappears after marriage, personal liberty becomes merely theoretical.

Article 21 – Life, Dignity and Privacy

Article 21 has evolved into one of the broadest guarantees under the Constitution. The Supreme Court has consistently held that the right to life includes:

✓ Human dignity

✓ Privacy

✓ Bodily autonomy

✓ Personal liberty

Forced sexual intercourse within marriage directly impacts each of these constitutional protections.

⚖️ Landmark Judgements That Changed Constitutional Thinking

E.P. Royappa v. State of Tamil Nadu

The Supreme Court declared that: "**Equality is antithetical to arbitrariness.**" This principle transformed Article 14 from a guarantee against discrimination into a protection against arbitrary state action.

Maneka Gandhi v. Union of India

This landmark judgement expanded the meaning of personal liberty and held that every law affecting liberty must be **fair, just, and reasonable**. It laid the constitutional foundation for later decisions concerning privacy, dignity, and bodily autonomy.

Navtej Singh Johar v. Union of India

While decriminalizing consensual same-sex relations, the Supreme Court emphasized that **constitutional morality must prevail over social morality**. The judgement reaffirmed that dignity, identity, and personal autonomy lie at the heart of the Constitution.

Kaini Rajan v. State of Kerala

The Court clarified one of the most important principles of criminal law: **Consent is an active and reasoned agreement, not passive submission**. This distinction has become central to discussions on marital rape.

Independent Thought v. Union of India

The Supreme Court held that sexual intercourse with a wife below eighteen years of age constitutes rape, recognizing that marriage cannot override the rights and bodily integrity of a child.

□ Global Perspective

Today, most democratic nations reject the centuries-old doctrine that marriage implies permanent consent. Countries such as the **United Kingdom, Canada, Australia, the United States, France, and South Africa** have criminalized marital rape, emphasizing that consent remains indispensable irrespective of marital status. India continues to be among the few jurisdictions where a broad marital rape exception still exists.

The Road Ahead

The debate surrounding marital rape is ultimately a debate about **constitutional values**.

Legal scholars argue that meaningful reform should include:

- Recognition of consent within marriage.
- Removal of the marital rape exception from criminal law.
- Strong safeguards against misuse through fair investigation and judicial oversight.
- Greater awareness regarding bodily autonomy and gender equality.
- Victim-support services, legal aid, and psychological counselling.

CONCLUSION

The question of marital rape is not simply whether a husband can be prosecuted for non-consensual sexual intercourse. It is a larger constitutional inquiry into the meaning of **equality, dignity, privacy, and autonomy** within marriage. A modern constitutional democracy cannot presume that marriage extinguishes individual choice. True partnership is founded upon mutual respect, and consent remains the cornerstone of every lawful sexual relationship. Marriage may create a legal relationship, but it can never replace free and voluntary consent.

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