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The Annual Review of Legal, Social & Economic Research marks the beginning of an academic initiative committed to fostering rigorous legal scholarship and interdisciplinary dialogue. In an era where law increasingly intersects with social transformation and economic development, the need for critical, well-researched, and analytically sound discourse has never been more significant.

This inaugural issue, Volume I, Issue I (2026), brings together contributions reflecting diverse perspectives across doctrinal and interdisciplinary areas of law. The Journal seeks to provide a platform for critical analysis and informed debate, while maintaining clarity, structure, and academic discipline in the presentation of ideas.

Particular emphasis has been placed on originality, coherence, and adherence to established citation standards. Each submission has been reviewed in accordance with the Journal's editorial framework to ensure meaningful contribution to legal scholarship.

As the first issue of the LegalBlur Journal, this publication represents a foundational step toward building a credible and sustained academic platform. The Journal aims to evolve as a space that encourages serious inquiry and supports contributions from students, researchers, and practitioners.

The Editorial Board expresses its sincere appreciation to all contributors and members whose efforts have made this issue possible.

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LIST OF ABBREVIATIONS

AIR – All India Reporter
Art. – Article
CrPC – Code of Criminal Procedure, 1973
BNSS – Bharatiya Nagrik Suraksha Sanhita
CPC – Code of Civil Procedure, 1908
Const. – Constitution
GDPR – General Data Protection Regulation
IPC – Indian Penal Code, 1860
BNS – Bharatiya Nyaya Sanhita
IEA – Indian Evidence Act
BSA – Bharatiya Sakshya Adhiniyam
IT Act – Information Technology Act, 2000
DPDP Act – Digital Personal Data Protection
No. – Number
PIL – Public Interest Litigation
SCC – Supreme Court Cases
SC – Supreme Court
HC – High Court
Sec. – Section
UOI – Union of India
EU – European Union

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CONSTITUTIONAL MORALITY AS A COUNTER-MAJORITARIAN PRINCIPLE IN INDIAN JURISPRUDENCE

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ABSTRACT

This article undertakes a jurisprudential examination of the distinction between constitutional morality and popular morality in Indian constitutional law. Beginning from Grote's nineteenth-century civic philosophy and Ambedkar's foundational invocation before the Constituent Assembly in 1948, the article traces the doctrine's judicial development through Kesavananda Bharati (1973), Naz Foundation (2009), Puttaswamy (2017), Navtej Singh Johar (2018), the Sabarimala case (2018), and Joseph Shine (2018). The article argues that constitutional morality functions as a structurally legitimate counter-majoritarian discipline, not an anti-democratic one, rooted in the Constitution's own textual commitments to equality, dignity, liberty, and fraternity. It also honestly engages with the doctrine's limitations, including conceptual vagueness and the risk of judicial subjectivity.

Keywords: Constitutional Morality, Popular Morality, Fundamental Rights, Judicial Review, Transformative Constitutionalism, Indian Supreme Court.

I. INTRODUCTION

Few tensions in constitutional law are as persistent or as consequential as the one between what the Constitution demands and what the majority happens to believe. In India, this tension has a name: constitutional morality versus popular morality. The distinction is not merely semantic. It determines whether a minority community's rights survive a hostile legislature, whether a woman can enter a place of worship on the same terms as a man, and whether centuries-old criminal laws rooted in Victorian prudishness can continue to govern the intimate lives of citizens in a republic that calls itself free.

India's Supreme Court has, particularly in the years between 2017 and 2019, moved this distinction from the margins of constitutional theory to its very centre. Deployment of "constitutional morality" as an interpretive standard-one that self-consciously overrides popular sentiment-has produced some of the most celebrated and most contested judgments in the Court's history. Chief Justice Dipak Misra captured the doctrine's animating logic with particular directness: courts must take guidance from constitutional morality, not from popular morality, and the view of the majority or public perceptions cannot be a sound basis for negating constitutional rights.¹

This article examines that doctrine systematically: its intellectual genealogy, its textual anchoring in the Constitution, its judicial development across a sequence of landmark cases, and the criticisms-some well-founded, some overstated-that it faces. The argument is ultimately that constitutional morality, properly understood, is not a rival to democracy but its self-imposed discipline: the mechanism by which a constitutional republic restrains its own majoritarian impulses in order to protect those most vulnerable to them.

II. CONCEPT AND INTELLECTUAL ORIGINS

Constitutional morality refers, broadly, to the values and principles embedded in the Constitution-equality, dignity, liberty, fraternity-which courts must treat as paramount when adjudicating rights claims. It is to be distinguished from popular morality: the prevailing moral norms of a community at any given historical moment, shaped by religion, custom, tradition, and

¹ Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1, 87 (India) (Misra, C.J.).

majoritarian consensus. The distinction is not of the kind that dissolves on close inspection. These two moralities frequently diverge, and when they do, the question of which governs is ultimately a question about the nature of constitutional democracy itself.

The doctrine's intellectual provenance in India traces to an unexpected source. George Grote, the nineteenth-century English historian, analyzed the democratic reforms of Cleisthenes in ancient Athens and described constitutional morality as “a paramount reverence for the forms of the constitution, enforcing obedience to authority and acting under and within these forms, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts.”² For Grote, the virtue was essentially procedural: a civic self-restraint that kept all constitutional actors-government and citizens alike-within constitutional channels even when passion or self-interest might tempt otherwise.

Dr B.R. Ambedkar took this formulation and loaded it with an urgency that Grote could not have imagined. Speaking before the Constituent Assembly on November 4, 1948, Ambedkar quoted Grote and then went considerably further. He warned that constitutional morality was “not a natural sentiment” in India, a society whose soil was, in his words, “essentially undemocratic,” saturated with caste hierarchy, gender subordination, and religious exclusion.³ He further cautioned that it was “perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution.”⁴ The Constitution's commitments to equality and fraternity were not aspirational decorations; they were intended to challenge, not merely accommodate, the moral architecture of Indian social tradition. This dual vision-procedural compliance with constitutional forms combined with substantive commitment to constitutional values-anticipates everything the Supreme Court has since done with the doctrine.

III. TEXTUAL ANCHORING IN THE CONSTITUTION

² GEORGE GROTE, A HISTORY OF GREECE 93 (Routledge reissue 2000) (1846–1856), quoted in CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORTS, vol. VII, at 38 (Nov. 4, 1948) (statement of Dr. B.R. Ambedkar).

³ CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORTS, vol. VII, at 38 (Nov. 4, 1948) (statement of Dr. B.R. Ambedkar) [hereinafter CAD vol. VII].

⁴ Id.

A recurring objection to the doctrine is that it lacks textual grounding—that it is, at bottom, whatever unelected judges happen to believe the Constitution ought to say. This criticism deserves engagement, but it overstates the difficulty. The doctrine draws its normative content from identifiable constitutional provisions.

The Preamble commits the Republic to “Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.”⁵ The Supreme Court in *Sabarimala* applied this fourfold framework—justice, liberty, equality, fraternity—as a constitutional morality test for the temple exclusion practice precisely, and found the practice wanting on every count.⁶

Part III provides the doctrine with its primary operational site. Articles 14 (equality before law), 15 (non-discrimination), 19 (freedoms of speech and expression), and 21 (life and personal liberty) have all been interpreted through the lens of constitutional morality. Article 21 has proven especially capacious: it now shelters not only physical liberty but also dignity, privacy, and personal autonomy.

The morality clauses in Articles 25 and 26 present the most technically charged site of contestation. Both articles protect religious freedom, but subject it to “public order, morality and health.”⁷ What “morality” means in that context is a live jurisprudential question. If it means popular morality—the prevailing moral sensibility of the devout majority—then religious practices, however exclusionary, could claim constitutional shelter. In *Sabarimala*, the Court authoritatively rejected this reading: the word “morality” in Articles 25 and 26 means constitutional morality, not popular or religious morality.⁸ Any other interpretation would transform the religion clauses into instruments for the perpetuation of discrimination, which no coherent reading of the Constitution can sanction.

IV. THE JUDICIAL JOURNEY: KEY CASES

⁵ INDIA CONST. pmb1.

⁶ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 S.C.C. 1, 93 (India) (Misra, C.J.) [hereinafter *Sabarimala*].

⁷ INDIA CONST. arts. 25, 26.

⁸ *Sabarimala*, *supra* note 6, at 93.

The doctrine's judicial life begins, in spirit if not in name, with *Kesavananda Bharati v. State of Kerala*.⁹ That thirteen-judge bench decision established the Basic Structure Doctrine: Parliament cannot amend the Constitution so as to destroy its fundamental identity. The phrase “constitutional morality” did not appear prominently in the judgment, but the underlying logic was structurally identical: certain constitutional values are non-negotiable, and democratic majorities cannot abrogate them. This counter-majoritarian principle was thus embedded in Indian constitutional law decades before the current doctrinal discourse.

The first explicit and sustained judicial invocation came with *Naz Foundation v. Government of NCT of Delhi*.¹⁰ A Division Bench of the Delhi High Court was called upon to decide whether Section 377 of the Indian Penal Code, which criminalised “carnal intercourse against the order of nature”, and thereby penalised consensual same-sex conduct between adults, was constitutionally valid. The Court held that it was not, and framed its holding in terms that went directly to the morality distinction: “Social morality has to succumb to the concept of constitutional morality.”¹¹ The judgment cited Ambedkar directly, anchored the analysis in Fundamental Rights, and treated the Constitution's commitment to equality and dignity as decisive-without regard to majoritarian moral attitudes.

What followed was an instructive object lesson in doctrinal regression. In 2013, a two-judge Supreme Court bench in *Suresh Kumar Koushal v. Naz Foundation* reversed the Delhi High Court entirely and restored the constitutional validity of Section 377.¹² The Court's central rationale was that LGBT persons constituted a “minuscule fraction” of the population and that decriminalisation was a matter for the legislature rather than the judiciary. The judgment attracted immediate and well-founded criticism. It applied no serious proportionality analysis, engaged superficially with Fundamental Rights, and, most damaging from a doctrinal standpoint, allowed prevailing moral attitudes to perform constitutional work that the Court had no business permitting. *Koushal* reads, in retrospect, as a study in what happens when a court either cannot or will not distinguish between the two kinds of morality at stake.

⁹ *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461 (India).

¹⁰ *Naz Found. v. Gov't of NCT of Delhi*, 160 D.L.T. 277 (Del. H.C. 2009) [hereinafter *Naz Found.*].

¹¹ *Naz Found.*, supra note 10, at 130.

¹² *Suresh Kumar Koushal v. Naz Found.*, (2014) 1 S.C.C. 1 (India) [hereinafter *Koushal*].

The correction began with Justice K.S. Puttaswamy (Retd.) v. Union of India in 2017, where a nine-judge bench unanimously recognised the right to privacy as a fundamental right under Article 21.¹³ Justice Chandrachud's plurality opinion explicitly identified the Koushal rationale as constitutionally unsound, noting that the “minuscule fraction” argument was “not a sound basis” for denying fundamental rights.¹⁴ Puttaswamy also grounded privacy in dignity and personal autonomy—the very concepts that would carry the subsequent decriminalization argument.

The watershed arrived with Navtej Singh Johar v. Union of India, decided by a five-judge Constitution Bench in September 2018. The Bench unanimously overruled Koushal and held Section 377 unconstitutional to the extent that it criminalised consensual adult same-sex conduct.¹⁵ Each of the four concurring opinions engaged substantively with the morality distinction. Chief Justice Misra held that courts must be guided by constitutional morality, not popular morality. Justice Chandrachud characterised Section 377 as an “anachronistic colonial law” that had denied a class of citizens the dignity and privacy the Constitution guarantees. Justice Malhotra concluded, in language that was as much moral reckoning as legal reasoning, that history “owes an apology” to the LGBT community for decades of state-sanctioned ostracism.¹⁶

The Sabarimala case, decided the same month, carried this logic into religious practice. The prohibition on women between ten and fifty years of age entering the Sabarimala temple in Kerala had centuries of custom and popular religious fervour behind it. The majority struck down the codified prohibition, holding that “public morality must yield to constitutional morality and that the physiological characteristics of women, menstruation, bore no relation to their constitutional entitlements.”¹⁷ The sole dissent, from Justice Malhotra, argued for harmonisation of competing rights and warned that courts should be cautious about intervening in matters of sincere religious faith. Her position raises questions that deserve serious engagement, though they ultimately identify the difficulty of the doctrine rather than defeating it.¹⁸

¹³ Koushal, *supra* note 12, at 43.

