

PREFACE TO THE EDITION

We are pleased to present this issue of **Indian Journal of Jurisprudence and Reviews (IJJR)**, which brings together six articles on contemporary questions in Indian law. They cover surveillance, criminal procedure, labour rights, food safety regulation, family law, and transparency, and they share a concern with the gap between constitutional principle and statutory design.

The issue opens with an examination of lawful interception and service suspension under the Telecommunications Act, 2023. Measured against the constitutional baseline set by PUCL, Puttaswamy, and Anuradha Bhasin, the article argues that the new framework still rests on executive self-review. It proposes independent authorisation, meaningful oversight, and narrower grounds for interception.

The second article asks why undertrial detention persists under the Bharatiya Nagarik Suraksha Sanhita. It locates the failure in institutional design, not principle, and identifies the arrest decision, monetary bail conditions, special-statute restrictions, and the lack of any actor charged with flagging prolonged detention as the points of breakdown.

The third article turns to domestic workers in India and examines why they remain outside most labour protection. It shows that a human rights framing becomes enforceable only when statute supplies a registered employer, a wage floor, a record, and a forum, and it proposes reforms along these lines.

The fourth article studies the overlapping regulation of pesticide residues under the Insecticides Act and the Food Safety and Standards Act. Its central finding is that there is no feedback path between the two regulators. It proposes a statutory duty of reference between them.

The fifth article revisits the debate on uniform civil codes, legal pluralism, and constitutional equality. It replaces the opposition between uniformity and pluralism with a narrower question about which differences reflect real inequality. It assesses the Uttarakhand statute against that framework.

The issue closes with an analysis of Section 44(3) of the Digital Personal Data Protection Act, which amended the Right to Information Act. The article treats the amendment as a question of statutory design and argues for restoring the public interest override.

Together, these contributions show that legal reform often succeeds or fails in the details of institutional design, such as who decides, who reviews, and who is answerable. We hope the issue will be useful to scholars, practitioners, and policymakers.

We thank the authors, reviewers, and editorial team for their work, and we invite readers to contribute to future issues.

Dr. Sangeeta Taak
Chief Editor

CONTENTS

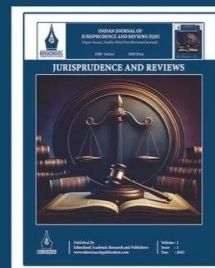
SL. NO.	TITLE	AUTHOR	PAGE NO.
1.	Lawful Interception, Constitutional Limits: Surveillance and Service Suspension under the Telecommunications Act, 2023	Gopi C.C	1-4
2.	Undertrial Detention and The Law of Bail Under the Nagarik Suraksha Sanhita	Ann Maria Rose	5-8
3.	Domestic Workers in India: Labour Rights, Human Rights and Statutory Exclusion	Reyona Elsa Sherin	9-12
4.	Pesticide Residues and Food Safety Law in India: Overlapping Regulators	Vinothini S	13-16
5.	Uniform Civil Codes, Legal Pluralism and Constitutional Equality in India	Rajesh joseph	17-20
6.	Data Protection and The Right to Information: Section 44(3) In India	Sharmila	21-24



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Lawful Interception, Constitutional Limits: Surveillance and Service Suspension under the Telecommunications Act, 2023

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Abstract

The Telecommunications Act, 2023, replaced a colonial-era framework, principally the Indian Telegraph Act, 1885, and its companion statutes, with a modern code governing India's telecommunications sector. Among its most consequential provisions are those that authorise the State to intercept communications, to suspend telecommunication services, and to take temporary possession of telecom networks on broadly worded grounds of sovereignty, security, public order, and public emergency. This paper examines those powers against the constitutional baseline established by three landmark decisions: *People's Union for Civil Liberties v. Union of India* (1997), which laid down procedural safeguards for telephone interception; *Justice K.S. Puttaswamy v. Union of India* (2017), which recognised informational privacy as a fundamental right subject to a proportionality test; and *Anuradha Bhasin v. Union of India* (2020), which subjected internet shutdowns to the same discipline. Drawing on the Act and the Telecommunications (Procedures and Safeguards for Lawful Interception of Messages) Rules, 2024, the paper argues that, while the Act modernises the law and the Rules restate certain safeguards, the surveillance architecture continues to rest on executive self-review, lacks judicial or parliamentary oversight, and defines its grounds so broadly as to strain the necessity and proportionality requirements that the Constitution imposes. It proposes reforms, including independent authorisation, meaningful oversight, narrowed grounds, the mandatory publication and review of suspension orders, and post-facto notification to affected persons, that would reconcile legitimate security needs with the constitutional right to privacy.

Keywords: - Surveillance, Interception, Internet shutdown, Right to privacy, Proportionality

I. INTRODUCTION

For nearly a century and a half, the legal basis for State surveillance of communications in India lay in the Indian Telegraph Act, 1885, a statute drafted by a colonial administration for a colonial purpose. The Telecommunications Act, 2023, replaced that framework, along with the Indian Wireless Telegraphy Act, 1933, with a modern code intended to reflect the realities of a digital, networked age (SFLC.in, 2024; LiveLaw, 2024). The reform was overdue, and much of the Act is unobjectionable modernisation. But the Act also recasts the State's most intrusive powers over communications, and it is those powers that this paper examines.

Three provisions have attracted particular attention. Section 20 empowers the government to intercept communications, to suspend telecommunication services, and to take temporary possession of telecom networks, in each case on grounds that include the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, and the prevention of incitement to offences, as well as public emergency and public safety (Shardul Amarchand Mangaldas, 2024). Section 3(7) contemplates biometric identification for the verification of users (SFLC.in, 2024). These powers reach into the private communications of citizens, and their exercise engages the fundamental right to privacy that the Supreme Court has placed at the centre of Indian constitutional law.

The constitutional stakes are not abstract. India has consistently ranked among the countries that suspend internet services most frequently, and the interception of communications has long been the subject of litigation and concern. The Act was passed in December 2023 during a session in which a large number of Opposition members were under suspension,

limiting deliberation, and its surveillance provisions came into force in 2024 (CJP, 2024). The Telecommunications (Procedures and Safeguards for Lawful Interception of Messages) Rules, 2024, notified in December 2024, supply the procedural detail for interception (JSA, 2024; Internet Freedom Foundation, 2024).

This paper addresses three central questions:

- *First*, do the interception powers under the Act and the 2024 Rules satisfy the procedural safeguards that *People's Union for Civil Liberties v. Union of India* and *Puttaswamy* require?
- *Second*, do the suspension powers conform to the proportionality discipline that *Anuradha Bhasin v. Union of India* imposed on the disruption of telecommunication and internet services?
- *Third*, what reforms would reconcile the State's legitimate security needs with the constitutional right to privacy and the freedoms that depend on communication?

Through doctrinal analysis of the Act, the Rules, and the governing precedents, the paper argues that the new framework, though an improvement in form, perpetuates an oversight deficit that leaves it constitutionally vulnerable, and it proposes targeted reform.

II. THE STATUTORY AND REGULATORY FRAMEWORK

The architecture of State power over communications is concentrated in Section 20 of the Act. The provision permits the Central or State Government, or an officer specially authorised, to take temporary possession of any telecommunication service or network in the event of a public emergency or in the interest of public safety. It empowers the government to intercept, detain, or disclose messages, and to suspend the transmission of communications, where satisfied that doing so is necessary or expedient in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, or for preventing incitement to the commission of an offence (Shardul Amarchand Mangaldas, 2024; Khaitan & Co., 2024). These grounds substantially mirror those in the predecessor framework, but they now apply expressly to the full range of modern telecommunication and internet services.

Section 21 confers further powers in the interest of national security, friendly relations, or in the event of war, including directions on the use and standards of telecommunication equipment. Section 3(7) provides for the verification of users through means that may include biometric identification, raising distinct privacy questions about the collection and retention of sensitive personal data (SFLC.in, 2024). The Act came into force in stages, with the core surveillance provisions notified in 2024 (CJP, 2024).

The procedural detail for interception is supplied by the Telecommunications (Procedures and Safeguards for Lawful Interception of Messages) Rules, 2024, notified on 6 December 2024 in supersession of Rules 419 and 419A of the Indian Telegraph Rules, 1951 (JSA, 2024; Lexology, 2025). Under the Rules, interception orders are ordinarily issued by the Union Home Secretary or a State Home Secretary, and in unavoidable circumstances by an officer not below the rank of Joint Secretary so authorised. Oversight is entrusted to Review Committees, a Central Review Committee headed by the Cabinet Secretary and State Review Committees, which are to review orders on a periodic basis and may set aside an order and direct the destruction of intercepted material where the order does not conform to the Act. Records of interception are to be destroyed periodically (Vision IAS, 2024; Next IAS, 2024).

The continuity is significant. The Review Committee mechanism and the periodic-review-and-destruction model derive from the safeguards that the Supreme Court mandated in 1997 and that were codified as Rule 419A in 2007. The 2024 Rules carry that model forward rather than reconceiving it, which means that both its strengths and its long-criticised weaknesses persist (Khaitan & Co., 2024; Internet Freedom Foundation, 2024).

III. THE CONSTITUTIONAL BASELINE: PUCL, PUTTASWAMY, AND ANURADHA BHASIN

The constitutional treatment of communications surveillance begins with *People's Union for Civil Liberties v. Union of India*, the telephone-tapping case. There the Supreme Court held that the right to privacy is a part of the right to life and personal liberty under Article 21, and that telephone conversations are protected. Because the Telegraph Act lacked procedural safeguards against arbitrary interception, the Court itself laid down safeguards, including authorisation by a designated high-ranking officer, limits on the duration of orders, and review by a committee, safeguards later codified in Rule 419A (PUCL, 1997). The decision established that surveillance must be hedged by procedures that are just, fair, and reasonable.

Two decades later, *Justice K.S. Puttaswamy v. Union of India* elevated privacy, including informational privacy, to the status of a fundamental right protected across Part III. The Court prescribed a structured test for any State intrusion upon privacy: it must rest on a valid law (legality), pursue a legitimate State aim, be proportionate in the sense of being the least restrictive means rationally connected to that aim, and be attended by procedural safeguards against abuse (Puttaswamy, 2017). Surveillance powers, being among the most intrusive of State actions, fall squarely within this discipline.

