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BRICS Law Journal (BLJ)

An independent, professional peer-reviewed academic legal journal.

Aim and Scope

The *BRICS Law Journal* serves as a platform for comparative research and legal development not only in and among the BRICS countries themselves but, more importantly, also between the BRICS countries and other countries across the globe. Additionally, the *BLJ* provides an open forum for legal scholars and practitioners to reflect on issues of international significance that are relevant to the BRICS countries. Prospective authors who are involved in legal research, legal writing, and legal development associated with these subjects are, therefore, the main source of potential contributions for publications in the *BLJ*.

The *BRICS Law Journal* is published in English and appears four times per year. The *BLJ* is indexed by Scopus.

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Manuscripts should be submitted electronically via the website www.bricslawjournal.com. Articles will be subjected to a process of peer review. Contributors will be notified of the results of the initial review process within a period of three-four months.

Citations must conform to the *Bluebook: A Uniform System of Citation*.

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GUEST EDITOR NOTE

Beyond Borders: India–Russia Engagements in Innovation, Learning, and Commerce

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Indo-Russian Collaboration History: India and Russia's combined population accounts for approximately 19.8 per cent of the world's population, while the BRICS countries' population is around 45 per cent of the world's population, covering approximately 30 per cent of the world's land surface and 20 per cent of the world's trade. India and Russia have had a long-standing strategic partnership spanning decades in defence, energy, science, AI, education, and international politics. Both countries have stood with each other in global politics when situations have been hostile for them, and have proven to be great allies in international politics.

At the world level, the BRICS is having a significant impact on education, trade, commerce, science, and other areas. The BRICS alliance is also moving in the direction of ending the dominance of the USD.¹ India and Russia's bilateral trade has surged in recent years, with India exporting around \$4.26 billion and importing around \$61.4 billion worth of goods. We can see a significant increase in this trajectory, since India exported around \$4.88 billion in products and imported around \$63.84 billion in products.

¹ Upadhyay, N. (2024). BRICS expansion: A comprehensive analysis of global power shifts and economic integration. *BRICS Law Journal*, 11(3), 5–8.

India primarily imports Russian crude oil. So, I doubt that the world superpowers have attempted to impose tariffs on India to halt its trade with Russia. Still, strong cultural and economic ties have continued to sustain the trade even after the threat of tariffs was made. This is a beacon of hope for strong friendship between India and Russia, which has not been shaken even after the threat of economic sanctions.

India and Russia are aiming for a US\$100-billion trade by the end of 2030 after implementing various key measures, which include a rupee-rouble settlement mechanism and exploring a free trade agreement with the Eurasian Economic Union (EAEU). This proposed FTA aims to boost exports, support business, and diversify market access for India and Russia.

India and Russia are also developing various naval trade routes through Iran and Central Asia, which will further enhance trade and commerce between the two nations. Both countries have been performing mock drills and naval defence exercises together for many years, which is very essential for naval forces. So, for trade and security, both countries are working together on the naval front also. Naval routes, such as the Chennai–Vladivostok Maritime Corridor, have reduced the travel time from 40 hours to 24 hours between the two countries, significantly reducing the cost of transport and duration. This has revitalised the International North–South Transport Corridor (INSTC), which is central to enhancing India–Russia relations. These corridors cut logistics cost, time, deepen integration and support trade in diversified areas across various industries.

India and Russia are not only working on naval defence and trade, but also on AI-based weapons and aerial defence systems, such as the S-400 Triumf air defence system from Russia, which played a crucial role in operation Sindoor against terrorist outfits in Pakistan. There has been a great reliance of the Indian defence sector on Russian technology and weapons for decades. India itself is moving quite rapidly in the domain of weapon development, but support from Russia will still be needed in this journey to make India a self-reliant defence sector.

India and Russia are also exploring collaborations in the digital economy, including cybersecurity, and recently India exported AI-capable servers, Dell PowerEdge XE9680 units with NVIDIA processors, to Russia, worth 434 million dollars. This move clearly reflects the cooperation between the two countries in AI and digital technology.

Not just in science and technology, India and Russia work very closely in the education sector as well, and millions of Indian students have studied medical and allied sciences in Russia in the past few decades. Russia and India have also established the Inter-Governmental Commission on Trade, Economic, Scientific, Technological and Cultural Cooperation (IRIGC-TEC), the Integrated Long Term Programme (ILTP), and the Basic Science Cooperation Programme. Indo-Russian ties are also powerful in inter-academia exchanges, which foster researcher-to-researcher linkages, sharing the best practices followed in research by both nations.

Recent initiatives between India and Russia have an expanded agenda to work on bridging innovation programs, start-ups, telemedicine partnerships, healthcare innovations, traditional knowledge databases, and the Russian-Indian Network (RIN) of universities for higher education, focusing on joint research and innovations.

Strategic Prospects and Policy Pathways: India and Russia need to work on trade diversification and cannot rely mainly on the energy sector. Both countries must identify new focus areas where significant trade can occur, such as pharmaceuticals, chemicals, engineering goods, and electronics, to narrow the trade imbalance. The Chennai–Vladivostok corridor is still not working at its full capacity, and neither country is utilising the resources to their full capacity—impetus to be given to operationalise this corridor for better trade and commerce. In the field of education, more scholarship initiatives need to be created, making India and Russia an educational gateway for student mobility. A focus needs to be deepened on internships and jobs that focus on AI, cybersecurity, and related technologies.

Needless to say, all the above-mentioned aspects compel an efficient and profound legal research and justification. The strategic trajectories require the new generation of lawyers and legal researchers who are capable, to legally navigate changes and uncertainties effectively.

The Indo-Russian Student Forum is a great move to let the young generation of both countries understand the cultural and educational value system of the other nation and make a strong future of Indo-Russian relations. The Indo-Russian forum was organised by the BRICS Law Journal and Knowledge Steez Eduhub LLP from India. This has given students, the opportunity to share their scientific research work with everyone and learn from other presenters. This forum is proposed to be an annual event, which will deepen the ties of Indian students and academicians with Russia and vice versa. These small efforts have a long journey ahead, but we are confident that they will bring a new ray of hope to BRICS+ nations, showing how bilateral arrangements can work, and India and Russia can serve as an example for this. Last but not least, I would like to thank all Indian and Russian contributors to this Special Issue for their excellent scientific research and scholarly discourse.

In this realm, the Special Issue on Indo-Russian legal trends and perspectives encompasses articles of the law scientists from two countries who suggest their vision and professional opinion on aspects of very important issues, including reproductive rights, which comes majorly from the realm of health laws, which are very often violated in India even after various laws and judicial pronouncements. The laws in terms of reproductive rights in India and Russia share a broad similarity but are quite distinct in a lot of instances, for example, abortion in India is permitted up to 20–24 weeks, with exceptions, whereas in Russia, it is 12 weeks, and in rape cases, up to 20 weeks, and unlimited in severe cases. India is attempting to control its pollution, whereas Russia is seeking to promote pollution growth.

Author Siddharth Kanojia discusses in his article “Biomedical Waste Governance in BRICS: Comparative Policy Perspectives and SDG Integration” a serious concern about

biomedical waste that the whole world is facing. However, due to a considerable population and disparity in health facility standards, BRICS countries face this problem at an acute level. Biomedical waste management is very important for sustainable development goals, and BRICS nations enact various law and policies related to it. For example, in South Africa, National Environmental Management Waste Act 59 of 2008, along with related standards like SANS 10248-1 for segregation and packaging, SANS 452 for sharps containers, and provincial regulations, is present. Whereas there are no specific laws in China, Brazil has Law No. 10,099, which regulates solid waste originating from healthcare services. This law governs waste originating from health facilities, detailing the storage, collection, transport, treatment, and disposal of medical waste. In India, the Bio-Medical Waste Management Rules, 2016 control the storage, disposal, and transport of bio-medical waste. Whereas the Federal Law No. 52-FZ of Russia, provides a framework for the sanitary and epidemiological welfare of Russian citizens, including regulations on medical waste. For the protection of public health in Russia, Federal Law No. 323-FZ is in place. This article focuses on developing a standard model for biomedical waste management in BRICS nations.

This Special Issue also features research work by Violetta Belousova, Dmitry Zaytsev, Sergey Zubarev on “Public Legal Ensuring of State Sovereignty: Experience of the People’s Republic of China and the Republic of India.” This Special Issue also focuses on articles by many other prominent Indian and Russian scholars and discusses important issues like corporate social responsibility (Arti Aneja), territories with a special regime in BRICS countries (Sergey Vasiliev, Yulia Motsnaya, Lyubov Potapova), smart cities in BRICS (Alexander Larichev, Larisa Soldatova), victim compensation in India (Elisha Kanungo, Paromita Chattoraj). Bringing together scholarly perspectives from India and Russia, the Issue addresses a diverse range of contemporary issues, including artificial intelligence, victim compensation, corporate social responsibility, smart city development, health law, and the achievement of sustainable development goals. By integrating these themes, the volume highlights the growing significance of interdisciplinary and cross-national research, while also underscoring the role of Indo-Russian academic cooperation in shaping responses to complex legal, technological, and societal challenges.

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ARTICLE

Reproductive Rights in India and the Way Forward

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Abstract. Pregnancy is a process inherent to the propagation of species, and the right to continue or discontinue the pregnancy electively appears to be exclusive to humankind and has been a much-debated topic since ancient times. Religious rationales believe that aborting a fetus is a “sin,” and this line of thinking makes the act of abortion an offense in almost all jurisdictions. However, with the advent of the human rights concept, particularly with the second generation of human rights, individual liberty becomes one of the most honorable and demanding rights. Some countries like Norway, the UK, and the USA have taken the lead in providing this right to pregnant women, where the United Kingdom introduced legislation in 1967 and

became the first European country to allow abortion right, statutorily, though limited in character, and the Supreme Court of America declared abortion as a fundamental right in 1973. Nevertheless, change is the reality of life, which is also true in this regard. Over time, on the one hand, the abortion right has reached a new height, and on the other hand, in its originating country, it comes under constant attack, as the American Supreme Court has overturned its earlier decision and allowed the states to legislate their laws regarding the right to abortion. The BRICS countries are also going in a similar direction on aborting a fetus even though there are few variations. India facilitated this right through specific legislation in 1971.

Keywords: reproductive rights; abortion; pregnancy; fetus; BRICS countries; legislation.

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Introduction

The very object of recognizing reproductive rights as a human right is to honor individual liberty and facilitate couples to decide their own choices relating to conceiving the womb and the persistence of gestation or even aborting the fetus. Therefore, having a wide range of liberties, this right also grants the use of contraception, termination of pregnancy, reproductive health services, and sex education. Being internationally recognized through various declarations and covenants, the Indian Constitution aligns with the same line of thinking, as the judicial interpretation suggested that various rights concerning reproductive health include the right to life and personal liberty enshrined under Article 21 of the Indian Constitution.¹

Regarding reproductive rights, the abortion of an embryo or *fetus* has always been sensitive and controversial issue amongst the various schools of thought, wherein one group argued that individual liberty should be honored at any cost, and therefore the right to abortion should be available on demand, while the other group believed that a lack of regulation or blanket permission for voluntary abortion will be a sin and an unethical act because no one has the right to kill an embryo or fetus which would become a living being in the future.

It is a widely accepted fact that equality, which is a natural right, must be valued; similarly, individual liberty should not be disregarded. Regarding this controversial approach, two schools of thought, namely, utilitarianism and libertarianism, emerged and focused on the conflicting interests between the state and the individual. The utilitarianism philosophy advocates that state policies should be framed in a manner to ensure the highest happiness for a maximum number of people, even if the interest of a few individuals suffers. Yet, libertarian philosophy in this regard states that personal autonomy cannot be restricted by the State unless it interferes with the individual liberty of others.

At the beginning of this paper, it must be clarified that reproductive rights are concerned not only with the choices related to reproduction but with its broader sense, which also includes the subjects and services related to reproductive health. Undoubtedly, reproductive health rights overlap to a certain extent, especially concerning information and services related to prophylactic devices, abortion, and sexually transmitted diseases. As sexual health and reproductive rights, in general, are recognized as human rights by the international community based on individual liberty, it is the foundation of the self-determination of the couple, especially over their bodies and sexual lives.

It is worth mentioning that before the emergence of contemporary legal theory, natural law philosophy significantly influenced the perspectives and thoughts of policymakers, planners, and legislators. In the late 18th century, the prevailing legal

¹ See, *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

theory was the “natural law school,” which held the fundamental view that “law is what it ought to be.” This school of thought placed substantial emphasis on reason, equity, and good conscience, equating these concepts with law. In stark contrast, the nineteenth century saw the rise of the positivist school of law, which argued that law must be separated from morality and instruct courts to avoid ethical, social, and equitable considerations, focusing strictly on the literal interpretation of the law.

Due to religious sentiments, early societies generally held the view that abortion is not permitted except for the life-threatening condition of the woman. It was believed that interrupting a pregnancy was unethical and constituted an offense punishable under the laws.² Therefore, any hindrance in pregnancy was considered with all weightiness, and it was also a wrongdoing against the order of divinity. For illustration, the Roman Catholic Church favors a fetus, as it believes that a fetus has its soul from the time of conception and thus should be considered a human being.³ The Mahabharata also says that “if the fertile period of women goes unutilized, it will be a sin tantamount to embryo murder.”⁴ Some of the other well-reputed writings also say that the woman who undertakes abortion acts as a prostitute and would be re-born in the same form in the next life.⁵

Moving towards modern jurisprudence, especially with its human rights concept, these traditional tenets have gone through a drastic change, where the advent of individual liberty has led to a more liberalized view on the issue of aborting the fetus in the beginning based on medical emergency and after that choice-based personal liberty. The journey of liberalization of reproductive choices is not tranquil yet but is continuing its way.

In light of the above introductory remarks, the paper discusses reproductive rights at the center point of the right to abortion. The study will move around various developments that occur nationally and internationally in the way of liberalizing this right. The paper also provides a detailed study of the BRICS countries’ position in this regard.

1. Meaning and Extent of Abortion

In its common connotation, abortion refers to the killing of a baby in its premature state. In its dictionary meaning, the act of abortion is a subtraction or dismissal of

² Aramesh, K. (2019). Perspectives of Hinduism and Zoroastrianism on abortion: A comparative study between two pro-life ancient sisters. *Journal of Medical Ethics and History of Medicine*, 12(9), 1340.

³ Paul, E. W., & Schaap, P. (1980). Abortion and the law in 1980. *New York Law School Law Review*, 25(3), 497–525.

⁴ Quoted by Manekar, K. (1973). *Abortion: A social dilemma* (p. 24). Vikas.

⁵ Kautilya’s Arthashastra provides for the imposition of a fine of 1,000 panas for the miscarriage by physical assault, and a fine of 500 panas by administering drugs, and 250 panas.

an embryo or fetus from the womb of an pregnant woman, resulting in or causing its death.⁶ The occurrence of abortion may be natural too, which is commonly known as a miscarriage, but, again, the term abortion generally denotes a induced procedure irrespective of the time of the period of the womb; however, sometimes it is demarcated as a miscarriage or willful end of gestation prior to 20 to 24 weeks of a gestational period, which is presumed as the non-viable stage of a fetus.⁷ Hence, considering the purpose and procedure, the occurrence of abortion may be of two types, i.e., spontaneous abortion and induced abortion. An abortion that occurs naturally, due to any complications during the pregnancy of a woman for any reason, is called spontaneous abortion. This type of abortion is generally termed a miscarriage.

Conversely, induced abortion is not natural. It is performed intentionally, either due to a medical emergency or, most often, as a matter of choice. It may be further divided into two categories. The first category of induced abortion is therapeutic abortion, which is intended to protect the well-being of the woman if the life of the woman is in hazard or if there is a possibility that the fetus will be born in a disabled state. Such procedure is termed a therapeutic abortion. The second category of induced abortion is elective abortion, which it is induced for any other reason, except medical reasons. Therefore, it is also known as elective abortion. It is pertinent to note that both the embryo and fetus refer to the unborn child at different chronological stages. Thus, the term abortion may be understood as an intended way to terminate the undesired pregnancy.

2. Reason for Allowing Abortion

As mentioned earlier, in both the past and present, all religions strongly disapprove of abortion. This leads to a frequent question: if the mother has the right to terminate her pregnancy, should not the child have a right to life? Ronald Dworkin conducted an in-depth analysis of abortion and did not endorse the extreme viewpoints of those advocating for a complete abortion ban, as he argued that a fetus is a being with moral value from the moment of conception.⁸ According to Dworkin, a fetus does not have interests before the third trimester.⁹ The reason behind is that a fetus is unable to feel pain until later in the pregnancy because its brain is not adequately developed until then. Experts of medical sciences are also of the view that the fetal

⁶ Abortion. (n.d.). Merriam-Webster. <https://www.merriam-webster.com/dictionary/abortion>

⁷ Moscrop, A. (2013). 'Miscarriage or abortion?' Understanding the medical language of pregnancy loss in Britain; a historical perspective. *Medical Humanities*, 39(2), 98–104.

⁸ Dworkin, R. (1999). *Freedom's law: The moral reading of the American Constitution* (pp. 90–91). Oxford University Press.