¹⁴ K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India) [hereinafter Puttaswamy].

¹⁵ Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India) [hereinafter Navtej Singh Johar].

¹⁶ *Id.* at 643 (Malhotra, J., concurring).

¹⁷ Sabarimala, *supra* note 6, at 96.

¹⁸ *Id.* at 219 (Malhotra, J., dissenting).

Two additional 2018 judgments completed this constitutional cycle. *Joseph Shine v. Union of India* struck down Section 497 IPC, the adultery provision, on the ground that it treated wives as their husbands' property, violating Articles 14, 15, and 21.¹⁹ And the Government of NCT of Delhi v. Union of India extended constitutional morality beyond rights adjudication into the structural domain of governance, treating it as a "governing ideal" that demands institutional accountability to the constitutional spirit.²⁰

V. THE CORE TENSION: JUSTIFICATION AND STRUCTURE

The structural justification for giving constitutional morality priority over popular morality is not complex, though its implications are. A constitutional democracy is not a pure majoritarian democracy. Under Article 13, any law that abridges the Fundamental Rights guaranteed by Part III is void to that extent.²¹ Judicial review under Articles 32 and 226 exists precisely to enforce this guarantee against legislative majorities. If courts were to assess constitutional validity against popular sentiment rather than constitutional standards, they would defeat the entire purpose of that scheme. The Constitution protects, above all, the person whom majoritarian society would prefer to ignore: the member of a persecuted minority, the woman excluded from sacred spaces by religious convention, the citizen whose identity makes the majority uncomfortable.

The "minuscule fraction" argument rejected in *Navtej Singh Johar* is not merely logically flawed; it is constitutionally illiterate. Fundamental rights are not quantitative entitlements that scale with population.²² They attach to each person by virtue of their constitutional standing as a citizen, not because of their membership in a numerically significant bloc. Constitutional morality enforces this guarantee, even when popular morality would prefer otherwise.

The tension is sharpest in the domain of religion and custom. Religious practices carry centuries of tradition, the weight of sincere faith, and popular majority behind them. But the Constitution was deliberately designed as a reforming document, not merely a conserving one. Ambedkar was explicit: the Constitution's commitments to equality and dignity were intended to challenge the

¹⁹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

²⁰ *Gov't of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501, 272 (India).

²¹ INDIA CONST. art. 13.

²² *Navtej Singh Johar*, *supra* note 16, at 87 (Misra, C.J.) (rejecting the "minuscule fraction" rationale in *Koushal*).

hierarchies of caste, gender, and religion that had structured Indian society for centuries.²³ To interpret "morality" in Articles 25 and 26 as popular or religious morality would convert the religion clauses from provisions protecting freedom into provisions protecting discrimination, an outcome that sits uneasily with every other textual commitment the Constitution makes.

VI. CRITICISMS AND THEIR LIMITS

Constitutional morality attracts serious criticism, and the honest case for the doctrine requires engaging with it rather than dismissing it.

The most significant objection is conceptual vagueness. The doctrine has no single authoritative definition in the Constitution or in case law. Courts have used it differently across different decisions, and there is real risk that "constitutional morality" becomes a rhetorical vessel into which judges pour personal moral preferences dressed in constitutional language, what some scholars have aptly called "judicial subjectivity."²⁴ The Supreme Court's own acknowledgement that a larger bench should attempt a more definitive formulation, still pending, is itself an admission that the doctrine's conceptual contours remain unsettled.

The democratic legitimacy objection holds that an unelected judiciary has no business overriding the moral judgments of elected legislatures. The concern has an intellectual pedigree-Alexander Bickel called the Court's counter-majoritarian role the central difficulty of constitutional law.²⁵ But the objection rests on a contestable premise: that democratic legitimacy means majoritarian supremacy. Under the Indian Constitution, it does not. Article 32 designates the Supreme Court as the guarantor of fundamental rights; that institutional assignment is itself the product of democratic deliberation through the Constituent Assembly. Judicial review of legislative enactments is not a usurpation of democratic function; it is the constitutional function.

The backlash problem is the most practically urgent criticism. The protests following Sabarimala, during which activists were physically prevented from entering the temple despite the Court's order-illustrated vividly the gap between a judicial declaration and social compliance.

²³ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 50 (Oxford Univ. Press 1966).

²⁴ Pratap Bhanu Mehta, What Is Constitutional Morality?, *SEMINAR*, No. 615, Nov. 2010, at 1.

²⁵ ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 16 (Yale Univ. Press 1962).

Courts can articulate constitutional morality; they cannot, by themselves, cultivate it. Ambedkar understood this better than anyone. He insisted that constitutional morality needed to be grown through education, democratic institutions, and civic participation. The judgment is a necessary condition, not a sufficient one.

VII. CONCLUSION

Constitutional morality is not a rival to democracy. It is democracy's discipline-the mechanism through which a constitutional republic restrains its own majoritarian impulses to protect the persons most vulnerable to them. The Indian Supreme Court's sustained engagement with the doctrine across the 2017–2019 landmark cases represents one of the most intellectually serious exercises in rights-based constitutionalism in the Court's history. These judgments did not invent new rights out of nowhere; they gave operational content to values that Ambedkar had inscribed into the constitutional project more than seventy years earlier.

The doctrine has real problems. Its vagueness demands greater definitional rigour; its judicial application demands transparency about which constitutional values are being invoked and why. And no court should be indifferent to the limits of litigation as a mechanism for social transformation. But the alternative-allowing popular morality, with all its historical baggage of exclusion and prejudice, to function as the measure of constitutional validity-is simply not an option in a republic premised on equal dignity for all persons. When the Constitution speaks differently from the crowd, the crowd must listen.

FREE CONSENT IN ALGORITHMIC CONTRACTS: A REASSESSMENT IN INDIA'S PLATFORM ECONOMY

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ABSTRACT

Clickwrap agreements, algorithmically designed standard form contracts, and other digital platform-based contracting have radically changed the way contracts are formed. In these settings, consent is usually given in the form of standardised digital mechanisms aimed at facilitating efficiency and volume over deliberation. These systems enable large-scale transactions, but raise questions about the nature and quality of consent under classical contract law.

The Indian Contract Act, 1872, requires contracts to be enforceable only when they involve free consent, which requires the absence of coercion, undue influence, fraud, misrepresentation or mistake. This assumes informed and consensual agreements between capable negotiators. But platform contracts are generally standardised, non-negotiable contracts, entered into as a precondition to accessing essential digital services. The rise of algorithmic technologies adds to the complexity of the process, as algorithms dictate the presentation, navigation and acceptance of contractual terms.

This paper demonstrates that the existing doctrine of free consent is theoretically insufficient for algorithmic contracting. Although courts give validity to electronic contracts, their reasoning is limited to formal markers of consent, without adequate consideration for the context of consent. The paper draws on statutory and judicial sources, as well as comparative insights from the United States and the European Union, to argue that consent needs to be understood in a more context-sensitive and substantive manner to be relevant in the platform economy.

Keywords: Digital Consent, Free Consent, Algorithmic Contracts, Clickwrap Agreements, Platform Economy, Standard Form Contracts, Unequal Bargaining Power, Indian Contract Law.

INTRODUCTION

The increasing use of digital platforms has greatly transformed the process of contract formation. Transactions, which previously had to be negotiated, documented and deliberated upon, can now be accomplished on standardised digital interfaces in a matter of seconds. Ranging from e-commerce websites and ride-hailing services to financial technology services, contractual relations are regularly formed when a user clicks on an “I agree” button or goes through the automated registration processes. Although such a model is more efficient and scalable, it changes the circumstances in which consent is manifested.

Under the Indian Contract Act, 1872, the validity of any contract is based essentially on the presence of consent between the parties, with Sections 13 and 14 further stating that this consent must be free and informed.²⁶ These provisions are a classical interpretation of contracting, where parties are assumed to have the autonomy and capacity to assess the terms of the contract before acceptance. However, the realities of platform-based contracting are at sharp variance with this model. Digital agreements are presented as non-negotiable standard form contracts, commonly with long and complicated terms, which the user is unlikely to read and understand thoroughly.

In practice, the act of clicking “I agree” is more of a protocol than an informed consent, as it requires people to go through it in order to use digital services. This relationship raises critical questions concerning whether such relations would meet the substantive criteria of free consent in contract law. The issue is further complicated by the fact that the role of algorithmic systems in organising the contracting process is growing. Platform interfaces are not neutral; they are explicitly crafted to guide user behaviour, prefer certain choices, and streamline acceptance.²⁷ As a result, consent in the digital world is not merely obtained but, in many instances, influenced by technological design.

²⁶ The Indian Contract Act, No. 9 of 1872, §§ 13–14 (India).

²⁷ Cass R. Sunstein, *Nudging: A Very Short Guide*, 37 J. CONSUMER POL’Y 583 (2014).

Judicial approaches in India have broadly upheld the enforceability of electronic contracts with emphasis on the presence of acceptance rather than the conditions under which it is obtained.²⁸ Although courts, in certain contexts, recognised the problem of unequal bargaining power and unfair terms of contract,²⁹ these factors have not been systematically extended to electronic platform contracts. This gives a gap in the doctrine of acceptance as a formality and as a concrete realisation in technologically mediated contexts.

Comparatively, jurisdictions such as the European Union and the United States have taken alternative paths to digital consent. The requirements of the clickwrap agreements highlighted by the U.S. courts, focusing on the notice and manifestation of assent to a greater extent, whereas the European Union, particularly under the General Data Protection Regulation focus on the quality and authenticity of user consent are based on a potential shift towards a more contextual and user-focused approach to consent.³⁰ These developments highlight the possibility of moving beyond a purely formal understanding of consent toward a more contextual and user-centric framework.

Against this background, this paper argues that the doctrine of free consent in the Indian contract law is structurally inadequate in the context of algorithmic platform contracts, where standardised interfaces and automated processes reduce consent to a procedural formality. It argues that courts should no longer rely on formal manifestations of consent, but a more situational methodology should be adopted that considers technological mediation and informational asymmetry, as well as the lack of meaningful choice in digital contracting. Through an analysis of establishment law, case law and comparative trends, the paper aims to revisit the idea of free consent in the dynamic platform economy of India.

FREE CONSENT UNDER INDIAN CONTRACT LAW

The doctrine of free consent constitutes the foundational requirement for the validity of contracts under the Indian Contract Act, 1872. Section 13 defines consent as an agreement between parties upon the same thing in the same sense, which encompasses the classical principle of *consensus*

²⁸ Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 S.C.C. 1 (India).

²⁹ Central Inland Water Transp. Corp. Ltd. v. Brojo Nath Ganguly, (1986) 3 S.C.C. 156 (India).

³⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), 2016 O.J. (L 119) 1.

ad idem. Section 14 further provides that consent is considered “free” when it is not by coercion, undue influence, fraud, misrepresentation or mistakes. These provisions create a framework where it is assumed that there is voluntary and informed agreement between contracting parties.

However, this statutory formulation is based on assumptions that are becoming stretched in modern contracting contexts. The doctrine of free consent was formulated in a context where parties are supposed to negotiate in good faith, have a relatively equal bargaining power and be independent in their choice of contractual terms. Lack of clearly identified vitiating factors in such a framework was considered adequate evidence of voluntariness. This formalistic approach continues to influence the judicial interpretation of consent in Indian contract law.

At one point, judicial decisions have recognised the limitations of this model, especially with the presence of standard form contracts and structural inequalities. In *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*, the Supreme Court invalidated an unconscionable contractual clause, recognising that an agreement that was made by the dominant parties might not depict a true agreement where the weaker party had no meaningful choice. The Court noted that in the presence of no traditional vitiating factors, inequality of bargaining power may result in the undermining of the voluntariness of consent.

Similarly, in *LIC of India v. Consumer Education and Research Centre* case, the standard form insurance contracts were exposed to a higher level of scrutiny, noting that a contract can lack fairness not by the mere use of coercion or deceit but by the form of the contract itself.³¹ These decisions indicate a gradual judicial recognition that consent may be compromised by structural conditions rather than direct coercion or deception.

Despite these developments, the wider doctrinal approach of the Indian Contract Act is tied to a formal understanding of consent. The legal focus remains on finding certain reasons that vitiate consent, instead of analysing the general context in which agreement is secured. Consent is therefore commonly assumed to be valid provided it is not under any of the categories listed in Section 14. The methodology does not provide much space to deal with cases of consent being influenced by systemic limitations, standardised contractual frameworks, or technological mediation.