Anuradha Bhasin v. Union of India applied these principles to the suspension of telecommunication and internet services. The Court held that access to the internet is instrumental to the exercise of fundamental freedoms, that an indefinite suspension is impermissible, and that suspension orders must be necessary and proportionate, must be published so that they can be challenged, and must be subject to periodic review (Anuradha Bhasin, 2020). Together, these three decisions form the constitutional baseline against which the Act and the 2024 Rules must be measured: surveillance and suspension are permissible, but only within the bounds of legality, necessity, proportionality, and effective oversight.

IV. INTERCEPTION: PROCEDURAL SAFEGUARDS AND THE OVERSIGHT DEFICIT

Measured against this baseline, the interception regime satisfies the requirement of legality and reproduces several procedural safeguards, but it falls short on independent oversight. The most fundamental difficulty is that authorisation,

execution, and review all remain within the executive branch. An interception order is issued by a Home Secretary, an officer of the same government that seeks the interception, and it is reviewed by a committee composed of senior civil servants of that same government. There is no requirement of prior judicial authorisation, and no role for Parliament or an independent body in supervising the system (Vision IAS, 2024; Bar and Bench, 2024).

This structure has long been criticised as inadequate, and the concern is sharpened by the Puttaswamy requirement of safeguards against abuse. A review mechanism internal to the executive cannot supply the independence that meaningful oversight demands; it asks the government to police itself. Comparative practice in several democracies requires prior authorisation by a judge or an independent commissioner before communications may be intercepted, precisely because the gravity of the intrusion warrants a check external to the agency seeking it. The retention of an executive-only model, even with periodic review, leaves the Indian regime exposed to the objection that it lacks the procedural guarantee that the Constitution requires (Bar and Bench, 2024).

Further concerns attach to the breadth of the grounds and to specific features of the 2024 Rules. Grounds such as public order and the prevention of incitement are capacious, and without narrowing constructions they risk authorising interception in circumstances far removed from the grave threats that justify so serious an intrusion. Commentators have also noted that the Rules relax the earlier insistence on confining urgent interception to genuinely emergent cases, and that provisions permitting the testing of interception systems could, absent strict limits, enable monitoring outside the ordinary authorisation framework (Internet Freedom Foundation, 2024; Vision IAS, 2024). Each of these features widens the gap between the regime and the necessity limb of the proportionality test.

V. SUSPENSION OF SERVICES: SHUTDOWNS AND PROPORTIONALITY

The power to suspend telecommunication and internet services raises distinct constitutional questions, because a shutdown disables not one person's privacy but an entire population's capacity to communicate, to access information, to trade, and to seek medical help. Anuradha Bhasin held that such suspensions must satisfy proportionality, must be limited in duration, must be published, and must be subject to review (Anuradha Bhasin, 2020). The constitutional question is whether the Act's suspension power, and the rules made under it, embed these requirements or merely restate a discretionary authority.

The Act authorises suspension on the same broad grounds as interception, and it continues a power that under the predecessor framework was exercised through the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. Those rules were the subject of the very criticism that Anuradha Bhasin addressed: orders were frequently unpublished, of uncertain duration, and difficult to challenge. For the new framework to satisfy the constitutional baseline, the rules governing suspension must require that every order state its grounds and duration, that orders be published promptly, that they be confined to the least restrictive measure capable of meeting the threat, such as the suspension of specific services rather than a blanket shutdown, and that they be reviewed by an independent body within a short, fixed period (Anuradha Bhasin, 2020; OHRH, 2024).

Where the rules fall short of these requirements, the suspension power will remain vulnerable to challenge, because a discretion to disable communications that is not disciplined by publication, duration limits, and proportionate tailoring cannot be reconciled with Anuradha Bhasin. The frequency with which suspensions have historically been ordered in India makes the adequacy of these safeguards a matter of practical, not merely theoretical, importance.

VI. CRITICAL EVALUATION: SHORTCOMINGS AND CONTRADICTIONS

The Act, assessed against the constitutional baseline, exhibits three connected shortcomings. First, it modernises form without reforming substance. The drafting is contemporary and the scope is updated for the digital age, but the core surveillance architecture, executive authorisation reviewed by an executive committee, is carried over from a framework devised before privacy was recognised as a fundamental right. The opportunity to align the law with Puttaswamy by introducing independent authorisation was not taken.

Second, the grounds for the exercise of intrusive powers are defined more broadly than the proportionality principle comfortably permits. Necessity requires that the most serious powers be reserved for the most serious threats, yet grounds such as public order and the prevention of incitement are wide enough to capture a great range of situations. Without statutory thresholds or narrowing safeguards, breadth of this kind invites disproportionate use and frustrates effective judicial review, since a court cannot easily test the necessity of an order whose authorising ground is open-ended.

Third, the regime suffers from an accountability and transparency deficit. Affected persons are ordinarily not informed that they have been subject to interception, even after the threat has passed and notification could cause no harm, which deprives them of any practical means of seeking a remedy. Suspension orders have historically gone unpublished. The destruction of records, while protective of privacy in one sense, also forecloses the possibility of after-the-fact scrutiny of whether powers were lawfully exercised. The cumulative effect is a system whose conformity with the Constitution must be taken largely on trust, which is precisely what the requirement of safeguards against abuse is meant to avoid (Internet Freedom Foundation, 2024).

VII. IMPLICATIONS AND RECOMMENDATIONS

The Act's legitimate objectives, the protection of national security and public safety, can be pursued through a framework that is also constitutionally robust. Five reforms are proposed.

First, interception should require authorisation independent of the agency seeking it. Whether through prior approval by a designated judicial officer or by an independent surveillance commissioner, an external check would supply the procedural guarantee that Puttaswamy demands and that an executive-only model cannot provide. Emergency interception could proceed on executive authority for a short period, subject to prompt confirmation by the independent authority.

Second, the grounds for interception and suspension should be narrowed and defined. The gravest powers should be tied to demonstrable and serious threats, with statutory thresholds that enable a court to assess necessity. Broad and elastic grounds should be qualified by requirements of specificity, so that orders identify the threat, the target, and the expected duration with precision.

Third, suspension of services should be governed by rules that codify Anuradha Bhasin in full: every order to state reasons and duration, prompt publication of orders, a strong preference for the least restrictive measure over blanket shutdowns, and mandatory review by an independent body within a fixed and short timeframe. Indefinite or unpublished suspensions should be expressly prohibited.

Fourth, the system should incorporate transparency and remedy. Persons subjected to interception should be notified once notification can no longer prejudice a legitimate investigation, the government should publish periodic aggregate statistics on interception and suspension orders, and an effective avenue of redress should be available to those whose rights have been infringed.

Fifth, the biometric verification contemplated by the Act should be subject to the data-minimisation and purpose-limitation principles of the data-protection regime, with strict limits on retention and use, so that user verification does not become a vector for a parallel system of identification and tracking.

VIII. CONCLUSION

The Telecommunications Act, 2023, was a necessary modernisation of an antiquated law, and the State's interest in intercepting communications and, in genuine emergencies, suspending services is real and constitutionally legitimate. The difficulty is that the Act modernises the language of surveillance without modernising its constitutional safeguards. It carries forward an architecture of executive authorisation and executive review that predates the recognition of privacy as a fundamental right, defines the grounds for intrusion broadly, and leaves the citizen with little transparency and little remedy.

This paper has argued that these shortcomings can be cured without sacrificing security. Independent authorisation of interception, narrowed and defined grounds, the full codification of Anuradha Bhasin for suspensions, transparency and remedy for affected persons, and disciplined limits on biometric verification would bring the framework into conformity with People's Union for Civil Liberties, Puttaswamy, and Anuradha Bhasin. Security and liberty are not opposed in this design; a surveillance regime that is precise, supervised, and accountable serves both.

The choices made in the rules and practice under the Act will determine whether India's surveillance framework reflects the constitutional order announced in Puttaswamy or merely the colonial order it replaced. As communications become ever more central to the exercise of every freedom, the discipline of legality, necessity, proportionality, and oversight is not a constraint upon effective governance but a condition of its legitimacy.

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Undertrial Detention And The Law Of Bail Under The Nagarik Suraksha Sanhita

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Abstract

Three quarters of the persons held in Indian prisons have not been convicted of anything. That proportion has been stable for four decades, across two general recodifications of criminal procedure and a long line of judicial pronouncements holding that liberty is the rule and detention the exception. This article asks why the doctrine and the statistics have failed to converge, and whether the Bharatiya Nagarik Suraksha Sanhita 2023 alters the position. It argues that the persistence of undertrial detention is not primarily a failure of principle but a failure of institutional design at four points: the decision to arrest, the setting of monetary conditions that a poor accused cannot satisfy, the operation of statutory bail restrictions in special legislation, and the absence of any actor with a duty to bring a prolonged detention to the notice of a court. Section 479 of the Sanhita is examined as the most significant textual change, and its exclusion of persons facing multiple cases is identified as the provision most likely to defeat its purpose. The article contends that the constitutional route pioneered in the speedy trial cases has now been developed as far as adjudication alone can take it, and that the remaining work belongs to the design of release conditions, to the surety requirement, and to legal aid at the stage of first production.

Keywords:- Bail, Undertrial Prisoners, Criminal Procedure, Article 21, Speedy Trial, India

I. INTRODUCTION

The Indian law of bail has produced a body of judicial statement that is close to unanimous and a set of outcomes that has barely shifted. Courts at every level repeat that bail is the rule and jail the exception. Prison returns show that more than three quarters of those held are undertrials and that occupancy exceeds capacity by a wide margin. The gap between the two records is the subject of this article.

The argument is that the gap is not caused by disagreement about the governing principle. It is caused by the fact that the principle addresses the decision of a judge at a hearing, while most of the determinants of pretrial custody operate before that hearing, or after it, or in a domain the judge cannot reach. An accused is arrested when arrest was not necessary. A magistrate grants bail on terms the accused cannot meet. A special statute reverses the ordinary burden. A file lies undisturbed for three years because no institution is charged with noticing that it has.

