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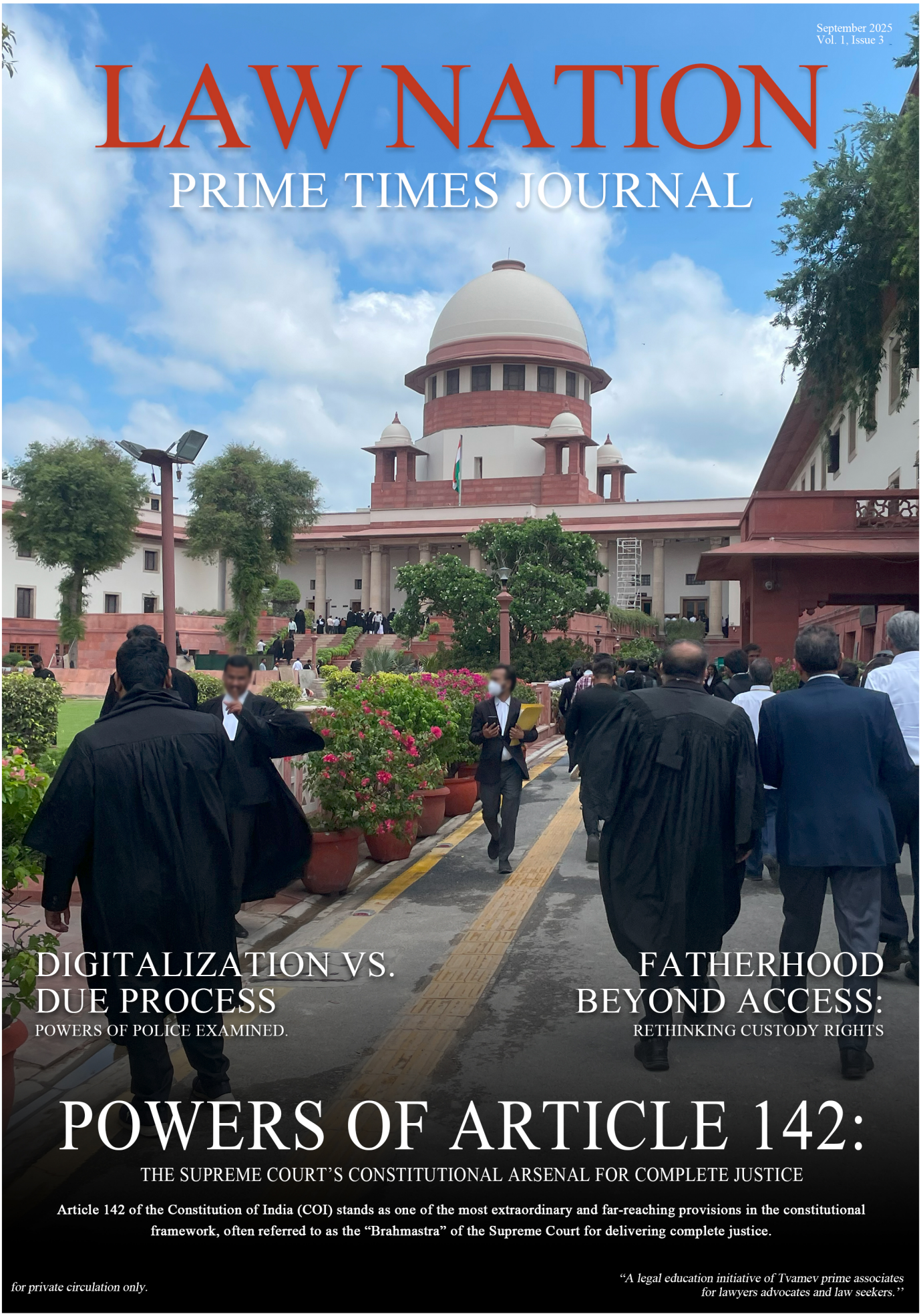

DIGITALIZATION VS. DUE PROCESS
POWERS OF POLICE EXAMINED.

FATHERHOOD BEYOND ACCESS:
RETHINKING CUSTODY RIGHTS

POWERS OF ARTICLE 142:

THE SUPREME COURT'S CONSTITUTIONAL ARSENAL FOR COMPLETE JUSTICE

Article 142 of the Constitution of India (COI) stands as one of the most extraordinary and far-reaching provisions in the constitutional framework, often referred to as the "Brahmastra" of the Supreme Court for delivering complete justice.

"A legal education initiative of Tvamev prime associates for lawyers advocates and law seekers."

Credit: Official website of Hon'ble High Court at Calcutta

FOREWORD

It is an honour to introduce the second edition of the Law Nation Prime Times Journal, an ongoing endeavour dedicated to fostering informed analysis, critical reflection, and meaningful discussion on contemporary legal issues. This volume continues our commitment to serving as a platform for legal professionals, scholars, and students who seek not only to understand the law, but to engage with its dynamic evolution in India's ever-changing constitutional landscape.

In this issue, readers will find rigorous examinations of pivotal developments, from the Supreme Court's expansive exercise of powers under Article 142 and its impact on the pursuit of 'complete justice', to the constitutional intricacies of presidential references and the enduring debate around 'One Nation, One Election'. The autonomy of the Election Commission, challenges in balancing digitization and procedural fairness, and critical reforms in bail jurisprudence highlight the multifaceted nature of modern legal dilemmas. Thoughtful analyses of guardianship and custody law, power of attorney controversies, and the tension between technological innovation and due process underscore the journal's holistic approach to legal discourse.

Each article is crafted with research and reflective writing, offering perspectives that bridge theory and practice while encouraging open and informed dialogue amongst readers. The journal remains steadfast in its educational mission, aiming to illuminate the forces that shape both the administration of justice and the fundamental principles sustaining our democracy.

Law and society are in constant conversation, each shaping the course of the other. Through accessible scholarship and inclusive participation, this Journal endeavours to keep that dialogue vibrant, rigorous, and relevant.

Rajiv Kumar Virmani
Founder, Tvamev Prime Associates
Advocate-on-Record, Supreme Court of India

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POWERS OF ARTICLE 142

The Supreme Court's Constitutional Arsenal for Complete Justice

Rajiv K. Virmani, Advocate on Record

Article 142 of the Constitution of India (COI) stands as one of the most extraordinary and far-reaching provisions in the constitutional framework, often referred to as the "Brahmastra" of the Supreme Court for delivering complete justice. This constitutional provision empowers the apex court with sweeping discretionary powers that transcend ordinary legal boundaries, enabling it to craft innovative remedies and ensure substantive justice in cases where conventional legal mechanisms prove inadequate. The exploration of Article 142's expansive scope reveals a judicial instrument that has evolved from a mere procedural provision into a transformative constitutional tool, fundamentally reshaping the landscape of Indian jurisprudence and establishing the Supreme Court as not merely an interpreter of law, but as an active architect of justice.

Constitutional Foundation and Historical Genesis

Article 142 emerges from the constitutional drafters' recognition that rigid adherence to procedural formalities could sometimes obstruct the delivery of substantive justice. The framers of the Constitution, drawing from their experience under colonial rule where technical legal barriers often prevented justice, sought to create a provision that would ensure the Supreme Court could deliver complete justice regardless of procedural impediments.

The historical evolution of Article 142 reflects the gradual expansion of judicial power in response to societal needs and constitutional imperatives. Initially conceived as a relatively modest provision to supplement existing legal remedies, , Article 142 has undergone significant judicial interpretation and expansion over the decades. . The provision's emergence as a powerful judicial tool coincided with the Hon'ble Supreme Court's evolving role from a traditional appellate court to a constitutional court actively engaged in protecting fundamental rights and ensuring good governance.

The constitutional text of Article 142 is deceptively simple, yet its implications are profound and far-reaching. Article142 (1) states that "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India"[1] .

Scope and Jurisdictional Dimensions

The jurisdictional scope of Article 142 extends across all matters pending before the Supreme Court, whether in its original, appellate, or advisory jurisdiction. This comprehensive coverage ensures that the provision operates as a universal remedy available to the Court regardless of the specific constitutional or legal pathway through which a matter reaches the Hon'ble Court. The Supreme Court has consistently held that Article 142 powers are not constrained by the specific nature of the case or the particular jurisdiction under which it is brought, creating a unified framework for the exercise of complete justice powers.

The phrase "complete justice" has been the subject of extensive judicial interpretation, with the Supreme Court developing a nuanced understanding of what constitutes completeness in the context of justice delivery. Complete justice encompasses not merely the resolution of immediate legal disputes but extends to addressing the broader implications and consequences of judicial decisions [2]. This interpretation has enabled the Court to craft comprehensive remedies that address not only the immediate parties but also affected third parties and broader societal interests.

The territorial enforcement aspect of Article 142 reflects the constitutional design of establishing the Supreme Court as the apex judicial authority with nationwide jurisdiction. This provision ensures that Supreme Court orders issued under Article 142 have binding force throughout India, eliminating potential conflicts between different state jurisdictions and ensuring uniform implementation of judicial directives. The nationwide enforceability of Article 142 orders has proven particularly crucial in cases involving inter-state disputes, environmental protection, and matters of national importance[3].

Landmark Judicial Interpretations and Case Law Development

The Foundational Restrictive Phase: Prem Chand Garg (1963)

The evolution of Article 142 jurisprudence has been marked by several landmark cases that have progressively expanded and refined the scope of this provision. The Supreme Court's approach to interpreting Article 142 has been characterized by a balance between judicial activism and constitutional restraint, seeking to maximize the provision's potential for delivering justice while avoiding judicial overreach.

In the seminal case of Prem Chand Garg v. Excise Commissioner, U.P.[4] , the Supreme Court established foundational principles for the exercise of Article 142 powers, emphasizing that these powers should be exercised sparingly and only when existing legal remedies prove inadequate. Justice Gajendragadkar, delivering the majority judgment, articulated the restrictive interpretation:

"An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. Therefore, we do not think it would be possible to hold that Art. 142(1) confers upon this Court powers which can contravene the provisions of Article 32."

This interpretation established a crucial precedent regarding the supplementary rather than substitutive nature of Article 142 powers. The Court emphasized that Article 142 is not intended to supplant existing laws but rather to supplement them when necessary to achieve complete justice.

The Expansive Transformation: Union Carbide and Delhi Judicial Services

The restrictive approach of Prem Chand Garg was significantly altered in two landmark cases that fundamentally transformed the understanding of Article 142 powers. **In Delhi Judicial Service Association v. State of Gujarat**[5] , a three-judge bench of the Supreme Court expanded the scope of Article 142, declaring:

"This Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court." This was further reinforced in **Union Carbide Corporation v. Union of India**[6] , where the Court held:

"Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of 'complete justice' of a cause or matter, the apex court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public-policy and regulate the exercise of its power and discretion accordingly."

The Bhopal Gas Tragedy case represents one of the most significant applications of Article 142 in contemporary Indian jurisprudence. The Supreme Court's comprehensive resolution of the industrial disaster

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through innovative remedial measures demonstrated the provision's capacity to address complex socio-economic issues that traditional legal mechanisms could not adequately resolve. The Court ordered Union Carbide Corporation to pay US$ 470 million in full settlement, exercising Article 142 to ensure comprehensive relief for victims[7].

The Corrective Phase: Supreme Court Bar Association (1998)

Recognizing the potential for judicial overreach, the Supreme Court in **Supreme Court Bar Association v. Union of India** sought to establish limits on Article 142 powers. Justice A.S. Anand, delivering the judgment for a five-judge bench, held:

"It, however, needs to be remembered that the powers conferred to the Court by Article 142 being curative in nature cannot be construed as powers which authorize the Court to ignore the substantive rights of a litigant while dealing with a case pending before it. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly." This interpretation clarified that Article 142 powers are supplementary and curative in nature, designed to remedy situations where existing legal frameworks prove inadequate, rather than to override established legal principles.

Recent Constitutional Applications

The Ayodhya Resolution (2019)
The Ayodhya Title Suit[8] represents one of the most significant contemporary applications of Article 142. The Supreme Court's comprehensive resolution of the centuries-old dispute through innovative remedial measures demonstrated the provision's capacity to address complex socio-religious issues that traditional legal mechanisms could not adequately resolve. The Court invoked Article 142 twice in its judgment:

> *"There was no abandonment of the mosque by the Muslims. This court in the exercise of its powers under Article 142 of the Constitution must ensure that a wrong committed must be remedied. Justice would not prevail if the Court were to overlook the entitlement of the Muslims who have been deprived of the structure of the mosque through means which should not have been employed in a secular nation committed to the rule of law[9]."*

Tamil Nadu Governor Case (2025)

In the recent landmark case of **State of Tamil Nadu v. Governor of Tamil Nadu**[10] , decided on April 8, 2025, the Supreme Court exercised Article 142 to address executive inaction and protect legislative autonomy. The Court deemed ten bills as having received assent after the Governor's prolonged inaction, stating:

> *"Having regard to the unduly long period of time for which these Bills were kept pending by the Governor before the ultimate declaration of withholding of assent and in view of the scant respect shown by the Governor to the decision of this Court. We are left with no other option but to exercise our inherent powers under Article 142 of the Constitution for the purpose of declaring these ten Bills as deemed to have been assented.[11]"*

Chandigarh Mayor Election (2024)

The Supreme Court's intervention in the **Chandigarh Mayor Election Case**[12] demonstrated Article 142's role in protecting electoral integrity. Chief Justice D.Y. Chandrachud, heading a three-judge bench, declared:

> *"We are of the considered view that in such a case, this court is duty bound, particularly in the context of its jurisdiction under Article 142 of the Constitution, to do complete justice to ensure that the process of electoral democracy is not allowed to be thwarted by such subterfuges." [13]*

Powers and Remedial Mechanisms

The powers flowing from Article 142 are both broad and flexible, enabling the Hon'ble Supreme Court to craft remedies that are not available under ordinary legal provisions. These powers include the ability to issue directions to government authorities, modify existing legal arrangements, create new institutional mechanisms, and establish ongoing judicial supervision over implementation of court orders. The flexibility inherent in Article 142 allows the Court to adapt its remedial approach to the specific requirements of each case, ensuring that justice is not constrained by rigid procedural or substantive limitations[14].

Environmental Protection Applications

Environmental protection has emerged as another significant domain for Article 142 applications, with the Supreme Court utilizing these powers to address ecological degradation and environmental violations. In M.C. Mehta v. Union of India[15] , the Court established the principle of absolute liability for environmental damage and recognized the right to a clean environment as part of Article 21. The Court observed:

> *"The constitutional right to life extend to living in a clean and healthy environment... Courts are empowered to grant compensation as a remedy for infringing the right to life."*

Social Justice Interventions

Vishaka Guidelines

In Vishaka v. State of Rajasthan[16] , the Supreme Court exercised Article 142 to formulate comprehensive guidelines for preventing sexual harassment at workplaces in the absence of legislative framework. The Hon'ble Supreme Court framed these guidelines as per Article 141 of constitution and as per Article 142 all authorities were bound to implement the same[17]. These guidelines remained in force until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, demonstrating Article 142's capacity to fill legislative gaps.