³¹ *LIC of India v. Consumer Educ. & Research Centre*, (1995) 5 S.C.C. 482 (India).

This is especially important in the framework of platform-based digital contracting. Although these agreements can meet the formal demands of consent as per the prevailing doctrine, it casts basic doubt on whether the premise of voluntary and informed consent remains valid. In this tension, the mediation of contract formation, which is not only mediated by the standardisation but also by algorithmic systems that mediate the interaction of users, is even more acute, as discussed in subsequent passages.

DIGITAL CONTRACT FORMATION AND CLICKWRAP AGREEMENT

The emergence of electronic commerce and platform-based services has dramatically changed the way that contracts are formed. The validity of electronic contracts in Indian law is formally put into place by Section 10A of the Information Technology Act, 2000, stating that agreements made electronically should not be invalidated based on the fact that electronic records or communications were used.³² This ensures that contracts made through online interfaces can be treated in the same manner as traditional contracts.

In this context, clickwrap agreements have become the dominant mode of contract formation in digital environments. These contracts also require users to expressly state their consent, usually by clicking an “I agree” button, after viewing the terms and conditions. In contrast to browsewrap agreements, where the terms are only available through hyperlinks, clickwrap mechanisms are typically deemed as more enforceable since the assent is explicitly expressed. However, the seeming completeness of such assent can be very deceptive as to the reality of any actual interaction with the contractual terms.

Electronic contracts have been widely embraced by Indian courts using a facilitative approach. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, there was no clickwrap interface; the Supreme Court declared the validity of a contract signed via electronic communications, noting that a binding agreement could come about due to correspondence provided the key parameters of an offer and acceptance are met. Although the case did not involve a clickwrap interface, it reflects the judiciary’s willingness to recognise non-traditional forms of contracting without imposing additional scrutiny on the mode of acceptance.

³² Information Technology Act, No. 21 of 2000, § 10A (India).

Similarly, in *DDIT (IT) v. Gujarat Pipavav Port Ltd.*, the electronic records were used as a reference to the existence of the agreement in the commercial environment, which supports the general principle that transactions that happen online are legally binding.³³ These decisions collectively demonstrate that Indian law prioritises the formal existence of agreement over the qualitative conditions under which consent is obtained.

This formalistic approach is further illustrated in comparative jurisprudence, especially of the United States. The court in *Specht v. Netscape Communications Corp.* did not enforce the software license agreement based on the unreasonable invisibility of the terms to the users, and instead supported the existence of a software license agreement requiring reasonable notice and evidence of acceptance.³⁴ In the *Feldman v. Google, Inc.* case, on the other hand, a clickwrap was enforced based on the fact that the user was given a chance to read the terms and took an action that indicated acceptance.³⁵

Although this method makes transactions within the digital realm certain and efficient, it also shows a major shortcoming. There is a legal inquiry that mostly revolves around the possibility of finding assent based on user contact with the interface, as opposed to the issue of whether such assent is based on an informed and voluntary choice. The mere act of clicking on “I agree” is considered to be enough to prove consent even in a situation where the users might not have time, ability, or realistic opportunity to be acquainted with the contractual terms.

This is more acute in platform-based ecosystems. The use of standardised terms can often be a precondition for the usage of critical services, literally negating the chance of negotiation. The interface design also simplifies the acceptance process to the lowest level by reducing friction and prompting quick completion of the onboarding process. Consequently, the dynamics of establishing digital contracts are rapid and standardised, yet lack deliberation and informed decision-making.

To this effect, although it is well-defined that the law of India and comparative jurisprudence stipulate with certainty that a clickwrap agreement is enforceable, it does so based on a formal understanding of the concept of assent that fails to take due consideration of the structural and

³³ *DDIT (IT) 3(1), Mumbai v. Gujarat Pipavav Port Ltd.*, [2013] 144 ITD 1 (Mum. Trib.) (India).

³⁴ *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17 (2d Cir. 2002).

³⁵ *Feldman v. Google, Inc.*, 513 F. Supp. 2d 229 (E.D. Pa. 2007).

technological context in which consent is secured. It is this gap that is critical when it comes to algorithmic contracting, where the consent obtaining process is not only standardised but is actively guided by automated systems that are geared towards influencing user behaviour.

ALGORITHMIC CONTRACTS AND THE TRANSFORMATION OF CONSENT

1. Nature of Algorithmic Contracting

The modern digital contracting is no longer a set of static click wrap but a system that is influenced by the algorithmic process and forms the patterns of communication between the user and the contractual terms. An algorithmic contract is one in which the presentation, acceptance, and formation of terms are mediated using automated systems in digital platforms. These systems control the onboarding procedures, define the order of information processing, and simplify user interaction, making agreements quick.

Platform-based environments do not presuppose parties to negotiate terms and then accept them beforehand, as is done in traditional contracting; instead, interface-based acceptance mechanisms focus on efficiency rather than deliberation. Users are usually taken through pre-programmed workflows that lead to one act of assent, and may not engage with the contractual contents meaningfully. This move is indicative of a change in negotiated agreements to system-driven, standardised interactions with the user playing a rather passive role.

2. Behavioural Influence and Dark Pattern

The use of behavioural design techniques to affect the user's decision-making is also a hallmark of algorithmic contracting. Based on lessons of behavioural economics, platforms use nudges to induce acceptance of terms by influencing the presentation of choices instead of simply prohibiting them. "Nudges" can take the form of the strategic positioning of acceptance buttons, default settings, and fragmentation of contractual disclosures across multiple screens.

Worse is the application of manipulation of the interface commonly referred to as "dark patterns," which aim to guide users towards specific actions. Such practices can include having the choice of acceptance more visually salient, blurring the options, or placing time pressure on

the terms so that people do not want to carefully consider them. Although these means are not the kind of coercion that is used in the traditional legal meaning of the term, they are systematic ways of changing the circumstances in which consent is given.

The legal significance of such practices lies in the fact that they lead to compliance without any real interaction. The users can technically have the choice of not accepting the terms, but the interface is designed in a way that makes such refusal impractical or inconvenient. This leads to consent being influenced by architecture as opposed to free will, and this begs the question of whether it meets the demands of voluntariness as per the Indian Contract Act, 1872.

3. Procedural vs Substantive Consent

The difference between procedural and substantive consent can be regarded as the key to the interpretation of the effects of algorithmic contracting. Procedural consent is the formal consent, e.g. clicking an “I agree” button, that fulfils the legal requirement of consent. Substantive consent, on the other hand, entails that such agreement must be informed, voluntary and indicative of a true meeting of minds.

The judiciary has given a lot of attention to the procedural indicators of consent, especially in a comparative jurisdiction. In *Feldman v. Google, Inc.*, the court enforced a clickwrap agreement, believing that the user had the opportunity to read the terms and had expressed an acceptance, which was clear and affirmative. In *Bragg v. Linden Research, Inc.*, although the court reviewed the fairness of specific contractual provisions, the underlying principle that the user acceptance was valid consent was not decisively challenged.³⁶

These decisions indicate a larger trend in the law in equating procedural compliance with substantive agreement. But in algorithmically mediated environments, this equation is more and more untenable. Acceptance is frequently unaccompanied by any real comprehension, with users going through interfaces that are geared to reduce any friction and increase the completion rates as much as possible. As a result, consent becomes more of a formality, which fulfils the technical conditions of the conclusion of the contract without reflecting the real nature of voluntary agreement.

³⁶ *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007).

This change reflects a major weakness of the doctrine of free consent. Where consent is technologically designed and behaviorally influenced, it becomes more challenging to keep its definition of free. The fact that the law still bases its reliance on formal signs of assent without analysing the circumstances under which assent is created has the potential of authorising contractual relations without the true autonomy of the assent.

COMPARATIVE PERSPECTIVE ON DIGITAL CONSENT

Comparative case law on digital consent highlights a key tension between formalistic and substantive approaches to contractual consent that can be used to assess the sufficiency of Indian contract law. Although both the United States and the European Union embrace the enforceability of digital contracts, there are considerable differences in how they probe the adequacy of consent in an online context.

Dispensing with the enforceability of electronic agreements in the United States rests on the rules of notice and manifestation of assent. The courts have consistently enforced clickwrap agreements based on adequate notice and an affirmative act of acceptance. In *Specht v. Netscape Communications Corp.*, the Second Circuit declined to enforce a license agreement because the terms were not clearly brought to the user's attention, thereby stressing the importance of notice to establish the presence of assent. However, more recent cases like *Feldman v. Google, Inc.* reveal a continued judicial willingness to enforce computer agreements when formal requirements of disclosure and acceptance are met. This reasoning reflects a doctrinal emphasis on procedural regularity, whereby the presence of assent is derived from user interactions with the interface, as opposed to a consideration of the substantive validity of consent.

By contrast, the European Union takes a more stringent approach that prioritises the quality of consent, especially in relation to data-driven environments. Under the General Data Protection Regulation, consent must be freely given, specific, informed and unambiguous, and therefore more rigorous than procedural regularity.³⁷ The case of *Planet49 GmbH v. Bundesverband der Verbraucherzentralen* is illustrative in this respect, as the Court of Justice of the European Union found that pre-selected consent boxes are invalid, because they do not ensure informed user

³⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, 2016 O.J. (L 119)1.

agreement.³⁸ This approach reflects the recognition that the design of the interface and the default settings can influence the voluntariness of consent.

The differences between these approaches underline the deficiencies of a formalistic conception of consent. The U.S. model guarantees certainty in transactions through the reliance on observable expressions of consent, but fails to account for the effects of technological design on user activity. The EU approach, with consideration given to design and defaults, brings us closer to a substantive model of consent that acknowledges the nature of online transactions.

By contrast, the Indian law of contracts is based on a formalist conception of consent under the Indian Contract Act, 1872, with little attention paid to the role of structure and technology in the procurement of consent. This comparative gap highlights the need to revisit the doctrine of free consent in India, especially in relation to algorithmic contracting, where the distinction between form and substance in consent becomes increasingly problematic.

REGULATORY FRAMEWORK IN INDIA AND ITS LIMITATIONS

India's legal framework for digital transactions demonstrates increasing awareness of electronic commerce and data-facilitated transactions. Yet, while there are various statutory frameworks, the regulation of consent in digital contracts remains disjointed and formalistic. Legislation like the Information Technology Act, 2000, the Consumer Protection Act, 2019 and the Digital Personal Data Protection Act, 2023, covers various aspects of digital transactions, but are not sufficiently concerned with how consent is constituted in digital media.

The Information Technology Act, 2000, offers basic recognition of electronic contracts. Section 10A acknowledges the validity and enforceability of electronic contracts, enabling the expansion of online business. But the law focuses mainly on the matters of legal recognition and admissibility, rather than the quality of consent. It does not impose requirements for the nature of the contractual terms presented or the level of user agreement, leaving the voluntariness of such agreements to be determined as per contract law.

³⁸ Case C-673/17, *Bundesverband der Verbraucherzentralen v. Planet49 GmbH*, ECLI:EU:C:2019:801 (Oct. 1, 2019).

The Consumer Protection Act, 2019,³⁹ provides for redress against unfair trade practices as well as exploitative contractual terms. Regulations on unfair contracts and misleading and deceptive practices provide some substantive safeguards, especially for standard form contracts. Yet, the Act adopts a primarily output-oriented approach by addressing the fairness of the contractual terms rather than the process of obtaining consent. As a result, it does not directly address the role of interface design, defaults and nudges in user agreement in digital platforms.

Likewise, the Digital Personal Data Protection Act, 2023,⁴⁰ is an important milestone in defining a consent framework for data processing. It mandates that consent must be free, specific, informed and unambiguous, therefore offering a more substantive approach in the realm of personal data. But it applies only within the realm of data and not to contractual consent. The Act implicitly acknowledges the significance of user choice, but it doesn't regulate the design of digital platforms or the behavioural nudge techniques used for extracting consent in the contract space.

These laws, collectively, show that while Indian law recognises the importance of consent in digital transactions, it does so in a piecemeal way that does not account for the structural aspects of algorithmic contracting. The regulatory attention remains split between validating electronic contracts, regulating for fairness of outcomes and preserving data sovereignty, without framing a clear framework for assessing the production of consent.

This is especially problematic in the platform economy, where contracts are formed through interface-based processes that offer little scope for agency or deliberation. Without specific legal guidelines on how consent is produced in these environments, the doctrine of free consent in contract law operates on assumptions that are out of touch with technological realities. This highlights the need for a more holistic, contextualised approach to governing consent in digital contracting.