The Bharatiya Nagarik Suraksha Sanhita 2023 replaced the Code of Criminal Procedure 1973. It provides an occasion to test whether recodification changes any of this. The article examines its bail provisions, and Section 479 in particular, against the four points of failure identified above, and concludes that the Sanhita makes one real advance alongside one drafting choice that is likely to neutralise much of it.

II. THE DOCTRINAL POSITION

The constitutional foundation was laid in a series of decisions in the late nineteen seventies and early nineteen eighties. In *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240, the Supreme Court set out the considerations governing a bail application and insisted that the deprivation of liberty before conviction requires justification rather than assumption. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81, the Court

found men and women held for periods exceeding the maximum sentence for the offence charged, and located a right to a speedy trial within Article 21.

Later decisions consolidated the position. *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40, held that the seriousness of an economic offence does not by itself justify continued detention where the trial will be long. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, addressed the anterior question by requiring police officers to record reasons for arrest in offences punishable with less than seven years of imprisonment, and requiring magistrates to record satisfaction before authorising detention.

The most systematic statement is *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51, which classified offences into categories, issued directions on compliance with the arrest provisions, set timelines for the disposal of bail applications, and asked the Union to consider a separate enactment on bail. Mate (2013) situates this style of adjudication within the broader development of the Supreme Court's supervisory jurisdiction, in which the Court issues directions to administrators in the absence of legislation. The style has obvious advantages of speed. Its weakness is that compliance depends on the same institutions whose conduct produced the problem.

III. ARREST AS THE FIRST DETERMINANT

Custody usually begins with a decision no court has reviewed. The requirement in *Arnesh Kumar* that an officer record the necessity of arrest was intended to convert an unexamined practice into a documented one, on the theory that a reason which must be written is a reason that must exist. The device has been partially effective at best, because the record is prepared by the officer whose conduct it is meant to constrain and is examined, if at all, weeks later.

The *Sanhita* retains the substance of the earlier provisions on arrest without notice and on the duty to inform, and adds procedural requirements concerning the maintenance of arrest records. What it does not add is an independent check at the moment of arrest. *Khanna and Mahajan* (2016), examining anticipatory bail, observe that Indian practice has developed an unusual remedy precisely because the ordinary controls on arrest are weak. Anticipatory bail is a symptom. A person who can afford counsel and can anticipate an accusation obtains protection in advance; a person who can do neither is arrested and then applies.

This asymmetry deserves emphasis because it shapes the composition of the undertrial population. The available prison data show a marked overrepresentation of Scheduled Castes, Scheduled Tribes and Other Backward Classes among undertrials, a pattern that is difficult to explain by offending patterns alone and easy to explain by differential access to the anterior remedies.

IV. MONETARY CONDITIONS AND THE SURETY REQUIREMENT

The second determinant operates after bail has been granted. Indian practice attaches to most bail orders a bond in a specified sum together with one or two sureties who must furnish proof of solvency and local residence. A migrant labourer accused in a city where he knows no property owner cannot produce a surety, and an order granting bail then has the same practical effect as an order refusing it.

The Supreme Court has addressed this repeatedly, directing that conditions be proportionate to the means of the accused and that a person unable to furnish sureties within a stated period be released on a personal bond. *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731, framed the problem in the context of statutory restrictions on bail and produced a scheme of release keyed to the period of detention already undergone. The difficulty is that these are directions to be applied case by case, and the surety requirement remains the default in the statutory form.

Comparative work is instructive here. Lippke (2016) argues that the presumption of innocence, taken seriously, constrains not only the decision to detain but the conditions attached to release, since a condition that cannot be satisfied is a detention order by another route. That analysis fits Indian practice closely. The reform it suggests is structural rather than exhortatory: a statutory presumption in favour of release on personal bond, with sureties required only where a recorded finding justifies them.

V. SECTION 479 AND THE ARITHMETIC OF DETENTION

The most significant textual innovation in the *Sanhita* is Section 479, which reproduces the earlier provision on the maximum period of detention of an undertrial and extends it. A person who has undergone detention for up to one half of the maximum period of imprisonment specified for the offence is to be released on bail. For a first time accused the threshold is one third. The section also allocates the duty to move: the superintendent of the jail must apply in writing to the court on completion of the relevant period.

Two features of this design are genuinely valuable. The first is that it converts a discretionary assessment into an arithmetical one, which removes the occasion for the risk averse refusal that dominates practice. The second is the allocation of the duty to initiate. Until now, a prolonged detention came to notice only if the accused or counsel raised it, which in practice meant that it often did not come to notice at all. *Ranjan* (2025), studying the underutilisation of legal aid among undertrial prisoners, documents how rarely the assigned advocate makes the application that the law contemplates. Placing the duty on the jail superintendent shifts it to an officer who necessarily knows the period served.

The provision is then narrowed in a way that is likely to defeat much of its purpose. Where an accused faces more than one offence, or where more than one case is pending against him, the section directs that release under it shall not be granted. Multiple case registration is common, and it is common precisely in the population the provision was designed to reach. The result is that the accused most likely to be held longest is the one least able to invoke the arithmetic. The narrowing may be defended as a guard against release where the aggregate exposure is high, but the objective could be met by computing the threshold against the aggregate maximum sentence rather than by excluding the class altogether.

VI. STATUTORY RESTRICTIONS IN SPECIAL LEGISLATION

A large part of the long stay undertrial population is held under statutes that restrict the power to grant bail. Provisions in the narcotics legislation and in the Unlawful Activities (Prevention) Act 1967 require a court, before granting bail, to record satisfaction of a negative proposition about the accused's guilt. Applied literally at a stage when the material is untested, that requirement approaches a bar.

The judicial response has been to hold that the statutory restriction yields where its operation would defeat Article 21. In *Union of India v. K. A. Najeer*, (2021) 3 SCC 713, the Supreme Court upheld the grant of bail to an accused under the Unlawful Activities (Prevention) Act who had been in custody for a prolonged period without the prospect of an early trial, holding that the statutory restriction did not oust the constitutional court's power where the delay was itself a violation. The reasoning was applied again in *Javed Gulam Nabi Shaikh v. State of Maharashtra*, Criminal Appeal No. 2787 of 2024, decided on 3 July 2024, where the Court granted bail after more than four years of custody in which charges had not been framed and the prosecution proposed to examine eighty witnesses. The Court there stated that a prosecuting agency unable to secure a speedy trial should not oppose bail on the ground that the offence is serious.

This line of authority is soundly based and, within its domain, effective. Its limitation is that it operates through individual adjudication in a constitutional court. An accused must reach the Supreme Court or a High Court to obtain the benefit of it, which reintroduces the resource dependence that the doctrine was meant to overcome.

VII. TRIAL DELAY AND THE INSTITUTIONS THAT PRODUCE IT

Bail law is, in a sense, a response to a problem it cannot solve. Detention before trial is tolerable in proportion to the shortness of the trial. Indian criminal trials are long for reasons that lie outside the law of bail: vacancies in the subordinate judiciary, the practice of adjourning on the non-appearance of official witnesses, the delay in forensic examination, and the volume of cases in which committal and framing of charge take years.

Satish (2024) examines the plea bargaining provisions introduced in 2005 and their limited use, and identifies causes that bear on the present argument. Where an accused is already in custody, the incentive structure of a negotiated disposal is distorted, since the sentence discount may be smaller than the custody already undergone. Where the accused is on bail, the incentive to conclude is weak. Neither situation is improved by a bail regime alone.

The health consequences of the resulting overcrowding are documented in the comparative literature. Aon, Oberconz and Brasholt (2025), in a scoping review of the relationship between prison overcrowding and health, find consistent associations with communicable disease transmission and with deterioration in mental health. Indian prison returns, showing occupancy well above capacity in the majority of states, place the domestic system within the range of conditions that review describes.

VIII. WHAT SHOULD CHANGE

The article's analysis suggests four changes, each addressed to one of the four points of failure.

The default form of release should be the personal bond. The surety requirement should be imposed only where the court records why the personal bond is insufficient in the particular case, and the sum should be fixed by reference to the means of the accused rather than the gravity of the charge. Mann (2022) shows that legal aid provision in India is concentrated at the trial stage and thin at the point of first production, which is precisely where the condition is set.

The exclusion in Section 479 for accused facing multiple cases should be replaced by a rule computing the threshold against the aggregate maximum sentence. This preserves the guard against premature release in genuinely serious aggregate exposure while restoring the provision to the population it was meant to serve.

The duty to report should be extended beyond the jail superintendent to the prosecuting agency and to the legal services authority, with a periodic return filed in the trial court. A duty placed on a single officer fails silently when that officer does not perform it.

A statutory review of detention should be provided at fixed intervals, independent of any application by the accused. The constitutional courts have effectively created such a review through the speedy trial cases, but they have done so one petition at a time, which confines the protection to those able to reach a superior court. Codification would generalise it.

IX. CONCLUSION

Indian bail doctrine does not need restatement. It has been stated with clarity and repetition for close to fifty years, and Satender Kumar Antil set out in 2022 a scheme of compliance that leaves little room for doubt about what courts are expected to do. What the doctrine has not been able to reach are the decisions and conditions that surround the bail hearing: the arrest that was unnecessary, the surety who does not exist, the statutory restriction that operates as a bar, and the file that nobody is obliged to notice.

Section 479 of the *Bharatiya Nagarik Suraksha Sanhita* is the first serious legislative attempt to reach the last of these. Its design places an affirmative duty on an officer who already holds the relevant information, and that design deserves to be extended rather than narrowed. The exclusion of accused facing multiple cases is the provision that most requires revisiting, because it removes the benefit from the group carrying the greatest share of the burden. The threshold could instead be computed on the aggregate maximum sentence. Until the conditions of release are made to correspond to the means of the person released, the proportion of undertrials in Indian prisons is unlikely to move.