⁹ He says that not everything that can be destroyed has an interest in not being destroyed.

brain develops sufficiently to feel pain around the 26th week.¹⁰ Therefore, whether abortion contradicts the interests of a fetus should it be determined by the interest of the fetus itself, considering what those interests would be if the right to abortion was not exercised. He asserted that something that is not alive cannot possess any interests. A fetus may only have interests once it reaches viability, which occurs only after the third trimester.¹¹

Apart from the above contentions in favor of the right to abortion, it would also be important to note that if the law is too strict against this right, then a woman seeking abortion will be forced to choose illegal and unsafe abortion, which is not only dangerous to her life but also contrary to the intent of legislators who never intended, even in their worst considerations, to bring about such a dire situation. Further, according to recent statistical data,¹² globally, out of a total of 295 thousand maternal deaths each year, there are 39,000 deaths caused only due to unsafe abortions, which is a 4.7 to 13.7 percent death of the total maternity deaths in the world. This data also clarifies that 7 million women require medical treatment each year due to complications arising from risky induced abortions in the world. Due to the rigidity of the laws against the right to abortion, there are a total of 73 million induced abortions and 33 million unsafe abortions conducted in the world every year.

The above discussion demonstrates that there are compelling arguments for recognizing the right to abortion, instead of having full restrictions against it or declaring it a punishable offense. Probably, that was the reason why India moved away from its stringent prohibitions against the right to abortion and enacted its specific legislation, namely, the Medical Termination of Pregnancy Act in 1971, which was later amended in 2021. Before discussing the provisions of this legislation, it will be relevant to focus on the position of abortion rights in other countries.

3. Right to Abortion and Global Perspective

On the issue of the right to abortion, the entire world may be divided into three categories. There are some countries where abortion rights are accessible on demand, while in most jurisdictions, abortion is restricted and available on certain grounds, like medical or social grounds, and in a handful of jurisdictions, it is entirely prohibited.

The following table¹³ demonstrates this position in a few specific countries:

¹⁰ See, Gorstein, C. (1988). *Science and the unborn: Choosing human futures* (p. 13). Basic Books.

¹¹ Dworkin, 1999.

¹² UNFPA. (2022). *Seeing the unseen: The case for action in the neglected crisis of unintended pregnancy*. https://www.unfpa.org/sites/default/files/pub-pdf/EN_SWP22%20report_0.pdf

¹³ Countries where abortion is illegal 2025. (n.d.). World Population Review. <https://worldpopulation-review.com/country-rankings/countries-where-abortion-is-illegal>

Country	Legality	Restrictions	Grounds
Afghanistan	Available	Restricted	To save the mother's life
Australia	Available	Unrestricted	No specific grounds
Argentina	Available	Unrestricted	No specific grounds
Bangladesh	Available	Restricted	To save the mother's life
Belgium	Available	Unrestricted	No specific grounds
Bhutan	Available	Unrestricted	No specific grounds
Brazil	Available	Unrestricted	No specific grounds
Canada	Available	Unrestricted	No specific grounds
Denmark	Available	Unrestricted	No specific grounds
Dominican Republic	Not available	Restricted	Entirely prohibited
DR Congo	Not available	Restricted	Entirely prohibited
Egypt	Available	Unrestricted	To save the mother's life
El Salvador	Not available	Restricted	Entirely prohibited
Fiji	Available	Restricted	On socio-economic grounds
France	Available	Unrestricted	No specific grounds
Germany	Available	Unrestricted	No specific grounds
Haiti	Not available	Restricted	Entirely prohibited
Honduras	Not available	Restricted	Entirely prohibited
Hong Kong	Available	Restricted	On socio-economic grounds
Hungary	Available	Restricted	To save the mother's life
India	Available	Restricted	On socio-economic grounds
Indonesia	Available	Restricted	To save the mother's life
Iran	Available	Restricted	To save the mother's life
Iraq	Not available	Restricted	Entirely prohibited
Ireland	Available on demand	Unrestricted	Up to 12 months fully open
Israel	Available	Restricted	To preserve physical or mental health
Italy	Available	Restricted	No restriction
Japan	Available	Restricted	To preserve health on socio-economic grounds

Jordan	Available	Restricted	To preserve physical health
Laos	Not available	Restricted	Entirely prohibited
Madagascar	Not available	Restricted	Entirely prohibited
Malaysia	Available	Restricted	To preserve physical or mental health
Malta	Not available	Restricted	Entirely prohibited
Marshal Islands	Not available	Restricted	Entirely prohibited
Mauritania	Not available	Restricted	Entirely prohibited
Mexico	Available	Restricted	To save the mother's life
Nepal	Available	Unrestricted	No specific grounds
Netherlands	Available	Unrestricted	No specific grounds
New Zealand	Available on demand	Unrestricted	No specific grounds
Nicaragua	Not available	Restricted	Entirely prohibited
Nigeria	Available	Restricted	To save the mother's life
North Korea	Available	Unrestricted	No specific grounds
Norway	Available	Unrestricted	No specific grounds
Pakistan	Available	Restricted	To preserve physical health
Palau	Not available	Restricted	Entirely prohibited
Philippines	Not available	Restricted	Entirely prohibited
Poland	Available	Restricted	To preserve physical health
Qatar	Available	Restricted	To preserve physical health
Republic of the Congo	Available	Restricted	Entirely prohibited
Russia	Available	Unrestricted	No specific grounds
San Marino	Not available	Restricted	Entirely prohibited
Sao Tome and Principe	Not available	Restricted	Entirely prohibited
Saudi Arabia	Available	Restricted	To preserve physical health
Singapore	Available	Unrestricted	No specific grounds
South Africa	Available	Unrestricted	No specific grounds
South Korea	Available	Restricted	To preserve physical health
Spain	Available	Unrestricted	No specific grounds

Sri Lanka	Available	Restricted	To save the mother's life
Sudan	Available	Restricted	To save the mother's life
Suriname	Not available	Restricted	Prohibited altogether
Sweden	Available	Unrestricted	No specific grounds
Switzerland	Available	Unrestricted	No specific grounds
Syria	Available	Restricted	To save the mother's life
Taiwan	Available	Restricted	To preserve health or on socioeconomic grounds
Thailand	Available	Restricted	To preserve physical or mental health
Tonga	Not available	Restricted	Prohibited altogether
Turkey	Available	Unrestricted	No specific grounds
Uganda	Available	Restricted	To save the mother's life
Ukraine	Available	Unrestricted	No specific grounds
United Arab Amirah	Available	Restricted	To save the mother's life
United Kingdom	Available	Restricted	To preserve health or on socioeconomic grounds
United States	Depend upon territory	Depends upon States	Varies by state
Uruguay	Available	Unrestricted	No specific grounds
Venezuela	Available	Restricted	To save the mother's life
Vietnam	Available	Unrestricted	No specific grounds
Yemen	Available	Restricted	To save the mother's life
Zimbabwe	Available	Restricted	To preserve physical health

It is necessary to clarify that the above table demonstrates the position of some specific countries, and almost all other countries that are not mentioned in the table are also very lenient towards the right to abortion, and by their specific legislations have provided this right with or without certain restrictions. The table indicates that the right to abortion is globally recognized, and there are only 24 countries where this right is entirely prohibited.¹⁴ In sixty-six countries, abortion is allowed if it is dangerous to the life of the mother, and in sixty-one countries, abortion is allowed for numerous causes, along with the safeguarding of her physical or psychological state or attention of her societal or fiscal circumstances. Further, approximately 76 countries

¹⁴ Abortion is considered a crime in El Salvador, Malta, Nigeria, Botswana and Zimbabwe.

have permitted abortion for any reason for a common threshold of 12 weeks. It also appears that some countries besides the United States permit abortion without any boundaries but after 15 weeks, it comes under restrictions.¹⁵ Therefore, it reflects that few countries permit abortion more permissive than others. In England, for example, a woman must have approval for the procedure from two doctors. In Bolivia, serious health risks are required to justify an abortion. In France, women can obtain an abortion on demand till the completion of 14 weeks of the pregnancy. According to the Abortion Act, 1975, any woman suffering from agony due to her unwilful pregnancy may terminate her pregnancy lawfully after psychological counseling and observing a mandatory one-week waiting period. Beyond 14 weeks, the procedure is allowed only if two doctors agree that it is required to avoid serious risk to her well-being or a strong probability of severe fetal impairment. However, recently in February 2022, this threshold was increased from 14 to 16 weeks, demonstrating a more lenient approach towards the right to abortion. Some states in the USA follow the same rule in their statutes that was decided through the famous case of *Roe v. Wade*.¹⁶

In Europe, the United Kingdom was the first country that liberalized its abortion laws by the Abortion Act, 1967, which established the right to abortion subject to certain restrictions.¹⁷ This Act was amended in 1990 and came out with the new name of Human Fertilization and Embryology Act, 1990, which allows two doctors to approve within 24 calendar weeks for terminating a pregnancy. In England, as previously mentioned, abortion can be carried out at any point if it is necessary to avert serious, permanent harm to the health of the woman, to eliminate a peril to her life, or in cases of severe fetal abnormality. Nonetheless, it is important to highlight that in England, women do not have the right to an abortion on demand; rather, it is up to medical professionals to determine the eligibility for the procedure.

In Sweden, the Swedish Abortion Act, 1974 granted women more liberal access to abortion, allowing it upon request until the eighteenth week of pregnancy. After this period, it is permissible for medical, socio-economic, or legal reasons with approval from the National Board of Health and Welfare. Similarly, Denmark's Pregnancy Act, 1973 permits women to obtain an abortion on request up to twelve weeks of pregnancy. Beyond that period, an abortion can be obtained if approved by a hospital committee for socioeconomic reasons such as health, age income, housing situation, personal interests, rape, and potential fetal impairment.

Turkey's Population Planning Law of 1983 governs abortion, permitting it within the first 10 weeks of pregnancy. However, married women are required to get their husband's consent for the termination of the pregnancy. After the 10-week mark,

¹⁵ These include North Korea, Iceland, New Zealand, Singapore, Canada and Vietnam.

¹⁶ 410 US 113 (1973).

¹⁷ In Northern Ireland abortions is available only to protect life of the women and her physical-mental health.

abortions are permissible with the consent of two doctors including a gynecologist who will certify that the life of the woman is in danger or there is a risk of severe fetal impairment.

In Romania, since 1989, women have been permitted to request an abortion up to the 14th week of pregnancy; procedures after this point are permitted only on therapeutic grounds. In Germany, abortion is allowed upon request until 12 weeks, and until 22 weeks if the woman believes it is necessary for her physical or mental well-being or her current or future living conditions. In Nepal, as of September 27, 2002, abortion became a legal entitlement at the request of the mother up to 12 weeks of pregnancy. However, in case of rape or incest, an additional 6-week period is allowed. More liberally, abortion can be performed at any time in Nepal considering the risk to the life of the woman. However, Nepalese law prohibits sex-selective abortion to prevent prenatal discrimination based on sex. Conversely, in Chile, abortion is completely banned without exceptions, even in circumstances aimed at preserving a woman's life. Similarly, in Nigeria, abortion is illegal nationwide unless performed to save the mother's life. The Philippines also criminalizes abortion.

The above discussion reveals that with a few exceptions, almost all countries recognize this right and, through their respective laws, demonstrate a degree of respect for reproductive rights. However, finally moving towards the United States of America, which was the leading actor in recognizing and honoring individual rights, has recently taken a U-Turn regarding the right to abortion. It should be noted that originally there was no provision regarding the right to abortion in the American Constitution, but the case of *Roe v. Wade*,¹⁸ established the right to abortion as a fundamental right in the United States. The American apex judicial body by this decision pronounced that in its permitted range of regulation, i.e., after the first trimester, the Constitution guarantees to elect abortion as a right. Again, in 1992 in America, the Supreme Court in the celebrated case namely, *Planned Parenthood v. Casey*,¹⁹ endorsed the above right nonetheless and permitted additional restrictions, such as waiting periods and parental consent requirements.

However, finally, in the case of *Dobbs v. Jackson Women's Health Organization*,²⁰ the United States Supreme Court refused to confer a right to abortion. This decision overruled both of its earlier decisions. Now, with its recent verdict, the individual States can regulate the issue of abortion on its own and overturn the *Roe case*.²¹

¹⁸ 410 US 113 (1973).

¹⁹ 505 US 833 (1992).

²⁰ No. 19-1392, 597 US (2022).

²¹ 410 US 113 (1973).

3.1. Right to Abortion and BRICS+ Countries

After discussing the position of abortion law in various countries around the world, the upcoming study will provide a more specific overview of the legal stance on abortion in BRICS countries—Brazil, Russia, India, China, and South Africa—based on their statutes, drawing from available information on global abortion laws. The BRICS nations have diverse legal frameworks influenced by cultural, religious, and political factors, leading to varied approaches to abortion rights.

3.1.1. Brazil

In Brazil, abortion is highly restricted. It is illegal except in three specific circumstances: when the pregnancy results from rape, when the pregnancy carries a risk to the life of the mother, and when the fetus has anencephaly or a severe brain abnormality. Outside these cases, abortion is prohibited and carries a penalty of imprisonment from 1 to 3 years.²² Additionally, in 2020, a regulation was passed under the Bolsonaro administration that required medical professionals to report rape-related abortions to the police, potentially deterring survivors from seeking legal abortions. These restrictions reflect Brazil's traditional socio-political landscape, particularly influenced by religious beliefs. Despite these limitations, illegal abortions remain common, often leading to unsafe procedures. There is also a proposed bill in 2024, which aims to limit legal abortions to 22 weeks and punish abortions after that point with penalties equivalent to homicide. This bill is controversial and has led to significant public arguments and protests.²³ While there is general societal opposition to abortion in Brazil, there is also strong support for allowing it in cases of rape, and many oppose imprisoning women who undergo the procedure. Concerns exist about the impact of restrictions on women's reproductive rights and the potential for unsafe abortions if access is limited.

3.1.2. Russia

For the first time since the end of communism, Russia enacted laws aimed at limiting access to abortion on July 14, 2011. These laws mandate that at least 10 percent of all promotional materials for abortion clinics include warnings regarding the possible health risks associated with the procedure. Although Russia has maintained a very permissive stance on abortion since the 1950s, with free abortions available at all licensed medical facilities, there has been a rising influence of anti-abortion groups within the government, leading many to worry that this legislation is merely a precursor to more restrictive measures. It is interesting to note that Russia was the pioneer in permitting abortion in all circumstances back in 1920,

²² Valpassos, C. A. M., Klusza, S. G., & Scott, J. B. (2025). Attacks on reproductive rights in Brazil. *The Lancet*, 405(10477), 462–463.

²³ Polo, C. (2024, July 8). *The WHO wants Brazil to allow infanticide. Can we stop them?* Population Research Institute. <https://www.pop.org/the-who-wants-brazil-to-allow-infanticide-can-we-stop-them/>

and access has largely been free from constraints.²⁴ There was a brief period from 1936 to 1954 when Joseph Stalin criminalized it in a bid to boost the population, but otherwise, abortion has been readily available and prevalent. Presently, Russia's abortion rates rank among the highest globally.²⁵ Currently, abortion is allowed on request throughout the initial 12 weeks from conception. After that period, abortion can occur under certain conditions, including cases of rape, fetal anomalies, or when hazardous to health or life. This comparatively liberal stance on abortion in Russia is rooted in Soviet-era policies that regarded abortion as a routine medical procedure. Nevertheless, there have been recent movements to tighten access, motivated by declining birth rates and the influence of the Russian Orthodox Church. For instance, some regions have implemented mandatory counseling or waiting periods to deter abortions, although these measures are not yet applied at the national level. The nascent anti-abortion movement in Russia receives strong support from the Russian Church. Opponents of abortion rights have adopted the American label "pro-life" and have been actively protesting outside abortion clinics. Additionally, President Medvedev's wife, Svetlana Medvedeva, has been an outspoken advocate against abortion; she has launched a campaign named "Give Me Life!" and has promoted a "week against abortion." However, Russia's shrinking population plays a significant role in the push to limit abortion access.

3.1.3. China

China has some of the most permissive abortion laws among the BRICS nations. Abortion is legal on request with no gestational limit, provided it is performed in authorized medical facilities. This policy aligns with China's historical approach to population control, including the now-relaxed one-child policy. However, recent government guidelines, such as those issued by the State Council in 2021, have called for reducing "non-medically necessary abortions" to encourage population growth amid an aging demographic. Despite legal access, social pressures and gender-based abortions remain concerns in some areas.²⁶

3.1.4. South Africa

The South African abortion law is considered progressive through the Choice on Termination of Pregnancy Act, 1996. As per this Act, abortion rights are available to South African women on demand up to 12 weeks of gestation. Between 12 and

²⁴ Avdeev, A., Blum, A., & Troitskaya, I. (1995). The history of abortion statistics in Russia and the USSR from 1900 to 1991. *Population: An English Selection*, 7, 39–66.

²⁵ Sakevich, V. I., & Denisov, B. P. (2014). *Birth control in Russia: Overcoming the state system resistance* (Higher School of Economics Research Paper No. WP BRP 42/SOC/2014). <https://www.hse.ru/data/2014/09/30/1100429010/Sakevich,%20Denisov.%20Birth....pdf>

²⁶ Mei, L., & Jiang, Q. (2025). Sex-selective abortions over the past four decades in China. *Population Health Metrics*, 23(6), 1–16.

20 weeks, it is permitted for health risks, socio-economic reasons, rape, incest, or fetal abnormalities. After 20 weeks, abortion is allowed in cases where the mother's life is endangered or where the fetus is suffering from any serious malformations.²⁷ The law reflects South Africa's commitment to gender equality and reproductive rights post-apartheid, but access is hampered by social stigma, conscientious objection by healthcare providers, and limited facilities in rural areas.