REASSESSING FREE CONSENT IN ALGORITHMIC CONTRACTS

The above discussion demonstrates that the doctrine of free consent under the Indian Contract Act, 1872, is premised on assumptions that are no longer relevant to digitally mediated

³⁹ Consumer Protection Act, No. 35 of 2019 (India).

⁴⁰ Digital Personal Data Protection Act, No. 22 of 2023 (India).

contracting. The law still conflates consent with the formal agreement, even as the use of algorithmic systems in the process of securing such an agreement becomes more prevalent. This imposition requires not only reinterpretation but a restructure of the doctrine of consent in platform contracts.

First, the courts must apply a contextual model of consent that shifts the focus from consent to consent's formation. Under this model, consent would be valid not only when assent is present but also when the conditions of its formation are sound, including the terms accessibility, the design of the interface, and the user's autonomy. This would shift the current approach, which defaults to a presumption of consent absent vitiating factors, to an approach that would view consent as dependent on the legitimacy of the contracting process.

Second, the courts must take into account interface design as a relevant aspect of contract formation. Online interfaces are not neutral tools but active agents that influence behaviour through design features such as defaults, layout and flow. When these design features are used to conceal information, speed up the decision-making process, or disproportionately tilt the scales towards acceptance, they should be regarded as vitiating the voluntariness of consent. It should not be enough for courts to invalidate contracts on this ground, but they should acknowledge that manipulation can functionally mimic traditional vitiating factors, even if it falls outside established categories like coercion and misrepresentation.

Third, the doctrine of procedural and substantive consent needs to be redrawn. The existing law conflates these by relying on procedural consent, such as ticking an accept button to determine consent. But in algorithmic contracting, procedural agreement can be accompanied by a failure to engage. A better approach would be to ensure that agreement involves a minimal standard of informed and voluntary consent, thereby reclaiming the substantive element of agreement underlying Sections 13 and 14 of the Indian Contract Act, 1872.

This can be achieved without changing the law, through a doctrinal shift. The approach taken in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*, which acknowledges the influence of bargaining power on contractual consent, can be leveraged to extend scrutiny to technologically-facilitated disparities. Likewise, the emerging standards of the Digital Personal Data Protection Act, 2023, show legislative recognition that consent needs to be substantive

rather than formal. These trends can be reconciled to underpin a more substantive analysis of consent in contract.

At the end of the day, the goal is not to undermine e-commerce but to bring law into line with technology. An approach that acknowledges the role of algorithmic systems in shaping user conduct enables the judiciary to maintain contractual enforceability while enabling consent to retain its doctrinal relevance. Otherwise, the ongoing reliance on formal signs of consent may continue to render the doctrine of free consent irrelevant to the circumstances in which contracts are formed.

CONCLUSION

The emergence of digital platforms has fundamentally transformed the mechanism of contract formation and called into question the continued suitability of existing legal rules for consent. While the Indian legal system has managed to adjust to changes regarding the formal validity of electronic contracts, it has failed to evolve in terms of consent. Modern contractual relationships based on platforms are no longer built via negotiations, but by using a standardised and streamlined method to establish contractual relations.

This paper has argued that the doctrine of free consent formulated in the Indian Contract Act, 1872, is based on outdated formal criteria of agreement. This idea finds its support in the fact that many contractual arrangements today take place by clicking certain buttons on the website's interface. Consent becomes the gateway for accessing certain services online rather than an expression of one's free will. It means that the principle of voluntary nature should be reassessed based on more concrete criteria.

The implications of such a development go far beyond the individual transaction to the larger question of consistency in contract law. With consent assessed on the basis of formal markers alone, and without consideration of the technological mediation and structural dynamics involved, the potential for consent to serve as a guarantor of autonomy becomes increasingly questionable. The critical question, however, is not about whether digital contracts should be considered legally binding, but rather about the continued importance of consent in the context of such developments.

Ultimately, the future relevance of contract law in India's platform economy will depend on its ability to engage with these transformations and to reconcile doctrinal principles with the realities of digital interaction.

SYSTEMIC STRUCTURES OF SUFFERING: DECONSTRUCTING DOWRY DEATHS THROUGH A SOCIAL LENS

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ABSTRACT

A young girl was murdered in Uttar Pradesh just a few months after getting married in 2024, putting the strong emphasis on the threat of dowry-related violence. Even though dowry has been banned, it is deeply rooted in the Indian culture and society; this is why this paper discusses dowry deaths not as solitary crimes but as a structural phenomenon built by the deep-rooted patriarchal, economic, and cultural factors. Yet, even with the strict laws, such as the Dowry Prohibition Act, 1961, and Section 304B of the Indian Penal Code (replaced in Section 80 of the Bharatiya Nyaya Sanhita, 2023), dowry violence is still not controlled, which underlines the existence of an enormous gap between the legal provisions and everyday social practices. The paper applies the theory of social constructionism to examine the ways the dowry is a form of coercion and role adjustment to women in families, the way this theory has changed over the years, and how it emerges as coercion and role change in the larger community processes. Although the study has expanded its scope with the inclusion of cruelties and physical abuse, there has been a consistent hindrance in implementation, and the apathy of many people still remains the bane. According to a survey of 38 respondents, dowries are widely recognised as a serious social vice that is strongly linked to patriarchal tendencies. In light of the data, the bridegroom's pressure, social anxiety, and a high degree of legal ignorance are all significant contributing factors. This problem calls for a multipronged approach that includes improving women's socioeconomic standing, strengthening the legal system, and encouraging a cultural shift via education and community involvement. India can only hope to deconstruct the systemic

structures that perpetuate dowry deaths and defend the dignity, equality and justice of women through long-term and combined efforts.

Keywords: Dowry Death, Social Construction, Patriarchy, Social Reforms, Gender Inequality.

INTRODUCTION

Indian dowry death is fundamentally a profound and endemic social malady being instilled into patriarchy, and systemic inequalities of socioeconomic factors. In the research titled *Systemic Structures of Suffering: Deconstructing Dowry Death through a Social Lens*, discussing the form of suffering, which is grievous, has been discovered to have been satisfied in a complex interrelationship by deep-rooted cultural practices, violence against women and societal mechanisms of oppression.

Even after decades of its legal prohibition, dowry-related violence continues and hence raises a dire need to understand why such crimes persist in contemporary society.⁴¹ These instances of young brides becoming victims of dowry harassment due to the breakdown of the current laws to offer complete protection to the rights of the women have become an urgent question of the social, economic and cultural systems that support the practice.

Dowry death should not be seen as a remote incident or individual acts of domestic violence, showcasing a common societal acceptance of dowry as a custom, despite it being illegal. It is also reinforced by the fact that it is an important issue in the current debate of legal scholars, gender studies and social policy about the best means to eliminate the systemic gender inequalities and offer women protection against systemic mistreatment. The Social perspective of dowry death study makes the framework much more holistic and broader, like criminal justice, since it incorporates social attitude and power dynamics in the society; therefore, it is noteworthy in holistic change.

Traditionally, dowry was considered a parental property transfer and an exchange of gifts at marriage, dowry has been transformed into a coercive, at times lethal, demand that commodifies women and perpetuates their subordination. The fact that dowry demands are high and that they

⁴¹ C. Lakhera, *Ecopsychological Pathologies: Dowry Deaths in the Indian Subcontinent*, 13 *ECOPSYCHOLOGY* 1 (2021).

result in violence is a pointer to more systemic issues, namely the gender inequality, reliance of women on economic aspects and the lack of proper social support systems.⁴²

This paper focuses on a social approach that extends beyond the legal one-sidedness of the issue in understanding how it is that these institutionalised patriarchal families, social constructs of marriage, economic inequalities and cultural norms converge to create an environment in which dowry-related violence and homicides are possible. In addition to that, dowry death is a systemic suffering that women are exposed to; it is the daily violence that is

practised and enshrined in social institutions. According to this study, to critically engage with the socio-cultural and legal mechanisms that address this issue, gaps in implementation, judicial interpretation, and social attitudes that undermine protection efforts are identified. Manifesting dowry death in the bigger context of social systems and structures, this study highlights why holistic and multidimensional thinking is required that goes beyond legal reform to social change and the process of empowerment.⁴³

Overall, this introduction introduces dowry death as a structural issue that needs to be analysed seriously regarding the social organisation in which they are perpetuated. It provides a framework for in-depth study of the applicable legislative framework, the existing socio-cultural context, judicial responses, empirical social research, and recommendations on what needs to be done to end rigid forms of suffering brought about by the dowry practice. In its final aim, this paper tries to contribute to the discussion of gender justice and social change in India.

LEGISLATIVE FRAMEWORK

Section 304B of the IPC (Section 80 of the BNS, 2023) is the basic legal provision that deals with dowry death. When a woman's death (by burns, injury, or other unnatural causes) occurs within seven years of her marriage due to cruelty or harassment from her husband or her in-laws over a dowry demand. Accordingly, the law authorises a minimal penalty of seven years in captivity, which can be increased to life imprisonment. The provision thus identifies dowry death

⁴² K. Bindley et al., Disadvantaged and Disenfranchised in Bereavement: A Scoping Review of Social and Structural Inequity Following Expected Death, 242 SOC. SCI. & MED. 112599 (2019).

⁴³ J. Bhana, *A Social Constructionist Understanding of Mourning: Indian Widows' Experiences* (2007) (unpublished Ph.D. dissertation, University of South Africa) (South Africa).

as a separate offence, underlining the lineage between harassment for dowry and fatal violence, thus enabling the focusing of legal action.

The importance of Section 304B of IPC is that it has provided a legal presumption based on circumstantial evidence. In such cases, if a woman dies, the onus of proving innocence lies with the accused; thus, this alleviates the burden on the prosecution, who earlier had to face problems in proving direct causality and intent in dowry-related murders. This shift in the burden of proof helps combat the systematic impunity of offenders within families.

The Dowry Prohibition Act 1961 punishes both giving and taking of dowry and prescribes a penalty for its violation. However, the secret practices of and social acceptability of dowry have kept the adherence of society to this law weak. Most victims do not come forward to seek legal remedies because of either a threat of social backlash or family honour. This reveals that legal provisions alone cannot root out social customs without broader societal change.

While general in scope, the Protection of Women from Domestic Violence Act 2005 covers abuse, including dowry-related harassment, and it provides for protection and maintenance orders, offering preventive and remedial measures before incidents escalate to untreatable violence. Further, Section 113B of the Indian Evidence Act 1872⁴⁴ (Section 118 of Bharatiya Sakshya Adhiniyam, 2023)⁴⁵ creates a legal presumption that in case a married woman dies within seven years of her marriage under doubtful circumstances related to dowry cruelty, such death shall be presumed to have been caused by such cruelty unless proved otherwise. This aids the prosecution by lessening the evidentiary burden of proof and the identification of the systemic pattern of dowry violence, even in the lack of direct evidence. While the definition of intelligence may be universally appealing, it may vary depending on the theory used.

CURRENT SCENARIO

Dowry deaths in India replicate one of the most serious manifestations of violence based on gender, rooted in cultural and structural inequalities. Despite legislative reforms and increased attention, the dowry-related deaths are significantly high, with hundreds of girls losing their lives under suspicious or unnatural circumstances. Experts say the real figure will be a lot higher

⁴⁴ Indian Evidence Act, No. 1 of 1872, § 113B (India).

⁴⁵ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 118 (India).

because of underreporting due to social stigma, family pressure, and fear of social ostracism. The trouble stays specifically acute in parts of Northern and eastern India, in which patriarchal traditions, rigid caste hierarchies, and entrenched gender norms persist to uphold dowry as a commonplace marital transaction.

Further, maximum victims of dowry-associated violence belong to economically weaker and socially marginal sections of society, where poverty and a lack of access to resources increase the dowry burden. Dowry, however, isn't restricted to the decrease socio-financial lessons-it persists in all strata of society, even the various affluent, in subtler paperwork like gifts, property transfers, and comfort objects masked as "standard exchanges." The intersectionality of caste, elegance, and gender adds to the vulnerability of women, as they grow to be victims of both economic exploitation and social discrimination.

The patriarchal norms toughen the ideology that a female's worth is decided by her marriageability, and dowry serves as one of the methods to commoditise girls. Financial dependence on the husband and illegal guidelines, coupled with the concern of damage to family reputation or widowhood, restrain girls and their households from reporting harassment or abuses.