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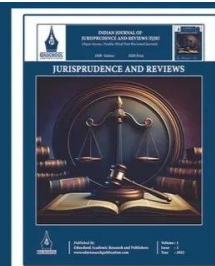
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Domestic Workers In India: Labour Rights, Human Rights And Statutory Exclusion

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Abstract

Paid domestic work sustains a large share of urban Indian households, yet the workers who perform it remain outside most of the statutory apparatus that Indian labour law builds around the employment relationship. This article examines why that exclusion has proved so durable and what would be required to end it. It traces the exclusion to three sources: a definition of the establishment that presumes a commercial workplace, an inspection model that cannot cross the threshold of a private dwelling, and a conception of the employer that dissolves when the household is the site of work. The article then tests the claim that a human rights framing rescues the position. It argues that the framing supplies a normative foundation and a set of international benchmarks, but that it converts into an enforceable claim only where the domestic statute supplies a registered employer, a wage floor, a record and a forum. The Code on Social Security 2020 is assessed against that test and found to advance registration while leaving financing and remedy incomplete. Comparative material from the Domestic Workers Convention and from state welfare board legislation is used to identify the design features that make the difference. The article concludes with reform proposals that place a registration obligation on the placement agency and the employing household, attach a wage floor through notification under minimum wage law, and create a district level forum with power to order payment.

Keywords:- Domestic Workers, Labour Law, Social Security, Human Rights, Informal Employment, India

I. INTRODUCTION

A household that employs a woman to cook, clean and mind children is an employer in every sense that matters to the person who does the work. Indian labour law has been reluctant to say so. The reluctance is not an oversight that survived into the present by inertia. It reflects a series of drafting choices, each defensible when it was made, whose combined effect is that several million workers perform waged labour in a legal space where the wage is not fixed, the hours are not limited, the termination is not regulated and the dispute has no obvious forum.

This article identifies the mechanism of that exclusion and asks what would displace it. Three questions organise the analysis. Which features of Indian labour legislation produce the exclusion, and are those features incidental or structural? Does the human rights framing that dominates advocacy in this field generate obligations a court can enforce, or does it operate mainly as a vocabulary of criticism? What would a workable statutory scheme look like, given that inspection of private dwellings is neither politically available nor, in most cases, constitutionally comfortable?

The argument proceeds from a distinction that is easy to lose. Recognition and regulation are different operations. A statute can recognise domestic workers by naming them in a definition clause without regulating the relationship in any way that changes what happens in a particular kitchen on a particular morning. Much of the Indian legislative record over the past two decades consists of recognition without regulation. The proposals advanced here are addressed to the second operation.

II. THE WORKFORCE AND THE DIFFICULTY OF COUNTING IT

Any argument about domestic work begins with a measurement problem that is itself a legal problem. Official estimates of the size of the workforce vary by a factor of several, because enumeration depends on whether the respondent household

describes the arrangement as employment. Where the work is performed by a relative, by a migrant lodged in the house, or by a woman who visits three households in a morning, the arrangement is frequently reported as something other than a job. Chen (2011) treats this as a conceptual failure rather than a survey failure, arguing that the categories used to count workers were built for enterprises and misdescribe work organised around a residence.

The measurement problem has direct legal consequences. Contribution based social insurance requires a known denominator. A welfare board requires a register. A minimum wage notification requires an occupational category against which a rate can be fixed. Where the state does not know how many workers there are, or where they are, every instrument that depends on enumeration operates at a fraction of its intended reach.

Neetha and Palriwala (2011) show that the difficulty is compounded by the structure of the work itself. Part time work spread across several employers is now the dominant form in Indian cities, displacing the live in arrangement that older literature treated as typical. That shift matters for law. A worker with one employer has a determinate counterparty. A worker with four employers, each of whom supplies a portion of the weekly wage, has no single respondent against whom a claim for unpaid wages, notice or severance can be framed.

III. THE PATTERN OF STATUTORY EXCLUSION

Indian labour statutes exclude domestic workers through three devices, and it is worth separating them because they call for different remedies.

The first is the definition of the establishment. The Factories Act 1948, the Shops and Establishments legislation of the states, and the Industrial Disputes Act 1947 all attach their obligations to a workplace defined by reference to trade, business or manufacture. A private residence is none of these. The exclusion here is definitional, and it would be cured by a definition.

The second is the inspection model. Indian labour enforcement has historically depended on an inspector with a power of entry. Article 21 of the Constitution, read with the privacy holding in *Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, makes the unannounced entry of an inspector into a family home a considerably more sensitive proposition than entry into a warehouse. This exclusion is functional rather than definitional, and a definition will not cure it. It requires a different enforcement design.

The third is the identification of the employer. Sankaran (2011) observes that labour law was constructed around a bilateral relationship of some stability, and that its protective devices degrade as the relationship fragments. Domestic work is the extreme case. Where a worker serves several households, none of which regards itself as an employer, the statutory duty has no natural addressee.

Only the first of these is addressed by the drafting technique that Indian legislatures have most often used, which is to add domestic workers to a schedule. Shankar (2019) makes the point sharply in relation to entitlements. Inclusion in a schedule confers a status, and status without machinery leaves the worker where she was.

IV. WHAT THE SOCIAL SECURITY CODE CHANGED

The Code on Social Security 2020 consolidated nine earlier statutes and, for the first time in central legislation, built a registration architecture for unorganised workers that does not depend on the existence of an establishment. A worker may register on the strength of a self-declaration and an identity number. The Code contemplates schemes framed by the central and state governments covering life and disability cover, health and maternity benefit, old age protection and creche facilities.

Three features limit what the Code delivers. Registration and entitlement are not linked by the statute; registration creates a record, while the benefit arrives only if a scheme has been framed, funded and notified, and the Code imposes no timetable on that step. Financing is left open, since the Code permits contributions from the central government, state governments, aggregators and beneficiaries but identifies, for domestic work, no contributor with both the capacity and the obligation to pay. There is also no dedicated forum. A worker who registers and receives nothing has no remedy within the Code that is quicker or cheaper than a writ petition.

The contrast with the construction sector is instructive. Building and construction workers have had a dedicated statute since 1996 and a dedicated financing device in the cess levied on the cost of construction. That financing device is what distinguishes the scheme from the general run of welfare legislation, and the absence of an equivalent for domestic work is the largest gap in the present architecture. Studying implementation in Kozhikode district in Kerala, K (2026) finds that the distance between an entitlement on paper and a benefit in the hand is governed less by the strength of the right than by the presence of an office, a register and a person answerable for the payment. That finding should discipline expectations about what a further round of central legislation can achieve on its own.

V. THE HUMAN RIGHTS FRAMING AND ITS LEGAL PURCHASE

Advocacy in this field is conducted largely in the language of human rights. Rao and T (2026) argue that labour rights in the unorganised sector should be understood as human rights, and that reframing them in that way changes both the standard of justification the state owes and the range of institutions that can be asked to intervene. The argument has force, and it is worth stating precisely what it does and does not accomplish.

What it accomplishes is threefold. It supplies a normative floor that does not depend on the worker's classification, which matters where classification is the instrument of exclusion. It brings into play the reporting machinery of the international covenants and of the national human rights institution, a route that Murthy (2019) documents in detail. It creates an interpretive resource for courts, since Indian constitutional adjudication has repeatedly read international standards into Articles 14, 19 and 21 where the domestic statute is silent or ambiguous.

What it does not accomplish is the conversion of a normative claim into an enforceable one. A human right against a household is not self executing. Someone must fix the wage, record the engagement, receive the complaint and order the payment. Tomei (2011) puts the point in the language of decent work. The standard is achievable, but only through the ordinary

instruments of labour administration, and the international standard is a specification for those instruments rather than a substitute for them. The framing is therefore best understood as a direction to the legislature, not as a shortcut around it.

VI. CONVENTION 189 AND THE STANDARD INDIA HAS NOT RATIFIED

The Domestic Workers Convention adopted by the International Labour Organization in 2011 sets out obligations that map closely onto the gaps identified above. It requires written particulars of employment, limits on hours, weekly rest of at least twenty four consecutive hours, coverage by minimum wage machinery where such machinery exists, and access to dispute resolution on terms no less favourable than those available to other workers. It also addresses the placement agency, requiring states to regulate the intermediary that recruits and places workers.

India has not ratified the Convention. The decade following its adoption produced substantial ratification elsewhere and a measurable increase in national legislation, as the International Labour Organization (2021) records in its review of progress. The absence of ratification is not, by itself, decisive, since ratification obliges a state to give effect to a standard it has always been free to adopt. The more useful reading of the Convention for present purposes is as a drafting template, and its most transferable feature is the treatment of the placement agency as a regulated intermediary carrying obligations of its own.

VII. CRIMINAL LAW, HARASSMENT AND THE LIMITS OF THE PENAL ROUTE

Where labour law has been absent, the criminal law has been asked to fill the space. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 expressly includes a dwelling place or house within its definition of workplace, and provides a Local Committee at district level for complaints against employers who are not covered by an internal committee. This is one of the few Indian statutes that confronts the private residence directly, and its drafting deserves attention as a precedent.

Provisions on trafficking, bonded labour and offences against children have also been used, and their availability reflects the seriousness of the worst cases. Their limits are equally clear. The penal route addresses the exceptional case and leaves the ordinary one untouched. A worker underpaid by two hundred rupees a month, dismissed without notice after nine years, or required to work on a declared holiday, has suffered a wrong that no criminal court will hear. Breman (1996) described this pattern across the informal economy, and returned to it during the pandemic, when the categories of worker least visible to labour administration proved also to be those least reachable by relief (Breman, 2020).

VIII. STATE LEGISLATION AND THE WELFARE BOARD MODEL

Several states have brought domestic workers within welfare board legislation for unorganised workers, and a smaller number have issued minimum wage notifications covering domestic work as a scheduled employment. The welfare board model has a real advantage. It creates an office with a register, a budget and a person who can be asked why a payment has not been made. Paliwala and Neetha (2010) show, in a comparison with anganwadi workers, that the presence of an identifiable public counterparty changes what workers are able to claim, even where formal legal status remains ambiguous.

The model also has a characteristic weakness. Boards are financed from general revenue supplemented by nominal worker contributions, which makes benefit levels a function of annual budget decisions rather than of an accrued entitlement. Where the board is not funded, registration produces an identity card and nothing else. Agarwal (1997) supplies the analytical reason to care about the difference. A woman's bargaining position within and beyond the household depends on the strength of her outside option, and an entitlement that may or may not be paid is a weak outside option.

IX. ELEMENTS OF A WORKABLE STATUTE

Five elements would move the position from recognition to regulation.

Registration should attach to the engagement rather than to the worker alone. A household that engages a worker for more than a stated number of hours in a month, and any agency that places a worker, should be required to record the engagement in a state register. The obligation is light, and it supplies the denominator that every subsequent instrument needs.