Constitutional Limitations and Judicial Restraint

Despite its broad scope, Article 142 is not an unlimited power, and the Supreme Court has consistently emphasized the importance of exercising these powers within constitutional boundaries. In **State of Karnataka v. Umadevi**[18] , a five-judge bench clarified:

> *"Complete justice under Article 142 means justice according to law and not sympathy while holding that it will not grant a relief which would amount to perpetuating illegality encroaching into the legislative domain."*

The Court has articulated several limitations on Article 142 powers, including the requirement that such powers cannot be exercised to violate fundamental rights, contravene explicit constitutional provisions, or override specific statutory frameworks without adequate justification.

Marriage and Family Law

The Supreme Court has increasingly used Article 142 in matrimonial disputes, particularly for granting divorce on grounds of irretrievable breakdown of marriage. In recent 2023 observations, a five-judge Constitution Bench noted:

"Given the expansive amplitude of power under Article 142(1) of the Constitution of India, the exercise of power must be legitimate, and clamours for caution, mindful of the danger that arises from adopting an individualistic approach as to the exercise of the Constitutional power."

Educational Access and Social Justice

The Court's recent intervention in **Atul Kumar's IIT Admission Case (2024)**[19] exemplifies Article 142's in ensuring educational access formarginalized communities:

"A talented student like the petitioner, who belongs to a marginalized group of citizens and has done everything in his power to secure admission, should not be left in the lurch. The power of this Court under Article 142 of the Constitution to do substantial justice is meant precisely to cover such a situation."

Criticisms and Constitutional Concerns

The expansive use of Article 142 powers has generated significant academic and judicial debate regarding the appropriate limits of judicial intervention in democratic governance. Vice President Jagdeep Dhankar recently referred to Article 142 as a "nuclear missile against democratic forces available to the judiciary 24×7," highlighting concerns about potential judicial overreach[20].

Critics argue that broad interpretation of Article 142 can lead to judicial overreach, undermining democratic principles and institutional separation of powers. These concerns reflect broader debates about the proper role of judiciary in a democratic system and the balance between judicial activism and restraint.

The concern about judicial legislation represents a significant criticism of Article 142 applications. Critics argue that some Supreme Court orders under this provision amount to making law rather than interpreting it, thereby encroaching upon legislative functions. This criticism raises important questions about the distinction between judicial law-making and legitimate exercise of judicial powers to ensure complete justice.

Future Directions and Constitutional Balance

The evolution of Article 142 jurisprudence suggests several potential directions for future development and reform. Enhanced institutional mechanisms for monitoring and implementing Article 142 orders could improve the effectiveness of judicial interventions while reducing administrative burden. The development of specialized courts or tribunals to handle specific categories of Article 142 cases might enhance expertise and efficiency in complex matters.

As noted by the Supreme Court in recent pronouncements, the exercise of Article 142 powers requires careful balance between activism and restraint: "Article 142(1) of the Constitution of India, which gives wide and capacious power to the Supreme Court to do 'complete justice' in any cause or matter pending before it, has its origin in and is inspired from the age-old concepts of justice, equity and good conscience."[21]

Way Forward:

Article 142 represents a unique and powerful constitutional provision that has fundamentally shaped the character of Indian judicial system and its approach to justice delivery. The provision's evolution from a modest procedural tool to a comprehensive mechanism for ensuring complete justice reflects both the adaptability of constitutional law and the Supreme Court's commitment to substantive justice over procedural formalism. While debates continue regarding the appropriate scope and limitations of Article 142 powers, their significance in addressing complex contemporary challenges remains undeniable. The continuing relevance of Article 142 in addressing emerging social, environmental, and technological challenges demonstrates its enduring value as a constitutional mechanism for ensuring that justice delivery keeps pace with evolving societal needs. As India faces new governance challenges in the 21st century, Article 142 provides the Supreme Court with essential tools to craft innovative and effective judicial responses that traditional legal frameworks might not accommodate.

The future of Article 142 will likely depend on the Supreme Court's ability to balance activism with restraint, ensuring that these extraordinary powers serve their intended purpose of delivering complete justice while respecting constitutional boundaries and democratic principles. The provision's legacy as the Supreme Court's "Brahmastra" for complete justice will ultimately be determined by how effectively it serves the cause of justice while maintaining the delicate balance of constitutional governance that defines India's democratic system.

END NOTES

1. *Article 142 of the Constitution of India, 1950.*

2. *Complete Justice Under Article 142 by Dr R. Prakash; cite as : (2001) 7 SCC (Jour) 14; available at: https://www.ebc-india.com/lawyer/articles/2001v7a3.htm*

3. *'SC's power under Article 142 does not empower it to ignore rights of litigants'; available at: https://legal.economictimes.indiatimes.com/news/litigation/scs-power-under-article-142-does-not-empower-it-to-ignore-rights-of-litigants/108141908*

4. *Prem Chand Garg v. Excise Commissioner, U.P., AIR 1963 SC 996*

5. *Delhi Judicial Service Association v. State of Gujarat, (1991) 4 SCC 406*

4. Prem Chand Garg v. Excise Commissioner, U.P., AIR 1963 SC 996

5. Delhi Judicial Service Association v. State of Gujarat, (1991) 4 SCC 406

6. Union Carbide Corporation v. Union of India, (1991) 4 SCC 584

7. Bhopal Gas Tragedy; Supreme Court Constitution Bench dismisses Centre's plea for enhanced compensation from Union Carbide Corporation; available at: https://www.scconline.com/blog/post/2023/03/14/bhopal-gas-tragedy-sc-constitution-bench-dismisses-centres-plea-for-enhanced-compensation-from-union-carbide-corporation-legal-research-legal-news-updates/

8. M/s M. Siddiq (D) Thr. Lrs. v. Mahant Suresh Das & Ors., (2019) 9 SCC 1

9. Ibid, at para 800

10. State of Tamil Nadu v. Governor of Tamil Nadu, 2025 INSC 481

11. Ibid, per J.B. Pardiwala, J.

12. Sunita v. Union Territory of Chandigarh, 2024 INSC 142

13. Ibid, per D.Y. Chandrachud, CJI

14. Court's sweeping powers under Article 142 can't be used to override substantive law: SC; available at: https://thewire.in/law/courts-sweeping-powers-under-article-142-cant-be-used-to-override-substantive-law-sc

15. M.C. Mehta v. Union of India, AIR 1987 SC 1086

16. Vishaka v. State of Rajasthan, AIR 1997 SC 3011

17. Diva Devarsha; IMPLEMENTATION OF VISHAKA GUIDELINES: POST VISHAKA JUDGEMENT; IJLPP (2014-15) Vol.1.1

18. Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1

19. ATUL KUMAR Versus THE CHAIRMAN (JOINT SEAT ALLOCATION AUTHORITY) AND ORS; Writ Petition(s)(Civil) No(s).609/2024

20. Vice President Jagdeep Dhankhar stirs row with Article 142 'nuclear missile' for Judiciary remark. What is it?; available at: https://www.hindustantimes.com/india-news/vice-president-jagdeep-dhankhar-article-142-nuclear-missile-judiciary-remark-parliament-supreme-court-101745029562781.html

21. M P Ram Mohan, Sriram Prasad, Vijay V Venkitesh, Sai Muralidhar, and Jacob P Alex; The Supreme Court of India's Use of Inherent Power under Article 142 of the Constitution: An Empirical Study; W. P. No. 2024-05-02; IIMA Working Paper.

PRESIDENTIAL REFERENCE

Anuj Malhotra, Jayeeta Deb Sarkar, Advocates

Advisory crossroads

The Hon'ble Supreme Court of India''s recent ruling in the dispute between the State of Tamil Nadu and Governor R N Ravi[1] has reignited debate around the President's and Governor's role in state legislation and the constitutional mechanism provided under the Constitution of India (COI), 1949. The contention to this disclosure is whether the Hon'ble Supreme Court can impose a timeline for the Governor, when a Bill is reserved for Presidential assent, which raises questions on constitutionality. While stopping short of issuing a mandate, the judgment significantly pushes toward institutionalizing judicial consultation in such scenarios[2].

The Hon'ble Supreme Court in the aforesaid case had rejected the notion of a pocket veto or absolute veto under Articles 200 and 201. It held that the Governor cannot indefinitely withhold assent to a Bill, even in the absence of a specific timeline. The ruling laid down timelines for the Governor to assent, withhold or reserve the Bill, and the failure to act upon the same would make the action of the Governor subject to judicial review:

Justice JB Pardiwala quoted Dr. B.R. Ambedkar,

"however good a constitution may be, if those implementing it are not good, it will prove to be bad[3]."

On May, 2025, the President of India had invoked Article 143(1) of COI, in response above mentioned Hon'ble Supreme Court's ruling and raised key constitutional questions, including:

- What are the constitutional options before a Governor when a Bill is presented to him under Article 200 of the Constitution of India?
- Is the Governor bound by the aid & advice tendered by the Council of Ministers while exercising all the options available with him when a Bill is presented before him under Article 200 of the Constitution of India?
- Is the exercise of constitutional discretion by the Governor under Article 200 of the Constitution of India justiciable?
- Is Article 361 of the Constitution of India an absolute bar to the judicial review in relation to the actions of a Governor under Article 200 of the Constitution of India?
- In the absence of a constitutionally prescribed time limit, and the manner of exercise of powers by the Governor, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of all powers under Article 200 of the Constitution of India by the Governor?
- Is the exercise of constitutional discretion by the President under Article 201 of the Constitution of India justiciable?
- In the absence of a constitutionally prescribed timeline and the manner of exercise of powers by the President, can timelines be imposed and the manner of exercise be prescribed through judicial orders for the exercise of discretion by the President under Article 201 of the Constitution of India?

Stage of the Bill	Timeline
Withholding assent or reserving the Bill for President, on State Council of Ministers' advice	Forthwith, maximum 1 month
Withholding assent contrary to State Council of Ministers' advice (i.e., sending Bill back with message)	Maximum 3 months
Reserving Bill for President contrary to State Council of Ministers' advice	Maximum 3 months
Granting assent to Bill after it is re-enacted by Assembly post-reconsideration (i.e., after being sent back and passed again by Assembly)	Forthwith, maximum 1 month

- In light of the constitutional scheme governing the powers of the President, is the President required to seek advice of the Hon'ble Supreme Court by way of a reference under Article 143 of the Constitution of India and take the opinion of the Hon'ble Supreme Court when the Governor reserves a Bill for the President's assent or otherwise?

- Are the decisions of the Governor and the President under Article 200 and Article 201 of the Constitution of India, respectively, justiciable at a stage anterior into the law coming into force? Is it permissible for the Courts to undertake judicial adjudication over the contents of a Bill, in any manner, before it becomes law?

- Can the exercise of constitutional powers and the orders of/by the President / Governor be substituted in any manner under Article 142 of the Constitution of India?

- Is a law made by the State legislature a law in force without the assent of the Governor granted under Article 200 of the Constitution of India?

- In view of the proviso to Article 145(3) of the Constitution of India, is it not mandatory for any bench of this Hon'ble Court to first decide as to whether the question involved in the proceedings before it is of such a nature which involves substantial questions of law as to the interpretation of constitution and to refer it to a bench of minimum five Judges?

- Do the powers of the Hon'ble Supreme Court under Article 142 of the Constitution of India limited to matters of procedural law or Article 142 of the Constitution of India extends to issuing directions /passing orders which are contrary to or inconsistent with existing substantive or procedural provisions of the Constitution or law in force?

- Does the Constitution bar any other jurisdiction of the Hon'ble Supreme Court to resolve disputes between the Union Government and the State Governments except by way of a suit under Article 131 of the Constitution of India?

These questions aim to clarify the constitutional limits of discretion, judicial review, and the enforceability of advisory opinions[4].

Recent Presidential reference:

Since independence, there have been about 15 Presidential references made to the Hon'ble Supreme Court under Article 143 of the Constitution of India (COI), 1949. Some landmark cases include:

Year	Case
1912	In Re: The Delhi Laws Act
1957	In Re: Kerala Education Bill, 1957
1960	In Re: Berubari Case
1963	In Re: the Bill to amend S.20 of the Sea Customs Act, 1878.
1964	Special Reference No. 1 of 1964
1974	Special Reference No. 1 of 1964 (In re: Presidential Poll)
1978	In Re: The Special Court Bill, 1978.
1980	In Re: The Jammu and Kashmir Grant of Permit for Resettlement in the State Bill,1980.
1991	In the matter of Cauvery Water Disputes Tribunal
1994	Special Reference No. 1 of 1994 (Dr. M. Ismail Faruqui v Union of India)
1998	Special Reference No. 1 of 1998 (Third Judges Case)
2001	Special Reference No. 1 of 2001.
2002	Special Reference No. 1 of 2002.
2012	Special Reference No. 1 of 2012 (2G Case: Natural Resource Allocation)
2016	In Re: The Punjab Termination of Agreement Act, 2004.

In Natural Resources Allocation, In re, Special Reference No. 1 of 2012, it was held that, the use of word "doubt" in reference is not required for maintainability thereof. Reference is not to be returned unanswered on ground of form or pattern alone. It required appropriate analysis, understanding and appreciation of content or issue on which opinion of Hon'ble Supreme Court is sought by President, keeping in view constitutional responsibility, and judicial discretion. References should not be vague or undefined. It is only when questions become unspecific and incomprehensible that the risk of returning reference unanswered arises[5].

Consult, Not Compel:

The Article 143(1) of COI, 1949, confers advisory jurisdiction to the Hon'ble Supreme Court and it also provides the president power to consult Hon'ble Supreme Court at the instances where the question of law or fact arises or the same is likely to arise in future. The Hon'ble Supreme Court as it thinks fit, report to President, its opinion on the same[6].

While generally, the courts decide cases between contesting parties, on the other hand Article 143 allows a consultative process directly initiated by the President. However, as per Article 74(1), the President is constitutionally bound to act according to the aid and advice of the Council of Ministers[7], and under Article 74(2), courts are barred from inquiring into whether such advice was tendered[8]. A Presidential reference without such

advice would violate the Constitution, potentially warranting impeachment proceedings[9].

Advice from the Apex Court:

The Hon'ble Supreme Court bench, comprising Justices J B Pardiwala and R Mahadevan, held that when a Governor reserves a Bill on grounds of of perceived unconstitutionality, the President should invoke Article 143 to consult the Hon'ble Supreme Court[10]. While not mandatory, such a reference is highly persuasive and promotes good governance. The Court emphasized that its advisory opinion derives its authority not from compulsion but from constitutional reasoning[11].