At the same time, felony and institutional mechanisms for redress have supplied some responsibility frameworks, ranging from provisions beneath the Dowry Prohibition Act, 1961, to Section 304B IPC (Section eighty of the Bharatiya Nyaya Sanhita, 2023), troubles persist in their enforcement. Delays in research, intimidation of witnesses, and the absence of gender sensitisation amongst law enforcement weaken prosecutions. Except for victim guide systems, along with shelters, counselling, and legal resources, they are appreciably inadequate. Dowries have not entirely disappeared, despite some customs being altered by modernisation, girl labour, and urbanisation; needs have surely become more materialistic and covert.

Dowry fatalities are a reflection of the continuous interplay between patriarchy, financial dependence, and social conditioning. Fundamental adjustments in education, gender sensitisation, network engagement, and empowerment are needed to provide women with safety, equality, and dignity in all areas of life. This cannot be accomplished by criminal measures alone.

JUDICIAL INTERPRETATION

The Indian judiciary is sensitive to shifting social realities and concerns for gender justice because it has played a significant role in interpreting and enforcing the criminal provisions about dowry deaths. In light of the more systemic oppression that women in patriarchal households face, the judiciary's creative interpretation of the term cruelty has expanded to include not only physical abuse but also mental, emotional, and financial violence.

In *Govind Rai & Ashok Rai v. Country of Jharkhand* (2021), the High Court showed the conviction of the appellants under Section 304B of IPC (Section 80 of BNS) and held that when the prosecution proves the basic elements of the offence, the onus then shifts onto the defendant for refuting this presumption.⁴⁶ Similarly, in *Sonu Kashyap v. the country of Uttar Pradesh* (2025), the Allahabad High Court held that regular dowry needs and harassment "quickly before death" are enough to draw the presumption of the offence under Section 113B of the Indian Evidence Act (Section 118 of BSA, 2023).⁴⁷ The preferred court in *X v. Country of Uttar Pradesh & Anr.* (2025) handled dowry loss of life as an extreme violation of human rights and revoked the bail of in-laws who had subjected the deceased to continuous cruelty and dowry strain.⁴⁸ Conversely, the Delhi court in (2025) defined that the presumption below section 113B (Section 118 of BSA, 2023) isn't always automatic but needs to be supported by way of sufficient evidence that she was subjected to dowry harassment previous to her death.

However, the courts are still plagued by serious problems like not on time court cases, intimidation of witnesses, and a shortage of forensic experts. Therefore, the judiciary, upon reliance on circumstantial evidence, specific testimony, and a victim-oriented approach, keeps trying to strike a balance between evidentiary rigour and social justice through framing dowry deaths as both criminal acts and human rights violations that need urgent alternate inside the systemic setup.

ILLUSTRATIVE SURVEY INSIGHT ON PERCEPTIONS OF DOWRY

How would you describe dowry in today's society?

38 responses



The following pie chart presents responses from a small, non-representative survey of 38 participants, intended solely to offer indicative insights into perceptions surrounding the practice of dowry in contemporary society.

Key Observations

- A majority of respondents (65.8%) identified dowry as “a serious social evil linked to gender inequality,” reflecting a strong critical perception among participants.
- 18.4% viewed dowry as “a symbol of family status or pride,” suggesting that social and cultural associations with prestige still persist for some.
- 10.5% considered it “a traditional gift custom,” indicating that a segment continues to interpret dowry within a cultural or historical framework.
- A small proportion (5.3%) regarded dowry as “a voluntary part of marriage,” showing limited support for a neutral or choice-based perspective.

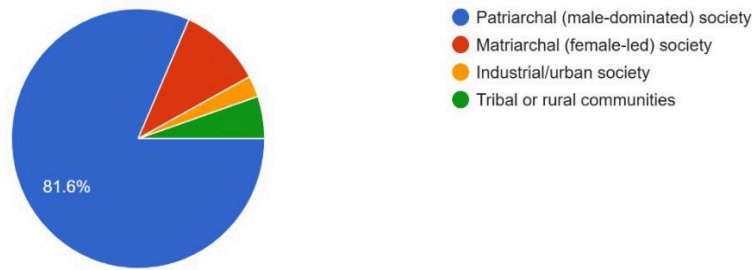
Note on Scope and Limitations

This survey is illustrative in nature and does not claim statistical or demographic representativeness. The findings should be interpreted with caution and should not be generalised to broader populations. Instead, they highlight a narrow snapshot of opinions that may reflect emerging attitudes but require validation through larger, methodologically robust studies.

PERCEPTION-BASED ILLUSTRATIVE SURVEY INSIGHT: WHERE IS DOWRY MOST COMMON?

Dowry practice is most common in which type of society?

38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and is intended only to provide indicative observations, not generalizable conclusions.

Key Observations

- A significant majority (81.6%) of respondents believe that dowry practices are most common in patriarchal, male-dominated societies.
- 10.5% associate dowry prevalence with matrilineal societies, reflecting a minority view.
- 5.3% link the practice to tribal or rural communities.
- 2.6% perceive dowry as more common in urban, commercial societies.

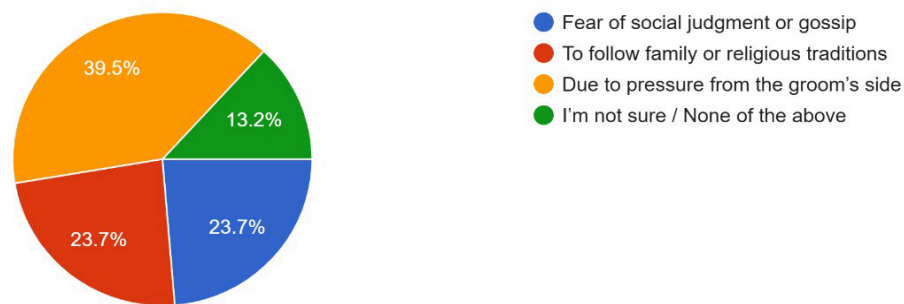
Note on Scope and Limitations

These findings are perception-based and derived from a limited sample size. They do not establish actual patterns of dowry prevalence across different social structures. The results should be read as a snapshot of opinions, not as empirical evidence. Broader conclusions require large-scale, methodologically sound research.

ILLUSTRATIVE SURVEY INSIGHT: WHY DO FMILIES GIVE OR TAKE DOWRY?

Why do you think families still give or take dowry?

38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and is intended only to provide indicative, perception-based insights into the reasons behind the continued practice of dowry.

Key Observations

- The largest share of respondents (39.5%) attributed the continuation of dowry to pressure from the groom's side, indicating that perceived external coercion is viewed as a primary factor.
- 23.7% of respondents identified fear of social judgment or gossip as a key reason, suggesting the role of societal scrutiny in sustaining the practice.
- Another 23.7% linked dowry to family or religious traditions, reflecting the continued influence of cultural norms.
- 13.2% selected "none of the above / not sure," indicating either uncertainty or the presence of reasons not captured within the given options.

Note on Scope and Limitations

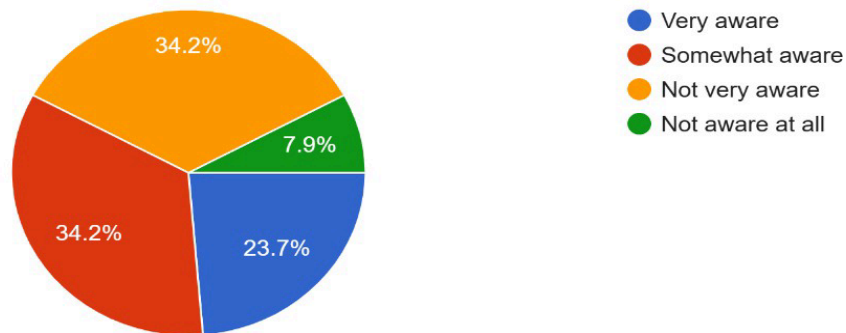
These responses reflect individual perceptions within a limited sample and do not constitute comprehensive or generalizable evidence. The findings should be interpreted cautiously, as the survey design may not capture the full range of motivations influencing dowry practices. Broader conclusions require rigorous, large-scale empirical research.

ILLUSTRATIVE SURVEY INSIGHT: AWARENESS OF ANTI-DOWRY

LAWS

How aware do you think people are about anti-dowry laws in your area?

38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and reflects self-reported awareness levels regarding laws prohibiting dowry.

Key Observations

- 34.2% of respondents reported being “somewhat aware” of anti-dowry laws, indicating partial or limited understanding.
- An equal proportion (34.2%) stated they are “not very aware,” suggesting a comparable level of low awareness among participants.
- 23.7% identified themselves as “very aware,” reflecting a smaller but notable group with higher familiarity.
- 7.9% reported being “not aware at all,” indicating a minority with no awareness of such legal provisions.

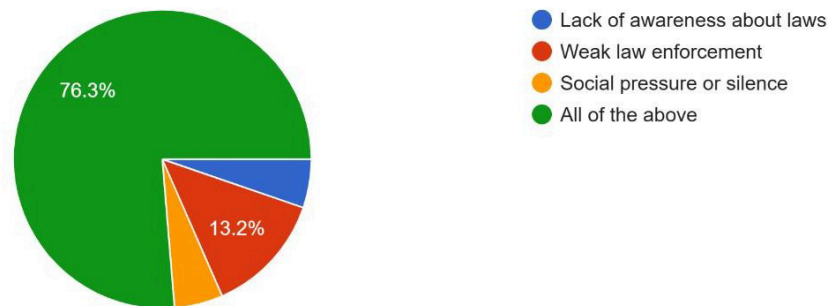
Note on Scope and Limitations

These findings are perception-based and self-reported, drawn from a limited sample size, and do not represent broader societal awareness levels. The results should be interpreted as a narrow snapshot of understanding rather than a reliable measure of public knowledge. Broader conclusions require large-scale, empirically grounded studies.

ILLUSTRATIVE SURVEY INSIGHT: PERCEIVED OBSTACLES TO ADDRESSING DOWRY

What do you think is the biggest obstacle in stopping dowry?

38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and reflects perceived barriers to addressing dowry practices.

Key Observations

- A clear majority (76.3%) selected “all of the above,” indicating that respondents perceive multiple factors: lack of awareness, weak law enforcement, and social pressure/silence, as interconnected obstacles.
- 13.2% identified poor law enforcement as the primary barrier, suggesting concerns around the effectiveness of implementation.
- 5.3% pointed to a lack of awareness of laws as the key issue.
- Another 5.3% highlighted social pressure or silence as the main obstacle.

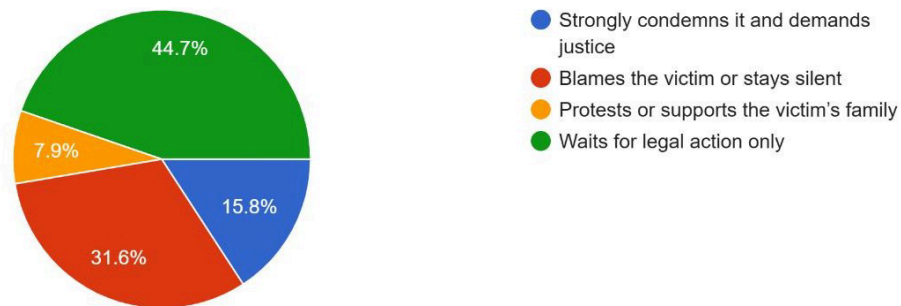
Note on Scope and Limitations

These findings are perception-based and drawn from a limited sample size. The high selection of “all of the above” may reflect question design bias, where respondents tend to choose a comprehensive option over isolating a single factor. Therefore, the results should be interpreted as a general perception of overlapping challenges, not as a precise ranking of causes.

ILLUSTRATIVE SURVEY INSIGHT: PERCEIVED SOCIETAL RESPONSE TO DOWRY ISSUES

When a dowry death is reported, how does society usually react?

38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and reflects perceptions of how society typically responds to dowry-related issues.