A wage floor should be fixed by notification under minimum wage machinery in every state, expressed per hour as well as per month, so that the multiple employer arrangement can be priced. Where a worker serves four households, each engagement is separately measurable only if the rate is stated in units of time.

Financing should be identified rather than left to appropriation. The construction cess shows that a dedicated levy can be sustained over decades. For domestic work the plausible contributor is the placement agency in the case of placed workers, and a modest employer contribution collected alongside an existing municipal payment in the case of direct engagements.

Enforcement should be complaint led rather than inspection led. This is the point at which the privacy objection must be met rather than avoided. A district authority with power to summon an employer, examine the register and order payment of a computed sum, subject to appeal, achieves most of what an inspectorate would achieve without a general power of entry into homes.

Termination should attract a short statutory notice period and a modest severance calculated on length of service. The absence of any notice requirement is what converts a wage dispute into a total loss of livelihood, and it is the provision most often missing from state legislation.

X. CONCLUSION

The exclusion of domestic workers from Indian labour law is not a single gap that a single amendment can close. It is the joint product of a definition built for enterprises, an enforcement model built for premises that can be entered, and a

protective structure built for a stable bilateral relationship. Each requires a different response, and only the first is addressed by adding a category to a schedule.

The human rights framing advanced by Rao and T (2026) is correct as a matter of principle and useful as a source of standards, but it does not do the work a statute must do. What converts the principle into a payment is administrative: a register, a rate, a fund and a forum. Evidence from district level implementation points the same way (K, 2026). Indian law has the drafting precedents it needs, in the 2013 harassment statute for the private dwelling, in the construction legislation for dedicated financing, and in the Domestic Workers Convention for the regulation of intermediaries. The task is one of assembly rather than invention.

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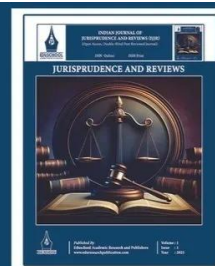
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Pesticide Residues And Food Safety Law In India: Overlapping Regulators

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Abstract

Indian law regulates pesticides twice, and neither regulator is answerable for what the other does. The Insecticides Act 1968 governs registration, manufacture and sale through an agricultural ministry, while the Food Safety and Standards Act 2006 governs the residue that reaches the consumer through a health ministry. The two statutes share no common decision point, no shared evidentiary record and no obligation of mutual notification. This article examines the consequences of that separation for the setting of maximum residue limits, for surveillance, for enforcement against the seller of contaminated food, and for the consumer's remedy. It argues that the principal defect is not the absence of standards but the absence of a feedback path: residue data generated by the food safety regulator does not, as a matter of law, require the registering authority to revisit a registration, and the registering authority's approvals do not bind the residue standard setter. The article compares the Codex approach, in which the residue limit and the approved use are determined together, and examines the treatment of the precautionary principle in Indian environmental adjudication. It proposes a statutory duty of reference between the two regulators, a sunset period on registrations, a residue limit for every registered use, and a presumption operating against the seller where a sample exceeds the limit.

Keywords:- Pesticide Residues, Food Safety, Maximum Residue Limits, Insecticides Act, Regulatory Design, India

1. INTRODUCTION

A farmer in India buys a pesticide that a central authority has registered. He applies it to a crop at a dose recommended on the label. The crop is sold, the produce is sampled by a food safety officer, and the sample is found to contain a residue in excess of the permitted limit. Two regulators have acted on the same chemical, and neither is in a position to answer for the outcome. The registering authority approved the product and the use. The food safety authority set the limit. No provision of Indian law requires the second finding to travel back to the first.

This article is about that missing path. Its subject is not the adequacy of Indian pesticide standards taken one at a time, which has been examined at length elsewhere, but the relationship between the two statutory schemes that produce them. John (2026) describes the legal architecture of pesticide management in India as a compliance system, and the description is apt: the architecture is built to secure compliance with each regulator's requirements taken separately, and it contains no mechanism by which failure under one becomes evidence under the other.

The analysis proceeds in five stages. It sets out the two schemes and identifies the points at which they touch. It examines how maximum residue limits are set and what happens when a registered use has no corresponding limit. It considers surveillance and the evidentiary weight of the resulting data. It examines the enforcement position of the seller and the remedy of the consumer. It then proposes four changes, all of which are drafting changes rather than institutional reconstruction.

II. TWO STATUTES, TWO MINISTRIES

The Insecticides Act 1968 establishes a Central Insecticides Board and a Registration Committee, and makes the manufacture, sale, distribution and use of an insecticide conditional on registration and licensing. Registration attaches to a

product and its claimed uses. The scheme is administered within the agricultural portfolio, and its orientation is toward the availability and efficacy of crop protection inputs, with safety operating as a condition on availability.

The Food Safety and Standards Act 2006 established the Food Safety and Standards Authority of India. It repealed a series of earlier enactments, among them the Prevention of Food Adulteration Act 1954, and brought the regulation of food under a single authority for the first time. Its regulations on contaminants, toxins and residues, framed in 2011, prescribe tolerance limits for pesticide residues in specified food commodities. The scheme sits in the health portfolio. Its orientation is toward the safety of the article of food as consumed.

Reddy, Reddy and Mathur (2024), surveying pesticide use, regulation and policy in Indian agriculture, note that the two systems developed on separate timelines and were never harmonised at the point of drafting. The Pesticide Management Bill 2020, which was intended to replace the 1968 Act, retains the separation. It strengthens registration review and introduces provisions on compensation, but it does not create a statutory link to the food safety regulator.

The consequence is a category of regulatory silence. A pesticide may be registered for use on a crop for which no maximum residue limit has been notified. The residue is then unregulated in the sense that matters to the consumer, because the food safety officer has no standard against which to assess the sample, while the use remains lawful under the registration.

III. HOW THE RESIDUE LIMIT IS SET, AND AGAINST WHAT

A maximum residue limit is not a health standard in the ordinary sense. It is the residue expected to remain when the product is used in accordance with good agricultural practice, tested against a toxicological reference value to confirm that the expected dietary intake remains acceptable. Yamada (2017) sets out the reasoning in the Codex system and emphasises the point that matters here: the limit is derived from the approved use. The two determinations are parts of one exercise, and separating them destroys the logic of both.

Indian practice separates them. The registration decision fixes the approved use. The residue regulation fixes the limit. Where the two are made by different bodies at different times on different records, three failures follow. A registered use may have no limit, as noted above. A limit may exist for a use that is no longer registered, which produces enforcement against a residue that should not be present at all rather than one that is merely excessive. Most seriously, a limit may be set on the assumption of a supervised application regime that Indian conditions do not deliver.

Shetty and Sabitha (2009), analysing the economic and ecological externalities of pesticide use in India, document the gap between label instruction and field practice, including application above recommended dose, disregard of the pre harvest interval and mixing of products. Chaudhry (2022) reaches similar conclusions in an assessment of policy alternatives for environmental health. A residue standard predicated on good agricultural practice is, in these conditions, a standard predicated on a counterfactual.

IV. SURVEILLANCE AND THE EVIDENCE THAT GOES NOWHERE

India operates a monitoring programme for pesticide residues in food commodities, and food safety officers draw samples under the 2006 Act. The programme generates a substantial body of data on which commodities and which chemicals produce exceedances.

The legal difficulty is that the data has no addressee. Under the Insecticides Act the registering authority may review a registration, but no provision obliges it to do so when residue surveillance shows a pattern of exceedance for a registered product. Under the Food Safety and Standards Act the authority may revise a limit, but the revision does not disturb the registration that produced the residue. Evidence of failure accumulates in one system and cannot be pleaded in the other.

The endosulfan episode shows what happens when that path is absent. Aerial spraying on cashew plantations in Kasaragod district in Kerala over two decades was followed by reports of congenital anomalies and neurological disorders in the surrounding population. Embrandiri, Singh, Ibrahim and Khan (2011) reported the epidemiological findings from the affected area. Regulatory action did not come from the registering authority acting on that evidence. It came from the Supreme Court, which in *Democratic Youth Federation of India v. Union of India*, by an interim order made on 13 May 2011, prohibited the manufacture, sale and use of endosulfan throughout the country and directed a scientific study by a joint committee. A court supplied the feedback path that the statutes did not.

V. THE PRECAUTIONARY PRINCIPLE AND ITS REACH

Indian environmental jurisprudence has adopted the precautionary principle as part of domestic law. In *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647, the Supreme Court held the principle and the polluter pays principle to be part of the law of the land, placing the onus on the developer or industrialist to show that an action is environmentally benign.

Applying that reasoning to registration would produce a scheme materially different from the present one. The onus at the point of registration would rest on the applicant to demonstrate that the proposed use will not produce residues in excess of an established limit under conditions of use that actually obtain, rather than under an assumed regime of supervised application. The onus at the point of review would shift once surveillance data disclosed a pattern of exceedance.

Indian registration practice has not moved in that direction, and the reason is partly structural. Registrations under the 1968 Act are granted without a general expiry, so the occasion for reconsideration arises only if someone creates it. Expert committees have periodically recommended the withdrawal of particular products, and the committee constituted in 2013 under the chairmanship of Anupam Verma reviewed a large set of pesticides banned or restricted elsewhere and reported in 2015 with recommendations for phased withdrawal of several of them. The recommendations proceeded chemical by chemical, which is the appropriate method for a review body and an inadequate substitute for a statutory review cycle.

De Schutter (2011), writing on agroecology and the right to food, makes the connected point that regulatory attention to residues addresses the endpoint of a system whose design determines the quantity of chemical applied. That observation

does not displace the case for residue regulation, but it explains why residue regulation alone tends to produce diminishing returns.

VI. ENFORCEMENT AGAINST THE SELLER AND THE CONSUMER'S REMEDY

Where a sample exceeds a prescribed limit, the food safety scheme treats the article as unsafe or substandard depending on the extent of the exceedance, and proceedings lie against the person in whose possession the article was found. That person is ordinarily a retailer or a wholesaler, and the residue was created by an agricultural operation several transactions earlier.