This refers to previous judgments such as In Re: The Special Courts Bill, 1978, where the Court validated pre-enactment judicial review to prevent post-enactment constitutional crises[12]. A similar rationale was reaffirmed in Natural Resources Allocation, In Re (2012), where it was held that form or phrasing alone is not grounds to reject a reference, what matters is public importance and constitutional relevance[13].

To Answer or Not to Answer?

While Article 143(2) obligates the Court to respond to references involving inter-governmental disputes, on the other hand Article 143(1) allows discretion. The Court may decline to answer questions that are vague, political, or unrelated to constitutional interpretation. In Kerala Education Bill, 1957, the Court noted that it may fall to answer a reference under 143(1) for proper reasons[14]. However, in the Special Courts Bill, 1978, it was clarified that this discretion also applies under 143(2) where questions are incapable of resolution[15].

Binding in spirit, If Not in Law:

The opinions expressed in presidential references are incredibly persuasive and morally significant. Past rulings such as the Cauvery Water Disputes Tribunal, Re and St. Xavier's College v. State of Gujarat have emphasized that while advisory opinions are not binding per se, they are typically followed and respected by all constitutional functionaries[16].

On the question that whether opinion of Hon'ble Supreme Court under advisory jurisdiction will be binding on all the Courts in India under Article 141, Chandrachud, C.J. though held,

> "that the question may have to be considered more fully on a future occasion, however opined that it would be strange that a decision given by the Hon'ble Supreme Court on a question of law in a dispute between two private parties should be binding on all courts in the country. Still, the advisory opinion should bind no one at all[17]."

The Hon'ble Supreme Court's decision does not legally require the President to seek its opinion under Article 143. Instead, it makes this discretionary power into a constitutional convention. In cases where there is a lot of constitutional doubt, this kind of consultation is encouraged to make things more straightforward, stop people from abusing their veto powers, and to protect federalism. The Court has created a framework of cooperative constitutionalism that balances accountability with judicial restraint by setting deadlines, clarifying roles, and encouraging principled interpretation.

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1. *State of T N v. Governor of T N, 2025 SCC OnLine SC 770*
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. *(2012) 10 SCC 1*
6. *Constitution of India, art.143.*
7. *Supra note 3, Article 74(1)*
8. *Id., Art. 74(2)*
9. *Hon'ble Supreme Court's Advisory Jurisdiction Under Article 143, 42 JILI (2000) 458.*
10. *Supra note 1.*
11. *Supra note 1.*
12. *In Re: The Special Courts Bill, 1978, (1979) 1 SCC 380.*
13. *Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1.*
14. *In re Kerala Education Bill, 1957, 1959 SCR 995.*
15. *Supra note 10.*
16. *In re Cauvery Water Disputes Tribunal; 1993 Supp (1) SCC 96 (2).*
17. *In re Special Courts Bill, (1979) 1 SCC 380*

ONE NATION ELECTION

Constitutional Dream or Federal Dilemma?

Akshaye Ahuja, Lokesh Kumar & Raman Sharma, Advocates

VOTING, REIMAGINED:

The concept of holding simultaneous elections, often referred to as "One Nation One Election" (ONOE), has resurfaced as a key electoral reform proposal in India. This project calls for holding elections for the Lok Sabha and all state legislative assemblies simultaneously. The goal is to lower costs for the public, decrease the policy paralysis caused by the Model Code of Conduct, and improve the continuity of governance. However, the practicality of such a change involves complicated constitutional, legal, and federal issues that make it challenging to implement immediately under the current legal system.

ECHOES FROM THE PAST:

In India, it was formerly customary for elections to be held simultaneously. Elections to the Lok Sabha and State Assemblies were held simultaneously from 1952 to 1967. But this practice fell apart because assemblies were dissolved too soon, and there was political instability at both the Union and State levels. The resulting delinking led to repeated elections, rising costs, and difficulties in running the government.

The Law Commission of India suggested in its 170th Report in 1999 that simultaneous elections be reconsidered to save money and streamline the process. The Law Commission's 255th Report (2015) also agreed with this suggestion and noted the constitutional and logistical difficulties it would face.

The Union Government established a High-Level Committee in September 2023, led by former Indian President Shri Ram Nath Kovind, to explore the possibility of ONOE. According to Article 368(2) of the Constitution,[1] which outlines the procedure for amending the Constitution, the committee's job was to suggest specific modifications to the Constitution and see if those changes would need to be approved by at least half of the State Legislatures. After talking with the Law Commission, the group devised a plan on how to get everything done by 2029.[2] It is believed that the "One Nation, One Election" model will hold elections for both the Lok Sabha and all State Assemblies every once in five years, streamlining the electoral process, reducing costs, and minimizing disruption to governance and public administration.[3] Still, the main question is that, is it possible without the need for a Constitutional Amendment?

LOCKED BY THE CONSTITUTION?

Articles 83(2) and 172(1) of the Constitution set the rules for legislatures: The Constitution says that the Lok Sabha and State Legislative Assemblies would serve five-year terms, unless they are dissolved early. These rules also allow for extensions of terms during a national emergency. But they don't let arbitrary shortening or lengthening happen outside of the Constitution. For this reason, changing the periods of office for legislators would require changes to the law that would allow for flexible adjustments.[4]

Problems with synchronization and mid-term dissolutions: There is currently no way under the Constitution to keep elections in sync if legislatures are dissolved early, President's Rule is imposed (Article 356), or there are mid-term elections.[5] This is a direct threat to ONOE, since it would be unconstitutional to require fixed periods no matter what the political situation is.

To make sure that the synchronization lasts, enabling provisions would need to:

- Change the length of a legislature's tenure to fit with a set election schedule.

- After a mid-term election, a new legislature should only be able to serve the rest of the original term.

- Put in place legal protections to lower the number of premature dissolutions.

CHANGES TO THE LAW:

The Representation of the People Act, 1951: Section 14 of the Representation of the People Act, 1951 says that elections can happen within six months after the end of a legislature's term. This legal time frame would need to be changed to make sure that elections are held at the same time across the country.

Also, the Act would need to be changed to create a single election calendar that would work for both Union and State elections and to add ways to limit terms in case of mid-term polls

Article 85 and Article 174,[6] which deals with the dissolution of Parliament and State Assemblies, would need to be changed to work with a set electoral calendar.

Article 356 gives the centre the ability to impose President's Rule in states. It may need protections to keep the coordinated schedule from being disrupted.

It has been recommended that Article 324A should be added to make elections in local entities, including Panchayats and Municipalities, happen at the same time as elections in the other two levels of government. This would complete the vision of a fully harmonized electoral cycle across all three tiers of government: Union, State, and Local. [7]
As these changes would affect the federal structure, they would be covered by Article 368(2), which says that at least half of the State Legislatures would have to approve them.[8]

THE BASIC STRUCTURE DOCTRINE AND FEDERALISM:

The Constitution of India is based on a quasi-federal framework. In S.R. Bommai v. Union of India, the Supreme Court stressed that the independence of State governments is an important part of federalism.

ONOE brings up important problems about federalism: Can states be forced to shorten or lengthen the terms of their assemblies to make them more uniform? Would this violate their right to make their own laws? These concerns need careful constitutional balance between the needs of the country and the need for decentralization.

Different Views on the Constitution: The US and Australia are two countries with federal systems that don't hold synchronized elections. On the other hand, South Africa has a set schedule for both national and provincial elections. Germany allows asynchronous elections in its Länder. These examples show that while synchronicity can make things easier for the government, it is not required under the Constitution and must be in line with democratic and federal ideals.

One Nation, One Question: Even while the ONOE idea seems good because it promises to save money, keep elections fair, and improve government, it can't be put into action under the current Constitution. To put it into action, there would need to be a complete revamp of the Constitution, with changes to basic articles and important laws, careful navigation of federalism principles, and agreement among the States.

Shri P. Chidambaram, who used to be the finance minister, said, "One Nation, One Election is not possible under the present Constitution.[9] " ONOE may stay an aspirational reform instead of a constitutional reality until a strong legal and political agreement is reached.

END NOTES

1. Constitution of India, Art 368(2)

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4. Constitution of India, Art 83(2) & 172.

5. Ashutosh Kumar, Understanding Simultaneous Elections: Explained, The Hindu, (10 April 2024), available at: https://www.thehindu.com/news/national/understanding-simultaneous-elections-explained/article67592051.ece (last visited July 15, 2025).

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8. Constitution of India, Art 368(2).

9. One Nation, One Election not possible under present Constitution: Chidambaram, The Indian Express (June 27, 2024) available at: https://indianexpress.com/article/cities/chandigarh/one-nation-one-election-constitution- chidambaram-9570765/

PRETRIAL UNISHMENT

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Recent court cases, including some that got a lot of attention, have brought up old arguments over how bail law should be used and understood in India. These events make people even more worried about the misuse of criminal law, when people are put in jail before they are found guilty, which makes the constitutional presumption of innocence less clear. The goal of this essay is to look at how bail legislation has changed in India and see if it has changed in a way that is consistent with constitutional morality and international legal standards.

Article 21: Article 21 of the Indian Constitution, which protects personal freedom, provides the basis for the notion that "bail is the rule and jail is the exception." Article 21 says that "No person shall be deprived of his life or personal liberty except according to procedure established by law." Even though this phrase is short, it has been widely taken to mean that freedom is a basic constitutional virtue. Because of this, granting bail is not just a procedural formality; it is a constitutional protection. So, courts must make sure that pre-trial custody is necessary by law and not employed as a punishment before a person is found guilty.

The Constitution doesn't say anything about the right to bail, but the Supreme Court has said that it is an important part of the right to personal freedom under Article 21. The Court has always said that the law should protect freedom, especially when there are so many people in Indian jails who are still waiting for their trial. So, the right to bail is not just a procedural precaution; it is also a constitutional requirement.

In Naresh Kumar v. State of Haryana[1], the Supreme Court set aside the conviction of a man convicted for abetment to the suicide of his wife, after almost 30 years of the initiation of the trial. While doing so, the Court lamented that India's criminal justice system can be a punishment for the accused if it takes 30 years for the criminal justice system to acquit the accused.

The Bench Comprising Justices J.B. Pardiwala and Manoj Misra quoted that

> "Before we part with this matter, we may only observe that our criminal justice system can itself be a punishment. This is exactly what happened in this case. It did not take more than 10 minutes for this Court to reach an inevitable conclusion that the conviction of the appellant convict for the offence punishable under Section 306 of the IPC is not sustainable in law.[2]" .

When deciding bail cases, courts must weigh the accused's basic rights against the needs of society. They have set procedural rules and used constitutional concepts to help them make decisions. Because of this, bail hearings have become significant places to talk about and defend personal freedom. The courts must balance the accused's right to freedom with the needs of justice and the necessity to keep the peace.

The Tripartite Test: The courts have always used what is now called the tripartite test when deciding whether to grant bail under the Code of Criminal Procedure. This is a judicial construct based on practicality and procedural fairness. These three things to think about are:

- Flight Risk: Is the accused likely to escape or avoid the legal process?
- Tampering with Evidence: If the accused is let go, they may be able to mess with the investigation or destroy crucial evidence.
- Influencing Witnesses: Whether the accused is a threat to witnesses, either by threatening or manipulating them, which would be a crime.

The Gravity of Offence as an Emerging Fourth Test:

While these three factors provide a minimum threshold, courts have gradually introduced a fourth, implicit test, i.e., the gravity of the offence, which, although not uniformly recognised, has increasingly shaped bail outcomes. Courts often justify pre-trial incarceration in cases involving heinous crimes or socio-economic offences by relying on this criterion, thereby creating an informal departure from the presumption of innocence [3].

Even while the BNSS doesn't say that the nature of the alleged crime and its effects on society are required to reject bail, courts often use them to do so. This factor may be suitable in serious circumstances, although it has often been applied inconsistently and subjectively. In some cases, especially those that are politically or economically sensitive, courts have put deterrence ahead of the presumption of innocence. This kind of reasoning by the courts could turn bail hearings into real mini trials. Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which India has signed, says that pre-trial detention should only happen in rare cases, not all the time.[4]

Satender Kumar Antil: Toward a Transformative Bail Framework

The Hon'ble Supreme Court in Satender Kumar Antil v. CBI & Anr[5]. judgment made a shift in the way Indian courts approach bail, this was in response to the systemic problem of too many people being in jail without trial wherein over 70% of the prison population is made up of people who are still waiting for their trial[6] . The Court set up a formal framework for deciding bail, going beyond just saying that bail is a constitutional virtue. It tried to change the way bail law works by focusing on how offenses are classified and following the rules.

The Court introduced a typological matrix by classifying offences into four categories, each governed by a corresponding approach to bail:

CATEGORY A

Offences punishable with imprisonment up to 7 years under general criminal law (non-special statutes). Courts are directed to avoid custodial arrest and instead issue a summons. If the accused appears, bail should be granted without insistence on custody, unless there is a clear risk of absconding or non-cooperation.

CATEGORY B

Offences punishable with imprisonment exceeding 7 years but not involving special legislation. Here, courts are urged to apply the tripartite test and consider individual circumstances, avoiding routine denial based on seriousness alone.

CATEGORY C

Offences under special statutes such as the NDPS Act[7] , UAPA[8], and PMLA. The Court mandates that statutory rigours be strictly applied, but not at the cost of ignoring procedural safeguards, such as delays, illegal arrest, or lack of prima facie evidence.

CATEGORY D

Economic offences and those affecting public trust but not falling under special laws. These require balanced judicial scrutiny, i.e., neither leniency based on non-violence, nor denial purely on the label of 'white-collar crime'. Courts are to adopt a case-specific proportionality analysis.

This schema introduces a scalable model for bail decisions. By decoupling offences from a one-size-fits-all mentality, the judgment restores nuanced discretion within a defined procedural framework. However, the massive problem with this is that the categorization is done based on the gravity of the offense.

When Special Laws Override Liberty:

In contrast to the BNSS framework, special statutes such as the Prevention of Money Laundering Act (PMLA), Narcotic Drugs and Psychotropic Substances Act (NDPS), and Unlawful Activities (Prevention) Act (UAPA) embed statutory restrictions that raise the bar for granting bail. This categorization is also precise from the framework in the Satender Kumar Antil judgment. Section 45 of PMLA: Section 45 of the PMLA was the first to use the twin conditions test, which is an important part of bail under special statutes. It has two strict requirements: the accused must show that they are innocent on the face of it and promise the court that they will

not commit the crime again if they are released. This puts the burden of proof on the accused even before the trial, which goes against the fundamental presumption of innocent. The test was first thrown out in Nikesh Tarachand Shah[9] , but it was brought back through a change to the law and affirmed in Vijay Madanlal Choudhary[10] , which meant it could be used again and supported a severe bail system under the PMLA.