Key Observations

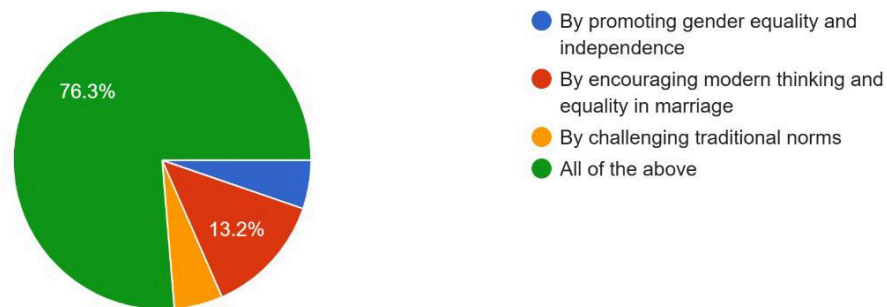
- 44.7% of respondents believe that society “waits for legal action,” indicating a perception of largely passive or reactive behaviour.
- 31.6% feel that society “blames the victim or remains silent,” suggesting concerns about social stigma and lack of support.
- 15.8% perceive that society “strongly condemns dowry and demands justice,” reflecting a smaller group that sees active opposition.
- 7.9% believe society “protests or supports the victim’s family,” pointing to limited instances of direct action or advocacy.

Note on Scope and Limitations

These findings are perception-based and derived from a limited sample, and do not represent actual societal behaviour. They should be interpreted as a snapshot of opinions, not as empirical evidence of how society responds in practice.

ILLUSTRATIVE SURVEY INSIGHT: ROLE OF EDUCATION IN ADDRESSING DOWRY

How can education help reduce dowry practices?
38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and reflects perceptions of how education can help address dowry practices.

Key Observations

- A majority of respondents (76.3%) selected “all of the above,” indicating a broad belief that education contributes in multiple ways, promoting gender equality, encouraging critical thinking, and challenging traditional norms.
- 13.2% identified “encouraging modern values and equality in marriage” as the primary role of education.
- 5.3% each selected “promoting gender equality and independence” and “challenging traditional norms” as key approaches.

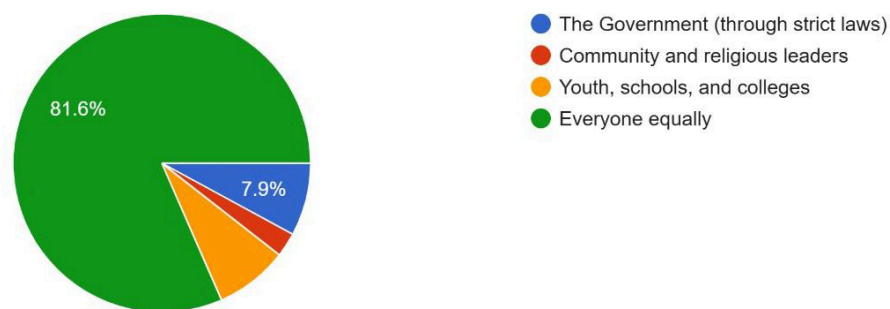
Note on Scope and Limitations

These findings are perception-based and derived from a limited sample size. The high selection of “all of the above” suggests a question design bias, where respondents tend to prefer a comprehensive option over choosing a single factor. As a result, the chart reflects general agreement on the importance of education, rather than a clear prioritisation of specific roles.

ILLUSTRATIVE SURVEY INSIGHT: WHO SHOULD DRIVE CHANGE AGAINST DOWRY?

Who do you think should take the lead in ending the dowry system?

38 responses



This pie chart is based on a small, non-representative survey of 38 respondents and reflects perceptions of who should take primary responsibility for addressing dowry practices.

Key Observations

- A large majority (81.6%) selected “all of the above,” indicating a general belief that responsibility should be shared across multiple actors, including government, educational institutions, communities, and individuals.
- 7.9% identified the government (through stricter laws and enforcement) as the primary driver of change.
- Another 7.9% pointed to youth, schools, and educational institutions, emphasising the role of awareness and generational change.
- 2.6% selected community or religious leaders, suggesting relatively low confidence in traditional authority figures as primary agents of reform.

Note on Scope and Limitations

These findings are perception-based and drawn from a limited sample size. The high selection of “all of the above” reflects a broad agreement rather than a clear prioritisation. As such, the chart does not establish which stakeholder is most effective, only that respondents perceive the issue as requiring collective responsibility.

RESULTS

According to the current study findings, dowry deaths in India are deeply rooted in intricate, highly expressed systemic patterns of suffering that have their origins in patriarchy, caste and class divisions, economic dependence, and dowry demands that have been in place for a

Century. The tradition of dowry giving, which previously was voluntary, has completely changed to become a force and a power of coercion, commodifying girls and supporting their subordination in the gender hierarchy.⁴⁹ Even though laws like the Dowry Prohibition Act of 1961 and Section 304B of the Indian Penal Code (Section 80 of the Bharatiya Nyaya Sanhita, 2023) contain important legal recognition and deterrents, actual enforcement is typically vulnerable because of intimidation, lack of gender sensitisation in law enforcement agencies and the judiciary, and delays in procedural procedures.

In addition to establishing felony presumptions that lessen the burden of proof for the prosecution, the judicial interpretations have expanded the definition of dowry dying to include economic, emotional, and mental cruelty as a component of systemic oppression. However, there are forensic challenges, witness harassment, and court case delays that make it difficult to administer justice effectively.

This unearths a near reflection inside the responses of the 38 surveyed. As many as sixty 58% understand dowry as an extreme social evil connected to gender inequality, and 81.6% hyperlink its incidence with patriarchy; consequently, patriarchy is once again reiterated as the prime structural root of dowry practices. The reasons why the respondents believe dowry persists include coercive force by the groom’s family (39.5), fear of social stigma, and subculture belief

⁴⁹ Kiran Bala & Jyoti Sharma, Dowry Deaths: A Legal and Social Analysis, INDIAN J. L. & SOC’Y (2023).

(23.7). The knowledge of anti-dowry legal provision is partial, and only (23.7) had very good knowledge, as there are large gaps in the knowledge.

Most of them have talked about the passivity of the society in dowry deaths, which mostly hinges on crime and victimisation or silence, which suggests that the culture of dowry violence is normalised. Three-quarters (76) of the respondents indicated that they strongly endorsed the concept of breaking traditional norms, gender equality, and bettering the current marital partnership, which is indicative of the need to engage in multisectoral relationships. 81.6% of the respondents confused collective responsibility as an imperative element, and this implies that education was viewed as an imperative change agent. The synthesized empirical and criminal analyses indicate dowry death as systemic practices of gendered oppression embedded in social structures and practices and not the criminal activities that should be simultaneously resolved through all-purpose, interdisciplinary solutions, including through improved felony enforcement with gender-based training, expeditious judicial gaming, and assistive help programs that cater to sufferers, as well as long-term cultural change through network focus, gender sensitization, and male engagement packages.

SUGGESTION

To begin with, the criminal enforcement should be enhanced even though the Dowry Prohibition Act of 1961 and Section 304B of the Indian Penal Code and (Section 80 of the Bharatiya Nyaya Sanhita,2023), their provision legal guidance that are highly prone to breach. Dowry cases must be treated with urgency and sensitivity to gender, and to achieve this, there is a need to train on laws that control enforcement, prosecution and judiciary. Specialised rapid-tune courts are to be established to ensure the timely trial; employees who are not acting in a timely and fair manner must receive severe punishment. But the socioeconomic empowerment of women can actually eliminate their dependence on patriarchal structures that can uphold dowry traditions. Greater access to the most desirable training, literacy programs and career training, especially among the rural and marginalised communities. Women become more economically independent, capable of making their own choices, and bravely defying traditional ways of marriage as persecuted.

Simultaneously, it is a great cultural change, which is obligatory to sustainable exchange. Established social conventions that idolise dowry must be challenged through awareness and

behaviour change campaigns over the long-term period. The media, educational institutions, and network companies need to propagate the culture of equality and decency; men and boys also need to be interested in the gender sensitisation programs in order to inculcate the spirit of joint accountability. Helplines should be established at the community level, aid groups of girls must be empowered to offer real-time help and empowerment, and networks that assist victims and survivors of dowry-related violence must be reinforced. Comprehensive services like mental health counselling, safe haven housing, financial assistance, and legal support should also be offered.

Sooner or later, coverage and research reforms are wished in terms of evidence-primarily based choice-making. Statistics collection regarding dowry deaths, home violence, and associated crimes must be institutionalised to pick out tendencies and gaps in guidelines. Educational interdisciplinary studies in law, sociology, and gender studies will yield progressive answers. Cumulatively, these concerted endeavours will dislodge the patriarchal, economic, and cultural underpinning that helps dowry violence and allow actual gender justice, social equity, and long-term societal transformation to take root.

CONCLUSION

Dowry deaths in India epitomise the entrenched suffering of ladies within deeply patriarchal structures that commodify them and toughen gender hierarchies. Even though comprehensive prison frameworks exist on the problem, including Section 304B of the Indian

Penal Code (Section 80 of the Bharatiya Nyaya Sanhita, 2023), Section 113B of the Indian Evidence Act (Section 118 of Bharatiya Sakshya Adhiniyam, 2023), and the Dowry Prohibition Act, 1961, highlight the staying power of dowry-related deaths, famous gaps between regulation and lived reality. This problem is considered one of structural inequality, rooted not in the lack of enforcement, however in centuries of socio-cultural norms, financial dependencies, and electricity imbalances within the family. Dowry, once espoused as a cultural tradition, has become a tool of management and exploitation, a discount of womanhood to an economic liability and not an individual with rights and organisation.

The recurring instances of dowry deaths, coupled with the partial implementation of laws, a lack of know-how, and social stigma associated with this crime, denote how deeply dowry expectancies have been normalised. Empirical studies also spotlight that women from lower socio-economic backgrounds face institutional barriers to getting access to prison aid and institutional help, therefore pushing them right into a cycle of silence and subjugation.

Preventing dowry deaths, therefore, needs more than mere legislative measures-a transformative, interdisciplinary, and holistic technique to address the trouble. education of the network, monetary empowerment, and raising recognition need to cross hand in hand with changes in policing, the judiciary, and policy implementation. Social mobilisation through media, grassroots groups, and the involvement of adolescents can provide the turning factor in reshaping attitudes toward gender equality. Sooner or later, removing dowry demise is largely about dismantling the deep-rooted structures of struggling underpinning ladies' oppression. It is essentially sustained collective motion to bring about a society based totally on the concepts of equality, dignity, and justice and free from dowry-related violence and discrimination.

ELECTORAL SYSTEM: ISSUES AND CHALLENGES

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ABSTRACT

The Indian Constitution is the fundamental law of the land, which governs the people of India. The Indian Constitution provides various fundamental rights for the welfare of the citizens. It protects the rights of the individuals, maintains peace and ensures security. However, there are duties also to be performed by the citizens of the country. The laws in the constitution are applicable to all the citizens of the country, irrespective of sex, caste, class, etc. However, the power of the legislators to amend the laws in the Constitution is vested in the people of India, by whom the legislators are elected. We, the people of India, choose the representatives by whom we should be governed. The process by which representatives get elected is the electoral system. The Electoral system gives us an opportunity to elect representatives irrespective of our caste, sex, class, etc., except for the age constraint, where citizens should attain the age of 18 to enjoy the right to vote. This paper discusses the electoral system in relation to the constitutional law and why the electoral system is established in India. The main question that is going to be dealt with is whether the constitutional bodies are acting according to the established principles. And in India, as it is very prevalent that 30% people are electing a representative, whereas the other 70% reject him, according to the Constitution, 50% citizens should approve to elect a representative. The question here is, by way of such electoral bodies, whether we are complying with the principles of the Indian Constitution.

Keywords: Indian Constitution, Election, Electoral system, Representatives, Citizens.

INTRODUCTION

The electoral system in India is a cornerstone of its democratic framework, ensuring free and fair representation of the people. After India attained independence in August 1947, there was a need to hold general elections to elect a representative government. The constituent assembly laid down the foundation for the electoral process in India by adopting the principle of Universal Adult Franchise. With the help of Article 324, the independent constitutional authority, i.e., the Election Commission of India, was established and was brought into force from 25th January, 1950⁵⁰. The first general elections were conducted in 1951-1952, and people above the age of 21 were allowed to vote, and later the voting age was reduced to 18⁵¹ for 489 seats in the Lok Sabha⁵². In 1961, electoral rolls were introduced, and in 1998, Electronic Voting Machines were used nationwide. In due time, as it was observed that there was more switching parties in the 1985 anti-defection law⁵³ was introduced to prevent elected members from switching parties to ensure stability in the legislature. In 2013, the NOTA option was also included to allow voters to reject all candidates. India has the distinction of having the largest democracy in the world⁵⁴. Elections are the most vital and integral part of politics in a democratic system of governance, and also a necessity and a core of democracy in each country. While politics is the art and practice of dealing with political power, an election is a process of legitimising such power⁵⁵.