It is important to note here that the initial BRICS nations refer to Brazil, Russia, India, China, and South Africa. However, in 2024, the BRICS group was expanded, and five more countries—Egypt, Ethiopia, Iran, Saudi Arabia, and the United Arab Emirates—were also included in this group. Below is an overview of the legal stance on abortion in these additional BRICS countries based on their statutes, drawing from available information on global abortion laws.

3.1.5. Egypt

In Egypt, abortion is highly restricted under the Penal Code. It is banned except in circumstances when the procedure is needed to save the life of a pregnant woman or preserve her physical health. Fetal abnormalities or rape are not recognized as legal grounds for abortion. Egypt's conservative social and religious context, predominantly Islamic, heavily influences these restrictions. Illegal abortions are common, often performed in unsafe conditions, and women face legal penalties, including imprisonment, under Articles 260 to 264 of the Penal Code.²⁸

3.1.6. Ethiopia

Ethiopia has relatively progressive abortion laws in Africa, governed by the Criminal Code of 2005. In Ethiopia, abortion is legal in cases of rape, incest, fetal abnormalities, or when the pregnancy jeopardizes the life of a woman or threatens her health, including psychological well-being. Minors or women with physical or mental disabilities can also access abortion. There is no explicit gestational limit, but the law requires the procedure to be performed by a licensed medical professional. Despite legal provisions, access is limited by social stigma, lack of trained providers, and inadequate healthcare infrastructure, particularly in rural areas.²⁹

3.1.7. Iran

Iranian abortion laws are restrictive and shaped by Islamic legal principles. Abortion is permitted only within the first 18 weeks of pregnancy in case of a dangerous situation

²⁷ Hera, R., Nojoko, S., Stiegler, N., & Bouchard, J. P. (2025). Abortion in South-Africa: Does a liberal legislation really impact safe access and use? *Annales médico-psychologiques*, 183(2), 185–194.

²⁸ DW. (2023, January 17). *Egyptian activists: We need to talk about abortion*. <https://www.dw.com/en/egyptian-activists-we-need-to-talk-about-abortion/a-64408518>

²⁹ Muzeyen, R., Ayichiluhm, M., & Manyazewal, T. (2017). Legal rights to safe abortion: knowledge and attitude of women in North-West Ethiopia toward the current Ethiopian abortion law. *Public Health*, 148, 129–136.

for the life of the mother or where the developing fetus has serious abnormalities incompatible with life, as determined by a medical panel. Rape, incest, or socio-economic reasons are not recognized as legal grounds. The process requires approval from multiple authorities, including medical and judicial bodies, making access challenging. Additionally, Articles 51, 52, and 53 of the Criminal Code prohibit the promotion and free distribution of contraceptives in healthcare settings.³⁰ This shows Iran's conservative religious framework limits broader reproductive rights, and illegal abortions carry legal and social consequences.

3.1.8. Saudi Arabia

Saudi Arabia has some of the most restrictive abortion laws, rooted in Islamic Sharia law, where aborting a fetus is prohibited unless there is a necessity to save the life of the woman. This necessity is determined by a panel of medical experts. No other grounds, such as rape, incest, or fetal abnormalities, are legally recognized.³¹ The country's conservative religious and cultural norms strictly regulate reproductive rights, and illegal abortions are rare due to severe legal penalties and societal oversight. Access to safe abortion services is virtually non-existent outside the life-saving exception.

3.1.9. United Arab Emirates

In the United Arab Emirates, abortion is also highly restricted and governed by Federal Law No. 3, 1987. It is permitted only on the same grounds as in Saudi Arabia, provided the pregnancy is within the first 120 days (approximately 17 weeks).³² However, new legislation that came into effect on June 21, 2024, has added new categories for cases in which abortion is permissible in the UAE. Cabinet Resolution No. 44 of 2024 adds three more circumstances in Article 4 of the resolution. A woman can now obtain abortions if the pregnancy results from rape, incest, or forceful intercourse where consent was not provided or could not be provided, such as when the victim is mentally impaired and her consent is invalid. In addition, the resolution also provides for abortions to be permitted at the request of spouses.³³

3.1.10. Indian Position and the Law on Abortion

India began its journey with a strict and restrictive approach to the issue of the right to abortion. It is undoubtedly true that in 1860, when the Indian Penal

³⁰ IranWire. (2022, February 1). *Free contraceptives banned at public health centers in Iran*. <https://iran-wire.com/en/iran/71218/>

³¹ Harty, C. (2023, October 9). *Exploring the stance of Saudi Arabia: Is abortion permissible in the kingdom?* MedShun. <https://medshun.com/article/does-saudi-arabia-allow-abortion>

³² Abortion in UAE. (n.d.). Wirestork. <https://wirestork.com/abortion-in-uae/>

³³ Al Kabban & Associates. (2024, June 26). *UAE expands legal grounds for abortion with new resolution*. <https://alkabban.com/new-uae-abortion-resolution-2024/>

Code was enacted, Indian society was entirely different. Considering the socio-economic conditions of the society at that time, cultural thoughts evolved with contemporaneous changes, and with a background of revering all life forms as a mark of humanity, the lawmakers in India in 1860 agreed that abortion should be declared an offense under the Code. So, if anyone compares the law of that time with present society, they may say that the law was harsh, but it must be acknowledged that it was the demand of the then society, and the law resonated with public perception. This was the reason that the Code of 1860 prohibits the willful abortion of the womb, contained under Sections 312 to 316. It is also clarified by the above sections that if such miscarriage is committed by a woman on her womb, she will also be penalized under this section.³⁴

Thus, a plain reading of Section 312 makes it clear that the 1860 Code chose a middle path regarding the right to abortion, as voluntarily causing miscarriage was declared an offense, but it was not an offense if such miscarriage was done in good faith with the intent to save the life of the mother. This also indicates that even before the introduction of the Medical Termination of Pregnancy Act, 1971, abortion was allowed but with the condition of its being for a lifesaving purpose for women who were pregnant. It is worth mentioning here that now the above law has been abolished, and Sections 88 and 89 of the Bharatiya Nyaya Sanhita, 2023, deal with the issue.

In this regard, reference can be made to a longstanding English case of *Rex v. Bourne*,³⁵ in which therapeutic miscarriage was declared legal. In that case, a fifteen-year-old girl was raped by someone, resulting in her pregnancy. A medical practitioner terminated her pregnancy at her request, but thereafter he was charged with causing a criminal abortion. Mr. Justice McNaughton, after considering the facts and circumstances of the instance, decided that where the medical procedure to abort the fetus was *bona fide* with the intention to save the life of the mother, then the medical personnel may be allowed to discharge, and in those circumstances, abortion is allowed.

4. Walking towards Liberalization

The law embodied in the Code of 1860 gave a bitter experience to Indian society. As cultures move forward in time and thinking evolves contemporaneously, some assumptions are questioned, and there is a felt need to devise a new order for the smooth running of society as a whole. A similar alteration was seen in the attitude towards abortion in Indian society by the nineteenth century. With the growing cost of living, smaller families were preferred, and with women participating in multiple

³⁴ Committing miscarriage is punishable under Sections 88 and 89 of the Bharatiya Nyaya Sanhita (2023).

³⁵ 3 All ER 615 at 62 (1938).

roles in a developing society, unplanned pregnancies became a deterrent to their life plans. It is true that “family planning” can be optimized by better education regarding contraception, but there was an intermediate transitory period when the use of contraception was not properly adopted, and yet the need to curtail family size was felt, so “contraceptive failure” became a justified reason to seek a legally covered abortion. Though it is true that under religious consideration, abortion was looked at or still is beheld as a sin and wrongful action, this line of thinking has now taken a progressive move.

Another important development in the late 19th century was the development of new methods of fetal monitoring in pregnancy, which led to prenatal diagnosis of fetal malformations. The birth of a physically handicapped child can have deleterious effects not only on the perinatal health prognosis but also affects family dynamics adversely and can lead to financial and psychological distress for the parents and caregivers. The point of prenatal diagnosis is to provide a logical solution to the problems, and the logical solution for lethal anomalies or those with very poor post-natal prognosis is to offer termination of that pregnancy to prevent unnecessary perinatal complications, which may sometimes even pose a risk of severe morbidity and mortality for the mother. After considering the various repercussions, it was thought that putting a blanket restriction on the act of abortion may cause a doomed situation. For example, the available statistical data³⁶ on this issue indicated that the general citizens of this country have never been in favor of a blanket prohibition on abortion, and due to that, even after the restrictive law under the Indian Penal Code, 1860, there was a gross violation of Section 312 of the Code. Here the authors are willing to clarify that they are not advocating that if there is any gross violation of any law, it must be removed from the statute book, but considering the opinion that law is a mirror of societal thinking, their humble request is that if so, it should be the onus of the government to re-look into the existing provisions and, if possible, grant some reasonable relaxation. The experiences have shown that due to the strictness of the penal law, a pregnant woman who was willing to abort her pregnancy due to personal reasons was compelled to secretly take the services of an unqualified person for the same, with all the perils of indisposition and impermanence. The study on this point also shows that about 4 percent of the overall deaths of women are a result of complications resulting from unsafe abortion, particularly if done by inexperienced medical personnel.³⁷ At the same time, materialistic clinicians exploit desperate victims of pregnancy by extracting a gigantic sum of money for performing abortions. Not only this, but the inflexibility of the legal requirements in seeking abortions has been answerable to a boundless degree for several offenses, corruptions, wrongdoing, and unhappy situations, such as suicidal attempts by

³⁶ See Bahadur, K. P. (1977). *Population Crisis in India* (pp. 165–169). National.

³⁷ Rao, K. N. (1972). Abortion and family planning. *Journal of the Indian Medical Association*, 59(8), 337–341.

expecting women, infanticides, and relinquishment of cruel progeny. Similarly, very recently in this regard, an analytical study published under the auspices of the United Nations Population Fund demonstrated that about 67 out of a hundred abortions in the Republic of India are deemed to be unsafe and kill at least eight women on average per day.³⁸

The above result of the strictness of the law is appealing and compels us to think over the issue. It is pertinent to note here that the consequence of hidden abortion is not only the story of India but is also rampant in well-advanced countries. According to a study conducted on the issue, 1.2 million unlawfully induced abortions happen yearly in the United States.³⁹ About five to ten thousand women die per year due to illegal abortions and suffer physical and psychological injury.⁴⁰ Undoubtedly, it was neither the purpose of the Indian Penal Code, 1860, nor the Bharatiya Nyaya Sanhita, because Sections 312 of the earlier Code or Sections 88 and 89 of the Code of 2023 were enacted with a virtuous intention to facilitate the life of an unborn kid as well as to prohibit the offense of female feticide or even to check the misuse of abortion in general. However, the problem was that undue enforcement of prohibiting abortion in all cases was posing a difficult situation not only for unmarried girls or widows but also for married women who conceived due to failure of contraceptives or even did not look for pregnancy due to personal choice or reasons.

Therefore, after considering the practical and humanitarian approach as well as the vulnerable position of women in Indian society, society started to think that it would be better to liberalize the harsh law of abortion, which would take them back from the difficult situation of humiliation, pain, and agony.

With the passage of about 104 years, this view was finally adopted in India, undoubtedly not on the above contentions regarding liberalization but rather with the intent to implement family planning in this country. This idea was introduced by an institution of the Government of India, namely, the Central Planning Board in 1964, under a vibrant plot of a family planning scheme to check the wide-ranging problem of population.

Keeping the above object in mind, the Shri Shanti Lal Shah Committee was constituted to investigate the possibility of liberalization of abortion law and its possible way of reformation. The prime question before the committee was whether it is possible to allow the act of abortion outside of the coverage of life-saving of women. On this question, the committee entirely agreed that the existing law contained under Sections 312 to 316 of the Indian Penal Code, 1860,

³⁸ UNFPA, 2022.

³⁹ Cates, W., Jr., & Rochat, R. W. (1976). Illegal abortions in the United States: 1972–1974. *Family Planning Perspectives*, 8(2), 86, 86–88.

⁴⁰ Binkin, N., Gold, J., & Cates, W., Jr. (1982). Illegal-abortion deaths in the United States: Why are they still occurring? *Family Planning Perspectives*, 14(3), 163–167.

related to miscarriage should be liberalized. To implement the above report of the Shah Committee, in the year 1970, the Indian Government placed a bill, namely, the Medical Termination of Pregnancy Bill, in the Parliament, which was passed in August 1971 with the name Medical Termination of Pregnancy Act, 1971, and became operational from April 1, 1972.

As mentioned above, steps towards liberalizing the draconian law of miscarriage were taken by the policymaker with the intent to apply family planning.⁴¹ However, due to tremendous pressure created by religious groups, the government never accepted this version, and in its sanctioned declarations, the Act imagined three objectives of liberalizing the old laws. These objectives are:

1. Protecting against the risk to life or health of the woman.
2. Against sexuality or sensual physical communication with women with mental disabilities.
3. Against deformities and diseases.

Thus, with the introduction of the Medical Termination of Pregnancy Act, 1971, the old rigid law was relaxed, and apart from the lifesaving purpose for women, certain choice-based grounds for abortion were also provided. This Act has also been changed with amendments and judicial interpretation from time to time. Before discussing those developments, it would be necessary to investigate certain important provisions of the Act.

In India, the Medical Termination of Pregnancy Act, 1971, offers a generous basis for procuring an abortion. The Act made Section 3 an overriding section over the Code of 1860. Again, Section 4 of the Act allows only those terminations of pregnancy that are conducted in government-controlled hospitals as the Government may specify from time to time.

It is already indicated that in India, abortion rights are not available to women on demand, and that can only be done with the permission of registered medical practitioners. In this regard, under Section 3 of the Act, abortion was declared legal within the initial 12 weeks of pregnancy with the consent of one doctor and after 12 weeks to the 20th week by two doctors. If the said doctors considered that abortion may be done because the circumstances reveal that there is a risk to the life of the mother or there is a possibility of grave injury to her health whether mental or physical, or even if there is an apparent risk to the unborn child because there is a strong possibility that the child would suffer from physical or mental abnormalities or may be seriously handicapped.⁴²

It is necessary to note here that the above provisions of the Act were first amended in 2003 and incorporated a positive level of lucidity to it. Though it is also

⁴¹ Chattopadhyay, S. (1974). Medical Termination of Pregnancy Act, 1971: A study of the legislative process. *Journal of the Indian Law Institute*, 16(4), 549–569.

⁴² See, Explanations 1 and 2 of the Section 3 of the Act.

true that even after the amendment, permission for aborting the womb is still in the hands of registered medical practitioners, the intention of the changes was to make the procedure of termination safer by stopping underqualified practitioners from being consulted on the subject. Therefore, it was a beneficial change for the protection of women. The definition of fetal anomalies and their implications will be better understood by specialists who deal with fetal problems as a matter of special interest. There is now a sub-specialty in Obstetrics and Gynaecology all over the world called "Fetal medicine," and a fetal medicine specialist must be a part of the medical board opining on these issues. After this amendment, the Act was again revised in 2021. Employing this amendment Act, the period of termination of pregnancy was extended. Now the view of one enumerated medical practitioner is obligatory up to 20 weeks, and the estimation of two doctors will be essential for aborting the pregnancy between 20–24 weeks.

It should be noted very carefully that through this amendment, the pregnancy period borderline for termination of the womb has been amplified from twenty to twenty-four weeks, but this change can be enjoyed only by 7 classes of women, which include victims of rape or sexual assault, or incest; pregnant minors; those whose marital status changes due to unfortunate widowhood or divorce during ongoing pregnancy; women incompatible with life due to physical disabilities; mentally ill; fetal malformation or if the child is born with a substantial risk of life or may suffer from serious physical or mental abnormalities; and women with pregnancy in humanitarian settings or disaster or emergencies. In addition to this, an important step has been taken to include unmarried girls who can now exercise their right to abort on grounds of failure of protecting pills or other methods. Nonetheless, the extended period of 24 weeks was not available to an unmarried girl who is willing to abort the pregnancy of her choice without coming under the above-mentioned seven categories. Therefore, unmarried girls were allowed to terminate their pregnancies for only up to 20 weeks.

The discussion indicates that the revised laws permit abortions up to 20 weeks based on the evaluation of a single medical professional. To abort between 20 to 24 weeks, consensus from two medical specialists is still needed. Women in special situations, including victims of rape or incest, women with disabilities, and minors, are allowed an extension of the gestation period, and if there are serious fetal abnormalities, a Medical Board at the state level will assess whether abortions after 24 weeks can be permitted. Only specialists in Obstetrics and Gynecology are authorized to conduct abortions. The identity and extra details of a woman whose pregnancy has been terminated must not be disclosed, except to those legally permitted. Therefore, for pregnancies arising out of sexual assault or rape that surpass 24 weeks, the only remedy is to submit a writ petition to the courts.