The result is a mismatch between liability and control. The retailer cannot test every consignment, has no relationship with the applicator, and in the ordinary case has no means of knowing what was sprayed. Prosecutions accordingly concentrate on a defendant who could not have prevented the contravention, which is a poor deterrent and an inefficient allocation of enforcement effort.

The Supreme Court has taken a strong view of food safety enforcement in a related context. In *Swami Achyutanand Tirth v. Union of India*, (2016) 9 SCC 699, concerned with adulterated and synthetic milk, the Court directed the strengthening of testing infrastructure and asked the Union to consider enhanced punishment. The direction is significant for the present argument because it treats the state's testing capacity as a component of the right rather than as an administrative detail.

The consumer's own remedy remains weak. A purchaser of contaminated produce has a claim under the Consumer Protection Act 2019, but must identify a seller, prove the defect in the article purchased and establish loss. Residue exposure is chronic and cumulative, and the harm it produces cannot ordinarily be traced to a single purchase. This is the classic case for a regulatory rather than a compensatory response, and it strengthens rather than weakens the argument for a functioning feedback path between the two regulators.

VII. SAMPLING, ANALYSIS AND THE EVIDENTIARY CHAIN

Residue enforcement stands or falls on the integrity of a sample. The 2006 Act prescribes a procedure in which a food safety officer draws a sample in the presence of a witness, divides it into parts, delivers one part to the person from whom it was taken and forwards another to a food analyst. The person aggrieved by the analyst's report may apply to have a part examined by a referral laboratory, whose report supersedes that of the analyst.

Three difficulties attend this procedure in residue cases specifically. The first is temporal. Residue levels in fresh produce decline with time, so a delay between sampling and analysis systematically favours the defendant, and a delay between the analyst's report and the referral examination compounds it. The procedure was designed with adulterants in mind, which do not degrade in the same way.

The second is analytical. Detecting a residue at the concentrations at which limits are expressed requires accredited instrumentation and validated methods for each analyte and matrix combination. A laboratory that is accredited for one pesticide in one commodity is not thereby competent for another. The statutory scheme treats laboratory notification as a general status, and it contains no requirement that the notification specify the analytes for which the laboratory is validated. A report from a laboratory not validated for the analyte in question is admissible in form and worthless in substance.

The third is the absence of an origin record. A sample drawn from a retail consignment establishes that a residue was present in that consignment. It cannot establish who applied the pesticide, on what date or at what dose, because no participant in the chain is required to record the source of what he sells. Enforcement therefore terminates at the first person in possession, which is the point made in the preceding section, and the terminating point is determined by the state of the records rather than by any judgment about responsibility.

The remedy for the first difficulty is a statutory timeline binding on the analyst and on the referral laboratory in residue cases. The remedy for the second is that notification of a laboratory should specify the scope of its accreditation and that a report outside that scope should be inadmissible. The remedy for the third is a requirement of traceability, discussed below.

VIII. RESIDUE STANDARDS AND INTERNATIONAL TRADE

Residue limits are not solely instruments of domestic health regulation. They function as conditions of market access, and Indian agricultural exports have repeatedly been affected by consignments rejected at destination for residues exceeding the importing jurisdiction's limits. The rejection of a consignment is a costly and highly visible event, and it generates a corrective response within the export supply chain that domestic surveillance does not generate within the domestic one.

The asymmetry deserves attention because it is instructive rather than merely regrettable. Exporters operate traceability systems, maintain records of application, and observe pre harvest intervals, because a purchaser at the far end of the chain requires it and because failure has an identifiable and immediate cost. The same crop grown for domestic consumption is subject to none of these disciplines. Two standards of practice therefore coexist within the same farming system, differentiated not by law but by the commercial consequences of failure.

Yamada (2017) explains the Codex framework within which international limits are set and harmonised. Its central feature is the one already noted: the limit is tied to a documented pattern of use. Where an exporter must demonstrate compliance with an importing country's limit, documentation of that use follows as a matter of commercial necessity, because the buyer will not accept the consignment without it. A domestic scheme requiring equivalent records, at least for produce entering organised wholesale markets, would import into the domestic chain the discipline the export chain already carries. Much of the sector keeps such records already. That is the practical form a traceability requirement should take.

IX. FOUR CHANGES

A statutory duty of reference should be created in both directions. Where surveillance data discloses exceedance of a prescribed limit for a registered product above a stated threshold, the food safety authority should be obliged to refer the matter

to the registering authority, and the registering authority should be obliged to conduct a review and to publish its reasons. Where a registration is granted, varied or cancelled, the registering authority should be obliged to notify the food safety authority so that the corresponding limit can be set, revised or withdrawn.

No use should be registered without a corresponding residue limit. The rule is simple to state and would close the category of regulatory silence identified above. Where a limit cannot be set because the data is insufficient, the appropriate response is to withhold the registration for that use rather than to grant it and leave the residue unregulated.

Registrations should carry a fixed term. A period of ten years, with renewal conditional on a review of accumulated surveillance and toxicological data, would convert reconsideration from an event that requires an initiator into a routine administrative step.

A statutory presumption should operate where a sample exceeds a prescribed limit. The presumption should run against the person who applied the pesticide or, where that person cannot be identified, against the first purchaser in the chain who maintained no record of source. Coupled with a requirement that wholesalers record the origin of consignments, this places the burden on the participant best placed to control the risk, which is the allocation that Vellore Citizens Welfare Forum contemplates.

X. CONCLUSION

The Indian pesticide residue problem is often described as a problem of standards or of laboratory capacity. Both descriptions are partly true, and neither identifies the structural defect. Two statutes regulate the same chemical for different purposes through different ministries, and the law provides no channel through which a finding under one becomes a reason for action under the other. Evidence accumulates in the food safety system and expires there.

John (2026) frames the Indian scheme as an architecture of compliance, and the frame is useful because it identifies what such an architecture omits. Compliance systems verify conformity with rules; they do not revise the rules when conformity fails to produce the intended result. The four changes proposed here are modest in drafting terms and would supply that missing function. Until they are made, the correction of a registration that produces excessive residues will continue to depend on litigation, as it did in the endosulfan proceedings, and a court will continue to perform an administrative function that a statute should have assigned.

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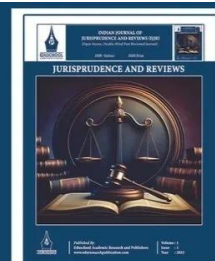
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Uniform Civil Codes, Legal Pluralism and Constitutional Equality in India

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Abstract

The enactment of a uniform civil code by a single Indian state has moved a long standing constitutional debate from the level of principle to the level of statutory text. This article examines what the shift makes visible. It argues that the debate has been conducted using a false opposition between uniformity and pluralism, and that the operative question is narrower and more tractable: which subject matters within family law are amenable to a common rule without loss, and which of the differences between personal law systems reflect substantive inequality rather than variation in form. The article separates three distinct claims that are usually run together, namely that plural personal laws are inconsistent with equality before the law, that they disadvantage women, and that codification is the appropriate remedy for either. It examines the Indian judicial record, which has repeatedly invalidated discriminatory personal law rules on constitutional grounds without displacing the plural structure, and compares the pluralist accommodation described in the comparative literature. The Uttarakhand statute is then assessed against the article's framework, with attention to its treatment of succession, of prohibited degrees, and of the registration of live-in relationships. The article concludes that the reform value of codification lies in the extension of statutory remedies rather than in uniformity as such.

Keywords:- Uniform Civil Code, Legal Pluralism, Personal Law, Constitutional Equality, Family Law, India

1. INTRODUCTION

Article 44 of the Constitution directs the state to endeavour to secure for citizens a uniform civil code throughout the territory of India. For seventy five years the provision generated argument and no statute. In February 2024 the Uttarakhand legislature enacted a uniform civil code for the state, which received assent in March 2024 and came into force on 27 January 2025. A directive principle has become an operative enactment in one jurisdiction, and the arguments that were previously conducted in the abstract can now be tested against a text.

This article undertakes that test. It begins by separating three claims that the literature and the political debate ordinarily combine. The first is that a plurality of religiously defined personal laws is inconsistent with equality before the law under Article 14. The second is that the content of those laws disadvantages women, in matters of marriage, divorce, maintenance, guardianship and succession. The third is that a uniform code is the appropriate remedy for the first, the second, or both.

The three claims are logically independent. Plural jurisdictions may operate without inequality between persons, as they do in respect of matters governed by the law of the place of celebration. Discriminatory content may be corrected within a plural structure, as Indian courts have repeatedly done. Uniformity may be achieved by legislation that reproduces the discriminatory content of the dominant tradition, which would satisfy the first claim while defeating the second. Keeping the three apart is the precondition for a useful analysis.

II. THE STRUCTURE OF INDIAN PERSONAL LAW

Indian family law is organised by community rather than by territory. Hindus, Buddhists, Jains and Sikhs are governed by the codified Hindu statutes of the nineteen fifties. Muslims are governed by uncoded Muslim personal law as modified by statute in specific respects. Christians and Parsis are governed by separate enactments. The Special Marriage Act 1954

offers a civil alternative available to any two persons, and the Indian Succession Act 1925 supplies a general law of succession that applies where personal law does not.

Menski (2009) argues that this arrangement is better understood as a working plurality than as a failure to unify, and that the Indian legal system has developed techniques for managing it. Solanki (2011) reaches a similar conclusion from empirical study of adjudication, describing a system in which state courts, religious bodies and community forums interact, and in which the state retains a supervisory role rather than a monopoly. Sezgin (2013), comparing India with Israel and Egypt, distinguishes systems in which the state enforces religious family law through its own courts from those in which separate religious courts operate, and locates India in the first category. The distinction matters. Where the state's own judges apply personal law, the constitutional guarantees travel with the forum.

That last point explains a feature of the Indian record that a purely uniformist account cannot accommodate. Reform of personal law content in India has proceeded largely through constitutional adjudication and targeted statute, not through codification.

III. WHAT THE COURTS HAVE ACTUALLY DONE

The judicial record is longer and more consequential than the debate on Article 44 usually acknowledges.