The difference between the BNSS and special statutes shows how inconsistent judges are when it comes to interpreting bail criteria. Even if the basic concepts, such the presumption of innocence, protection from arbitrary imprisonment, and proportionality, are the same in all legal systems, how they are applied might change depending on things like national security or public morality. When it comes to BNSS crimes, the focus is on rights, while with special laws, the focus is on the state.

The Supreme Court has endeavoured to find a balance between freedom and social order via a series of decisions. In Arnesh Kumar[11] , it told the police not to make regular arrests for crimes that carry a sentence of less than seven years. In Siddharth v. State of U.P.[12], the court said that arresting someone at the chargesheet stage is not required if the person has been helpful. The goal of these measures is to stop a culture of punitive arrests. However, the simultaneous support of strict rules like those in the PMLA shows a judicial paradox: supporting freedom in some situations while supporting exceptions in others. This paradox shows how hard it is to run a complicated constitutional democracy with the courts.

BAIL BOND AND SURETY:

People have long criticized India's bail system for being inconsistent and unfair to people with less money. Courts typically set bond amounts without considering the accused's ability to pay, which hurts poor people the most because they stay in jail even though they are granted bail. Also, the need for several bail bonds in similar situations or property-based sureties, which are often linked to certain local authorities, turns freedom into a privilege that depends on money. As stated in Maneka Gandhi v. Union of India[13] , the right to life and personal liberty under Article 21 of the Constitution includes the right to fair procedures.

A recent ruling by the Supreme Court in Girish Gandhi v. State of Uttar Pradesh[14] marked a significant step toward alleviating these systemic burdens. The petitioner, Girish Gandhi, had been granted bail in 13 cases. However, he remained in custody because he could not furnish multiple personal bonds and local sureties in several states. Hearing the writ petition under Article 32 of the Constitution, a bench of Justices B.R. Gavai and K.V. Viswanathan observed that such onerous requirements defeated the purpose of granting bail. The Court specifically noted that the bail order issued by a Jaipur court required a local surety, while Gandhi resided in Haryana, making compliance an “arduous task.” As a result, the condition “virtually rendered ineffective the order for bail.”

Even while the courts have made some progress, there are still problems that make it hard to use bail effectively in India. Courts are nonetheless limited by procedural delays, the lack of consistent bail requirements, and the fact that they rely too much on pre-trial incarceration. About 75% of the people in India's prisons are undertrial inmates, and many of them stay there because they can't meet bail requirements. It is still hard to get good legal help, and judges often make decisions that are unfair or inconsistent because they are supposed to follow principles of justice and fairness. The Supreme Court said in Sanjay Chandra v. CBI[15] that pre-trial custody should not be used as a punishment, especially for crimes that are related to money. (…..SH)

END NOTE

1. *Naresh Kumar v. State of Haryana, Criminal Appeal No(s). 1722 of 2010*

2. *Ibid.*

3. *SSRN, Bail and Rights during Trial under General and Special Laws, (25 March 2025).*

4. *International Covenant on Civil and Political Rights, 1966, Art. 9.*

5. *Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51*

6. *Supra note 8*

7. *Narcotic Drugs and Psychotropic Substances Act, 1985.*

8. *Unlawful Activities (Prevention) Act, 1967.*

9. *Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.*

10. *Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 353.*

11. *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 469.*

12. *Siddharth v. State of Uttar Pradesh, (2021) 1 SCC 676.*

13. *Maneka Gandhi v. Union of India, (1978) 1 SCC 248.*

14. *Girish Gandhi v. State of Uttar Pradesh (2024) 10 SCC 674.*

15. *Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.*

AUTHORITY TO OWNERSHIP?

General Power of Attorney

From Authority to Ownership? Supreme Court's Take on Power of Attorney Abuse

Akashdeep Rajput & Surbhi Rashmi, Advocates

Source : ai generated image

The power of attorney ("PoA") is a creation of an agency whereby the principal authorises the attorney/ agent to do the acts specified therein, on behalf of principal, which when executed will be binding on the principal as if done by him directly. A PoA is a legal instrument generally used in commercial and personal transaction enable one person to authorise another to act in situations where the principal himself cannot act.

STATUTORY FRAMEWORK

The Power of Attorney in India is primarily governed by following statutes:

1. The Power of Attorney Act 1882

The Act deals with the law relating to Power of Attorney. Section 1A defines a "Power of Attorney" as:

"Any instrument empowering a specified person to act for and in the name of the person executing it."[1]

2. The Indian Contract Act, 1872.

The Indian Contract Act, 1872 ("ICA") deals with the law relating to contracts. Chapter X of ICA contains the provisions dealing with the appointment and authority of agents. PoA is governed by the law of agency by reason that, an agent is formally appointed to act for the principal in one transaction or series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person.[2]

3. Indian Stamp Act, 1899

The Indian Stamp Act, 1899 ("ISA") deals with matters related to stamp duty. Section 2(21) of ISA defines a Power of Attorney as:

"power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it".[3]

4. The Registration Act, 1908

The Registration Act, 1908 ("RA") lays down the law relating to the registration of documents in India. It stipulates that which documents require compulsory registration and which may be registered optionally.[4]

Scope of Power of Attorney

The PoA is creation of an agency whereby the principal authorises the attorney to do the acts specified therein, on behalf of principal, which when executed will be binding on the principal as if done by him. Generally, it is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable PoA does not have the effect of transferring title to the attorney, it merely authorises them to act on behalf of principal.[5]

Types of Power of Attorney

General Power of Attorney ("GPA"):
It is a legal instrument through which the principal authorizes the attorney to act on their behalf in a wide range of matters, such as managing property, handling financial transactions, or representing them before authorities.

Special Power of Attorney ("SPA"):
It is a legal instrument through which the principal authorizes the agent to act on their behalf for a specific purpose or a particular transaction.

Judicial Precedents

Judicial precedents have played an important role in clarifying the legal position on sale/will/Gift transaction in respect of General Power of Attorney. The Court consistently observed that only a properly stamped and registered sale deed conveys the ownership in an immovable property in India.

A General Power of Attorney does not ipso facto constitute an instrument of transfer of an immovable property even where some clauses are introduced in it, holding it to be irrevocable or authorizing the attorney holder to effect sale of the immovable property on behalf of the principal. [6]

Transactions involving Sale Agreement + General Power of Attorney + will : SA/GPA/Will

The seller (flat allottee) and the buyer entered into a sale agreement, under which the buyer got possession of the flat after paying the full price. Additionally, the seller executed an "irrevocable" power of attorney, granting the buyer authority to manage, use, or even sell the property without seller consent. Further, the seller also made a Will in favour of the buyer, so that if the seller died before executing a proper deed, the buyer's rights would still be protected.

In *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*, (2009), a two-Judge Bench of the Hon'ble Supreme Court does not recognize the "power of attorney" sales as valid mode of property transfer. Any process which interferes with regular transfers under deeds of conveyance properly stamped, registered and recorded in the registers of the Registration Department, is to be discouraged and deprecated. [7]

This issue was again dealt with in three judge benches of Hon'ble Supreme Court in the case of *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana*, (2012), this case also deals with the issue relating to validity of SA/GPA/will.

The Court has clarified that SA/GPA/will transactions are not "transfers" or "sales." they will only be considered as agreement to sale.
In the above-mentioned case the Hon'ble Supreme Court held that they are not intended to affect the validity of sale agreements and power of attorney executed in genuine transactions in any way.

Once again, the Hon'ble Supreme Court in *Ramesh Chand (d) Thr. LRs v. Suresh Chand and Anr, (2025 INSC 1059)* observed that a power of attorney is not a sale. A sale involves transfer of all the rights in the property in favour of the transferee, but a power of attorney simply authorises the grantee to do certain acts with respect to the property including if the grantor permits to do certain acts with respect to the property including an authority to sell the property.[8]

The Reason behind using SA/GPA/Will transactions instead of sale deed is to avoid payment of stamp duty and registration charges on deeds of conveyance, to avoid payment of capital gains on transfers, to invest unaccounted for money (black money) and to avoid payment of "unearned increases" due to development authorities, on transfer.[9]

Gift + General Power of Attorney transaction

The law on transfer of gifts is provided under Sections 122 and 123 of the Transfer of Property Act, 1882. A gift is the voluntary transfer of existing moveable or immoveable property made without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.[10]

In Gian Kaur versus Piara Singh and Anr. the Hon'ble High Court of Punjab and Haryana observed that in the instant case the gift deed was not executed by the donor himself, but it was executed by his attorney. The power of attorney granted general powers of alienation such as sale, mortgage, gift, etc. but the PoA did not specifically authorise the attorney to make the gift in favour of donee. The Court emphasised that a gift must be voluntary and emanate from the donor. In this case the donor does not authorize the attorney to make gift specifically in the favour of Gian Kaur. [11]

It means that GPA must expressly mention that the donor has express intention to transfer the property in form of gift to the done.

Several times Hon'ble Courts have consistently held that the power to gift property must be specifically and expressly conferred by the donor.

ANALYSIS

Risk of Transaction based on SA/GPA/wills: GPA is not a legal form of transfer of ownership in a moveable property. The owner of property any time transfer the property to any person other than GPA holder. The owner of the property can do either by way of a sale deed or in form of a fresh GPA in other's name. The SA/GPA/will transactions increased the risk of forgery and cheating.[12]

A GPA is a legal instrument by which the principal delegates authority in commercial, property, and personal transactions to the attorney. However, it does not transfer ownership in immovable property, it only authorises the attorney to act on behalf of the principal.

The GPA is not intended to be used as an instrument of sale, but over the period of time people start using these instruments for the purpose of sale to avoid paying stamp duty, taxes and registration charges. Such practices undermine the very purpose of the statutory enactment. Additionally, avoid paying stamp duty, taxes and registration charges affect source of revenue for the state.

Authentication of POA

That most recently, the Hon'ble Supreme Court in G. Kalawathi Bai (Died), through LRs. Vs G. Shashikala (Died), through LRs, and others Civil Appeal No. 9497-9501 of 2025, examined the issue of authentication of GPA in accordance with sections 32,33,34 and 35 of Registration Act, 1908 ("RA") and has observed that by mere signing of a document on behalf of the principal, a power-of-attorney holder does not lose his status as an agent of that principal and become the 'executant' in his own right. Such an agent would, therefore, continue to be covered by Section 32(c) of RA as he would then present the signed document for registration only as an agent and must necessarily satisfy the requirements of Sections 32(c), 33, 34 and 35 of the Act and the rules framed in that context.

The Hon'ble Court while dealing with the above said case was unable to persuade themselves with the law settled in Rajni Tandon vs. Dulal Ranjan Ghosh Dastidar, whereby it was categorically observed that when a document is executed by an agent for principal in terms of a power of attorney and the same agent signs, appears and presents the said document or admit its execution before the registering officer, it would not be a presentation falling under section 32(c) of the Act and there would be no necessity for 'authentication' of the power of attorney, as required by section 33(1)(a) of RA.
In light of above-stated conflicting interpretations, the matter stands referred to a larger bench for consideration.

Revocability or Irrevocability of GPA
The revocability and irrevocability of a GPA is not provided under the Powers-of-Attorney Act, 1882 whereas the Indian Contract Act, 1872, has the provisions related to termination of agency.

The General rule is that the PoA is terminated by principal revoking his authority unless it is made irrevocable in a manner known to law. One of the examples of irrevocable PoA is under section 202 Indian Contract Act. A PoA is irrevocable where the attorney has himself an interest in the property which forms the subject-matter of the agency.[13]

Conclusion

A GPA is only an instrument of delegation of authority and not a mode of transfer of property. It does not create ownership in immoveable property. It only empowers the attorney to act on behalf of principal. However, over the years, this instrument has been misused to constitute property transactions. Subsequently, the Hon'ble Supreme Court in number of cases, has held that transactions executed through GPA cannot be treated as valid transfers of ownership.

END NOTES

1. The Powers-of-Attorney Act, 1882 Act No. 7 of 1882

2. State of Rajasthan v. Basant Nahata (SCC pp.90 &101, paras 13 &52)

3. The Indian Stamp Act, 1899 Act No. 2 of 1899

4. The Registration Act, 1908 Act No. 16 of 1908

5. Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656

6. Ramesh Chand (d) Thr. LRs v. Suresh Chand and Anr, (2025 INSC 1059)

7. Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2009) 7 SCC 363

8. Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656

9. Anuskha PS, 115-Suraj Lamp & Industries (P) Ltd.(II) v. State of Haryana — Lacking in Law A case comment, 2023 SCC OnLine Blog OpEd

10. Transfer of Property Act 1882, Act No. 4 of 1882

11. Gian Kaur v. Piara Singh, 1986 SCC OnLine P&H 75

12. Government of NCT of Delhi, Revenue Department, FAQ Circular on Ban on Registration of Properties in Lal Dora/Extended Lal Dora Abadi Area, available at: https://revenue.delhi.gov.in/sites/default/files/revenue/generic_multiple_files/faq_circular_bm.pdf (last visited on 11 Sept. 2025).

13. Indian Contract Act, 1872 Act No. 9 of 1872, s. 202

DIGITALIZATION vs DUE PROCESS

Powers of Police examined

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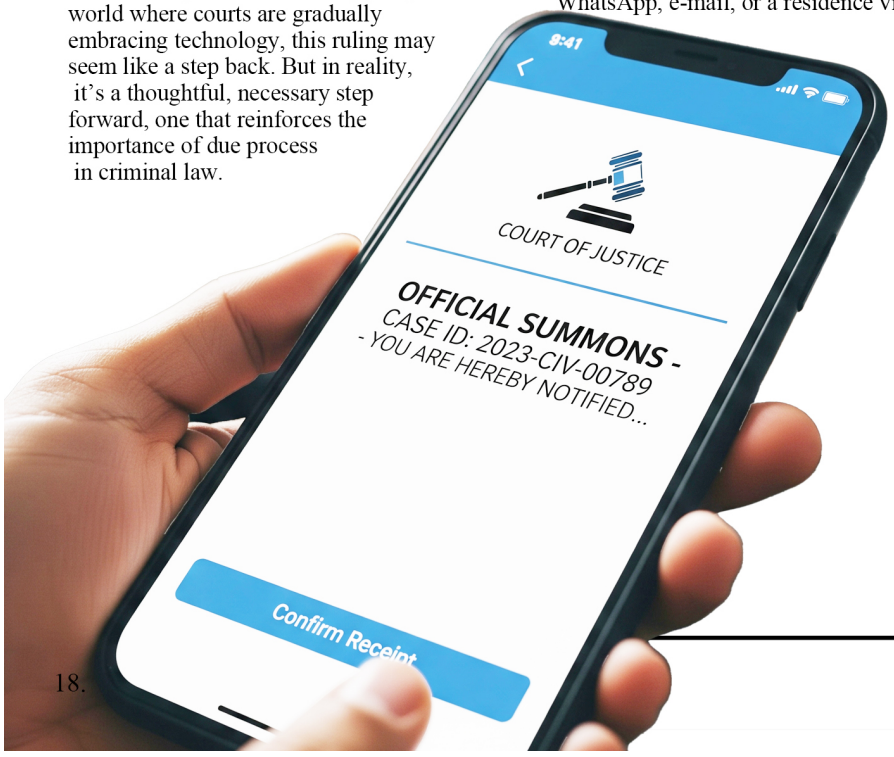
In recent times, the judiciary has stepped in to address instances where the executive has attempted to assert greater control over judicial proceedings. Two particularly significant cases illustrate this intervention: first, when law enforcement sought to serve legal summons through electronic channels, and second, when police departments pursued authorization for officers to provide testimony via audio-video technology from police stations. In both scenarios, law enforcement agencies positioned these initiatives under the banner of digital transformation, advocating that technological integration and digitization would enhance efficiency and streamline judicial operations.