Accordingly, when the fetus was diagnosed with *spina bifida*, a non-curable condition associated with the pregnancy, the Honorable Calcutta High Court

legalized a 37-year-old woman to abort her pregnancy at 34 weeks.⁴³ Similarly, in August 2021, the Bombay High Court approved a 20-year-old woman to undergo medical termination of her pregnancy due to her fetus being diagnosed with Arnold Chiari Malformation II, which is a brain defect that can lead to severe spinal issues, along with bilateral clubfoot at 33 weeks.⁴⁴

These cases are very apt reminders to us that some fetal malformations may develop later in pregnancy or evolve in their severity, thus altering the prognosis and making termination of pregnancy a justifiable option. While the permission for late terminations is now being granted, the law also needs to address the issue of the possibility of “signs of life” in the newborn who is delivered after a “termination” at late gestation. This situation presents a very severe dilemma for parents and caregivers because you just have to “wait and watch” till the baby dies!! In countries like the UK and France, there is a provision for doing “feticide” before the process of “termination” of the pregnancy to avoid this terrible situation. As of now, the feticide aspect is left at the discretion of the medical board, and unless mentioned, the provision is ambiguous and open to interpretation and hence misinterpretation.

Considering the above cases, it would be interesting to recall that undoubtedly, in 2021, the Medical Termination of Pregnancy Amendment Act extended the gestational period from twenty to twenty-four weeks as a welcome move, but even though this amendment Act did not recognize the abortion right on demand. After this amendment, the Honourable Supreme Court received two important petitions in which contradictory decisions have been given. In September 2022, in the case of *X v. Principal Secretary, Health and Family Welfare Department*,⁴⁵ while allowing abortion to an unmarried woman, the court held that for enjoyment of any rights, making any distinction based only on marital status is unconstitutional. The Supreme Court also opined that an undesirable pregnancy has grave and damaging paraphernalia on the life of a lady because it disreputes her education, her vocation, and even her mental comfort. Therefore, it also recognizes the unmet needs of marital rape survivors in their unwanted pregnancy. On the flip side, concerning the situation of an unmarried woman, in this case, the Supreme Court specified that all women, irrespective of their nuptial position, have the right to harmless and legal abortion. A three-judge bench consisting of Mr. Justice D.Y. Chandrachud, Mr. Justice Surya Kant, and Mr. Justice A.S. Bopanna issued a ruling in her favor after hearing the petition requesting the end of her gestation at 23 weeks and five days. In this particular instance, the petitioner initially pursued relief from the Delhi High Court, but the court rejected the request because the applicant’s situation did not fall under any provisions of the Medical

⁴³ See, *Smt. Nivedita Basu v. The State of West Bengal & Ors*, WPA 2513 of 2022.

⁴⁴ Khan, M. K., & Ali, K. (2022). Medical termination of pregnancy (Amendment) ACT 2021–A review. *IP International Journal of Forensic Medicine and Toxicological Sciences*, 7(1), 1–3.

⁴⁵ SCC Online SC 905 (2022).

Termination of Pregnancy Act, 1971. Subsequently, she turned to the highest judicial body of the land. The Supreme Court remarked that the High Court's decision had adopted a disproportionately obstructive interpretation of the Medical Termination of Pregnancy Act's provisions, specifically Rule 3-B of the Medical Termination of Pregnancy Rules, 2003, which details the categories of women authorized to terminate pregnancies between 20 to 24 weeks. It is important to highlight that Rule 3-B(c) of the Medical Termination of Pregnancy Rules, 2003, addresses a change in marital status during the ongoing pregnancy through widowhood or divorce. Before this ruling, unmarried women in consensual relationships were allowed to remove their gestations only up to the 20-week mark.

In its decision, the court emphasized that "change in marital status" must be interpreted broadly, as the amended provisions of 2021 replaced the term "husband" with "partner," indicating an intention to include unmarried women as demonstrated by the phrase "woman or her partner." However, the court also clarified that the definition of "woman" within the judgment encompasses individuals other than cis-gender women who may need access to benign medical termination of their pregnancies.

Finally, the Supreme Court clearly stated that any restrictive interpretation of Rule 3-B of the Medical Termination of Pregnancy Rules, 2003, that applies solely to married women would be discriminatory against unmarried women and contravene Article 14 of the Constitution. Hence, the court concluded that legal provisions should not dictate who benefits from a statute based on narrow patriarchal perceptions of acceptable sexual behavior, which create harmful distinctions and exclude certain groups due to their circumstances. The court also noted that dignity is a fundamental aspect of Article 21 of the Indian Constitution, which addresses the right to life and personal liberty. The ruling further emphasized,

The denial of control to women over their own bodies and lives would infringe upon their dignity. The ability to make one's own choices is essential to the right to self-respect and dignity. This right would be destabilized if women were involuntarily compelled to carry unwelcome pregnancies. Reproductive independence requires that every pregnant woman has the inherent right to choose an abortion without needing consent or approval from outside parties.

It also reemphasized that the right to reproductive autonomy is closely linked to the right to bodily autonomy.

It was a delightful decision, but in the year 2023, the court took a U-turn and gave a setback to its previous judgment. In the case of *X v. Union of India*, a married woman who already had two children moved to the court to get permission to abort a 24-week pregnancy on the grounds of lactational amenorrhea, which leads to breastfeeding women not menstruating. Rejecting her case, the court held that the case failed to attract Section 3(2-B) of the Act. In the opinion of the Supreme Court, her case also did not fulfill the criteria given under Section 5 concerning the threat to the life of women.

All the contentions such as cerebral well-being, postnatal hopelessness, psychosis, and miserable suicide tendency to cause harm to herself and her two children were also rejected by the court. It is submitted respectfully that though the amended provisions are progressive on paper, on the applicability level they fail to move away from the gestational limits approach because the decision confines reproductive rights within the boundaries of Section 3(2-B) and Section 5 of the Act by not considering the special actualities of the case.

Further, it is also important to highlight that the 2021 amendment, along with its original Act and the amendment from 2003, limited the use of the term “women,” which excludes transgender individuals and those from other gender minorities from benefiting from the bill. In India, a considerable percentage of the inhabitants identify as transgender and experience severe discrimination, including incidents of sexual assault and rape. If someone from the transgender or intersex community becomes pregnant under these conditions, they would lack the same options available to a cisgender female. The Indian judiciary must consider this issue in its deliberations.

5. Right to Privacy and Abortion

The issue of abortion has also been closely connected with the right to privacy. Dealing with the issue, a constitutional bench comprising nine judges of the Supreme Court, in the case of *Justice K.S. Puttaswamy v. Union of India*,⁴⁶ declared the right to privacy a fundamental right under Article 21 of the Indian Constitution. This is to say, individual autonomy covers reproductive rights, as predicted by the U.N. International Conference on Population and Development, 1994.

This problem appeared within the framework of the Medical Termination of Pregnancy Act of 1971, which regulates abortions in this country. The Act permits legal abortions only under specific circumstances. It imposes boundaries to equilibrium the woman's right to privacy with the genuine interest of the State in safeguarding the female's strength and the capableness of human life. An additional frequently cited rationale is that limitations on abortions are essential to avoid abortions intending to sex selection. However, the 46-year-old legislation faced increasing criticism over the years for being overly deterring and not aligning with advancements in medical technology. The privacy ruling considerably strengthens appeals for reform, creating additional opportunities to challenge Sections 3 and 5. It violates the rights of women to make decisions about reproduction, already recognized as integral to the right to privacy by the courts. At any point during pregnancy, a woman cannot independently elect to end the pregnancy, which hinders her from exercising her rights to bodily autonomy and making independent choices regarding her body. In practice, in India, the right to an abortion is centered on the doctor, who retains ultimate authority

⁴⁶ 10 SCC 1 (2017).

over the body and choices of women throughout their pregnancy. Moreover, the commandment only acknowledges medical hazards as valid reasons for an abortion, invalidating all other motivations a woman may have for wanting to remove her pregnancy.⁴⁷ These medical menaces become even more pronounced after 20 weeks; under such circumstances, a woman must complete the pregnancy unless it poses a serious threat to her life, even if other grounds related to fetal corporeal and cerebral aberrations under Section 3 are fulfilled. The legislation does not take into account non-medical issues such as the financial implications of child-rearing, impacts on career choices, or any other personal factors. Additionally, the Act overlooks the struggles of married women who are compelled to conceive and carry a pregnancy to term against their will, as marital rape for women older than 15 years is not legally acknowledged as rape.⁴⁸

It is respectfully submitted that, undoubtedly, the state be empowered to put restrictions on any fundamental right, but the limitations imposed by the state must be within constitutional norms. It must come under Article 21, which guarantees the fundamental right to life and personal liberty, and entails a just, reasonable, and fair test as given in the case of *Maneka Gandhi v. Union of India*.⁴⁹

Consequently, a woman is required to possess the right to make decisions regarding her own body and reproductive health on her terms. It has been asserted that since pregnancy happens within her body and has significant insinuations for her well-being, the rights of an unborn fetus cannot be ranked over those of a living woman. Therefore, both the Bombay High Court and the Supreme Court have underscored the autonomy of women in making conversant choices about their bodies, productiveness, and generative matters. Even though the apex judicial body has permitted abortions beyond twenty weeks, the necessity for women to approach the courts illustrates an additional barrier to access to harmless and lawful abortions. In a nation where unsafe abortions frequently lead to maternal fatalities, there is a pressing need to synchronize the Act's provisions with the views of the Indian Judiciary. This alignment would significantly help in tackling privacy issues and diminishing the stigma associated with abortion.

Conclusion

The study conducted under this paper reveals that, barring a handful of jurisdictions, the right to abortion is recognized in almost all countries, wherein this

⁴⁷ Section 3 requires approval of one doctor to abort pregnancy upto 12 weeks and two doctor for 12 to 20 weeks.

⁴⁸ Considering the privacy judgment, a two-judge SC bench recently read down the exception for marital rape and held that forced sex with all minor wives, and not just wives under the age of 15, would constitute rape. The larger exception for marital rape is also expected to be debated further.

⁴⁹ AIR 1978 SC 597.

right is slowly but continuously expanding as far as its dimensions are concerned. In a country like India, the recent verdict of the Supreme Court proves that the right to abortion, which was not available at a point in time when abortion was declared an offense, is finally decriminalized and became a right, and now it is moving in a more progressive direction. As the study discussed, during the British period, the Indian Penal Code was passed in 1860, which makes the act of miscarriage a punishable offense with imprisonment, fine, or both. The law continued even after independence, and it was not until 1971 that the Indian Parliament developed and enacted a distinct law concerning reproductive rights, known as the Medical Termination of Pregnancy Act, 1971. This legislation granted women a limited right to abortion, contingent upon the approval of medical professionals. After more than 25 years, the Indian Parliament recognized the shortcomings of this law and made amendments to it in 2003. Subsequently, in 2021, it expanded the timeframe for pregnancy terminations to 24 weeks for precise groups of women, including survivors of rape, minors, those with mental disabilities, and women carrying fetuses with abnormalities. However, the Act still systematically excluded unmarried girls in consensual relationships, thus denying them bodily autonomy. The Supreme Court, however, identified this as discrimination based on matrimonial rank and ruled that the right to abortion up to 24 weeks should be accessible, regardless of marital status. As a result, an unmarried girl who becomes pregnant in a consensual relationship is now entitled to terminate her pregnancy within 24 weeks, just like a married woman.

Given the previously mentioned concern, it can be confidently stated that the recent ruling by the Supreme Court reinforces India's dedication, as expressed in various international agreements, to guarantee harmless and permissible abortion as a legitimate right for every woman. This decision regarding equality and the right to choose is especially significant for a nation where women's bodies have historically been subjected to patriarchal scrutiny, signalling a much-needed leaving from the obsolete belief that only married women engage in sensual relations and that consequently, the law must only cater to them. This reflects the profound changes and evolving perspectives that are emerging within traditional Indian society. It is important to note that in India, with 73 million single women who previously lacked legal and safe access to abortion after 20 weeks, the extension of the Medical Termination of Pregnancy Act, 1971, will be highly progressive for this specific group of women.

To sum up, it may be concluded that even after the liberalization of abortion rights in India, it still depends on the will and decision of the medical board and has not yet become a right of women in the true sense. Therefore, it is requested that the right to abortion should be granted to women as a choice, and unnecessary restrictions should be removed in this regard, which would be a great step towards legal and safe abortion.

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ARTICLE

Biomedical Waste Governance in BRICS: Comparative Policy Perspectives and SDG Integration

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Abstract. Biomedical waste poses significant risks to public health and the environment when not managed properly. While healthcare facilities (HCFs) are intended to heal, they also generate hazardous waste such as used syringes, sharps, and contaminated materials that can exacerbate environmental pollution if treated inadequately. In India, despite implementing the Biomedical Waste Management Rules, 2016, challenges persist due to systemic non-compliance, especially among unauthorized HCFs, and insufficient waste treatment infrastructure. Accordingly, this article employs a doctrinal and comparative policy approach to assess regulatory frameworks and implementation strategies across the BRICS countries. Using 2020 Central Pollution Control Board (CPCB) statistics, it examines India's biomedical waste management policy while drawing cross-jurisdictional insights from Brazil, Russia, China, and South Africa. The report finds major areas of policy convergence and divergence, particularly on regulatory design, public-private compliance mechanisms, and technology integration. Based on this comparative study, the article offers the Public-Private Compliance Incentive Model (PPCIM) and recommends regionally coordinated efforts to bridge regulatory and infrastructure gaps. By situating these proposals within the framework of the Sustainable Development Goals (SDGs), specifically 3, 6, 12, and 17, this article emphasises the critical role of BRICS collaboration in transforming biomedical waste management from a regulatory challenge to a catalyst for sustainable health and environmental governance.

Keywords: biomedical waste management; sustainable development goals; environmental governance; BRICS nations; cross-jurisdictional analysis; health and environmental justice; waste treatment technologies.

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Introduction

Among the many environmental concerns, biomedical waste has emerged as a uniquely complex threat due to its infectious and hazardous nature particularly in emerging economies like the BRICS.¹ This issue has become central to contemporary discourse, as the environment provides the fundamental elements for human survival, i.e., clean air, safe drinking water, and nutritious and pure food. A degraded environment can have serious consequences for human health, leading to respiratory disorders, neurological impairments, cancers, and other critical illnesses.² Beyond

¹ Praveen, K., Ganguly, S., & Wakchaure, R. (2017). Environmental pollution and safety measures: International issues and its global impact. In M. M. Abid Ali Khan et al. (Eds.), *Global progress in development of sustainable environment* (pp. 40–65). Discovery.

² Janik-Karpinska, E., et al. (2023). Healthcare Waste—A Serious Problem for Global Health. *Healthcare*, 11(2), 242–256.

sustaining human life, the environment supports many plant and animal species integral to maintaining ecological balance.³ Protecting the environment thus ensures the preservation of biodiversity and reduces the risk of species extinction. A healthy environment is also imperative for climate regulation and is a source of essential materials supporting agriculture, industry, and daily life.⁴ However, human interventions—deforestation, industrial emissions, and the excessive use of fossil fuels—have contributed to severe environmental degradation. These activities have accelerated climate change, triggering phenomena such as rising sea levels, ocean acidification, and extreme weather events, all posing long-term threats to ecological stability and intergenerational sustainability.⁵

Among the many contributors to environmental degradation, the improper disposal of biomedical waste is a significant and often overlooked concern.⁶ Biomedical waste generated during the diagnosis, treatment, or immunization of humans and animals includes used syringes, contaminated bandages, pharmaceutical residues, and discarded medical devices.⁷ This waste is broadly categorized into infectious waste (e.g., blood-soaked materials, sharps), hazardous waste (e.g., chemical disinfectants, cytotoxic drugs), and radioactive waste (e.g., materials from radiation therapy and diagnostic procedures). Numerous studies have indicated that when biomedical waste is mishandled or inadequately disposed of, it poses serious risks to human health, animal life, and the environment.⁸ Therefore, effective and sustainable biomedical waste management has become an urgent public health and environmental mandate, particularly in countries facing rapid population growth and expanding healthcare demands.⁹ Given the severity of the risks associated with improper biomedical waste management, it is essential to have robust legal and regulatory mechanisms in place to ensure the safe handling,

³ Nnawulezi, U., & Nwaechefu, H. (2022). Reinforcing indigenous peoples' right to health in the wake of the COVID-19 pandemic: A panacea for sustainable human rights protection. *BRICS Law Journal*, 9(4), 108–133.

⁴ Aplet, G. H., & McKinley, P. S. (2017). A portfolio approach to managing ecological risks of global change. *Ecosystem Health and Sustainability*, 3(2), e01261.

⁵ Kampa, M., & Castanas, E. (2008). Human health effects of air pollution. *Environmental Pollution*, 151(2), 362–367.

⁶ McMichael, A. (2003). *Climate change and human health: risks and responses*. World Health Organization. <https://iris.who.int/server/api/core/bitstreams/6397f75e-4fee-4ebe-9842-213a47e82ca0/content>

⁷ Divan, Sh., & Rosencranz, A. (2022). *Environmental law and policy in India: Cases and materials*. Oxford University Press.

⁸ Omo, Q. G., & Hassan, N. E. (2024). Biomedical waste management and their effects on the environment: A review. *World Journal of Advanced Engineering Technology and Sciences*, 11(01), 86–95.

⁹ Rawcliffe, C. (2014). Sources for the study of public health in the medieval city. In J. T. Rosenthal (Ed.), *Understanding medieval primary sources: using historical sources to discover medieval Europe* (pp. 177–195). Routledge.

treatment, and disposal of such waste. The responsibility for mitigating these risks lies with healthcare facilities, governments, and regulatory authorities tasked with setting and enforcing biomedical waste standards. As in other BRICS nations, the legal framework is crucial in shaping biomedical waste management practices in India. Understanding these frameworks' effectiveness, limitations, and enforcement mechanisms is essential to identifying systemic gaps and formulating sustainable solutions. The following section critically examines the legal and regulatory landscape governing biomedical waste management in India, with comparative insights from other BRICS countries to evaluate the effectiveness of existing policies and the potential for cross-jurisdictional learning.