In *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556, the Supreme Court held that a divorced Muslim woman was entitled to maintenance under the general criminal procedure provision, and observed that Article 44 remained unimplemented. The legislative response, the Muslim Women (Protection of Rights on Divorce) Act 1986, was then construed in *Danial Latifi v. Union of India*, (2001) 7 SCC 740, to require provision for the wife's future extending beyond the period of iddat, a reading that preserved the statute while restoring most of the entitlement. The sequence was completed in *Mohd. Abdul Samad v. State of Telangana*, decided on 10 July 2024, in which the Court held that the 1986 Act operates in addition to and not in derogation of the general maintenance provision, so that a divorced Muslim woman may proceed under either.

In *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635, the Court addressed conversion undertaken to contract a second marriage and held that the first marriage was not dissolved by the conversion. In *John Vallamattom v. Union of India*, (2003) 6 SCC 611, a restriction on charitable bequests by Christians was struck down under Article 14. In *Shayara Bano v. Union of India*, (2017) 9 SCC 1, the practice of instantaneous triple talaq was invalidated.

Two observations follow. The first is that constitutional review of personal law content is available and has been used, so that the plural structure is not a barrier to the correction of discriminatory rules. The second is that the correction has been uneven, because it depends on litigation and therefore on the presence of a litigant. Subramanian (2008), examining changes in Muslim family law in India, shows that the pattern of change reflects the interaction of judicial intervention with community politics rather than a steady application of constitutional principle. Agnes (2011) makes the parallel point from the standpoint of practice, noting that constitutional claims have delivered more for women in some communities than in others, for reasons that have little to do with the doctrinal strength of the claim.

IV. CUSTOM, PLURALISM AND THE POSITION OF WOMEN

The relationship between plural legal orders and women's rights has been examined comparatively, and the findings are more qualified than either side of the Indian debate usually allows. Taak (2025), analysing the intersection of customary law and women's rights across developing jurisdictions in Africa and Asia, finds that constitutional reform displaces custom only where the constitutional text is explicit about the subordination of custom and where an accessible forum exists to enforce it. Where either element is missing, the customary rule survives the constitutional guarantee, because the guarantee is available only to a litigant who can reach a court.

That finding aligns with the Indian evidence on succession. Saxena (2020) documents the persistence of practices that defeat statutory succession rights notwithstanding the amendments that gave daughters coparcenary rights, including relinquishment executed under family pressure and the recording of holdings in a male relative's name. The statute changed the entitlement. The land record did not.

Shachar (2001) frames the underlying problem as one of institutional design rather than of doctrine, arguing that a group's jurisdiction over family matters places the burden of accommodation on its most vulnerable members, and proposing schemes in which jurisdiction is divided so that the individual retains an exit. Kapur and Cossman (2018), revisiting their earlier work on feminist engagement with Indian law, caution against treating a uniform code as a feminist objective in itself, on the ground that the content of the uniform rule is what determines its effect on women.

Nussbaum (2004) reaches the conclusion that follows from these analyses. The constitutional guarantee of sex equality should operate on the content of every personal law system, and the choice between uniformity and plurality is secondary to that operation. Kannabiran (2025), writing on the place of secularism in the uniform civil code debate, adds a point about method: the debate has been conducted as a question of national identity, which has obscured the technical questions about which family law rules can be made common without loss.

V. THE UTTARAKHAND STATUTE

The Uttarakhand enactment provides an occasion to examine those technical questions.

Its principal operative content is a common law of marriage, divorce, succession and related matters, applicable to residents of the state. Scheduled Tribes are excepted. It prescribes conditions for a valid marriage including monogamy and minimum age, provides for compulsory registration of marriage, sets out grounds of divorce applicable to all, and creates a single scheme of intestate succession. It also introduces a registration requirement for live-in relationships, with a duty to submit a statement to the registrar and penal consequences for failure to do so.

The succession provisions are the strongest part of the statute considered as a reform of substance. A single intestate scheme, applied without distinction between sons and daughters and without the residual survivorship rules that complicated

the earlier position, removes a real inequality and does so in a subject matter where the case for a common rule is strongest. Succession concerns the transmission of property on death, an event the state already records, and the arguments for community specific treatment are weakest here.

The provisions on live-in relationships raise a different question. Narayan and Narayan (2024), reviewing the statute, observe that the registration requirement effects a legal recognition of the relationship while simultaneously subjecting it to state supervision, and that the two effects pull in opposite directions. The requirement that a statement be filed, that a person under a stated age have a parent informed, and that failure to register attract penal consequences, converts a private arrangement into a regulated status. The constitutional difficulty is direct. Puttaswamy located decisional autonomy in intimate matters within Article 21, and a criminal sanction attached to the non registration of a consensual adult relationship requires justification under the proportionality standard that judgment prescribes.

The exclusion of Scheduled Tribes is also significant for the article's argument, because it concedes the central point. If uniformity is required by equality before the law, an exemption defined by community membership is difficult to defend. If the exemption is justified by the protection of distinct social organisation under the constitutional provisions governing tribal areas, then the principle that justifies it is pluralist, and the statute is a limited codification rather than an application of a general rule.

VI. THE GOAN COMPARISON AND ITS LIMITS

Goa is regularly cited as evidence that a uniform civil code is workable in India. The Portuguese Civil Code of 1867 continues in force there, and in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, decided on 13 September 2019, the Supreme Court held that it governs the succession of Goan domiciles in respect of property situated anywhere in India, describing Goa as a state with a civil code applicable to all citizens regardless of religion.

The example is instructive but narrower than its usual deployment suggests. The Goan code operates alongside usages preserved for particular communities, and its provisions on community of property produce results that differ from those obtaining elsewhere in India. It is a uniform code in the sense that one body of law applies, not in the sense that a common rule was derived from a comparison of the traditions it displaced. Its authority as a precedent lies in demonstrating that a common civil law can be administered in an Indian state, which is a proposition about feasibility rather than about content.

VII. A FRAMEWORK FOR ASSESSMENT

Three questions should be asked of any proposed uniform code, and they follow from the separation of claims made at the outset.

Does the proposed rule remove an inequality between persons, or only a difference between systems? A common minimum age of marriage removes an inequality, because it alters the position of the person who could previously be married younger. A common form of registration removes a difference. Both may be desirable; only the first is required by the equality guarantee.

Does the proposed rule select the most protective of the existing positions, or an average of them? Codification that adopted the least protective rule available in any tradition would be uniform and regressive. The test of a reforming code is simple. It is whether the code improves the position of the person who was worst placed under the arrangement it replaces.

Does the proposed rule extend a forum and a remedy, or only a norm? This is the lesson of the comparative material. Taak (2025) shows that constitutional reform without an accessible forum leaves customary practice intact, and Saxena (2020) shows the same in the Indian succession context. A code that creates a registrar, a record and a procedure for enforcement changes outcomes. A code that states a rule does not.

VIII. CONCLUSION

The Indian debate on Article 44 has been organised around a choice between uniformity and pluralism, and that framing has obscured what reform requires. The plural structure of Indian personal law has not prevented the correction of discriminatory content, which has been achieved through constitutional adjudication in *Shah Bano*, *Sarla Mudgal*, *John Vallamattom*, *Shayara Bano* and *Mohd. Abdul Samad*. What the plural structure has not delivered is evenness, because adjudication reaches only the litigant who arrives.

Codification can supply that evenness, but only if its content is selected on the protective principle and only if it carries a forum with it. Assessed against those criteria, the Uttarakhand statute is mixed. Its succession scheme removes a real inequality in a subject matter well suited to a common rule. Its live-in registration provisions create a penal regulation of private conduct that will have to answer to the standard set in *Puttaswamy*, and its exemption for Scheduled Tribes concedes that uniformity is not, after all, the operative principle. The useful lesson of the enactment is that the difficult questions in this field are questions of drafting, and that they are answered rule by rule rather than by settling the argument about uniformity as a whole.

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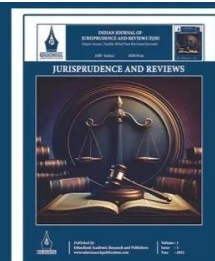
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Data Protection And The Right To Information: Section 44(3) In India

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Abstract

The Digital Personal Data Protection Act 2023 amended the Right to Information Act 2005 through a single sub-section of its miscellaneous chapter. The amendment substituted the exemption for personal information in the transparency statute, removing the qualification that had made disclosure turn on the presence of a larger public interest. This article examines the amendment as a question of statutory design rather than as a contest between privacy and transparency. It argues that the balancing structure removed by the amendment was not an accident of drafting but the mechanism through which the transparency statute reconciled two constitutional interests, and that its removal transfers a judgment previously made case by case into a categorical rule applied at the level of the information class. The article traces the judicial construction of the earlier provision, which had already narrowed disclosure considerably, and shows that the amendment displaces the very authority that produced that narrowing. It examines the constitutional position after the privacy judgment, the special problem of information about public servants acting in an official capacity, and the position of statutes elsewhere that address the same conflict through an exception rather than a prohibition. It proposes the restoration of the public interest override, a defined class of official capacity information excluded from the exemption, and a duty to record reasons.

Keywords: - Right To Information, Data Protection, Personal Information, Privacy, Transparency, India

1. INTRODUCTION

Amendments to one statute made in the miscellaneous chapter of another rarely attract the attention their effects deserve. Section 44(3) of the Digital Personal Data Protection Act 2023 is a case in point. It occupies a few lines, it appears among consequential provisions, and it substitutes clause (j) of sub-section (1) of Section 8 of the Right to Information Act 2005. The provision it replaced had governed every request in which the information sought concerned an identifiable person, which is to say a very large proportion of all requests made under the Indian transparency statute.

This article examines the amendment. The examination is deliberately narrow. It does not attempt a general assessment of the data protection statute, on which there is now a considerable literature, and it does not treat privacy and transparency as opposed values requiring a winner. Its question is structural: what did the replaced provision do, what does the substituted provision do, and what happens to the interests that the earlier structure reconciled.

The argument is that the earlier clause performed a specific and unusual function. It did not exempt personal information. It exempted personal information subject to a condition that returned the matter to the deciding officer whenever a larger public interest was shown. That condition is the reason the clause could accommodate both constitutional interests within a single provision. Removing it does not adjust the balance; it removes the instrument through which the balance was struck.