However, a critical distinction exists between leveraging technology to accelerate the delivery of justice and employing it in ways that may compromise the transparency and effectiveness of judicial processes. There is a very thin line between technologies being used for speeding up justice delivery and technology being used to make justice delivery process less transparent and more ineffective.

SUPREME COURT RESTRAINS THE POLICE OFFICIALS FOR THEIR MUMPSIMUS ACTS OF SERVING SUMMONS/NOTICES THROUGH E-MODE

A recent observation by the Supreme Court of India dated 16.07.2025 in *Satender Kumar Antil v. CBI* [1], where the Court made it clear that notices under Section 35 of the BNSS (formerly Section 41A of the Cr.P.C) cannot be served electronically. In an increasingly digital world where courts are gradually embracing technology, this ruling may seem like a step back. But in reality, it's a thoughtful, necessary step forward, one that reinforces the importance of due process in criminal law.



Rakesh Kumar vs Vijayanta Arya (DCP) and others

This issue first came into the notice of the Hon'ble High Court of Delhi wherein the court has laid down the law regarding issuance of notice to the accused persons through electronic mode can be deemed as effective service and holds a constitutional validity. The Hon'ble High Court made an observation that the police officials, are guilty of contempt for arresting the petitioner in violation of the Supreme Court's directions in Arnesh Kumar v. State of Bihar.[2] Despite the offence involving only allegations of criminal breach of trust with a maximum sentence of three years, no notice under Section 41A CrPC was served, rendering the arrest unlawful and a breach of the petitioner's right to personal liberty under the Constitution. The Court observed that such illegal arrest not only humiliates the individual but also damages the reputation and dignity of their family. The court observed that notice through e-mail or WhatsApp is not contemplated as a mode of service under Section 41A of the Cr.P.C. The Court rejected the police officer's claim that the accused was duly intimated through WhatsApp, e-mail, or a residence visit to join the investigation, as no evidence of such visits existed and these methods are not valid under Section 41A Cr.P.C.[3] Proper service requires personal delivery, pasting the notice on the residence, or sending it via Speed Post none of which were followed. The WhatsApp message did not meet legal requirements, and the investigating officer acted in violation of both the prescribed procedure and the Supreme Court's directions in Arnesh Kumar. The said unlawful action violated the petitioner's constitutional right to personal liberty, leading to the police officer being held guilty of contempt of court.[4] The said judgement was later relied upon by the Hon'ble Supreme Court of India in Satender Kumar Antil vs. CBI.

Satender Kumar Antil vs. Central Bureau of Investigation & Anr.

The matter arose when the State of Haryana attempted to justify that the issuance of a notice under section 35 of the BNSS is valid through WhatsApp and the same is permitted under the provisions of BNSS. Section 3(x) of the BNSS allows the use of electronic means for communication, including notices.

Further the DGP Haryana has passed standing order dated 26.01.2024, whereby the police officials were permitted to serve notice under section 41A of CrPC/ section 35 of BNSS in person or through WhatsApp, E-mail, SMS or any other electronic mode.[5] The present case involves the issue where the state of haryana had filed an application to modify the directions passed by the Hon'ble Supreme Court of India in January 2025 "that summons for appearance under Section 41A CrPC/Section 35 BNSS cannot be served through WhatsApp or other electronic means".[6]

The Hon'ble Supreme Court of India while hearing Miscellaneous Application No. 2034/2022 in MA 1849/2021 in SLP (Crl.) No. 5191/2021 in matter titled as 'Satender Kumar Antil Vs. Central Bureau Of Investigation & Anr.' took note of the submissions made by Senior Advocate Siddharth Luthra, who appeared as amicus curiae, asserting that service of notice through electronic means is neither contemplated nor permitted under Section 35 of the BNSS. He argued that the procedure laid down in Chapter VI of the BNSS prescribes personal service, and any attempt to dilute it undermines the statutory intent. Three concerns were flagged by learned amicus curiae i.e. Senior Advocate Siddharth Luthra. The three issues are as follows:

i. Release of Under-trial Prisoners (for short "UTPs") on personal bond, based on verification of AADHAAR Card.

ii. Service of Notice under Section 41-A of the Code of Criminal Procedure, 1973 (for short "CrPC, 1973") and Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS, 2023") is to be made in person, as contemplated under the statutes, and not through WhatsApp or other electronic modes.

iii. Whether sufficient steps have been taken by the High Courts to set in place an "Institutional Monitoring Mechanism" in pursuance of the order dated. 06.08.2024 passed by this court? [7]

The Hon'ble Supreme Court of India while dealing the issue No. 2 has stated in its order dated 21.01.2025 that:

i. All the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. It is made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognized as an alternative or substitute to the mode of service recognized and prescribed under the CrPC, 1973/BNSS, 2023.

ii. All the States/UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 must be issued strictly in accordance with the guidelines issued by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya (DCP) & Ors., 2021 SCC Online Del 5629 and Amandeep Singh Johar v. State (NCT Delhi), 2018 SCC Online Del 13448, both of which were upheld by this Court in Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51.

iii. All the States/UTs must issue an additional Standing Order to their respective Police machinery to issue notices under Section 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 of CrPC, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. [8]

Section 35 of BNSS

While interpreting Section 35 of BNSS, the Supreme Court observed that the provision, while empowering the police to arrest without warrant in certain cases, also contains substantive safeguards to prevent arbitrary arrest. Specifically, Section 35(3) mandates the issuance of a notice directing appearance when arrest is not deemed immediately necessary. The Court clarified that this notice is not a mere procedural formality but a substantive safeguard rooted in Article 21 of the Constitution of India, as non-compliance can potentially result in arrest under Section 35(6) of BNSS. Consequently, the manner of service must reflect the gravity of its implications for personal liberty.

The legislature, in its wisdom, has specifically excluded the service of a notice under Section 35 of the BNSS, 2023 from the ambit of procedures permissible through electronic communication, that have been delineated under Section 530 of the BNSS, 2023.[9]

The Court reaffirmed that personal liberty requires strict compliance with procedural laws, particularly in criminal matters. It held that while electronic means may supplement civil processes (e.g., notice under Order V CPC), they cannot replace formal service in criminal law where non-appearance may result in arrest or coercive action.

A pivotal part of the judgment lies in the Court's interpretation of Section 530 of the BNSS, which allows electronic communication in select stages of criminal proceedings such as trials, inquiries, and appellate processes. Notably, Section 35 is excluded from this list, which the Court interpreted as a conscious legislative omission. The Court held that the specific inclusion of certain procedures and exclusion of others, especially those with liberty consequences, clearly reflects legislative intent to bar electronic service of notices under Section 35. Permitting e-service in such cases would be tantamount to judicially rewriting the statute, a step outside the Court's mandate.[10]

It distinguished between different kinds of legal communication. The summons under Sections 63, 64, and 71 of the BNSS which are issued by courts can be sent electronically because they don't have immediate consequences like arrest. But notices under Section 35, which are issued by the police during investigations, directly affect a person's liberty. It clarified that summons issued by a court are judicial acts, typically enforceable through processes less immediate than arrest. In contrast, a Section 35 notice is an executive action taken during investigation and can lead to arrest upon non-compliance. As such, the procedures applicable to judicial summons cannot be analogously applied to executive notices, especially when the latter may trigger loss of liberty.[11]

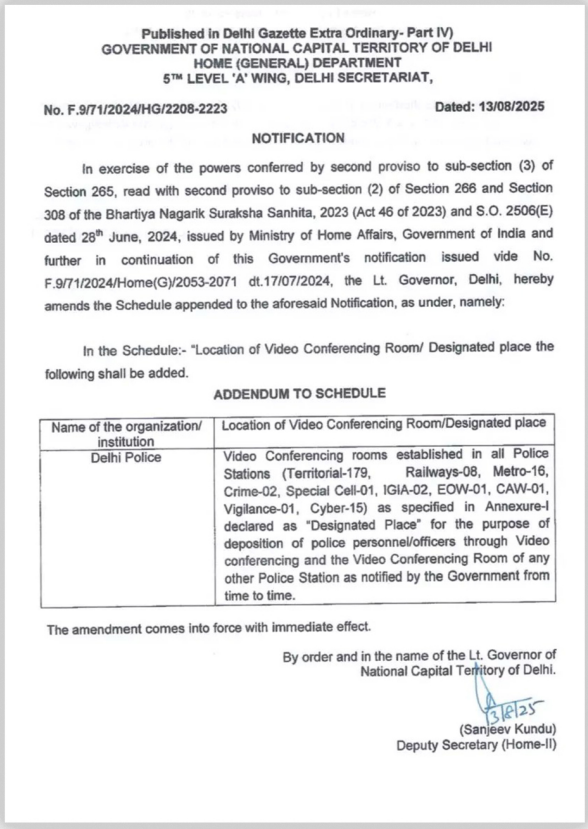
Justice Sundresh and Justice N.K. Singh, who later reiterated this stand, explained that court-issued summons are judicial acts. But police notices are executive actions.[12] So, the same rules can't apply to both. The Court also pointed out that other sections in the BNSS like Section 93 or Section 193 that allow electronic service deal with documents, not people. In other words, the law allows digital communication in non-sensitive situations, but when liberty is on the line, it insists on more robust safeguards. While recognizing that the BNSS does allow electronic service in specific investigative contexts such as the issuance of summons to produce documents under Section 94(1) and submission of final investigation reports under Section 193(3), the Court

emphasized that none of these contexts involve direct consequences on an individual's liberty. These provisions deal with forwarding documents or reports to magistrates or informing informants and victims. Thus, the Court reaffirmed that Section 35 notices do not fall within the same category and remain outside the purview of permissible electronic communication under the BNSS.

In essence, the Court has made it crystal clear; if police officers violate these orders and continue to serve Section 35 notices electronically, it could lead to disciplinary action, legal challenges, or even suppression of the arrest based on defective service.

No absolute ban

The Court also upheld that BNSS, 2023 does not entirely preclude the use of electronic communication by the investigating agency. The Legislature has envisioned the use of electronic communication, during the course of investigation, and upon completion of investigation by the investigating agency, specifically provided for under Sections 94(1) and 193(3) of the BNSS, 2023 respectively.[13] The Section 94 deals with issuance of summons, in an electronic form, to produce a document. The Section 193 deals with the usage of electronic communication for forwarding the report to a Magistrate, upon completion of the investigation, or to inform the progress of the investigation to the informant or victim. None of these procedures have any bearing on the liberty of an individual.[14]



Published in Delhi Gazette Extra Ordinary- Part IV)
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
HOME (GENERAL) DEPARTMENT
5TH LEVEL 'A' WING, DELHI SECRETARIAT,

No. F.9/71/2024/HG/2208-2223 Dated: 13/08/2025

NOTIFICATION

In exercise of the powers conferred by second proviso to sub-section (3) of Section 265, read with second proviso to sub-section (2) of Section 266 and Section 308 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023) and S.O. 2506(E) dated 28th June, 2024, issued by Ministry of Home Affairs, Government of India and further in continuation of this Government's notification issued vide No. F.9/71/2024/Home(G)/2053-2071 dt.17/07/2024, the Lt. Governor, Delhi, hereby amends the Schedule appended to the aforesaid Notification, as under, namely:

In the Schedule:- "Location of Video Conferencing Room/ Designated place the following shall be added.

ADDENDUM TO SCHEDULE

Name of the organization/ institution	Location of Video Conferencing Room/Designated place
Delhi Police	Video Conferencing rooms established in all Police Stations (Territorial-179, Railways-08, Metro-16, Crime-02, Special Cell-01, IGIA-02, EOW-01, CAW-01, Vigilance-01, Cyber-15) as specified in Annexure-I declared as "Designated Place" for the purpose of deposition of police personnel/officers through Video conferencing and the Video Conferencing Room of any other Police Station as notified by the Government from time to time.

The amendment comes into force with immediate effect.

By order and in the name of the Lt. Governor of National Capital Territory of Delhi.

13/8/25

(Sanjeev Kundu)
Deputy Secretary (Home-II)

The Supreme Court's ruling reasserts a foundational tenet of Indian criminal law: procedure is not a mere formality, but a shield for liberty. While India embraces digital transformation in judicial infrastructure, this judgment upholds that technology cannot compromise the integrity of personal liberty guaranteed under Article 21 of the Constitution of India.

Notification of Lieutenant Governor

On August 13, 2025, the Lieutenant Governor (LG) of Delhi issued a notification that has triggered nation-wide legal and constitutional debate. The notification declares all 226 police stations in the National Capital Territory (NCT) as "designated places" where police personnel can give evidence and depose before courts through video conferencing. It relies on the second proviso to Section 265(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which allows witnesses, to testify using audio-video electronic means from such notified places. While the BNSS permits the use of technology for recording evidence, many in the legal profession believe that allowing police officers to testify from inside their own stations undermines the principles of a fair trial, judicial independence, and the constitutional protections under Article 21 of the Constitution of India.

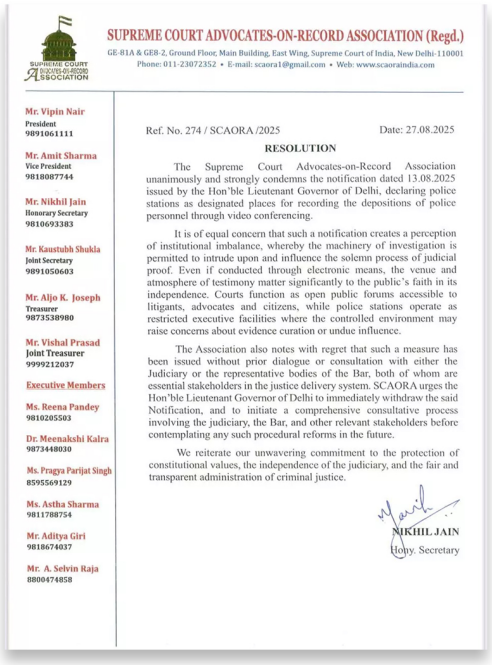
The controversy centres on how Section 265(3) of the BNSS and its second proviso should be understood. This provision allows witnesses to be examined by audio-video means at a designated place notified by the State Government. One may argue that the legislature's intention was to make trials more efficient in rare or special circumstances, not to create a system that might tilt proceedings in favour of the prosecution. But police stations being under the control of the executive are inappropriate venues for judicial processes because they increase the possibility of undue influence, coaching, and manipulation of testimony.