1. Legal & Regulatory Framework

Resilient regulatory and legal frameworks are essential for effectively managing biomedical waste. Among BRICS countries, the strength and enforceability of such regulations vary considerably.¹⁰ While some nations have developed comprehensive legal systems, inconsistencies in implementation and regulatory loopholes remain key challenges. As a member of the BRICS bloc, India has made progress in formulating and enforcing biomedical waste management policies.¹¹ While its approach holds domestic significance and potential as a model for others, India must also proactively learn from the best practices of fellow BRICS nations.

The Government of India introduced the Biomedical Waste (Management and Handling) Rules, 1998, in July 1998 to address the growing concerns related to the improper disposal of biomedical waste.¹² These rules establish accountability among healthcare facilities (HCFs) and ensure the proper management and disposal of waste they generate.¹³ Applicable to all HCFs such as hospitals, clinics, laboratories, and research institutions, the primary objectives of these rules were to promote environmentally sound waste management practices, safeguard the health of healthcare workers and waste handlers, and standardize procedures for segregation, collection, storage, transportation, and disposal of biomedical waste.¹⁴ Additionally, the rules outlined the classification of biomedical waste types, introduced a color-coding system for waste containers, and specified labelling and packaging standards.

¹⁰ Anisimov, A., & Ju, K. (2019). Trends and prospects for legislative regulation of legal responsibility for environmental offenses in BRICS countries: Comparative law. *BRICS Law Journal*, 6(1), 82–101.

¹¹ Datta, P., Mohi, G., & Chander, J. (2018). Biomedical waste management in India: Critical appraisal. *Journal of Laboratory Physicians*, 10(1), 6–14.

¹² Capoor, M. R., & Bhowmik, K. T. (2017). Current perspectives on biomedical waste management: Rules, conventions and treatment technologies. *Journal of Medical Microbiology*, 35(2), 157–164.

¹³ Patil, A. D., & Shekdar, A. V. (2001). Healthcare waste management in India. *Journal of Environmental Management*, 63(2), 211–220.

¹⁴ Singh, A., & Kaur, S. (2012). *Biomedical waste disposal*. Jaypee Brothers.

Additionally, healthcare facilities were also required to maintain detailed waste generation, collection, and disposal records and submit regular reports to the designated authorities.

In response to evolving challenges and gaps in the 1998 regulations, the Government of India introduced a revised and more robust framework, the Biomedical Waste Management Rules, 2016. These rules were legislated by the powers conferred on the central government under the Environment (Protection) Act, 1986. The new set of exhaustive rules aims to streamline and increase the efficacy of managing and administering biomedical waste generated in the country and address the emerging challenges and developments in the field.¹⁵ Any stakeholder directly involved in generating, collecting, preserving, conveying, treating, or disposing of biomedical waste must now abide by these regulations.¹⁶ In reference to waste collection, the 2016 rules mandate segregation into four systematic categories instead of the earlier ten categories under the 1998 rules, while entailing the appropriate color-coding system (see Figure 1). The new rules allow for the pre-treatment of laboratory waste to reduce its volume and ensure safe disposal, and mandate that every waste container have a barcoding system to track the waste from its generation to disposal.¹⁷ Hence, they emphasize the need for a sustainable and environmentally friendly approach towards waste management while promoting the safety and scientific disposal of biomedical waste to prevent adverse impacts on the health of the species and the environment.

These rules are comprehensive and enforceable, requiring each healthcare facility to categorize waste using standardized colour codes (see Figure 1).¹⁸ The segregated waste can be stored for up to two days before being properly disposed of or picked up by a professional from a facility that handles typical bio-medical waste, i.e., Common Biomedical Waste Treatment Facility (CBMWTF). The CMBWTF then treats the waste according to the color of the bag. A few of these disposal techniques are deep entombment, cremation, autoclaving, annihilation, chemical treatment, and transportation to secured landfills or wastelands.¹⁹ In certain instances, the concerned healthcare institutions are de-facto in charge of pre-treating blood tests, blood bags,

¹⁵ Goswami, M., Goswami, P. J., Nautiyal, S., & Prakash, S. (2021). Challenges and actions to the environmental management of bio-medical waste during COVID-19 pandemic in India. *Heliyon*, 7(3), e06313.

¹⁶ Datta, Mohi & Chander, 2018.

¹⁷ Maurya, S., Saxena, A., Srivastava, K., Singh, A., Joshi, R., & Patel, A. (2025). Strategies for bio-medical waste management: A comprehensive approach. In A. Mandpe, S. Paliya & M. P. Shah (Eds.), *A vision for environmental sustainability: Overcoming waste management challenges in developing countries* (pp. 167–190). Springer.

¹⁸ Babu, R., et al. (2009). Management of biomedical waste in India and other countries: A review. *Journal of International Environmental Application & Science*, 4(1), 65–78.

¹⁹ Hajam, Y. A., & Lata, P. (2025). Management of biomedical wastes. In *Biomedical Waste Management* (p. 85). Apple Academic Press.

and microbiological waste which is generated from their facilities through local sanitization and eviscerating following the recommendations made by National Aids Control Organization (NACO) and World Health Organization (WHO), even though these HCFs rely on CBMWTF or have in-house captive facility for treating the waste. Finally, healthcare facilities are further suggested to stop employing the chlorinated plastic bags, medicated gloves, and packs containing blood to prevent the emission of dioxins and furans from burning such trash.²⁰ Nevertheless, the efficacy of these rules is limited by structural enforcement deficits, such as capacity gaps in State Pollution Control Boards and insufficient digital compliance monitoring. Unlike China's real-time tracking or Brazil's fiscal compliance models, India's enforcement remains reactive rather than proactive.

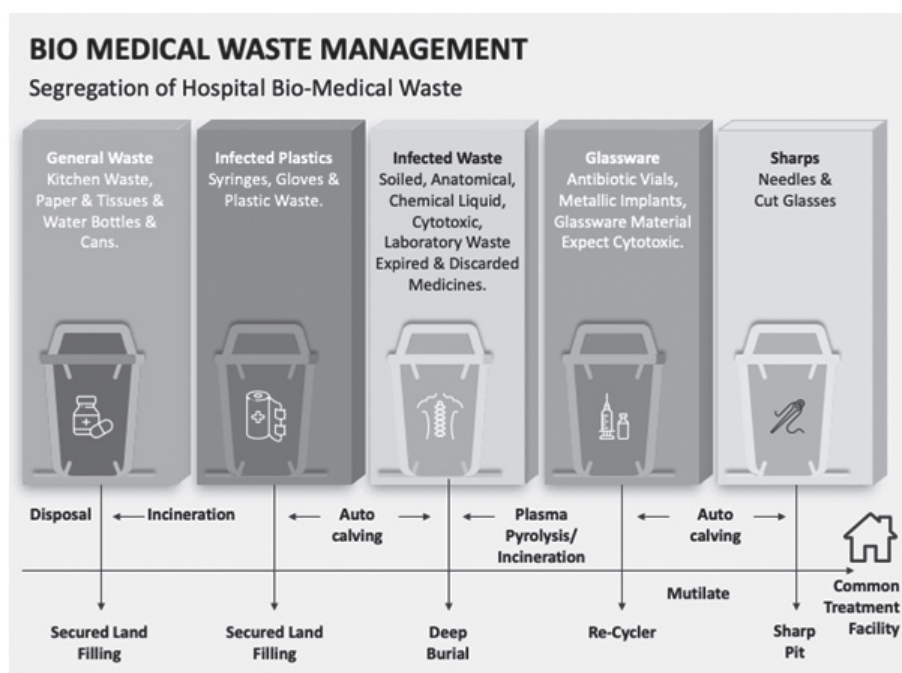


Figure 1: Color Coding of Bio-Medical Waste²¹

²⁰ Wisniewski, A., Zimmerman, M., Crews, T., Haulbrook, A., Fitzgerald, D. C., & Sistino, J. J. (2020). Reducing the impact of perfusion medical waste on the environment. *Journal of Extra Corporeal Technology*, 52(2), 135–141.

²¹ Biomedical Waste Management. (2022, April). *Role of Hospitals*. Clutch Health, <https://clutch-health.in/biomedical-wastebmw-management-role-of-hospitals>

1.1. Initiatives by States

In order to mitigate the harmful effects on public health and the environment, Common Biomedical Waste Treatment Facilities (CBWTFs) were established in various districts of the states. Herein, the biomedical waste generated by its healthcare facilities has been appropriately treated. After treatment, recyclable material can either be recycled or disposed of in secure landfills or wastelands. Healthcare facilities located within a 75-km radius of a CBWTF are generally restricted from setting up their treatment facilities, as per the 2016 regulations.²² According to the revelations in Annual Reports on BMW, currently, 208 CBWTFs are operational in the country, and almost 30 are under construction. A few North Eastern States, along with Goa and Andaman & Nicobar, do not have the CBWTFs for treating and disposing of biomedical waste. However, if the CBWTF is unavailable, the Healthcare Facilities may establish their treatment facility per the requirements in the aforementioned Regulations for treating and disposing of biological waste. Under this proviso, almost 17,206 healthcare facilities have installed their respective captive facilities, wherein the State's pollution control boards were instructed to oversee adherence to the 2016 Biomedical Waste Management Regulations. In case of any violation, the concerned HCFs can be ordered to shut down their facility and, thereafter, be compelled to become members of CBWTF. Some of these captive treatment facilities also offer deep burial facilities, whose condition must be regularly monitored by the State's pollution control bodies.²³

Further, the regulations also mandate each operator of the shared bio-medical waste treatment facility to install an Online Continuous Emission Monitoring System (OCEMS) in order to monitor the treatment of waste in real-time for the parameters as stipulated by State Pollution Control Boards (SPCB) or Central Pollution Control Board (CPCB) in transmitting and authorizing the real-time data to their servers. According to the statistics provided, of the total operation CBWTFs, only 93.75% have followed this instruction of installing OCEMS with their incineration stack.

2. Compliance and Findings

According to the new rules of 2016, every year, by July 31, the SPCB of each State is obligated to submit an annual report. This report must include information and minutes about the collection, handling, transportation, and disposal of biomedical waste in the respective State. The report is directed to the Ministry of Environment, Forests & Climate Change (MoEFCC) for further collation of the data received from other states. Despite regulatory mandates, compliance remains inconsistent. The

²² Baghotia, K. S. (2017). Systems approach in biomedical waste management. *Journal of Indian Society of Hospital Waste Management*, 16(1), 36–73.

²³ Central Pollution Control Board (2020).

2020 CPCB report illustrates this through alarming statistics (see Table 1). According to this report, the cumulative quantum of biomedical waste generated by each State was reported as 774 tonnes per day, of which almost 8.53% of waste was not treated. Of the total waste collected, 656 tonnes per day was non-COVID and 118 tonnes per day was COVID-related biomedical waste.

As a consequence, an unaccounted portion of bio-medical waste (including COVID) must have been disposed of in the environment or landfills. Furthermore, of the total 352,014 operational HCFs, only 69% are authorized HCFs, and accordingly receive assistance for the collection, transportation, treatment, and disposal of BMW. While 5% of HCFs have their captive waste treatment facilities, which deal with the disposal and treatment of waste. This annual report has revealed a few discrepancies and non-compliances with a few provisions of BMW Rule 2016, such as the lack of liquid waste pre-treatment facilities, the failure to disclose the existence of deep burial trenches, and the more alarming problem of an unauthorized healthcare facility. The report further revealed that out of the total operational HCFs in India, almost 54.33% of HCFs are unauthorized. Additionally, around 22,261 HCFs were reported to have violated the BMW Rule 2016, of which only 60% were issued show-cause notices concerning the respective violation.²⁴

Table 1: Data related to HCFs, generation, and treatment of Biomedical Waste²⁵

S No.	Particulars	Data	Remarks
I	Number of Operational Healthcare Facilities	3,52,014	–
II	Number of Authorized HCFs	1,60,736	45.66% of I
III	Number of Unauthorized HCFs	1,91,278	54.33% of I
IV	HCFs using CBMWTF	2,44,282	69.39% of I
V	HCFs have their own captive BMW Management facility	17,206	4.88% of I
VI	Bio-Medical Waste Generation	774 tons/day	–
VII	Non-COVID-19 Bio-Medical Waste Generated	656 tons /day	84.75% of VI
VIII	COVID-Related Bio-Medical Waste Generated	118 tons/day	15.25% of VI
IX	Bio-Medical Waste Treated by CBMWTF & Captive facilities	708 tons/day	91.47%

²⁴ Central Pollution Control Board (2020).

²⁵ Central Pollution Control Board (2022).

X	Bio-Medical waste untreated	66 tons/day	8.53%
XI	HCFs in violation of BMW Rules	22,261	6.32% of I
XII	HCFs received a show-cause notice from SPCB for violation of BMW Rules	13,389	60.14% of XI

By observing this dataset, there are various gaps in ensuring full compliance with the rules concerning effective management of Bio-Medical Waste. A regression in compliance from 2018 to 2020 highlights not merely institutional inefficiency but systemic tolerance for non-compliance. This has long-term consequences for water pollution and zoonotic outbreaks, particularly in high-density urban regions. Meanwhile, the key concerns that require immediate intervention are mentioned herein:

(i) Unauthorized healthcare facilities are not subject to mandatory compliance with the rules. Thus, they are not bound to report their biomedical waste generation to the concerned CBWTF. Hence, the waste generated by these HCFs remains unaccounted and may be disposed of untreated in landfills or wastelands.

(ii) Almost 25.73% of HCFs do not have their own captive BMW management facility, nor do they rely on a CBWTF. Hence, the waste generated by these HCFs is also unaccounted for and may be left untreated.

(iii) Approximately 66 tons per day, or 792 tons per year, of generated bio-medical waste is left untreated. This waste includes COVID waste. Subsequently, this waste may be disposed of in wastelands, water bodies, or garbage dumps.

(iv) Almost 40% of the HCFs that have violated some or other provisions of BMW Rules 2016 have not received any show-cause notice by the State's pollution control board. It reflects the concerns related to the implementation and execution of penal provisions.

3. Technological Inclusion

Technology plays a pivotal role in modernizing biomedical waste management. An improper technique of garbage disposal eventually arises from improper segregation. The waste generated by the HCFs is mixed with common garbage due to improper segregation techniques, making the entire waste stream dangerous. Besides that, an inadequate management of such wastes also results in environmental pollution and proliferation of pests like insects and rodents, leading to the spread of diseases like cholera, typhoid, hepatitis, and serious infections such as AIDS, which can originate from syringes and needles contaminated with human blood.²⁶ Subsequently, HCFs administration and regulatory bodies such as Pollution Control Boards (PCBs) should

²⁶ Price-Smith, A. T. (Ed.). (2001). *Plagues and politics: infectious disease and international policy*. Springer.

look for novel, scientific, safe, and economical ways to manage the trash, and keep the direct stakeholders, such as Doctors, Nurses, Lab Technicians, Diagnostics, and Rag Pickers, updated on the latest developments in this field. Nevertheless, some traditional techniques must be adopted by the HCFs to reduce the generation of and improve biomedical waste management. They can commence by adopting a waste reduction plan focusing on reducing waste generation at the source. It may include implementing a green purchasing policy, reducing packaging waste, and using reusable medical devices. Establishing the procedures of appropriate waste segregation can help reduce the amount of biomedical waste generated. It involves separating infectious waste, sharps, pharmaceutical waste, and other types of waste into separate containers for disposal or recycling. Then there is a need to implement a recycling program for paper, cardboard, plastic, and glass items. It can help reduce the volume of waste dumped in landfills and provide basic training to hospital staff on appropriate procedures for managing the generated waste. Apart from relying only on the traditional methods, the State shall persuade the PCBs and HCFs to adopt technologically advanced protocols and methods to reduce, segregate, and treat the hazardous wastes. Some of these technologies are mentioned herein and compared in Table 2.

3.1. Incineration Technology

Incineration is a high-temperature waste treatment procedure (800–1000°C) that can process a wide range of waste types, including biomedical and hazardous waste. It minimizes waste volume by up to 90%, making it very effective in space-constrained environments. Its ability to neutralise pathogenic and poisonous chemicals improves environmental safety, while its potential for energy recovery (by steam or electricity) increases its sustainability worth. However, the technique produces pollutants like greenhouse gases and harmful particles, which raises environmental concerns. Furthermore, its high installation and maintenance costs make it unfeasible in resource-constrained environments such as many districts of India, emphasising the need for cost-effective alternatives or hybrid solutions.²⁷

3.2. Non-Incineration Technologies

Mechanical-Biological Treatment (MBT) is a non-combustion waste management strategy that combines mechanical sorting with biological processes like composting or anaerobic digestion. It is very successful in treating organic and mixed municipal garbage, reducing landfill dependence and enabling resource recovery. MBT requires less capital than incineration and produces fewer pollutants, making it more appropriate for developing countries. However, its efficiency is dependent on

²⁷ Cogut, A. (2016). *Open burning of waste: A global health disaster*. <https://api.semanticscholar.org/CorpusID:202548765>

efficient waste segregation at the source, and it may require other technologies to effectively manage leftover hazardous components.