RELEVANCE OF STUDY:

The study of constitutional law and electoral systems is very important in the context of democratic governance. Free and fair elections are important for the legitimacy of any democratic government. A deeper understanding of the constitutional safeguards can help in preventing such issues. By conducting elections, citizens' trust in the democratic process is

⁵⁰ Election Commission of India, *About ECI*, <https://www.eci.gov.in/about-eci> (last visited Apr. 20, 2026)

⁵¹ The Constitution (Sixty-first Amendment) Act, 1989, No. 61 of 1989 (India)

⁵² Election Commission of India, *Statistical Report on General Elections, 1951 to the First Lok Sabha, Volume I* (National and State Abstracts & Detailed Results), <https://tinyurl.com/kxydfd64> (last visited Apr. 20, 2026).

⁵³ INDIA CONST. TENTH SCH. (Anti-Defection Law), <https://www.mea.gov.in/Images/pdf1/S10.pdf> (last visited Apr. 20, 2026)

⁵⁴ Election Commission of India, Press Note: Symbol for “None of the Above” (NOTA) Option, No. ECI/PN/58/2015 (Sept. 18, 2015), <https://www.eci.gov.in> (last visited Apr. 20, 2026)

⁵⁵ Bimal Prasad Singh, Electoral Reforms in India—Issues and Challenges, 2(3), *International Journal of Humanities & Social Sciences Invention* 1 (2013)

tested when elections are conducted transparently in accordance with the constitutional principles. The electoral system must operate within the bounds of constitutional provisions to ensure that it reflects the rule of law. Analysing the constitutionality of the electoral system helps in safeguarding democratic values against violations. Insights from this study will help the readers to understand the accountability, transparency and fairness in the electoral system.

HYPOTHESIS

The electoral system aligns with the constitutional principles in theory, but in practice, it deviates due to issues such as non-interference of the public and a lack of proper implementation.

OBJECTIVES

1. To examine the structure and the constitutional principles relating to the electoral system.
2. To know the reason why India implemented a majoritarian system, while a majority of established democracies use a proportional system.
3. To identify the challenges in the practical implementation of constitutional principles in the electoral system.

ANALYSIS

STRUCTURE OF THE ELECTORAL SYSTEM IN INDIA

The structure of the elections is based on the provisions of the Constitution of India, 1950, the Representation of the People Act, 1951, the Indian Penal Code, 1860, and the Delimitation Act, 1972. With the help of Article 328⁵⁶ of the Constitution, state governments can also make laws without deviating from the provisions of the Central Laws.

THE BHARATIYA NYAYA SANHITA, 2023⁵⁷

Some actions in relation to the elections are said to be as offences under the Bharatiya Nyaya Sanhita 2023; they are:

⁵⁶ INDIA CONST. Art. 328 (authorizing State Legislatures to legislate on elections to the State Legislature, subject to Parliamentary law and constitutional provisions)

⁵⁷ Bharatiya Nyaya Sanhita, 2023 (India)

- Section 169 – Defines candidate and electoral right
- Section 170 – Bribery
- Section 171 – Undue influence at elections
- Section 172 - Personation at an election
- Section 173 – Punishment for Bribery
- Section 174 – Punishment for undue influence or personation at an election
- Section 175 – False statement in connection with an election
- Section 176 – Illegal payments in connection with an election
- Section 177 – Failure to keep election accounts

THE CONSTITUTION OF INDIA⁵⁸

Articles 54-71, which set down the process for the election of the President of India and the Vice-President of India, are the most relevant provisions of the Constitution concerning elections.

- Article 83 deals with the duration of the House of Parliament, and Article 80 has laid down the Composition of the Council of States
- Article 84 sets down the minimum requirements for a Member of Parliament. (a) has to be a citizen of India and (b) have a minimum age of twenty-five years in case of Lok Sabha and a minimum age of thirty years in case of Rajya Sabha. Other requirements can also be made necessary from time to time.
- Article 101 says that a person cannot be a member of both houses at the same time.
- Article 102 provides for the disqualification of Members of Parliament, i.e. (a) holding an office of profit under the jurisdiction of the Government; (b) being insolvent; (c) having been found unsound by the competent court; and (d) having willingly obtained the citizenship of

⁵⁸ Constitution of India, 1950 (India)

another country. Many disqualifications are given by the Representation of the People Act, 1951.

- Articles 168 to 173 deal with the constitution, composition, and membership qualifications of State Legislatures and Articles 190 to 192 provide specific rules on the vacation of seats and the disqualifications of members.
- Art. 324 deals with the superintendence, direction and control of elections to be vested in an Election Commission. It has gained significance and garnered attention at the present time. It specifies that the President may appoint the Election Commissioner and Other members to the Commission.
- Art. 326 provides that elections to the House of People and the State Legislative Assembly shall be held on the basis of universal adult franchise. The minimum age to be considered and to be an adult was changed from 21 years to 18 years in 1988.
- Article 329 (i) bars the courts from challenging the legitimacy of any law relating to the delimitation of electoral districts or the allocation of seats; and (ii) provides that the election to Parliament or the State legislature can be challenged only by means of an election petition submitted to the authority provided for by statute. The Election Commission was the authority until 1966. In 1966, the jurisdiction was transferred to the High Courts⁵⁹.

THE REPRESENTATION OF THE PEOPLE ACT, 1951⁶⁰

This is the most critical piece of legislation that sets out the “nuts and bolts” elements of the process for elections.

- This sets out specific procedures for the conduct of elections, including nomination, polling, and counting.
- It gives detailed information about the administrative body for the conduct of elections.
- It defines the power of the government to requisition premises, cars, etc., for elections.

⁵⁹ Representation of the People Act, 1951, § 80A (India)

⁶⁰ Representation of the People Act, 1951, No. 43 of 1951 (India)

- This Act provides a procedure for polling and counting of votes.
- The process to count the votes or polling and the announcement of the polls;
- The prohibition of electoral offences;
- The condition when election may be suspended, and the registration of parties is needed.
- The deposit for standing in the elections,
- The prohibition to impersonate and other similar offences.
- The ceiling of electoral expenses.

THE REPRESENTATION OF THE PEOPLE ACT, 1950⁶¹

The main provisions of the Act are-

- The allocation of seats in the lower house is according to the provisions of this Act . The electoral district of the Lower House cannot be split between states.
- The constituencies in the Lok Sabha are single-member constituencies.
- Since the Sixty-first Amendment Act, 1988, a person who is not below the age of 18 years on the qualifying date and ordinarily a resident of the constituency and not in any way disqualified by law is entitled to vote. The electoral rolls are required to be updated in a timely manner by the Electoral Registration Officers. It can be done either on the application by a person or suo-motu.

WHY INDIA IMPLEMENTED MAJORITARIAN

There are a wide number of voting systems in the world, but they can be primarily divided into three:

⁶¹ Representation of the People Act, 1950, No. 43 of 1950 (India)

1. The Majoritarian systems
2. The Proportional Representation System
3. The Mixed Electoral System

In India, we have been following the Majoritarian System, which is better known as the “First Past the Post System” (FPTP). In this, the territories in the nation are divided into single-member constituencies. In this, every voter has one vote, and the person having the most number of votes, irrespective of the proportion of the vote, wins.

There are a few reasons why India implemented a majoritarian system while a majority of established democracies use a proportional system.

There are a few reasons for this-

The origins of the Indian political system were primarily derived from the American, Switzerland and British constitutions. Second, the drafters of our constitution predicted that, like the United Kingdom and the United States, we would also possibly establish a stable two-party system. But this hope didn't materialise because of the lack of democratic values. The other two majoritarian systems are the Double Ballot system⁶² and the Preferential Voting System⁶³. They both offer much fairer results but are not suited to Indian conditions.

This scheme has certain advantages:

- It forms a stable government, unlike the unstable governments experienced by many countries under the Proportional Representation System. In that case, governments lasted less than six months.
- This avoids the rapid increase in the number of political parties, as in Israel, where a few small parties play a significant role in the two main parties.

The main features of the Indian electoral system:

⁶² Electoral Reform Society, *Two-Round System*, <https://electoral-reform.org.uk/voting-systems/types-of-voting-system/two-round-system/> (last visited Apr. 20, 2026)

⁶³ Electoral Council of Austl. & N.Z., *Preferential Voting Systems*, ECANZ, <https://www.ecanz.gov.au/electoral-systems/preferential> (last visited Apr. 20, 2026)

1. It describes the Election Commission's functions and responsibilities.
2. It provides the election procedures, including when candidates are nominated and when results are announced.
3. Describes the process of the election.
4. Provides information about the Universal Adult Franchise.
5. It contains the provisions related to reservation for the Scheduled Castes, the Scheduled Tribes and other Backward Classes.

MAJORITY SYSTEM

The current system of majority rule is the root of many of our issues. It only gives the result of who won the majority of votes among the candidates without considering the percentage of votes they received, because this percentage is sometimes less than 50% of the total votes cast. Even though they win the election, it leads to representing a constituency that has a minority of votes, despite having been elected to represent all of the people.

An alternative is to elect a representative who gets more than 50% voting, and if not received, there should be a run-off election if the top two candidates are not able to make it past the first stage. As a result, it brings a sense of unity among people and a decrease in the use of political devices, such as casteism and communalism. Without the backing of all segments of society, no Political party can win an election.

ELECTORAL SYSTEM OF INDIA: MAJOR ISSUES

In India, a vast amount of money is needed to win in elections. The election system in India is plagued by several severe flaws, such as money power, criminalisation of politics, Opportunistic Coalition Governments, Non-serious candidates in Political parties and paid news.

Money power: Electioneering is a very expensive affair and plays a more vital role in India. A prospective candidate in each constituency had to spend millions of dollars towards transport, publicity and the election campaign. In recent times, election expenses have increased beyond the limits due to the desire on the part of every political party to spend more than their

opponents. The elections were not as costly in 1952 as they have become today. Political leaders considered unethical to work with a desire for any reward, but now the scenario has changed. The elections in the Indian polity are becoming increasingly expensive.⁶⁴ In the past years, industrialists and businessmen supported political parties, but now they directly participate in elections, run for office by themselves, and sometimes buy seats in state legislatures.

Criminalisation of Politics: The criminalisation of politics is a big problem in our politics right now. Lawmakers should not have criminal records, so the law should keep them from running for office.⁶⁵ If one party wins, then the opponent tries to place the flaws made by the previous government and files cases regarding their corruption, and vice versa. Political parties tap criminals for funds and, in return, provide them with political patronage and protection.⁶⁶

Opportunistic Coalition Governments: It is very prevalent in India when it comes to post-election coalitions. Despite their differences in ideology, they joined together to establish the government on the argument that to prevent re-elections. It is against the public sentiment, and post-election coalitions should be prevented by the law.⁶⁷

Non-Serious Candidates in Political Parties: In the changing times, we are seeing many people entering politics. The number of candidates who are contesting elections are increasing day by day, especially independent candidates. Some political parties make some of their representatives to contest as independent candidates so that the votes get distributed. It is also seen in modern times that these independent candidates get their symbols most similar to their own party and try to get votes. These non-serious candidates should be prevented from contesting elections.

Paid news: The Indian electoral system is now facing a serious challenge of paid news and biased media. Media plays a very important role in influencing the minds of the people, and as we see in present times, some of the channels are confined to one single party, and some political parties own the news channels.

REMEDIAL MEASURES:

⁶⁴ Election Commission of India, *Expenditure Reports*, <https://www.eci.gov.in/expenditure-reports> (last visited Apr. 20, 2026)

⁶⁵ Representation of the People Act, 1951, No. 43 of 1951, India Code (1951)

⁶⁶ Law Comm'n of India, *244th Report on Electoral Disqualifications* (2014)

⁶⁷ National comm'n to Review the Working of the Constitution, *Report* (2002)

The following are some of the measures that can be taken into consideration in order to make the electoral system free and fair:

- Even after 75 years of independence, the Election Commission of India largely depends on state and central government staff. So, government officials do both the ordinary administration work and the electoral administration work.⁶⁸
- A candidate involved in corruption should be disqualified.⁶⁹
- For having a true democracy, the registration and recognition of the political parties should be fair and without any kind of influence.⁷⁰
- Mass Media should play a non-partisan role in elections and as a safeguard of democracy.⁷¹
- Periodic elections are the foundation of a democratic system. For a fair electoral system, every aspiring candidate must have reasonable freedom to offer himself as a candidate for election and to conduct his election campaign in his own way, so long as he keeps himself within the law.⁷²
- Every voter must be perfectly free to vote as he likes without any fear of consequences and without being unduly influenced by anyone by improper means, inducement, or pressure of any kind.⁷³
- The secrecy of voters' preferences for any candidate should be maintained. The election machinery must function honestly and impartially at every stage.⁷⁴
- Parliament must pass a law dealing with this serious problem of the de-listing of valid electorates from electoral rolls because illiterate electorates residing in remote villages cannot watch over the publication of the electorate lists.⁷⁵

⁶⁸ Election Comm'n of India, *Annual Report*.