In response, the legal community has adopted multiple forms of protest ranging from strikes to symbolic actions like wearing black ribbons in court.[15] The Coordination Committee of the Delhi District Court Bar Associations made representations to both the Chief Minister and the Lieutenant Governor on August 18 and 20, 2025 and later called for a strike from August 21 to 27, 2025.[16] The Delhi High Court Bar Association (DHCBA) passed a resolution on August 22, 2025 denouncing the notification and warning that its enforcement would "jeopardise the trial process and adversely impact trial outcomes."[17] On the same day, the Supreme Court Bar Association (SCBA), led by President Vikas Singh and its Executive Committee, passed a resolution calling the notification arbitrary, unlawful, and against natural justice, and urged its immediate withdrawal. [18]

Similarly, on August 27, the Supreme Court Advocates on Record Association (SCAORA), through its Secretary Advocate Nikhil Jain, warned that the notification could create an institutional imbalance between the judiciary and investigative agencies. SCAORA highlighted that while courts are open to the public and allow transparency, police stations are restricted executive offices where coercion, subtle influence, or rehearsed testimonies are far more likely. The association expressed disappointment that neither the judiciary nor the Bar was consulted before implementing such a significant procedural change.

The Bar Council of India (BCI), the statutory body under the Advocates Act, 1961, also opposed the notification. In a letter to the Lieutenant Governor dated 25.08.2025, the BCI said that although technology can help speed up trials, it cannot replace the importance of recording evidence physically in an open court. The Council identified three main risks: (i) witness testimonies given from police stations may lose credibility and spontaneity; (ii) defense lawyers may find it harder to cross-examine witnesses, challenge documents, and assess demeanor through video links; and (iii) presiding judges may have less control over the process, increasing the likelihood of procedural errors.[19]

This legal battle connects to broader constitutional principles such as transparency, accountability, and the separation of powers. Article 21, which guarantees the right to life and personal liberty, has been interpreted by the Supreme Court in cases such as *Maneka Gandhi v. Union of India*[20] to include the right to a fair trial. By allowing police officers to testify from their own offices, violates this right by creating conditions that favor the prosecution and limit the accused's ability to effectively challenge evidence.



SUPREME COURT ADVOCATES-ON-RECORD ASSOCIATION (Regd.)

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Ref. No. 274 / SCAORA /2025 Date: 27.08.2025

RESOLUTION

The Supreme Court Advocates-on-Record Association unanimously and strongly condemns the notification dated 13.08.2025 issued by the Hon'ble Lieutenant Governor of Delhi, declaring police stations as designated places for recording the depositions of police personnel through video conferencing.

It is of equal concern that such a notification creates a perception of institutional imbalance, whereby the machinery of investigation is permitted to intrude upon and influence the solemn process of judicial proof. Even if conducted through electronic means, the venue and atmosphere of testimony matter significantly to the public's faith in its independence. Courts function as open public forums accessible to litigants, advocates and citizens, while police stations operate as restricted executive facilities where the controlled environment may raise concerns about evidence curation or undue influence.

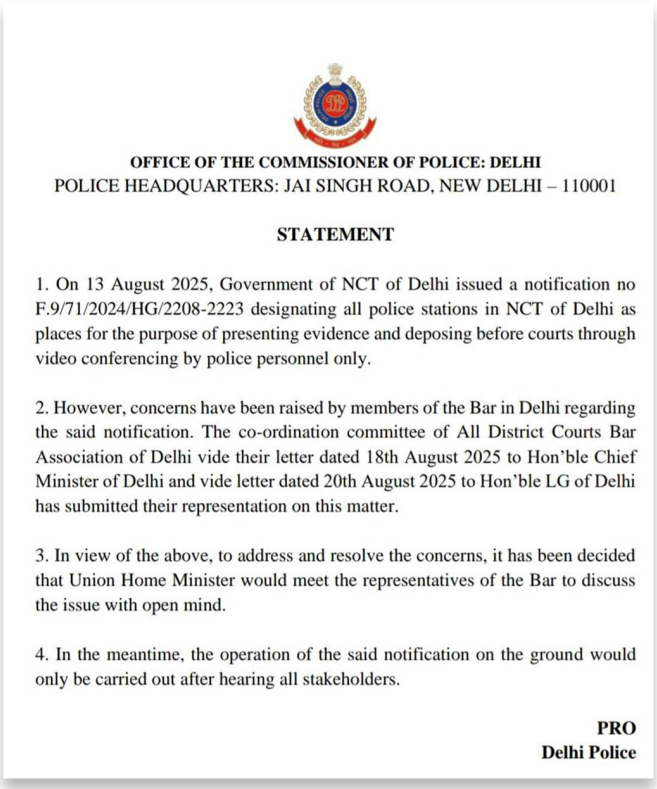
The Association also notes with regret that such a measure has been issued without prior dialogue or consultation with either the Judiciary or the representative bodies of the Bar, both of whom are essential stakeholders in the justice delivery system. SCAORA urges the Hon'ble Lieutenant Governor of Delhi to immediately withdraw the said Notification, and to initiate a comprehensive consultative process involving the judiciary, the Bar, and other relevant stakeholders before contemplating any such procedural reforms in the future.

We reiterate our unwavering commitment to the protection of constitutional values, the independence of the judiciary, and the fair and transparent administration of criminal justice.

NIKHIL JAIN
Hony. Secretary

Thus, the debate over the BNSS notification is part of a larger question: how much can the State rely on technology to make trials faster without compromising rights of people? Supporters argue that letting police officers testify remotely saves time, reduces delays, and allows better use of police resources. Opponents argue that the primary aim of criminal law is fairness, not speed, and any reform that risks harming the rights of the accused must face strict constitutional scrutiny.

Section 308 clearly states that evidence must be taken in the presence of the accused, and where that is not possible, it can be done in the presence of the defense lawyer, even through video conferencing at a designated place notified by the State Government. However, whether such a "designated place" can include the offices of prosecution witnesses and whether this satisfies constitutional standards of fairness is the question before the court.



OFFICE OF THE COMMISSIONER OF POLICE: DELHI
POLICE HEADQUARTERS: JAI SINGH ROAD, NEW DELHI – 110001

STATEMENT

1. On 13 August 2025, Government of NCT of Delhi issued a notification no F.9/71/2024/HG/2208-2223 designating all police stations in NCT of Delhi as places for the purpose of presenting evidence and deposing before courts through video conferencing by police personnel only.

2. However, concerns have been raised by members of the Bar in Delhi regarding the said notification. The co-ordination committee of All District Courts Bar Association of Delhi vide their letter dated 18th August 2025 to Hon'ble Chief Minister of Delhi and vide letter dated 20th August 2025 to Hon'ble LG of Delhi has submitted their representation on this matter.

3. In view of the above, to address and resolve the concerns, it has been decided that Union Home Minister would meet the representatives of the Bar to discuss the issue with open mind.

4. In the meantime, the operation of the said notification on the ground would only be carried out after hearing all stakeholders.

PRO
Delhi Police

Following its issuance, the Delhi Police tasked with implementing the notification stated that the measure would not be enforced immediately. They clarified that its operation would remain on hold until discussions with key stakeholders were completed. According to the police, the Union Home Minister planned to meet representatives of the legal fraternity to hear their concerns, and only after such consultations would the final implementation be decided.

Further on 04.09.2025, the Office of the Commissioner of Police issued a statement wherein it further upheld its standing that police witnesses can be deposed audio-video electronic means at "designated places' which includes police stations. It supported its stand by stating that this arrangement will facilitate a smooth and balanced implementation of the newly introduced progressive provisions for virtual examination in BNSS. It stated that the circular dated 04.09.2025 by the police commissioner is contrary to the assurance given by the Union Home Minister.

In retaliation to this, on the same date (04.09.2025), the co-ordination committee, All District Courts Bar Association of Delhi issued a statement. In its statement it informed that representatives of the Coordination Committee along with the Bar Council of Delhi had met Union Minister on 02.09.2025 to apprise the resentment amongst the legal fraternity of Delhi against the Notification dated 13.08.2025. In its discussion it was assured by the Union Home Minister that an official correspondence/circular shall be issued to clarify examination of police officials shall not take place from police stations.

Finally, on 08.09.2025, The Commissioner of Police vide its circular no. 9952-71/CP Sectt, modified the earlier circular dated 04.09.2025 and directed that in all criminal trials, all police officers/ personnel shall physically appear before the Hon'ble Courts for the purpose of deposition/evidence. Hence, as of now the dispute over due process is settled creating a balance between technological innovation in criminal trials and the enduring constitutional promise of fairness and justice.

DATE	EVENT
AUGUST 13, 2025	Notification issued by the Lieutenant Governor (LG) of Delhi designating 226 police stations as "designated places" for recording testimonies via video conferencing under Section 265(3) BNSS, 2023.
AUGUST 18, 2025	Representation submitted by the Coordination Committee of Delhi District Court Bar Associations opposing the notification.
AUGUST 20, 2025	Follow-up representation submitted by the Coordination Committee of Delhi District Court Bar Associations to authorities.
AUGUST 21–27, 2025	Strike held in all district courts of Delhi.
AUGUST 22, 2025	DHCBA passed a resolution condemning the notification; SCBA passed a resolution calling it arbitrary and against natural justice.
AUGUST 27, 2025	SCAORA issued a warning about risks of allowing testimonies from police stations.
SEPTEMBER 2, 2025	Meeting held between Coordination Committee, Bar Council of Delhi, and Union Home Minister; assurance given to issue clarification against police station depositions.
SEPTEMBER 4, 2025	Commissioner of Police issued a circular bearing no. 9860-72/CP Sectt/PHQ supporting the notification of 13.08.2025 and allowing police stations as designated places.
SEPTEMBER 4, 2025	Coordination Committee of All District Courts Bar Association of Delhi issued a statement criticizing the circular and cited earlier assurance from the Union Home Minister.
SEPTEMBER 8, 2025	The Commissioner of Police vide its circular no. 9952-71/CP Sectt, modified the earlier circular dated 04.09.2025 and directed that in all criminal trials, all police officers/ personnel shall physically appear before the Hon'ble Courts for the purpose of deposition/evidence.

Public confidence in the independence of the process is as important as the safeguards themselves, especially in criminal trials that affect personal liberty and the credibility of law enforcement. Testimonies given from within police stations may appear biased or influenced, even if the process is conducted honestly, which could damage public trust.

The August 13, 2025 notification by the Delhi Lieutenant Governor is a major procedural change surrounded by constitutional and legal challenges.

While the BNSS promotes the use of technology in criminal justice, but this must be balanced with justice, adversarial fairness, and judicial oversight. The strong objections from multiple Bar associations, the concerns raised by the Bar Council of India, and the pending court cases show that the measure, as it stands, may not pass constitutional scrutiny. The Delhi High Court's decision in these PILs may set an important precedent on how far technology can reshape criminal trials while respecting the non-negotiable right to a fair trial under Article 21 of the Constitution of India.

The Supreme Court's decision in Satender Kumar Antil v. CBI[21] also sheds light on this tension between digital convenience and constitutional protections. In that case, the Haryana police used WhatsApp and email to issue Section 35 BNSS notices, claiming the law allowed such electronic modes. The Supreme Court rejected this approach, ruling that notices which can lead to arrest cannot be sent through such channels.

The Court pointed out that while Sections 94(1) and 193(3) of the BNSS permit electronic communication for specific purposes like document submission and investigation reports, Section 35 is different because ignoring such notice can result in arrest.

This distinction is vital when considering the Delhi LG's notification: although video testimony can make trials faster and more accessible, it must not override key safeguards in criminal procedure and the accused's rights. The judgment reinforces that innovation in criminal law is welcome, but it must come with strong legal protections to prevent executive overreach and avoid creating a parallel, less accountable system of justice.

The judicial interventions examined in these cases underscore a fundamental principle that must guide India's legal transformation in the digital age: technological advancement cannot come at the expense of constitutional safeguards and procedural integrity. The Supreme Court's decisive stance in Satender Kumar Antil v. CBI against electronic service of Section 35 notices, coupled with the ongoing constitutional challenge to Delhi's police station testimony notification, reflects the judiciary's commitment to preserving the delicate balance between efficiency and fairness in criminal proceedings. While the embrace of digital tools in the justice system represents a progressive step toward modernization, these landmark rulings serve as a critical reminder that innovation must be tempered by unwavering respect for due process and the fundamental rights enshrined in Article 21 of the Constitution.