3.3. Chemical Technology

It involves the use of chemical agents to treat waste. The process can neutralize hazardous waste, separate metals from other waste materials, or reduce the volume of waste.²⁸

3.4. Pyrolysis

Pyrolysis is a thermal waste treatment process that decomposes organic materials in the absence of oxygen, producing gas, oil, and charcoal. It provides a sustainable way to manage biomedical and organic waste while also producing biofuels, which contributes to circular economy aims. Pyrolysis has fewer emissions than incineration and can be used for decentralised waste treatment. However, the technology necessitates precise operational controls and a hefty initial investment, which may limit its widespread adoption in low-resource environments unless supported by public-private partnerships and long-term policy incentives.²⁹

3.5. Plasma Gasification

It involves the use of high-temperature plasma to convert waste into a gas that can be used to produce energy. This process can be used to handle a wide variety of wastes.³⁰

3.6. Autoclaving

Autoclaving is also referred to as steam sterilization, the procedure adopted to sterilize medical waste, including infectious waste and laboratory materials. It involves using high-pressure steam to kill microorganisms that may be present in the waste. During the process, the waste is placed in a sealed chamber, and steam is introduced at a high pressure and temperature (usually between 121–134 degrees Celsius). The heat and pressure cause the microorganisms to break down, effectively sterilizing the waste. Autoclaving has been proven to be highly effective at sterilizing medical waste, reducing the risk of infection and contamination. It produces no harmful emissions or by-products, making it a more environmentally friendly waste management option than incineration. The technique is often less expensive than

²⁸ Demirbas, A. (2011). Waste management, waste resource facilities and conversion processes. *Energy Conversion and Management*, 52(2), 1280–1287.

²⁹ Hsu, E., Barmak, K., West, A. C., & Park, A. A. (2019). Advancements in the treatment and processing of electronic waste with sustainability: A review of metal extraction and recovery technologies. *Green Chemistry*, 21(5), 919–936.

³⁰ Fabry, F., Rehmet, C., Rohani, V., & Fulcheri, L. (2013). Waste gasification by thermal plasma: A review. *Waste and Biomass Valorization*, 4, 421–439.

incineration or other waste treatment options, making it more accessible to smaller healthcare facilities or clinics. Whereas autoclaving equipment requires regular maintenance and calibration to ensure that it is functioning correctly, the process requires significant energy to heat the steam and maintain the high pressure, making it less energy-efficient than other waste treatment options.³¹

3.7. Microwave Irradiation

A technology used to treat medical waste involves exposing the waste to microwave radiation. This technology uses high-frequency electromagnetic waves to generate heat, killing microorganisms and sterilizing waste. During irradiation, the waste is placed in a chamber and exposed to microwave radiation. The radiation causes water molecules in the waste to vibrate rapidly, generating heat and increasing the temperature. Subsequently, the heat generated by the microwave radiation is sufficient to kill microorganisms and sterilize the waste. This technique can sterilize waste in a shorter time than other methods, such as autoclaving or chemical treatment. It also requires less energy than other waste treatment options, such as incineration or autoclaving, and it does not produce harmful emissions or by-products, making it a safer option for workers than incineration. Nonetheless, microwave irradiation equipment can be expensive to purchase and maintain, making it less accessible to smaller healthcare facilities or clinics.³²

Table 2: **Comparative Analysis of Major Waste Treatment Technologies**

Technology	Waste Streams Treated	Key Advantages	Key Disadvantages	Relative Cost
Incineration	Municipal solid Biomedical and hazardous waste	Destroys pathogens & toxics Cuts volume up to 90% Steam/electricity generation	Emits GHGs, particulates, and dioxins unless well-controlled High capital and pollution-control costs	High
Mechanical-Biological Treatment (MBT) (non-incineration)	Mixed municipal waste pre-segregated	Lower emissions than thermal methods Recovers recyclables & biogas	Longer processing time Residual rejects still need disposal/incineration	Medium

³¹ Ghasemi, M. K., & Yusuff, R. Bt. M. (2016). Advantages and disadvantages of healthcare waste treatment and disposal alternatives: Malaysian scenario. *Polish Journal of Environmental Studies*, 25(1), 17–25.

³² Diaz, L. F., Savage, G. M., & Eggerth, L. L. (2005). Alternatives for treating and disposing healthcare wastes in developing countries. *Waste Management*, 25(6), 626–637.

Chemical Treatment	Hazardous liquids/slurries	Neutralizes toxins/metals	Generates secondary residues needing landfill	Medium
	Metal-bearing wastes	Adaptable to many chemistries	Ongoing reagent costs & handling risks	
Pyrolysis	Organic/biomass	Produces sellable fuels & char	Feed must be dry & homogeneous	Medium-High
	Plastics & tyres	Lower air emissions vs. Incineration	Capital & operating know-how	
Plasma Gasification	Heterogeneous MSW	Nearly destruction of toxins	Very high power demand & capex	Very high
	Hazardous and e-waste	Minimal ash/landfill needs High-grade syngas for power	Complex O&M, limited global track record	
Autoclaving (Steam Sterilisation)	Infectious & lab medical waste	Proven pathogen kill	Consumes steam/energy	Low-Medium
		No toxic air emissions Lower capex than Incineration	Equipment needs strict maintenance No volume reduction unless followed by shredding	
Microwave Irradiation	Medical & lab wastes with sufficient moisture	Rapid cycle time	High unit cost for small facilities	Medium
		Lower energy than autoclave/incinerator No combustion emissions	Limited throughput; metal items must be removed	

Biomedical waste management techniques differ significantly in terms of efficiency, cost, environmental impact, and applicability. High-temperature technologies such as incineration and plasma gasification provide effective volume reduction and energy recovery, but they are capital-intensive and emit pollutants, making them unsuitable for resource-constrained places. Alternatives such as autoclaving, microwave irradiation, and mechanical-biological treatment are cleaner and often less expensive, albeit they may necessitate pre-treatment or additional disposal procedures. Advanced procedures such as pyrolysis and chemical treatment offer promise for converting biomedical waste into reusable products, but their

operational complexity limits scalability.³³ In developed nations, new technologies such as electron beam irradiation and supercritical water oxidation are being investigated to improve safety and sustainability.³⁴

4. Comparative Lessons from BRICS Nations

Biomedical waste management (BMWM) strategies exhibit substantial diversity across BRICS nations, each reflecting distinct regulatory structures, technological adoption, enforcement mechanisms, and compliance frameworks (see Table 3).³⁵ In China, BMW is characterized by a highly centralized regulatory approach. The government enforces stringent penalties for non-compliance, facilitating high adherence among healthcare facilities.³⁶ Significant investments in advanced waste-to-energy technologies, notably plasma gasification and autoclaving, have substantially decreased untreated waste volumes. Real-time waste tracking systems provide transparency and enhance operational oversight. Transferable elements for India from China's experience include establishing centralized digital monitoring systems, rigorous penalty structures, and strategic investment in advanced technological infrastructure. Brazil contrasts with China's centralized control by adopting a decentralized, market-oriented approach heavily reliant on public-private partnerships (PPPs).³⁷ The decentralization of waste treatment services, driven by fiscal incentives and explicit green governance mandates, has significantly boosted innovation and compliance.³⁸ The active role of subnational governments, combined with the integration of extended producer responsibility (EPR) mechanisms into healthcare financing frameworks, presents a highly successful policy innovation.³⁹

³³ Tawo, O. E., & Mbamalu, M. I. (2025). Advancing waste valorization techniques for sustainable industrial operations and improved environmental safety. *International Journal of Scientific and Technology Research*, 14(2), 127–149.

³⁴ Pavlov, Y. S., Petrenko, V. V., Alekseev, P. A., Bystrov, P. A., & Souvorova, O. V. (2022). Trends and opportunities for the development of electron-beam energy-intensive technologies. *Radiation Physics and Chemistry*, 198, 110199.

³⁵ Zorina, A., & Yapyntsev, I. (2024). Images of corporeality in law: The experience of the BRICS countries. *BRICS Law Journal*, 11(1), 58–83.

³⁶ Mao, K., Zhu, Y., Zhao, Zh., & Shan, Y. (2020). Authoritarian environmentalism and environmental regulation enforcement: A case study of medical waste crime in northwestern China. In N. South & A. Brisman (Eds.), *Routledge international handbook of green criminology* (2nd ed., pp. 382–400). Routledge.

³⁷ Mu, R. (2008). *Public-private partnerships for expressways in China: An agency theory approach* (paper presented at IEEE/NGI conference on infrastructures (Rotterdam)). <https://repository.tudelft.nl/record/uuid:f5431f5b-54c7-4943-aecc-4348ef27f7bf>

³⁸ Gao, Y., Li, Zh., & Wang, Zh. (2025). Fiscal decentralization, green innovation and low-carbon transition of heavily polluting firms. *Journal of Environmental Management*, 380, 124897.

³⁹ Cai, Y., & Choi, T. M. (2019). Extended producer responsibility: A systematic review and innovative proposals for improving sustainability. *IEEE Transactions on Engineering Management*, 68(1), 272–288.

India can leverage Brazil’s PPP and EPR frameworks to enhance localized and economically sustainable BMWM solutions.

Russia employs a mixed governance model, wherein regional authorities predominantly manage general waste streams albeit without adequate specialized regulations explicitly tailored to biomedical waste.⁴⁰ Despite these regulatory gaps, Russia’s strengths lie in its initiatives focused on environmental education, stakeholder engagement, and public-sector transparency, thereby indirectly promoting compliance.⁴¹ India could benefit from adopting Russia’s soft regulatory mechanisms strategies, focusing particularly on education, public awareness campaigns, and transparent information dissemination. Meanwhile, South Africa integrates national BMWM guidelines with substantial municipal autonomy, enabling flexible, context-specific implementation at the local level.⁴² The decentralized regulatory structure facilitates grassroots community engagement, allowing localized monitoring mechanisms that significantly improving accountability and compliance. South Africa’s approach underscores the efficacy of linking public health services directly with waste management operations, which could substantially enhance India’s community-level BMWM accountability and effectiveness.⁴³ Drawing from these diverse experiences, India’s BMWM strategy could adopt a hybrid regulatory framework integrating China’s robust centralized monitoring infrastructure, Brazil’s PPP-driven decentralized service delivery and EPR mechanisms, Russia’s educational outreach and transparency initiatives, and South Africa’s effective municipal-level accountability practices.

Table 3: **BMWM Frameworks Across BRICS Nations**

Country	Regulatory Approach	Technological Advancement	Compliance Rate	Enforcement Mechanisms
China	Centralized and strictly punitive	Plasma gasification, autoclaving	High	Real-time tracking, stringent penalties

⁴⁰ Proskuryakova, L. (2021). Policy and governance for waste management in Russia. In P. Singh et al. (Eds.), *Waste Management Policies and Practices in BRICS Nations* (pp. 217–230). CRC Press.

⁴¹ Vinogradova, T. (2022). Improving green budget decisions and transparency through public participation: Evidence from Russia. *Public Sector Economics*, 46(3), 385–401.

⁴² Van Wyk, M. W. (2011). *An evaluation of the implementation of the normative objectives set for Environmental Management Frameworks in selected case studies in Gauteng and the Northwest Province, South Africa* (Thesis). <http://hdl.handle.net/11427/11258>

⁴³ Agenbag, M. H. A., Human, I. S., & Schutte, D. (2022). Local government environmental health services: Fundamentals for effective municipal service delivery and preventive health outcomes. *Journal of New Generation Science*, 20(2), 40–54.

Brazil	Decentralized, PPP-driven, EPR	Waste-to-energy, recycling systems	High	Fiscal incentives, subnational governance
Russia	Mixed approach; Regional governance	Limited targeted technologies	Moderate	Environmental education, transparency
South Africa	Decentralized; Municipal autonomy	Autoclaving, localized technologies	Moderate to High	Community monitoring, public health integration
India	Mixed, decentralized SPCBs	Incineration, limited advanced tech	Moderate	Variable, limited centralized tracking

India's reliance on decentralization without real-time oversight, unlike China's centralized digital compliance architecture, hampers accountability. The success of PPPs in Brazil hinges on robust institutional checks something that India's fragmented pollution control boards lack.

4.1. Public-Private Compliance Incentive Model (PPCIM)

The Public-Private Compliance Incentive Model (PPCIM) represents a pragmatic and adaptive governance mechanism for enhancing biomedical waste (BMW) management, especially in rapidly developing economies like the BRICS bloc.⁴⁴ This model is grounded in the principle of collaborative accountability, wherein public regulatory institutions and private healthcare or waste treatment providers share responsibility for ensuring environmental and public health compliance. PPCIM operates through regulatory enforcement, fiscal incentives, and technological support to align private sector behavior with public health goals.⁴⁵ Drawing on Principal-Agent Theory, PPCIM aims to align incentives between the regulator (principal) and HCFs (agents) through real-time tracking and conditional subsidies. In Brazil and South Africa, public authorities have developed contractual frameworks and accreditation systems encouraging private healthcare providers to outsource waste treatment to certified third-party facilities.⁴⁶ Russia and China have leveraged state-owned enterprises and private contractors under centralized monitoring

⁴⁴ Kvanina, V., Kovalenko, E., & Vypkhanova, G. (2023). Improving the legislation on public-private partnerships in environmental protection in the BRICS countries. *BRICS Law Journal*, 10(3), 106–121.

⁴⁵ World Health Organization. (2024). *Governance of the private healthcare sector in low- and middle-income countries: A scoping review of approaches, effectiveness and enablers*. <https://iris.who.int/server/api/core/bitstreams/578d5072-113a-4e4a-b22b-6a093dd5740a/content>

⁴⁶ Joachim, M. (2020). *Constructing: Relationships, human resource management and culture of quality—The case of hospital do subúrbio, a Brazilian healthcare public-private partnership* (PhD dissertation). https://deepblue.lib.umich.edu/bitstream/handle/2027.42/163172/mjoachim_1.pdf;sequence=1

systems to ensure BMW's traceability and environmentally sound disposal. Under the BWMR, 2016, India has incorporated several PPCIM-like elements, such as mandating membership in CBWTFs for small and mid-sized healthcare facilities, and have further offered financial assistance or relaxed compliance timelines for entities that adopt eco-friendly treatment technologies. Moreover, state pollution control boards are empowered to issue compliance certificates, link emission monitoring data to regulatory dashboards, and impose penalties on public and private violators, creating a balanced incentive-penalty framework. By promoting a cooperative rather than adversarial relationship between regulators and healthcare actors, the PPCIM enables scalable and sustainable waste governance.⁴⁷ Importantly, its success hinges on the robust institutional capacity and clearly defined accountability structures, which vary across BRICS nations.⁴⁸ As a model, PPCIM offers significant potential for replication and refinement, especially in contexts where state resources are limited but public health risks from untreated biomedical waste are high.⁴⁹

5. Sustainable Development Goals and BRICS Collaboration

India's challenges in biomedical waste management intersect directly with several critical targets under the United Nations Sustainable Development Goals (SDGs). Effective BWWM practices directly support SDG 3 (Good Health and Well-being) by significantly reducing the risk of infectious disease transmission through the safe handling, segregation, and disposal of hazardous biomedical waste.⁵⁰ This has tangible health outcomes, as demonstrated in Brazil, where PPP-driven advanced waste treatment systems substantially lowered hospital-acquired infections and enhanced healthcare worker safety. Effective BWWM also directly supports SDG 6 (Clean Water and Sanitation) by preventing harmful medical contaminants from entering water systems, thereby safeguarding water quality and public health, a notable outcome seen in China's centralized wastewater treatment initiatives linked to healthcare facilities. Additionally, BWWM contributes significantly to SDG 12 (Responsible Consumption and Production) by encouraging sustainable waste

⁴⁷ Izuchukwu Precious, O., Zino Izu, O., Chudi, F. A., & Ojevwe, A. T. (2025). Public-private collaborations in waste management: Evaluating policy effectiveness and governance models in Nigeria. *Journal of Integrity in Ecosystems and Environment*, 3(2), 1–24.

⁴⁸ Wei, D., & Rafael, A. P. (2023). Influencing companies' green governance through the system of legal liability for environmental infractions in China and Brazil: Lighting the way toward BRICS cooperation. *BRICS Law Journal*, 10(2), 37–67.

⁴⁹ Gupta, P. P., Bankar, N. J., Mishra, V. H., Sanghavi, S., & Badge, A. K. (2023). The efficient disposal of biomedical waste is critical to public health: Insights from the Central Pollution Control Board Guidelines in India. *Cureus*, 15(10), e47303.

⁵⁰ Shetty, V. P., Akshay, S. D., Thilai, B. D., & Deekshit, V. K. (2025). Biomedical waste management: Navigating the challenges to achieve the promise of sustainable development goal. *Waste Disposal & Sustainable Energy*, 7(2), 303–321.

management practices such as recycling, reuse, and waste generation reduction at the source, successfully implemented in South Africa through municipal-level recycling and community engagement programs.⁵¹

To effectively integrate BMWM within their national SDG reporting frameworks, specific measures and indicators could include: the percentage of biomedical waste treated versus generated; the prevalence of healthcare-associated infections linked to waste management practices; the number of healthcare facilities complying fully with BMWM regulations; and reductions in water contamination incidents related to biomedical waste.⁵² BRICS nations have shown measurable progress using such indicators; for instance, China has employed real-time tracking systems to achieve near-complete compliance and transparent reporting. Brazil's extended producer responsibility (EPR) systems include explicit accountability measures tied directly to SDG 12 outcomes.⁵³ India could leverage these insights by advocating for a BRICS Biomedical Waste Management Task Force. This task force would develop standardized BMWM indicators aligned with SDGs, monitor cross-border compliance, facilitate joint pilot projects, and encourage regional innovation. Such collaborative efforts would significantly enhance technical capabilities, strengthen regulatory frameworks, and amplify collective bargaining power in global climate-health governance, effectively aligning national and regional efforts toward achieving broader sustainability targets.