II. THE TWO STATUTES

The Right to Information Act 2005 gives every citizen a right of access to information held by a public authority, subject to exemptions in Section 8 and to a general public interest override in sub-section (2) of that section. Naib (2011) describes the design as one in which the exemptions are narrow, the override is general, and the burden of justifying refusal rests on the

public authority. That allocation of burden is the statute's distinguishing feature. It is what separates it from the earlier position in which official information was presumptively closed.

The Digital Personal Data Protection Act 2023 regulates the processing of digital personal data by data fiduciaries. It imposes obligations of notice and consent, creates rights for data principals, and constitutes a Data Protection Board. Parsheera (2025), reviewing the long process that produced the statute, characterises the outcome as a framework whose substantive content depends heavily on delegated legislation and on the exemptions available to the state. Srivastava (2019) anticipated the difficulty during the drafting period. Calibrating a data protection regime is unusually hard in a jurisdiction where the state is itself the largest processor of personal data.

The two statutes are not natural adversaries. One regulates the state's disclosure of information it holds; the other regulates the processing of personal data by those who hold it. The conflict arises only at the point where a citizen asks a public authority for a record that identifies another person. Indian law addressed that intersection, before 2023, in the clause that Section 44(3) has now replaced.

III. THE PROVISION BEFORE THE AMENDMENT

The clause as originally enacted exempted information relating to personal information the disclosure of which had no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. It then added a proviso: unless the officer concerned was satisfied that the larger public interest justified the disclosure of such information.

Three elements of that drafting deserve notice. The exemption was conditional on the absence of a relationship to public activity, which meant that information about an official act was outside it from the start. It required the invasion of privacy to be unwarranted, which is a comparative judgment rather than a categorical one. It attached an override exercisable by the deciding officer.

Judicial construction narrowed the clause considerably. In *Girish Ramchandra Deshpande v. Central Information Commissioner*, (2013) 1 SCC 212, the Supreme Court held that the service record of a public servant, including details of assets, income tax returns and disciplinary proceedings, was personal information within the clause, disclosable only on a demonstration of larger public interest. That holding was applied in *Canara Bank v. C.S. Shyam*, decided on 31 August 2017, where information about transfers and postings of employees was likewise treated as personal.

The Constitution Bench in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, revisited the position in the context of information about judges. It held that the office of the Chief Justice of India is a public authority under the statute, and set out a structured approach in which the nature of the information, the relationship it bears to public activity and the extent of the invasion of privacy are weighed against the public interest asserted. Two features of that judgment matter here. It treated the assessment as one of proportionality rather than category, and it insisted on the procedure for third party information, requiring that the person concerned be heard.

The state of the law before 2023 was therefore not one of open disclosure of personal information. It was one of restricted disclosure, restricted by judicial construction, with a residual route available where the applicant could show a public interest of sufficient weight.

IV. THE TEXT AFTER THE AMENDMENT

The substituted clause exempts information which relates to personal information. The qualifying conditions and the proviso are gone.

Two readings are available, and the difference between them is substantial. On the first, the clause now exempts every record that relates to an identifiable individual, whatever its connection to public activity, with no route to disclosure on public interest grounds within Section 8(1)(j). On the second, the general override in Section 8(2) survives and can be applied, since it operates in terms on the whole of Section 8.

The second reading is the better one as a matter of construction, because Section 8(2) was not amended and a court will be slow to treat it as impliedly repealed for one clause alone. It is not, however, an equivalent substitute. The override in Section 8(2) is framed as a discretion where the public interest in disclosure outweighs the harm to protected interests, and it has been applied sparingly. The proviso to clause (j) was addressed to the officer as part of the very test he was applying. Relocating the balancing exercise from the operative clause to a general discretion changes both its prominence and, in practice, its frequency of use.

There is also a drafting consequence that will be felt in adjudication, and it is easily overlooked. The judicial authority developed under the earlier clause was built on words that no longer appear in the statute: *Girish Ramchandra Deshpande* turned on whether information had a relationship to public activity, and *Subhash Chandra Agarwal* turned on the weighing that the proviso authorised. Neither test has a textual home in the substituted clause. An information commission that wishes to apply the reasoning of either judgment must now do so by analogy, against a provision whose language points the other way.

V. COMMENCEMENT AND THE ASYMMETRY IT CREATES

The amendment did not take effect when the statute received assent. The 2023 Act provided for commencement on dates to be appointed, and the appointment was made in November 2025, when the Digital Personal Data Protection Rules 2025 were notified and the constitution of the Data Protection Board was announced. The commencement was staggered.

The staggering produces an asymmetry that bears directly on the argument of this article. The provisions establishing the Board and a group of ancillary provisions, including the amendment to the transparency statute, were brought into force at once. The obligations of data fiduciaries and the rights of data principals, which are the substance of the protective scheme, were deferred, with the principal compliance obligations taking effect eighteen months after notification and the provisions on consent managers at twelve months.

A citizen therefore stands, for a period of some eighteen months, in a position where the restriction on access has taken effect and the corresponding protection has not. The record about a third party is exempt from disclosure by reason of a statute whose obligations of purpose limitation, security and erasure do not yet bind the authority holding it. The sequence is difficult to defend. The justification advanced for the amendment is that personal data requires stronger protection than the earlier clause afforded, and that justification presupposes the operation of the protective scheme. A commencement order that brings the restriction into force while deferring the protection removes the premise of its own defence.

The point is not merely one of timing. Commencement in this staggered form was a matter of executive choice, exercised under a power the legislature conferred without conditions. A restriction on a right that has constitutional standing under Article 19(1)(a) was therefore brought into operation by an administrative instrument, at a moment selected by the administration, and separately from the provisions that were said to justify it.

VI. THE CONSTITUTIONAL POSITION

The privacy judgment in *Justice K. S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, established informational privacy as an aspect of the right under Article 21 and set out a test of legality, legitimate aim and proportionality for restrictions upon it. That judgment is frequently cited in support of the amendment, on the footing that the state was obliged to protect personal data more firmly.

The citation proves less than it appears to. The right to information has its own constitutional foundation. In *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428, the Supreme Court recognised the right of the people to know the particulars of every public transaction, and in *S. P. Gupta v. Union of India*, 1981 Supp SCC 87, the Court located access to information about the functioning of government within Article 19(1)(a). Both interests are constitutionally protected, and the proportionality analysis in *Puttaswamy* applies to the restriction of either. A categorical exemption that operates without regard to the weight of the public interest asserted in the particular case is, on its face, harder to justify under a proportionality standard than a provision that requires the weighing to be done.

The *Aadhaar* judgment, *Justice K. S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 SCC 1, is instructive on a related point. In upholding the identity scheme in part, the majority relied on the availability of safeguards and on the limitation of purposes, and struck down provisions that permitted use beyond the purpose for which the framework was justified. The reasoning turns on the fit between the restriction and its objective. An exemption drawn at the level of the class rather than the record has a poor fit where a substantial part of the class consists of information about the discharge of public functions.

VII. THE PUBLIC SERVANT PROBLEM

The sharpest practical consequence concerns information about public servants acting in an official capacity. Attendance records, tour claims, expenditure sanctioned by a named officer, the allotment of a public benefit to a named beneficiary, and disciplinary outcomes all relate to identifiable individuals. On the wider reading of the substituted clause, each is exempt.

The consequence extends to the verification of public expenditure. *Muralidharan, Niehaus and Sukhtankar* (2016), in an evaluation of biometric payment infrastructure in Andhra Pradesh, demonstrate that measurable reductions in leakage in welfare payments depend on the ability to compare a record of entitlement with a record of receipt at the level of the named beneficiary. Social audit practice in employment guarantee and food distribution programmes rests on the same comparison. Where beneficiary level records are exempt as personal information, the audit becomes an examination of aggregates, and aggregates conceal precisely the diversion that the audit is designed to detect.

John (2025), analysing consent, accountability and data sovereignty in India's digital public infrastructure, identifies a related difficulty in the attribution of responsibility across the layers of those systems. The observation applies with force here. Where the record that would identify the responsible official is exempt from disclosure by virtue of relating to a person, accountability for an administrative act becomes dependent on the willingness of the administration to disclose it.

VIII. HOW OTHER SYSTEMS DRAW THE LINE

Access to information statutes elsewhere address the same conflict, and the common technique is an exception rather than a prohibition. Personal information is exempt, and the exemption is displaced where disclosure is necessary in the public interest, or where the information concerns the person in a professional or official capacity, or where the individual concerned has consented after notice.

The third of these devices is already present in Indian law. The procedure for third party information in Section 11 of the 2005 Act requires notice to the person concerned and consideration of any objection, and *Subhash Chandra Agarwal* emphasised its importance. That procedure is a proportionate mechanism: it protects the individual by giving a hearing rather than by closing the class. It survives the amendment, but its utility is reduced, since a categorical exemption removes the occasion for the procedure to operate at all.

IX. WHAT SHOULD BE RESTORED

Three changes would repair the position without weakening the protection of personal data.

The public interest override should be restored to the operative clause. Its location matters. An override that appears in the same provision as the exemption is applied by the officer as part of the same decision, and it generates a record of reasons that can be tested in appeal.

Information concerning a person in an official or professional capacity should be expressly excluded from the exemption, with a defined list covering the discharge of public functions, the receipt of public money and the exercise of

statutory power. This is the class in which the transparency interest is strongest and the privacy interest weakest, and drawing it in the statute removes the need for case by case litigation over the boundary.

A duty to record reasons should attach to every refusal under the clause. The 2005 Act already requires reasons for rejection, but a specific requirement that the officer state why the record relates to a person otherwise than in an official capacity would preserve, in a modest form, the analytical discipline that the deleted proviso imposed.

X. CONCLUSION

Section 44(3) is a short provision with a long reach. It replaced a clause that had been the principal site at which Indian law reconciled the constitutional interest in privacy with the constitutional interest in access to information, and it replaced it with a categorical exemption. The reconciliation has not been relocated; it has been removed from the operative provision and left to a general discretion that is exercised infrequently.

The case for restoring the override does not rest on a preference for transparency over privacy. It rests on the observation that the interests conflict at the level of the individual record and not at the level of the class, and that a rule drawn at the level of the class will therefore be over inclusive in a predictable and substantial way. The clause as it stood was capable of protecting a citizen's medical record and disclosing a district officer's sanction of a contract. The clause as substituted treats the two alike.

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