END NOTES

1. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr., SLP (Crl) 5191/2021*

2. *Arnesh Kumar v. State of Bihar (2014) 8 SCC 273*

3. *Rakesh Kumar vs Vijayanta Arya (DCP) and Others Cont. Cas (C) 480/2020, CM Appl 25054/2020 (Oct 28, 2021), Para 12*

4. *Rakesh Kumar vs Vijayanta Arya (DCP) and Others Cont. Cas (C) 480/2020, CM Appl 25054/2020 (Oct 28, 2021), Para 12-13*

5. *Dgp notice*

6. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 21.01.2025)*

7. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 21.01.2025)*

8. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 21.01.2025)*

9. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021, Para 27-30 (Order dated 16.07.2025)*

10. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 16.07.2025), Para 16-17*

11. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 16.07.2025), Para 31-39*

12. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 16.07.2025), Para 39*

13. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 16.07.2025), Para 40*

14. *Satender Kumar Antil vs. Central Bureau of Investigation & Anr. MA 2034/2022 IN MA 1849/2021 IN SLP (Crl) 5191/2021 (Order dated 16.07.2025), Para 42*

15. *https://www.hindustantimes.com/india-news/delhi-hc-bar-urges-members-to-wear-black-ribbons-to-protest-lg-s-video-testimony-order-101756279796830.html*

16. *https://www.hindustantimes.com/cities/delhi-news/delhi-lawyers-call-off-strike-as-lg-s-video-order-put-on-hold-101756403665043.html*

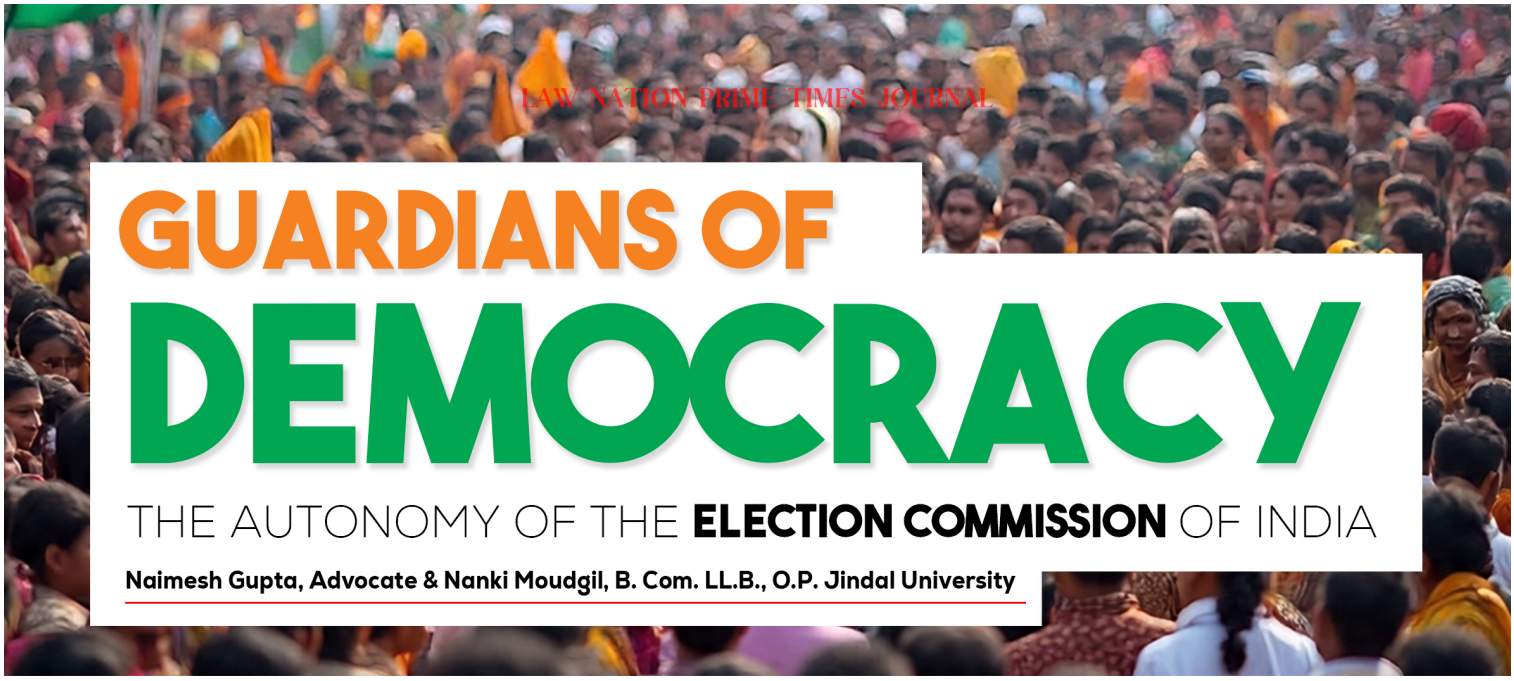
17. *https://www.livelaw.in/high-court/delhi-high-court/dhcba-condemns-delhi-lg-notification-allowing-recording-of-police-officials-evidence-from-police-stations-301752*

18. *SCBA Slams Delhi LG's Notification Allowing Police Officers To Depose Virtually From Police Stations available at https://www.thelawadvice.com/news/scba-slams-delhi-lg%E2%80%99s-notification-allowing-police-officers-to-depose-virtually-from-police-stations*

19. *https://images.assettype.com/barandbench/2025-08-25/cm5yxavx/BCI_Letter_to_Lieutenant_Governor.pdf*

20. *Maneka Gandhi v. Union of India AIR 1978 SC 597*

21. *Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51*



GUARDIANS OF DEMOCRACY

THE AUTONOMY OF THE **ELECTION COMMISSION** OF INDIA

Naimesh Gupta, Advocate & Nanki Moudgil, B. Com. LL.B., O.P. Jindal University

India is a Sovereign, Socialist, Secular, Democratic Republic and the largest democracy in the World. The Election Commission of India ("ECI") is one of the most important constitutional bodies that plays a vital role in our democracy. Every time the country conduct election, it is the ECI that makes sure the election process is fair, impartial, and unbiassed.

The Election Commission was established in accordance with article 324 of Constitution of India, 1950. The Commission celebrated its Golden Jubilee in 2001 and in 2026, the ECI will celebrate its Diamond Jubilee, marking 75 years since its establishment on January 25, 1950.

POLITICAL CONTROVERSY/ BACKLASH

Recently, the Election Commission of India came into the limelight due to the Special Intensive Revision ("SIR") of electoral rolls in Bihar. On August 11, 2025, Congress leaders Rahul Gandhi, Priyanka Gandhi Vadra, and several other Members of Parliament took out a vociferous march from Parliament House with the aim of reaching the Election Commission of India's headquarters to submit a memorandum against the SIR of the Bihar electoral rolls. But they were detained by the Police barricades on Parliament Street.

Subsequently, on 14 August, the Hon'ble Supreme Court directed the Election Commission of India to displayed on the websites of the District Election officers, district-wise list of approximately 65,00,000 voters who have been omitted from the draft electoral roll published after the SIR drive in Bihar. The Court also stated that the list discloses the reasons for deletion. The Hon'ble Supreme Court observed that disclosing the list as well as the reasons will improve "voter confidence" in the institution.

Further, on 17 August, 2025 during the press conference, the election commission dismissed the opposition's claims of biased approach towards any political party and said that there was no ruling side or opposition for us. The EC added that as per the Constitution of India, every citizen of India who has attained the age of 18 years must become a voter and must also vote. For Election Commission all are equal, no matter who belongs to which political party.

In response, the Opposition Parties released a joint statement on platform X that

> *"The CEO gave no clarification or comment on the SC's order of August 14, 2025……ECI has completely failed in discharging its constitutional duty of ensuring a free and fair electoral system in the country. It has now become clear that the ECI is not being led by officers who can ensure a level playing field. To the contrary, it is now clear that those who lead the ECI divert and thwart any attempt at a meaningful inquiry into voter fraud and instead opt to intimidate those who challenge the ruling party. This is a serious indictment."*

Thereafter, another election case come into conflict i.e Mohit Kumar v. Kuldeep Singh & ors. in Civil Appeal No. 10487 of 2025, the controversy arose from the election of Sarpanch of Gram Panchayat, Buana Lakhu village, Panipat, Haryana, where Kuldeep Singh was declared elected. Mohit Kumar challenged the result before the Election Tribunal. Subsequently, matter reached to the Hon'ble Supreme Court. Hon'ble Supreme Court ordered for recount of votes, under supervision of Senior Judicial official of Hon'ble Supreme Court. The recount revealed that Mohit Kumar had secured 1051 votes against 1000 votes polled by Kuldeep Singh. The Hon'ble Supreme Court appointed Mohit Kumar as Sarpanch.

The Hon'ble Supreme Court interventions reflects that there is lack of transparency in the elections. These cases brought this issue in the attention but there are number of similar cases across the country which silently compromising the true meaning of democracy.

LEGAL PROVISIONS RELATED TO ECI

ECI is a permanent Constitutional Body established on January 25, 1950. Every year on January 25, the National Voters' Day has been celebrated to mark the foundation day of the Election Commission of India. The main purpose of the National voters' day is to encourage, facilitate, and maximize voter enrolment.

> *"National Voters' Day is an occasion to appreciate the remarkable contribution of the EC to strengthen our democratic fabric and ensure smooth conduct of elections. This is also a day to spread awareness on the need of ensuring voter registration, particularly among the youth."*
>
> *- Prime Minister Narendra Modi*

Article 324 of the Constitution of India grants the ECI the superintendence, direction, and control of the entire process of conducting elections to the Parliament, the Legislatures of every State, and to the offices of the President and Vice-President of India.

The extract of Article 324 is produced herewith for ease and reference

> 324. Superintendence, direction and control of elections to be vested in an Election Commission.—
>
> (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
>
> (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time-to-time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
>
> (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.
>
> (4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).
>
> (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:
> Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:
> Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
>
> (6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

The Representation of the People Act, 1951, ("RP Act") passed by Parliament with an objective to regulate the conduct of elections to Parliament and State Legislatures, prescribe qualifications and disqualifications of members, define corrupt practices and other offences, and provide dispute resolution. RP Act, was passed under Article 327 of the Constitution. The act provides detailed provisions in all matters and all stages connected with elections to the various Legislatures in this country.

RP Act is divided into 11 parts, and 171 sections. Part I deals with 'Preliminary', Part II deals with 'the qualifications and disqualifications for membership,'' Part III deals with the 'notification of General Elections', Part IV provides for the 'administrative machinery for the conduct of elections', Part IV A Provides 'Registration of Political Parties', and Part V makes provisions for the 'conduct of elections' which further deals with matter regarding nomination of candidates, presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, withdrawal of candidature, General Procedure at Elections, the Poll, counting of votes, Publication of Results, etc. Part VA deals with 'free supply of certain material to candidates of recognised political parties.' Part VI deals with 'disputes regarding elections' and provides for the manner of presentation of election petitions to High Court, the trial of election petitions, withdrawal and Abetment of Election Petitions and Appeals. Part VII provides the provisions to deal with 'corrupt Practices and Electoral offences.' Part VIII deals with Powers of Election Commission in connection with inquires as to disqualifications of Members. Part IX deals with Bye-Elections and Part X and XI deals with 'Miscellaneous' and 'General' provisions respectively.

THE FRAMEWORK OF THE COMMISSION

Originally the commission had only a Chief Election Commissioner. It currently consists of Chief Election Commissioner and two Election Commissioners. For the first time, two additional Commissioners were appointed on 16th October 1989 but they only serve till 1st January 1990. Subsequently, in 1993 two additional Election Commissioners were appointed. Since then, the concept of multi-member Commission has been started.

The Commission has a separate Secretariat in New Delhi, consisting around 550 officials, in a hierarchical set up. Five or Six Deputy Election Commissioners and Director Generals who are the senior officers in the Secretariat assist the Commission.

At the state level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State.

At the district and constituency levels, the District Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of functionaries, perform election work. They all perform their functions relating to elections in addition to their other responsibilities. During election time, however, they are available to the Commission, more or less, on a full-time basis.

INDEPENDENCE OF ECI

In the landmark case Anoop Baranwal v. Union of India (2023), the counsels submitted that there is a lacuna in the matter of appointment under Article 324. Of the twelve categories of unelected Constitutional Authorities, it is only the Election Commission and the National Commission for Scheduled Castes, where qualifications and eligibility are not laid down in the Constitution or the statute.
Further, he elaborated that the law prevailing in other South Asian countries and in the United Kingdom, it is contended that clear qualification, as also eligibility conditions, have been put in place. Mandatory tenures are made available. The removal process, which is uniform, is rigorous. It is contended that there has been a sudden change after 2001, in the matter of appointing Chief Election Commissioners. Successive Governments have decided to select increasingly older candidates. This has resulted in casting a shadow on the much-needed independence, apart from curtailing their tenure. Inaction on the part of the Election Commission even in the face of alarming increase of criminals in public life, must guide this, Court.


Source : eci.gov.in

On the basis of submission of both the parties the Hon'ble Supreme Court directed that

> ***"Until Parliament makes a law in consonance with Article 324(2) of the Constitution, the following guidelines shall be in effect:***
>
> ***We declare that the appointment of the Chief Election Commissioner and the Election Commissioners shall be made on the recommendations made by a three-member Committee comprising of the Prime Minister, Leader of the Opposition of the Lok Sabha and in case no Leader of Opposition is available, the Leader of the largest opposition party in the Lok Sabha in terms of numerical strength and the Chief Justice of India."***

LEGISLATIVE ENACTMENT: 2023 ACT

In December 2023, Parliament enacted the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, ("Act") that replaces the old Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. The objective of new act is to regulate the appointment, conditions of service and term of office of the Chief Election Commissioner and other Election Commissioners, the procedure for transaction of business by the Election Commission and for matters connected therewith or incidental thereto. The Act deals with appointment and term, salary, Allowances and other conditions of chief election commission and other election commissioners.

ANALYSIS

The Hon'ble Supreme Court in Anoop Baranwal v. Union of India (2023) held that, to protect the independence of the Election Commission, appointments must be made by a three members committee of the Prime Minister, Leader of Opposition, and the Chief Justice of India (CJI) until Parliament enacts a law. The Court stressed that the CJI's presence was important to balance executive dominance. However, in the Chief Election Commissioner and Other Election Commissioners Act, 2023, The Chief Election Commissioner and other Election Commissioners shall be appointed by the President on the recommendation of a Selection Committee consisting of –
(a) the Prime Minister—Chairperson;
(b) the Leader of Opposition in the House of the People—Member;
(c) a Union Cabinet Minister to be nominated by the Prime Minister—Member.
This gives the executive majority. Thus, while the Act codifies an appointment process, it contradicts the spirit of Anoop Baranwal by reducing judicial involvement, raising fears of undermining the Election Commission's autonomy.

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FATHERHOOD BEYOND ACCESS:

RETHINKING CUSTODY RIGHTS

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The Guardians and Wards Act, 1890 stands as a broad secular law that comprehensively covers custody matters across all communities in India, functioning as the foundational framework that works in conjunction with various personal laws including the Hindu Minority and Guardianship Act, 1956, and the intricate rules of Muslim law governing *hizanat*[1] . This legislative architecture was designed with the noble intention of creating a unified approach to child welfare, yet its practical implementation reveals troubling disparities that undermine its core objectives. The "best interests of the child" principle, as meticulously established under Section 17 of the GWA, serves as the primary criterion underpinning all custody-related regulations, mandating that courts consider multiple factors including the age, sex, and religion of the minor, alongside the character, capacity, and proximity of the proposed guardian to the child.[2]

In practice, this ostensibly neutral criterion almost invariably favours mothers as custodial parents, while systematically relegating fathers to peripheral roles characterized by limited, often symbolic visitation arrangements. This pattern represents more than mere judicial preference; it reflects a fundamental structural bias that permeates the entire family law system. Under the Hindu Minority and Guardianship Act, 1956, while Section 6(a) explicitly designates the father as the natural guardian of a Hindu minor boy or unmarried girl, followed sequentially by the mother, the practical application reveals that custody of children under five years ordinarily remains with the mother, creating an immediate exception that often becomes the rule rather than the exception .[3]

The concept of child custody has undergone a fundamental philosophical transformation, evolving from being perceived as a "right of the parent" to being recognized as the "right of the child," which now forms the constitutional and legal foundation upon which all custody decisions should theoretically be made[4]. The Supreme Court of India has consistently and emphatically upheld that the welfare and safekeeping of the child constitutes the paramount consideration in custody determinations, thereby rendering traditional preferential rights legally irrelevant. However, this evolution in legal philosophy has not translated into corresponding changes in practical implementation, creating a troubling gap between constitutional principles and ground-level reality.