Table 4: **Indicators for Biomedical Waste Management Aligned with SDGs**

SDG Target	Indicator	Description	BRICS Best Practices
SDG 3.9 Reduce illnesses from hazardous chemicals and waste	Percentage of healthcare facilities with full BMWM compliance	Measures regulatory compliance with BMWM Rules	China – 85%+ via digital compliance enforcement

⁵¹ Kumar, A. (2024, August). *Accelerating progress in SDG-6 (Clean water and sanitation) in South and South-West Asia subregion*. South and South-West Asia Office, Economic and Social Commission for Asia and the Pacific. <https://repository.unescap.org/server/api/core/bitstreams/096e2072-a7e2-4686-8731-21d8e1254b00/content>

⁵² Deepak, A., Kumar, D., & Sharma, V. (2021). Developing an effectiveness index for biomedical waste management in Indian states using a composite indicators approach. *Environmental Science and Pollution Research International*, 28(45), 64014–64029.

⁵³ Fox, T. M. (2018). *Co-opting sustainabilities: The transformative politics of labor and extended producer responsibility under Brazil's national solid waste policy* (PhD dissertation). <https://dspace.mit.edu/bitstream/handle/1721.1/118208/1054488845-MIT.pdf?sequence=1&isAllowed=y>

<i>SDG 6.3</i> Improve water quality by reducing pollution	Percentage of healthcare waste pre-treated before discharge	Tracks on-site liquid waste treatment & pre-disposal sanitation	Brazil – Integrated wastewater-BMWM facilities
<i>SDG 12.4</i> Environmentally sound waste management	Percentage of biomedical waste treated vs. generated	Proportion of total BMW that is properly treated	South Africa – 95%+ in metro municipalities
<i>SDG 12.5</i> Substantially reduce waste generation	Percentage of recyclable/ reusable biomedical material recovered	Measures circular economy integration in BMW streams	Brazil – Active EPR & recycling under PPPs
<i>SDG 17.18</i> Enhance data availability	Percentage of HCFs with real-time waste tracking system	Adoption of barcoding, OCEMS, and digital dashboards	China – Universal digital tracking since 2015

The table (see Table 4) lists five critical SDG targets and their accompanying metrics, which can be used as benchmarks for national performance and BRICS collaboration. Under SDG 3.9, which aims to minimise sickness caused by hazardous substances and waste, the proportion of healthcare facilities (HCFs) in full compliance with BMWM guidelines serves as a key indicator. China's integration of digital compliance systems has increased compliance rates above 85%, demonstrating the benefits of centralised enforcement. For SDG 6.3, the percentage of healthcare waste that is pre-treated before release reflects water pollution reduction, with Brazil setting the standard through integrated wastewater and BMWM infrastructure. Whereas, SDG 12.4 is centred on environmentally responsible waste management, and South Africa exemplifies best practices by processing over 95% of biomedical waste in metropolitan areas. SDG 12.5 aims to reduce waste generation, as assessed by the recovery rate of recyclable or reusable biomedical materials an area in which Brazil excels thanks to aggressive Extended Producer Responsibility (EPR) programs and public-private partnerships. Finally, SDG 17.18 relies on improving data availability; the proportion of HCFs that use real-time waste tracking systems, such as barcoding and Online Continuous Emission Monitoring Systems (OCEMS), is critical. China leads the way in this regard, having developed a universal tracking system in 2015. These indicators not only encourage accountability and harmonisation among the BRICS nations, but they also serve as a foundation for transnational cooperation, regulatory convergence, and long-term policy innovation.

Conclusion

As healthcare systems prioritise operational efficiency and revenue, the environmental impact of biomedical waste management (BMWM) risks being overlooked. True sustainability in healthcare necessitates a shift from cost containment to long-term environmental stewardship and systemic resilience. This article emphasises the importance of waste minimisation techniques and investments in sustainable technologies such as autoclaving, plasma gasification, and real-time tracking systems for healthcare facilities of all sizes. These techniques are not only ecologically friendly; they also provide important co-benefits such as improved infection control and increased community confidence. However, the analysis appreciates that structural disadvantages, such as poor infrastructure, regulatory enforcement gaps, and institutional capacity asymmetries, impede the route to meaningful transformation. Small and unauthorised establishments, which frequently operate on the edges of the regulatory net, bear disproportionate compliance burdens. Hence, addressing this inequality necessitates a targeted policy response. Accordingly, to that purpose, this article proposes a multifaceted strategy:

(i) Expanding the Public-Private Compliance Incentive Model (PPCIM) across states, using fiscal and effective tools such as green tax credits, emission-based subsidies, and differential compliance windows to encourage compliance.

(ii) Mandating the ubiquitous use of barcoded tracking systems and OCERS to improve real-time regulatory visibility and deter noncompliance, particularly in high-risk metropolitan areas.

(iii) Creating a BRICS Biomedical Waste Management Task Force charged with developing harmonised cross-national procedures, exchanging technical blueprints, and pooling financing for mobile and rural waste treatment facilities through the New Development Bank (NDB).

(iv) Implementing performance-based grants for state pollution control boards, linked to measurable outcomes such as the percentage of HCFs in compliance and the reduction in untreated waste volumes.

(v) Integrating BMWM indicators into national SDG reporting frameworks to ensure that environmental measures are transparent and internationally benchmarked.

This article positions biomedical waste as a cornerstone of sustainable public health policy by presenting it as an opportunity for innovation, climate-health integration, and international cooperation, rather than a requirement for regulatory compliance. Comparative lessons from BRICS countries show that collaborative governance, when supported by technological adoption and budgetary alignment, can transform biomedical waste from a persistent threat to a catalyst for environmental justice and equitable development.

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ARTICLE

Public Legal Provision of State Sovereignty: Experience of the People's Republic of China and the Republic of India

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Abstract. This article examines the conceptual foundations and peculiarities of public legal provision of state sovereignty in the People's Republic of China and the Republic of India. It analyses the basic theoretical principles of the legal systems of China and India, the concepts of state sovereignty, and the legal design of state sovereignty of China and India. In China, the public legal provision of state sovereignty at the doctrinal level is based on the doctrine of Legism, which emphasises the idea of creating a strong state, the establishment of uniform laws and administrative orders that are binding on all members of the population, and the establishment of severe penalties for offences. In practice, this is reflected in the legislative framework, which is characterised by a relatively small number of acts as well as severe sanctions for crimes that infringe state sovereignty. In India, public legal provision of state sovereignty is based on the preservation of its centuries-old ancient culture and traditions, observance of the balance of legally enshrined rights and freedoms, and a respect

for spiritual values. The pacifism of Buddhism and the tolerance, as well as the high degree of universality of the core values of Hinduism, formed the basis of the concept of state sovereignty, as enshrined in the Constitution of 1950, which prioritises the fundamental rights of citizens. It is important to note, however, that there are not many normative prescriptions on state sovereignty in Indian law. Nevertheless, the Indian state, in response to new challenges, not only maintains its independence and autonomy at the national and international levels but also pays great attention to the protection of human rights as a foundation of state sovereignty.

Keywords: public legal provision; state sovereignty; public law; legal systems; People's Republic of China; Republic of India.

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Introduction

The events of recent years have raised with particular acuteness the issue not only of the formation of a multipolar world but also of the preservation of the sovereignty of individual countries.¹ In this regard, the study of the experience of

¹ Troshev, D. B. (2024). *Administrative and legal protection of the sovereignty of the Russian Federation from hostile actions of foreign states* (pp. 3–5). Prospect. (In Russian).

public legal provision of state sovereignty of the People's Republic of China (PRC) and the Republic of India acquires both theoretical and practical importance.

The choice of these countries is justified by the following key factors.

Firstly, China and India, along with Russia, are members of the BRICS organisation, and in the conditions of new challenges and threats, act as states friendly to the Russian Federation.

Secondly, China and India are the largest countries in the world in terms of population (each with over 1.4 billion citizens), which have relatively recently gained independence (China in 1949 and India in 1947), possess nuclear weapons (China since 1964, India since 1974), and have a major collective impact on the international legal order.

Third, in 1954, China and India signed a joint communiqué declaring “five principles of peaceful coexistence,” namely (1) mutual respect for territorial integrity and sovereignty; (2) mutual non-aggression; (3) non-interference in each other's internal affairs; (4) equality and mutual benefit; and (5) peaceful coexistence and economic co-operation.²

Thus, China and India, as leading developing countries, play a major role in shaping the modern world order as well as function as states with strong state sovereignty. Consequently, the study of their experiences in ensuring state sovereignty could be highly significant for enhancing the public legal provision of state sovereignty of the Russian Federation.³

1. Public Legal Provision: China's State Sovereignty

1.1. China's Legal System: General Provisions

China can be described as both an ancient civilisation and a modern state due to its deep historical roots, as well as its ongoing rapid modernization. However, full and permanent state sovereignty (in the classical sense of the term) was acquired by the Celestial Empire only in the middle of the 20th century, following the end of the civil war (1927–1949) and the proclamation of the People's Republic of China (October 1, 1949).⁴ The ramifications of this significant political and legal divergence resulted in a systemic duality within nearly all of China's social structures (and their constituent subsystems), as well as the institutions governing them. These entities have historically been—and continue to be—shaped by both indigenous, tradition-rooted administrative frameworks reflecting pre-modern statecraft and by progressive

² Fokeev, G. V. (Ed.). (1987). *History of international relations and foreign policy of the USSR. 1917–1987. Vol. 2: 1945–1970* (p. 106). International Relations. (In Russian).

³ Zubarev, S. M., & Troshev, D. B. (2024). The concept and essence of public law enforcement of state sovereignty. *Kutafin Law Review*, 11(3), 569–594. (In Russian).

⁴ Tishkov, V. A., & Filippova, E. I. (Eds.). (2016). *Cultural Complexity of Modern Nations* (p. 16). ROSSPEN. (In Russian).

Western administrative theories and practices. The Chinese legal system serves as the most vivid illustration of such dual influence. Within this system, chronologically and substantively distinct philosophical and legal traditions—primarily Confucianism and Legalism—coexist in a manner largely devoid of overt antagonism.

Confucianism (“school of educated people”) is a doctrine founded by philosopher and official Confucius in the V–VI centuries BC. Confucius preached the ideals of a “society without law” and government without laws. “If one governs the people through laws and maintains order through punishments,” he believed, “the people will tend to evade [punishments] and will not feel shame.”⁵ Instead, Confucius proposed organising human society based on ethical norms, such as trust, humaneness, justice, honesty, loyalty, modesty, reverence for elders, and others.

Legalism, or Legism (as is commonly used in the Chinese legal philosophy from the ancient Chinese term *Fa jia* 法家 meaning “school of legalists”), has several major representatives but is most often associated with its founder, philosopher, and official Shang Yang, who lived in the IV century BC. Shang Yang was an adherent of “governance through law” and denied all the precepts of Confucius. “An intelligent ruler,” he argued, “... takes power into his own hands, establishes law and through laws brings order.”⁶ In practical terms, the thinker called for the construction of a “strong state,” the mandatory attributes of which, along with law and order, would be a despotic form of government and the strictest punishments (as a rule, the death penalty) for any, even the mildest, offences.

According to the French comparativist René David, for many centuries Confucianism has generally triumphed over Legalism. Although modern China has laws in principle, they

are not the normal means of resolving conflicts between people ... there should be a great deal of discretion in their execution and application, and the ideal is that laws should not be applied at all and judgements should not be made.⁷

In addition, compared to other countries, the number of laws and regulations in the Middle Kingdom is quite small. Thus, if in 2010 the total population of China was 1,340.9 million people⁸ and their activities were regulated by 236 laws, 690 administrative acts, and just over 8,600 local acts.⁹ Apparently, in the Chinese system of social norms, the palm of primacy belongs not to legal norms at all, and this fact should be taken into account when studying the ways of ordering social relations in China.

⁵ Cited by Leist, O. E. (2006). *History of political and legal doctrines: Textbook* (p. 23). Zertsalo. (In Russian).

⁶ Perelomov, L. S. (Trans. & Ed.). (1993). *The Book of the Ruler of the Shang Region (Shang Tszyun Shu)* (2nd ed., p. 392). Ladomir. (In Russian).

⁷ David, R. (1988). *The main legal systems of modernity* (p. 440). Progress. (In Russian).

⁸ Wang, S., Jia, X., & Mishchuk, S. (2023). Changes in China's demographic policy in 2010–2021. *Population*, 26(3), 66, 67.

⁹ Troshchinsky, P. V. (2015). Legal system of the People's Republic of China: Formation, development, and characteristic features. *Courier of Kutafin Moscow State Law University (MSAL)*, 5, 109. (In Russian).

Today, the Chinese legal system is developing in a harmonious manner, including in the direction of overcoming internal contradictions. Chinese legism is gradually absorbing the basic postulates of European normativism and positivism, and Confucianism is filling the substantial gaps in the law, particularly in the implementation of the discretionary powers of public authorities. However, these processes are not yet complete and, according to some experts, “Chinese legislation remains ineffective in many respects.”¹⁰

1.2. The Concept of State Sovereignty in China

The issue of state sovereignty is extremely sensitive for China, which has existed as a colony of the Mongols and Manchus, as a foreign protectorate, as an occupied territory, etc. For millions of Chinese people, the highest but unattainable value for many centuries has been the independence of their country. It is, therefore, rather surprising that the Chinese language has lacked a special term for state autonomy for thousands of years.

The concept of state sovereignty was not introduced to the Chinese until 1865, when Presbyterian missionary William A.P. Martin translated into Chinese the seminal work published in 1836 by American lawyer and diplomat Henry Wheaton, *Elements of International Law*.¹¹ The translator coined the binomial “主权” for the word “sovereignty,” consisting of the characters “主” (from the Chinese word for “master”) and “权” (from the Chinese terms for “power,” “force” or “right”).¹² Accordingly, a literal back-translation yielded the idiom “master power,” and this is how internal state sovereignty was perceived in China for a long period of time (and partly is still perceived today—see below).

At first glance, it may seem that the term “master power” is not the most appropriate synonym for the category we are analysing. A Russian lawyer who hears this term might, for instance, associate it with the founding father figure found in domestic labour law, L.S. Tala, who described an employer’s legal status as “master’s power.”¹³ However, if we consider the fact that in the 19th century the Chinese state was still an empire, this rationale behind the translation becomes much clearer. The main point to keep in mind is that in a number of Old World monarchies, the emperor was officially called the “master” (for example, during the census in 1897 Emperor

¹⁰ Borodina, S., & Kovalev, S. K. (Eds.). (2010). *Investments in the BRIC countries: Risk assessment and corporate governance in Brazil, Russia, India and China* (p. 356). Alpina. (In Russian).

¹¹ Petukhin, L. A., & Skvortsova, E. M. (2023). Features of ‘Chinese’ sovereignty and the evolution of approaches to it by the country’s leadership in the context of globalization. *East Asia: Facts and Analytics*, 4, 39, 43.

¹² Krivokhizh, S. V. (2019). Correlation of the categories ‘sovereignty’ and ‘human rights’: Beijing’s position. *Problems of the Far East*, 4, 77, 78. (In Russian).

¹³ Tal, L. S. (1916). *Sketches of industrial law* (p. 22). Printing House of G. Lissner & D. Sovko. (In Russian).

Nicholas II listed his occupation as “Master of the Russian land”¹⁴). In view of this, William A.P. Martin’s translation should be recognised as fairly accurate.

Moreover, the definitions of Chinese external state sovereignty hardly deserve scrupulous study as they largely mirrored the well-known definitions of European and American jurists. Thus, in the second half of the 19th century, the diplomat Liu Sihong believed that a sovereign state is “a state in whose internal policy other states do not interfere,”¹⁵ and the ambassador Xue Fucheng equated sovereignty, autonomy, and independence.¹⁶ Later on as well, the Chinese understanding of state sovereignty showed little departure from the established concepts, and even the establishment of a socialist republic in the Celestial Empire brought no significant adjustments to it (except that now some formulations were borrowed from international legal acts).

It appears that the lack of original interpretations of state sovereignty by Chinese authors is determined not due to the secondary and mediocre nature of Chinese legal thought (on the contrary, on the whole it is quite original), but by purely pragmatic, utilitarian motives. China needed the terms “sovereignty,” “sovereign state,” and “sovereign rights of the state” exclusively to defend its interests on the world stage and in the international legal field. The development of an independent concept of state sovereignty, and participation in foreign policy dialogue on that basis, did not take place precisely because doing so would have hindered the achievement of that goal.

Thus, state sovereignty in China represents one of the few institutions of public law that is semantically devoid of any distinctive national character. The Chinese interpret sovereignty in the same way as the French, British, Germans, Americans, or Russians.