⁶⁹ Representation of the People Act, 1951, No. 43 of 1951, India Code (1951).

⁷⁰ Law Comm'n of India, *170th Report on Reform of the Electoral Laws* (1999).

⁷¹ Press Council of India, *Norms of Journalistic Conduct* (latest ed.).

⁷² *Union of India v. Ass'n for Democratic Reforms*, (2002) 5 S.C.C. 294 (India)

⁷³ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. S.C.C. 1 (India)

⁷⁴ Durga Das Basu, *Introduction to the Constitution of India* (LexisNexis)

⁷⁵ Election Commission of India, *Handbook for Electoral Registration Officers*

CONCLUSION

In a democracy, the sovereignty lies with the people and without their support, an individual cannot become a representative of the people. It is the responsibility of every citizen of India to vote for their desired candidate and also to question the government regarding all the policies being implemented.⁷⁶ The representatives whoever is being elected by the people always had a responsibility towards the citizens, and even before questioning them, representatives were accountable. Further, in modern times, there was a use for implementing an Act to make representatives accountable and answerable, i.e., the RTI Act, through which the public can ask for any information with some exemptions.⁷⁷ Therefore, despite Election Commission of India doing their best to conduct free and fair elections, it is not possible until and unless every individual knows their duty towards the state and their moral obligation and ethical values are followed as an individual. At the end, there would be a proper mechanism that is fully operational and properly ready to any consequence.

⁷⁶ Nat'l Comm'n to Review the Working of the Constitution, *Report* (2002)

⁷⁷ Right to Information Act, 2005, No. 22 of 2005, India Code (2005)

CASE COMMENT: HARISH RANA VERSUS UNION OF INDIA 2026 SCC Online SC 358

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ABSTRACT

The decision in the case of Harish Rana versus Union of India represents a landmark significance in Indian Constitutional jurisprudence regarding passive euthanasia. Harish Rana has been under medical care for many years, lying in bed with artificial life support. He suffered the same state of pain with a delay in the dying process. Harish Rana's parents' unwavering love and support forced them to make a decision to withdraw life support to Rana. Therefore, the petitioner approached the Hon'ble Court to allow the withdrawal of life support to Harish Rana in his best interest. Further, the Respondent appeared before the Court and humbly submitted their concern to preserve the dignity of Harish Rana in his death. The Court observed “right to die with dignity” through the prism of self-determination, individual autonomy and privacy. The Court referred to primary and secondary medical board submissions. Notably, the Court allowed passive euthanasia. The Hon'ble Court primarily relied on the Common Cause (2018) case to decide the matter with regard to passive euthanasia. This decision is not about choosing death, but is rather one not to suffer from artificially prolonging life.

Keywords: Life support, Best Interest, Right to die, Dignity, Passive euthanasia.

INTRODUCTION

This is one of the landmark cases regarding Article 21 of the Indian Constitution. The Hon'ble Supreme Court bench, constituting of Justice J.B. Pardiwala & Justice K.V. Viswanathan,

pronounced the judgment on March 11, 2026. The essence of this judgement is primarily based on Constitutional, human, moral and scientific principles.

In this case, the court examined CANH as a medical treatment, the principle of the best interest of the patient and the withdrawal of life support to the patient. Finally, the Hon'ble Court applied various legal and scientific principles to decide on "allowing withdrawal of life support" to Harish Rana.

FACTS OF THE CASE⁷⁸

The petitioner Harish Rana was a young man aged 20, who was an engineering student at Punjab University fall from the fourth floor of his accommodation in 2013. He suffered from a severe traumatic brain injury after that fall. It results in a Persistent Vegetative State (PVS) with irreversible brain damage and 100 per cent disability.

The injury occurred over 12 years ago, and since then, he has been put under Clinically Assisted Nutrition and Hydration (CANH) treatment. However, food was provided to him through a Percutaneous Endoscopic Gastrostomy (PEG) tube. The family of Harish Rana and the doctors agree that the patient's condition is permanent and there is no recovery.

The Delhi High Court in 2024 rejected their petition, stating that the withdrawal of CANH treatment would result in him starving to death. The Supreme Court agreed with the view of the Delhi High Court but issued notice to the Union to shift the Petition to a facility that can cater to his needs.⁷⁹

The Supreme Court basically backed the High Court's view, but they're not done yet. They're asking the Union to look into shifting Rana to a facility that can cater to his needs, considering his parents are getting hit financially and are getting old. In November 2024, on the final day of then Chief Justice D.Y. Chandrachud's tenure, the Bench suggested that the Uttar Pradesh government provide aid for his medical expenses.⁸⁰

⁷⁸ *Harish Rana v. Union of India*, 2026 INSC 222

⁷⁹ Advay Vora, *In a first, Supreme Court gives green signal for passive euthanasia* Supreme Court Observer (Mar. 16, 2026), <https://rb.gy/t3hs2q>

⁸⁰ Advay Vora, *Supra* note 2.

After that, in October 2025, Rana’s parents filed a miscellaneous application, which was taken up by a Bench of Justices Pardiwala and Viswanathan. Based on the *Common Cause* guidelines, the Bench set up the two-tier medical review process. In December 2025, the Hon’ble Court wrote that Rana’s case was the ultimate litmus test for the implementation of the *Common Cause* guidelines.

ISSUES RAISED

The issues raised in this Case are:

1. Does CANH amount to “life-supporting” treatment?
2. Whether the Court can deliver a verdict in the patient’s “best interests”?
3. Does allowing withdrawal of the life support system violate the Right to Life under Article 21 of the Constitution?
4. Whether it is in the best Interest of the specific applicant (Harish Rana) that his life be prolonged by the continuation of medical treatment?

ARGUMENTS ADVANCED BY THE PARTIES

A. PETITIONER ARGUMENTS

The parents, on behalf of the petitioner Harish Rana, seek a Miscellaneous Application to be allowed and the reliefs prayed for to be granted.

Some of the major submissions are as follows:

1. The Petitioner argued that Clinically Assisted Nutrition and Hydration (CANH) is a form of medical treatment through a Percutaneous Endoscopic Gastrostomy (PEG).
2. They contended that continuing this treatment is not in Rana’s best interest because it is futile and does not help Rana to recover. It offers prolonged suffering and no hope of recovery, thereby violating Article 21 of the Indian Constitution.

3. The Petitioner also argued that the right to life under Article 21 includes the right to die with dignity. They argued that the information of medical boards to access the situation is the established procedural guidelines.⁸¹
4. They stated that the family was affected by the moral responsibility to act in Rana's best interest, and the family believed that the withdrawal of medical treatment would be his presumed wish. They wanted their son to experience a natural and peaceful death, which would allow him to maintain his dignity.⁸²
5. Therefore, the petitioner relied on the case Common Cause 2018, which was observed by the Court:
 - a) The doctors have a duty of care to decide medical treatment in the patient's best interest.
 - b) The Court established a link between the right to dignity and medical intervention.
 - c) The Court provided guidelines for allowing euthanasia for patients.

B. RESPONDENT ARGUMENTS

The Respondent counsels, on behalf of the Union of India, submitted as follows:

1. They submitted that a Clinically Assisted Nutrition and Hydration (CANH) constitutes a medical treatment because it is administered through medical devices, and it cannot be mere basic care.
2. The Respondent submitted that removing artificial feeding mechanisms is a lawful cessation of artificial intervention, and it is not an unlawful act causing death. Further, the medical boards have also established that Rana is in an irreversible Persistent Vegetative State (PVS) with no hope of improvement, rendering continued treatment medically futile.
3. They further submitted that for over 13 years, the caretaker of Harish Rana has been his parents, who made a well-considered decision to allow Rana's humane passing in their best interests.

⁸¹ *Harish Rana v. Union of India*, 2026 INSC 222.

⁸² Muhammed Farooque KT, *The Jurisprudence Of Dignity: Evolution Of Passive Euthanasia In India*, LiveLaw (Mar. 14, 2026), <https://rb.gy/7y17ds>.

4. The Respondent also relied on the case *Common Cause 2018*, which was observed by the Court:
 - a) Withdrawal of medical treatment is constitutionally permissible if such medical treatment is futile.
 - b) The removal of medical treatment does not amount to causing death. Rather, it constitutes cessation of an artificial medical intervention, allowing death due to an irreversible condition of the patient.
5. The Respondent prayed that the government must be permitted to ensure the dignity, humane support and comfort of Rana during the withdrawal of CANH.

JUDGEMENT

A. RATIO DECIDENDI

The Hon'ble Court relied on the case *Common Cause v. Union of India (2018) 5 SCC 1*, in which the Supreme Court recognised that life should be lived with dignity. In addition, an individual has the right not to prolong life artificially when it does not preserve their dignity.

Further in *Common Cause v. Union of India (2018) 5 SCC 1* case, the court referred to *Gian Kaur v. State of Punjab 1996 SCC (2) 648*, the court overruled the previous decision, which declared that Article 21 does not include the right to die. The Court explained that people who wish to die with dignity at the end of their life have rights under Article 21.

In the *Common Cause (2018)*, the court also referred to *Aruna Shanbaug v. Union of India 2011 (4) SCC 454*, the Supreme Court permitted passive euthanasia under strict supervision.

B. OBITER DICTA

The Hon'ble Court relied on several scientific definitions and principles to decide the case. One such observation is from the ICMR Palliative & EOL Care Primer. They defined the term 'Palliative Care'. Based on the definition, the Court states that palliative care creates an environment which meets several needs of both patient and parents, including the spiritual needs of the patient and parents.

In addition, the Hon'ble Court relied on a famous quote of Shakespeare, "to be or not to be," to interpret the liberty to die.

C. COURT'S OBSERVATION ON DETERMINED ISSUES

1. CANH constitutes 'medical treatment' with respect to administration, refusal, withholding or withdrawal by a medical practitioner in good faith.
2. The principle of the best Interest of the patient is predominantly determined by the court with reference to the Common Cause case of 2018.
3. Withdrawal of medical treatment based on the primary and secondary medical board certification. There is no requirement for court intervention, but it is subject to exception.
4. The withdrawal of medical treatment must be carried out by doctors by following procedural frameworks step by step, without affecting the dignity of the patient.

D. COURT'S DECISION

The Supreme Court clearly examined all the medical experts' reports and all the constitutional principles. The medical treatment can be stopped under specific circumstances, which include cases where recovery becomes impossible. The Court also confirmed that Article 21 of the Indian Constitution, i.e. Right to Life and personal Liberty, includes the right to die with dignity when life-support systems provide no relief to the patient. Families become the decision-making authority if the patients reach an irreversible vegetative state.

The process of withdrawing all the medical treatments needs to follow established principles, and doctors assess the situation to prevent any potential abuse. The Court said that the family members of the patient possess complete knowledge about their loved one's best interests and their personal wishes, but family decisions are not absolute.

The Court also highlighted the case *Aruna Shanbaug v. Union of India 2011 (4) SCC 454*, which became a foundation for the judiciary to decide on allowing euthanasia. In addition, the Hon'ble Court urged the parliament to enact comprehensive legislation to deal with this subject matter.

CONCLUSION

This case commentary provides an overview of the Supreme Court's observations in the *Harish Rana versus Union of India and others* in the subject matter “right to die with dignity”. This judgement is purely based on humanity, morality, constitutional and scientific approach. The decision of the Hon'ble Supreme Court prioritises "Best interest of the patient".

This ruling restores the Right to life, including the right to die with dignity. The Hon'ble Court adopted the *Common Cause (2018)* case guidelines to decide on this case regarding passive euthanasia. Therefore, this case took a new dimension in end-of-life care jurisprudence in India.

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We acknowledge the authors whose work reflects substantive research and critical engagement with contemporary legal, social, and economic issues. Their contributions form the core of this publication and support its objective of fostering rigorous and meaningful discourse.

We also recognize the efforts of the editorial team in ensuring consistency, accuracy, and adherence to established academic standards throughout the review and publication process.

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