Landmark judicial decisions have attempted to address these inconsistencies with varying degrees of success. The pivotal case of Gita Hariharan v. Reserve Bank of India (1999) the Supreme Court courageously clarified that the word "after" in Section 6(a) of the HMGA should not be interpreted narrowly to mean "after the lifetime" of the father, but could encompass his "absence" due to various circumstances including temporary unavailability, demonstrated apathy towards the child, or incapacity due to illness or other impediments[5]. This interpretation represented a significant step toward gender equality in guardianship rights, yet its practical implementation has remained inconsistent across different jurisdictions.

The historic Saraswati Shripad Ved v. Shripad Vasanji Ved (1941) case established a fundamental principle that continues to resonate in modern family courts: "the paramount consideration is the best interest and welfare of the child rather than the rights of the parents."[6] In this particular case, the Bombay High Court emphasized that a child of tender age requires maternal care and affection that cannot be adequately substituted by any other arrangement. While this decision was grounded in the social realities of its time, its continued application in contemporary contexts raises questions about whether such presumptions remain valid in light of evolving family structures and parenting capabilities.

The Reality of Symbolic Visitation

Indian courts have consistently affirmed the fundamental right of children to maintain meaningful contact with both parents, yet the enforcement mechanisms designed to protect this right remain woefully inadequate and systematically undermined by procedural deficiencies. The GWA and various personal laws typically include provisions for "visitation rights," but these arrangements have evolved into largely symbolic gestures, often limited to an hour or two every two weeks, frequently conducted in sterile court premises rather than natural family environments that bear little resemblance to meaningful shared parenting arrangements that would truly serve children's developmental needs.

Recent legal precedents have attempted to address these shortcomings with varying degrees of success. The Roxann Sharma v. Arun Sharma decision represented a significant step forward when the court explicitly clarified that custody determinations should be based strictly and exclusively on the child's needs and developmental requirements rather than traditional parental claims or societal expectations[7]. Similarly, the Sheoli Hati v. Somnath Das[8] decision emphasized the critical importance of structured, scheduled visitation arrangements that

provide predictability and security for children while ensuring meaningful contact with both parents.

The Supreme Court's decision in *Gaurav Nagpal v. Sumedha Nagpal* [9] established another crucial precedent by holding that fathers should not be arbitrarily deprived of visitation rights even in circumstances where primary custody is granted to mothers. This decision recognized that the roles of custodial and non-custodial parents are complementary rather than competitive, and that children benefit from maintaining strong relationships with both parents.

Despite these progressive legal pronouncements, enforcement mechanisms remain virtually non-existent across most jurisdictions. When a parent, typically the custodial mother, fails to comply with court-ordered visitation schedules, contempt charges are rarely filed, and when they are initiated, they seldom result in meaningful consequences that would deter future non-compliance. This systemic failure creates a legal environment where court orders become merely advisory rather than binding, fundamentally undermining the rule of law and the authority of the judicial system itself.

This enforcement deficit has created an untenable situation where fathers' access to their children depends primarily on the goodwill and cooperation of custodial mothers rather than on legal protections and constitutional rights. Such dependency relationships are inherently unstable and subject to manipulation, creating environments where children become unwitting pawns in adult conflicts. The practical consequences of this enforcement failure extend beyond individual families to undermine public confidence in the justice system.

Parental Alienation and Its Devastating Consequences

Parental alienation represents one of the most insidious and psychologically damaging phenomena in contemporary custody disputes, where one parent, typically the custodial parent, systematically manipulates and conditions the child to develop unfounded negative attitudes, fear, and rejection toward the other parent. This phenomenon has increasingly emerged as a critical concern in custody battles across India, yet the legal system's response has been inadequate and inconsistent. The Supreme Court's recognition of this issue in Vivek Singh v. Romani Singh (2017) marked a significant milestone when the court characterized this behavior as "mental poisoning" and warned of its profound long-term developmental consequences for children .[10]

The psychological research documenting the impacts of parental alienation presents a disturbing picture of long-term damage to children's emotional and social development. Children who are systematically deprived of secure, stable relationships with both parents exhibit significantly elevated rates of anxiety disorders, clinical depression, and profound identity confusion that can persist well into adulthood. These psychological injuries are not merely temporary disruptions but often represent fundamental alterations to the child's capacity for forming healthy relationships and maintaining emotional stability throughout their lives.
The impact on alienated fathers is equally devastating. Fathers who are systematically excluded from their children's lives through alienation tactics experience profound isolation, complicated grief, and significantly elevated rates of clinical depression that often requires professional intervention. Empirical data reveals the stark reality of this crisis: only approximately 25% of men with court-ordered visitation rights can actually exercise these rights in any meaningful way, with this percentage dropping even further for children under ten years of age.

Weak enforcement mechanisms significantly exacerbate the problem of parental alienation by creating environments where alienating behaviors are effectively rewarded rather than discouraged. When custodial parents realize that they can violate court orders without facing meaningful consequences, they are incentivized to continue and escalate alienating behaviors. This creates a vicious cycle where alienation becomes progressively more severe over time, making remediation increasingly difficult and eventually impossible.

Religious and Community Specific Legal Frameworks

The complex mosaic of Indian family law encompasses multiple religious and community-specific legal frameworks, each with distinct provisions governing custody and guardianship arrangements. Under Hindu law, the framework established by the Hindu Minority and Guardianship Act, 1956, creates a hierarchical system where Section 6 designates the father as the natural guardian for minor boys and unmarried girls, with the mother occupying the secondary position in this legal hierarchy. However, this apparently straightforward provision contains significant exceptions and qualifications that fundamentally alter its practical application.

The most significant exception relates to children under five years of age, for whom custody ordinarily remains with the mother regardless of the general guardianship provisions.[15] This exception, initially conceived as a recognition of young children's particular needs for maternal care, has been expanded and interpreted broadly by courts, often extending well beyond the specified age limit. Section 13 of the same Act mandates that the welfare and best interests of the minor shall be of paramount consideration in all guardianship decisions, providing courts with broad discretionary powers that can override the statutory hierarchy when deemed necessary[11].

Islamic law presents a different but equally complex framework through its provisions governing hizanat or custody arrangements. The two major schools of Islamic jurisprudence applied in India, Shia and Hanafi, have developed distinct approaches to custody that reflect different theological and practical considerations. Under Shia law, mothers retain custody until sons reach two years

of age and daughters reach seven years, while Hanafi law extends maternal custody until sons reach seven years and daughters attain puberty[12].

Parsi and Christian communities operate under separate legal frameworks that provide courts with broad discretionary powers in custody matters. Section 49 of The Parsi Marriage and Divorce Act, 1936, and Section 41 of The Indian Divorce Act, 1869, authorize courts to issue interim orders regarding custody, maintenance, and education of minor children, with the fundamental guiding principle being the child's best interests and welfare .[13] These provisions provide greater flexibility than some other religious frameworks but also create greater uncertainty due to their reliance on judicial discretion rather than specific statutory guidelines.

The multiplicity of legal frameworks creates additional complications for interfaith marriages and families that span different religious communities. When parents belong to different religious communities, courts must determine which legal framework applies, often leading to complex jurisdictional disputes that can delay proceedings for years. The interaction between secular and religious legal frameworks creates another layer of complexity that affects custody proceedings, with the Guardians and Wards Act, 1890, serving as the overarching secular framework that applies to all communities while interacting inconsistently with personal laws.

Marginalization of fathers in custody proceedings

Recent comprehensive research conducted by the Ekam Nyaay Foundation has provided stark empirical validation of the systemic failures inherent in India's custody framework, revealing disturbing patterns that corroborate decades of anecdotal evidence regarding the marginalization of fathers in custody proceedings. The study, conducted over two months and collecting data from across the country, found that only 25% of fathers caught in matrimonial disputes were granted visitation rights by courts to meet their children. Even more troubling, a mere 26.9% of respondents were actually allowed to visit their children despite existing court orders, highlighting the profound gap between judicial pronouncements and practical enforcement. The research revealed that 48.2% of fathers among the respondents went to court to seek visitation rights, while 51.8% have not taken any legal step, suggesting widespread resignation and loss of faith in the judicial system's capacity to provide meaningful relief. The study's methodology carefully distinguished between justified estrangement, where rejection occurs due to documented abuse or legitimate safety concerns, and alienation, where rejection stems from systematic manipulation by one parent against the other. This distinction is crucial for understanding the scope of the problem, as it separates genuine child protection concerns from cases where children are being manipulated to reject loving, non-abusive parents .

children are being manipulated to reject loving, non-abusive parents .[14]

The research documented cases spanning multiple legal frameworks, including proceedings under the Guardians and Wards Act, Hindu Marriage Act, and the Protection of Women from Domestic Violence Act, with some cases involving serious charges under the Protection of Children from Sexual Offences Act and various sections of the Indian Penal Code including Section 307 for attempt to murder, Section 354 for assault on women, Section 420 for cheating, and Section 498A regarding dowry harassment. Perhaps most alarming is the demographic profile of affected families revealed by the study, which found that 39.8% of respondents have children under five years old, and 38% have children between five and 10 years, demonstrating that parental alienation predominantly impacts very young children during their most formative developmental stages when secure attachment relationships are critical for healthy psychological development. This finding is particularly concerning given the research establishing that children systematically deprived of relationships with both parents exhibit significantly elevated rates of anxiety disorders, clinical depression, and identity confusion that can persist well into adulthood. The study documented that 61.1% of respondents have been separated from their children for less than five years, indicating that many of these cases involve recent separations where intervention might still be possible if adequate enforcement mechanisms existed[15].

A particularly poignant example from the research involved a 48-year-old former biochemistry teacher from Delhi University who lost his job following his divorce in 2024 after 12 years of marriage. He had been separated from his 11-year-old child for approximately 10 years, despite court-ordered visitation rights under Section 26 of the Hindu Marriage Act, 1955, which grants courts power to make interim or final orders regarding custody, maintenance, and education of minor children during and after divorce proceedings. His testimony captures the desperation experienced by many fathers when he stated, "The court allowed me visitation rights, but those were never complied with. I pursued the case but gave up as there was not the slightest hope for justice." This case exemplifies the systemic enforcement failure where court orders become merely symbolic documents rather than binding legal obligations. The study revealed that even fathers with weekly visitation rights

often find these arrangements ignored by custodial mothers, with little recourse available through the legal system. According to Deepika Narayan Bhardwaj, director of the NGO, this research brings forth the plight of fathers suffering because of parental alienation, revealing how despite trying hard and pleading before courts for visitation rights, just 25% of fathers get access to their children. Legal experts like Shonee Kapoor, a law graduate and men's rights activist, have argued that child alienation should be declared a crime, noting that the alienating parent is not just giving emotional pain to the other parent but scarring the psyche of the child in such a manner that the child will never be able to form any reasonably successful relationship in their life .[16]

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~~Parliament vs. Judiciary~~

INDIRA GANDHI VS. RAJ NARAIN

....(1975) 2 SCC

RAJ NARAIN

Indira Gandhi v. Raj Narain is one of the best examples about the clash between law and politics in Indian constitutional history. The case was decided under the Emergency, that examined whether the Constitution could be changed to protect political authority or whether the courts would say that even the Prime Minister is not above constitutional scruting. The controversy was more than just a disagreement over the elections; it was a key moment in the fight between the supremacy of Parliament and the independence of the courts.

After winning the Rae Bareilly seat in 1971, Raj Narain, who was in the opposition of Prime Minister Indira Gandhi, alleged that she had cheated in the election under the Representation of the People Act, 1951. The Allahabad High Court agreed with the challenge and said she could not hold the office. To fix this problem, Parliament immediately introduced the 39th Constitutional Amendment. It introduced Article 329A, which said that judges could not question the election of the Prime Minister and Speaker. The Supreme Court heard arguments against the amendment itself.

Constitutional Questions:

1. Does Article 329A (4) of the Constitution safeguard the Prime Minister's election from Judicial Review?

2. Were the Representation of the People (Amendment) Act, 1974 and the Election Laws (Amendment) Act, 1975 Constitutional?

3. Was Indira Gandhi's election genuinely lawful?

The Court Speaks: The Supreme Court found a careful but a clear middle ground. The Court unanimously struck down Article 329A (4), saying that Parliament cannot protect the Prime Minister's election from being reviewed by the courts. It said that basic structure included free and fair elections, judicial review, the rule of law, and equality and that no change can impact these things.

The amendments to election legislation in 1974 and 1975 were seen as legitimate uses of Parliament's power to make laws. People believed that changes to election laws that were implemented after the election were not in breach of the Constitution but rather choices made by government officials. Article 122 said that courts could not judge how Parliament worked.

The Court rejected the Allahabad High Court's decision of Indira Gandhi's election because there was no clear proof of corrupt behaviour. The party was responsible for campaign costs, not Gandhi herself, and Yashpal Kapur was said to have quit before helping her. So, she was elected again.

The Court safeguarded the Constitution by invalidating Article 329A (4) while maintaining the political status quo by affirming Indira Gandhi's victory. This conclusion was both protective and conciliatory.

Judicial Scales of Power: The decision in Indira Gandhi v. Raj Narain protects the Constitution and reminds judges to be careful. The decision in Indira Gandhi v. Raj Narain protects the Constitution and reminds judges to be careful. The Court's decision to strike down Article 329A (4) firmly established the idea that no modification to the Constitution can weaken the basic principles of democracy, the rule of law, and judicial review.

INDIRA GANDHI

This is a strong affirmation of landmark case of Kesavananda Bharati. But by backing Indira Gandhi's victory, it seemed to give in to political pressure, making it hard to tell the difference between judicial strength and compromise. So, even while the verdict said that the Constitution was the most important thing, it also revealed how weak the court can be when politicians are in power. Ultimately, the case demonstrates that the Constitution is paramount, irrespective of the power held by Parliament or the Executive. To keep India's democracy alive, its core values must be upheld through free elections, equality, and an autonomous judiciary.

From Rae Bareilly to today's 'vote chori' debates, the lesson remains: democracy only works when the courts are always there to protect free and fair elections.

LAW NATION PRIME TIMES JOURNAL

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- While word limits are to be observed, "quality will take precedence over length".

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- The first page must carry the title, author(s) name, institutional affiliation, and abstract.
- The second page should begin the main text of the manuscript.
- Manuscripts must use:
  - Times New Roman, 12 pt font, 1.5 spacing (main text).
  - Times New Roman, 10 pt font, 1.0 spacing (footnotes).
  - Uniform formatting for all headings.
- Citations must be in the form of Endnotes and must conform to the ILI (Indian Law Institute) citation style.

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