However, because the concept of state sovereignty was artificially and one-time transplanted to Chinese soil, rather than nurtured step by step in the natural conditions of public-law development, it has not inherited some of the strong immanent links with related legal categories that were and still are characteristic of the perception of sovereignty in European powers. In particular, the Chinese do not see the familiar dependence of state sovereignty on popular sovereignty (popular power). Martin Jacques, a professor at Cambridge University, notes in this regard that in China “the accountability of the government to the people is very weak because state sovereignty is preferred to popular sovereignty: the government is essentially accountable to itself through an ethical assessment of its performance.”¹⁷

¹⁴ Mironov, B. N. (2018). *Russian Empire: From tradition to modernity*. Vol. 1 (2nd ed., p. 93). Dmitry Bulanin. (In Russian).

¹⁵ Cited by Carrai, M. A. (2019). *Sovereignty in China: A genealogy of a concept since 1840* (p. 67). Cambridge University Press.

¹⁶ Carrai, 2019, p. 67.

¹⁷ Jacques, M. (2009). *When China rules the world: The end of the western world and the birth of a new global order* (p. 219). Penguin Press.

1.3. The Legal Formation of China's State Sovereignty

It is generally accepted that China began to build a state based on the rule of law after 1978, during the period of implementation of the national programme of the "Reform and Opening-up Policy."¹⁸ However, this construction was and is still being carried out taking into account the Chinese cultural matrix and relying on Chinese traditions of social management. The rule of law in the Celestial Empire is intertwined with Legist dogmas and Confucian canons, making it difficult, at times, to determine how this or that norm will be interpreted and applied (or even whether it will be applied at all). In this respect, the provisions of Chinese legislation on state sovereignty differ from the rest of the normative body in that they are based primarily on the "school of legal scholars" and only then on the "school of educated people."

The Constitution of the PRC of December 4, 1982 mentions sovereignty only in its preamble. In particular, it states that in its relations with foreign countries, "China ... firmly adheres to five principles—mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence"¹⁹ (as it is easy to see, the listed principles almost verbatim duplicate the "five principles of peaceful coexistence" enshrined in the 1954 joint Sino-Indian communiqué).²⁰ The norms on state or people's sovereignty do not appear once in the Basic Law.

For a country that has only relatively recently achieved its independence, this minimalistic approach may appear too lapidary. In reality, however, it fits perfectly with the views of Shang Yang. According to James D. Sellmann, a professor at the University of Guam, the "silence" on sovereignty is explained by the fact that "the Chinese constitutional tradition has in some sense inherited ... the tyrannical elements of traditional feudal monarchy" because "the Chinese emperor has always acted according to the laws of Fajia (so-called Legalism) and the principles of tyrannical power."²¹ Simply put, state sovereignty in China is still predominantly identified with authoritarian "master power," and its content simply does not need to be disclosed in an act that was created to limit such power.

¹⁸ Yan, L. M. (2012). Theories of public administration in the legal doctrines of China. *Vestnik of Omsk University. Series 'Law'*, 1(30), 26, 30. (In Russian). For more details, see, e.g., Gudoshnikov, I. M., & Gudoshnikov, L. M. (2007). *Political system and law of the People's Republic of China in the process of reform 1978–2005* (p. 464). Russian Panorama. (In Russian); Shen, H. (2021). *Xi Jinping and the policy of reform and openness* (p. 799). Chance. (In Russian).

¹⁹ Constitution of the People's Republic of China. (2014). In D. V. Kuznetsov (Ed.), *Constitutions of the countries of the world: Chrestomathy. Part 4* (p. 999). Blagoveshchensk State University Press. (In Russian).

²⁰ Timofeev, O. A. (2012). Evolution of the concept of state sovereignty in China. *Problem Analysis and State-Management Design*, 2, 114, 114–115. (In Russian).

²¹ Sellmann, D. D. (2017). Constitution of the People's Republic of China: A critical assessment. *Russian Political Science*, 4, 73–79. (In Russian).

However, in other Chinese legal acts regulating state sovereignty, the consequences of the colonial past are much more evident.

One of the most important Chinese legal acts is the Law of the People's Republic of China of March 15, 2000 "On Lawmaking,"²² which defines the procedure for enacting laws and regulations. Article 8 of this Law stipulates that laws, but not administrative or local acts, should be adopted on matters of state sovereignty. Thus, on the one hand, the exceptional value of Chinese sovereignty is emphasised, and on the other hand, departmental separatism and political decentralisation are suppressed.

Also of interest is the PRC Law of March 14, 2005 "On Counteracting the Splitting of the Country."²³ This Law is unique and has no analogues in foreign legal orders. It comprises only ten small articles on the complex relationship between China and Taiwan. Over time this law provoked another international discussion on the status of Taiwan, mass protest rallies in Taiwan, and a conciliatory statement from the Chinese leadership.²⁴ Article 1 of the Law declares that it was enacted "in accordance with the Constitution to counter and deter separatist forces seeking Taiwan independence."

Furthermore, Article 2 of the Law notes that "there is only one China in the world, located on the mainland and on the island of Taiwan. China's sovereignty and territorial integrity extend equally to its mainland and Taiwan."

Finally, Article 8 of the Law states that if Taiwan's *de facto* independence worsens or the possibility of peaceful unification disappears, China will resort to "non-peaceful means and other necessary measures to protect the sovereignty and territorial integrity of the country."

State sovereignty in China is under special criminal law protection. Article 13 of the Criminal Code of the People's Republic of China defines as crime:

All acts that harm the state sovereignty, territorial integrity and security of the state, aimed at splitting the state, undermining the power of the people's democratic dictatorship, overthrowing the socialist system, disturbing the social and economic order, infringing on the state or collective property of the working masses, on the personal property of citizens, their personal, democratic and other rights, as well as other acts that harm the socialist system of the People's Republic of China.²⁵

²² Law of the People's Republic of China of 15 March 2000 "On Lawmaking." (2004). In L. M. Gudoshnikov (Comp. & Ed.), *Modern legislation of the People's Republic of China: Collection of normative acts* (p. 57). Zertsalo-M. (In Russian).

²³ Gudoshnikov, L. M., & Troshchinsky, P. V. (Eds.). (2012). *Modern law of the People's Republic of China (law review 1978–2010). Part 2: 2002–2010* (p. 51). Institute of Far Eastern Studies of the Russian Academy of Sciences. (In Russian).

²⁴ Stafeeva, M. S. (2007). The problem of the relationship between the parties of the Taiwan Strait at the present stage. In *Global and regional problems of our time: Origins and prospects: Materials of the Scientific conference of young scientists, Yekaterinburg, April 28, 2007. Issue 2* (p. 159). Ural University Publishing House. (In Russian).

²⁵ Korobeev, A. I., & Chuchayev, A. I. (Eds.). (2017). *Criminal Code of China: Collection of documents* (p. 38). Contract, INFRA-M. (In Russian).

Thus, the Chinese legislator has placed the safeguarding of state sovereignty and territorial integrity of the country at the top of the pyramid of social relations protected by criminal law (unlike European criminal codes, in which the rights, freedoms and interests of the individual always take precedence²⁶). Each of the offences against state sovereignty may be punishable by the death penalty, even in cases where the death penalty is not listed as a sanction in the relevant article of the special part of the Criminal Code of the People's Republic of China.²⁷

The essence of state sovereignty is also revealed in some other Chinese laws (such as the PRC Law of February 26, 2010 "On Defence Mobilisation,"²⁸ the Civil Procedure Code of the People's Republic of China,²⁹ etc.). We will not, however, quote and comment on the norms enshrined in these laws, as they all proceed from the same Legist logic. The country should be powerful, independent, territorially integral, and ready to respond promptly and effectively to any threats; be governed from one centre, devoid of any influential opposition groups; possess strict and extensive criminal legislation and enforce it impartially—this, in essence, is the administrative model that is used in the legal safeguarding of Chinese sovereignty.

Unfortunately, this model correlates very poorly with the institution of human rights. As O.A. Timofeev states, "the principle of prioritising sovereignty over human rights prevails in the PRC."³⁰ Chinese lawyers usually consider this problem from a different angle. They argue that the protection of citizens' rights cannot be effective if sovereignty is threatened.³¹ However, upon contemplation of these positions, one realises that there is no conceptual difference between them: each expresses the predominance of collective rights over individual rights.

Thus, state sovereignty in China is ensured by ancient doctrinal teachings and a modern and relatively developed legal framework based on them. The increased rigidity of the relevant laws is conditioned by China's dramatic history and the legislator's natural desire to mitigate the slightest risks to the country's independence. However, the balance between state sovereignty and human rights

²⁶ Chuchaev, A. I., & Korobeev A. I. (2022). Criminal Code of China: A fusion of legal thought and national specificity. Part 2. *Asia-Pacific Region: Economy, Politics, Law*, 24(3), 172, 174.

²⁷ Chuchaev, A. I., & Korobeev A. I. (2022). Criminal Code of China: A fusion of legal thought and national specificity. Part 1. *Asia-Pacific Region: Economy, Politics, Law*, 24(2), 119, 129.

²⁸ Kozhin, P. M., & Rumyantsev, E. N. (Eds.). (2011). *Law of the PRC of February 26, 2010 "On the Law of the People's Republic of China on Defensive Mobilisation"* (p. 48). Institute of the Far East of the Russian Academy of Sciences. (In Russian).

²⁹ Civil Procedure Code of the People's Republic of China. (2004). L. M. Gudoshnikov (Comp. & Ed.), *Modern legislation of the People's Republic of China: Collection of normative acts* (pp. 259–313). Zertsalo-M. (In Russian).

³⁰ Timofeev, O. A. (2011). Evolution of perceptions of sovereignty in modern China. *Bulletin of the Amur State Sovereignty*, 52, 55, 57. (In Russian).

³¹ Qiucen, L. (2019). Specifics of the law of the People's Republic of China and features of its modern development. *Jurisprudence*, 63(2), 327, 335. (In Russian).

has not yet been found, and the legal reality in the Middle Kingdom is clearly skewed in favour of the former.

1.4. Trust as the Basis of State Sovereignty in China

As previously noted, the ideas of both Legism and Confucianism are widespread in Chinese society. The latter has penetrated into all spheres of state administration, managerial practice and even interpersonal relations. The “school of educated people” has not been overlooked in ensuring state sovereignty (although this area is, of course, primarily influenced by Legism).

Confucius was convinced that the state is based not on law and coercion, but on trust in authority. He told his disciples: “If the people stop trusting, the state will not stand.”³² Another judgement of Confucius, which can be applied both to the head of the country and to government officials, has been preserved: “How can you deal with a person who cannot be trusted? If a cart has no axle, how can one ride in it?”³³

Indeed, if the people do not trust the authorities, then in the state appear objective prerequisites for the most terrible social upheavals—riots, rebellions, coups, and revolutions.³⁴ The opposite is also true: people’s trust is a condition for stability and development. Chinese legal scholars are well aware of this connection. For example, in 2022, Zhu Jinwen, a professor at the School of Law of the Chinese People’s University, published an article in Rossiyskaya Gazeta entitled *Citizens’ Trust in Government Remains the Key to Prosperity and Harmony in China*.³⁵

At times, Confucian trust is seen as an integral complement to Legist law in Chinese philosophical and legal thought. A striking example of this is the dualistic perception of offence as transgression of the law and loss of trust at the same time. China’s top officials regularly speak out in this context. For example, Xi Jinping, General Secretary of the Central Committee of the Communist Party of the People’s Republic of China, once demanded “to improve ... mechanisms for punishing those who break the law and lose trust, so that a person simply does not dare, simply cannot lose trust.”³⁶

A similar approach is found in the Chinese understanding of corruption. According to E.A. Antonyan, “in China, corruption ... is viewed in two types: corruption as bribery and corruption as decomposition.”³⁷ Legist methods are used to fight the first type

³² Cited by Perelomov, L. S. (1998). *Confucius: ‘Lun Yu’* (p. 383). Eastern Literature. (In Russian).

³³ Cited by Oldenburg, S. F. (2017). *Confucius. Life, activity, thoughts* (p. 145). Tsentrpoligraf. (In Russian).

³⁴ Zaitsev, D. I. (2023). Genealogy of administrative discretion. *Siberian Legal Review*, 20(3), 272, 279. (In Russian).

³⁵ Zhu, J. (2022, November 9). *Citizens’ trust in the government remains the key to prosperity and harmony in China*. Rossiyskaya Gazeta. <https://rg.ru/2022/11/10/u-kogo-bolshe-vlasti.html>. (In Russian).

³⁶ Cited by Gordon, A. V. (2020). The doctrine of Xi Jinping’s rule. *Social and Humanities. Domestic and Foreign Literature*, 9(2), 158, 189.

³⁷ Nechevin, D. K. (Ed.). (2023). *History of countering corruption in the civil service of Russia and foreign countries in the 20th century* (p. 89). Prospect. (In Russian).

of corruption, while Confucian methods are used to fight the second type. It is no coincidence that China's anti-corruption campaign, literally translated as "Hunting Tigers and Flies" (i.e., large and small bribe takers), launched in 2013, focused on two tasks: "(a) to make all officials aware of the inevitability of responsibility for corruption offences; and (b) to restore public trust in the authorities."³⁸

The question that arises is: How can civil servants earn the trust of the public? The easiest way is to comply with the law, i.e., to not lose trust. This thesis forms the basis of the Chinese concept of the rule of law. In this concept, law and order have no independent value; they are important only as tools to create trust between the government and society.

In terms of ensuring state sovereignty, this concept unites and "reconciles" Confucianism and Legism. The following cyclical algorithm emerges: (a) for the state to become sovereign, the people must trust the authorities; (b) for the people to trust the authorities, the authorities must respect the laws; (c) if the authorities violate the laws, they will lose the trust of the people; (d) if the authorities lose the trust of the people, the state will lose its sovereignty.

1.5. Impact of Globalisation on the Concept of State Sovereignty in China

All states of the modern world are engaged in globalisation, which can be described as "the process of universalisation, the formation of unified structures, connections, and relations for the entire planet Earth across various spheres of social life." This process inevitably affects the state sovereignty of any country, yet scholars assess its impact in markedly divergent ways. For instance, P.A. Tsygankov argues that "globalization undermines national sovereignty," while according to A.A. Moiseev, "it would be incorrect to claim that globalization leads to the limitation of state sovereignty." Without endorsing either position, we shall examine how globalisation influences China's state sovereignty and its corresponding theoretical concept.

Beijing is an authoritative actor in international relations and integration processes. Its foreign policy is characterised by diplomatic restraint and consistent mercantilism. For contemporary China, any form of interstate engagement that provides third countries with potential pretexts or resources to exert political pressure is unacceptable. Conversely, as the "world's industrial workshop," China itself can dictate specific terms to its counterparts. As U.S. President Donald Trump noted in one of his books, China–U.S. trade resembles a "one-sided game" due to China's unilateral advantages.

Today's Beijing avoids total isolation and autarky, establishing comprehensive partnerships with foreign states, including capitalist ones, while striving to occupy—if not a dominant—at least an autonomous position within them. American

³⁸ Galiullina, S. D., Lifanova, M. V., Gerasimova, D. I., & Safina, E. A. (2020). Chinese model of fighting corruption: origins and peculiarities. *Problems of Oriental Studies*, 2(88), 8, 12 (In Russian).

political scientist Samuel Kim, a professor at Columbia University, characterises this behavioural model in the international system as a “maxi-mini approach,” expressed through “maximizing benefits from system participation while minimizing normative costs, such as dependency and loss of sovereignty.”

Thus, globalisation not only fails to constrain China’s state sovereignty but may progressively strengthen it. Here we fully align with the thesis of Russian philosopher A.G. Dugin, who claims that “China is not forfeiting its sovereignty; rather, it is pragmatically leveraging the opportunities globalization offers.” Yet does this imply that the shift in China’s international strategy is transforming its conceptualisation of state sovereignty?

Formally, no grounds exist for such hypotheses. China still adheres to the conventional understanding of state sovereignty, declares commitment to respecting all nations’ autonomy and territorial integrity, advocates for a multipolar world order, and condemns neocolonialism and hegemonism. However, the scale of China’s global engagement and its depth of involvement in world economics and politics suggest that China’s sovereignty now depends less on its own independence and more on the (at least partial) dependence of other states on China. Consequently, the PRC may soon develop a fundamentally new concept of state sovereignty aligned with its global stature and international interests. Modern history offers precedents such as the United States’ adoption of the doctrine that “a state forfeits sovereignty if it violates human rights within its territory,” granting other nations the right to conduct “humanitarian interventions.”

Therefore, globalisation reinforces China’s state sovereignty, which in turn may catalyse a comprehensive—or more likely a partial—revision of China’s sovereignty doctrine in the future.

2. Public Legal Provision of State Sovereignty: Sovereignty of India

2.1. Indian Legal System: General Provisions

India is one of the world’s oldest and most unique states, having successfully been able to preserve its self-identity while integrating elements of different legal systems. It is paramount to pay attention to the source of the polity’s formation, which is religion. India’s two predominant religions, Hinduism and Muslimism, have both directly influenced the formation of the legal system of the state. These two religions have presented a united front, particularly during various turbulent periods throughout history. However, later the differences between them became significant, which led to the division of the territory into two independent states, India and Pakistan. Consequently, customs and some religious views got their consolidation in “dharmashastras” which are ancient Hindu extensive sets of rules attributed to famous scholars. The best known of these are the Laws of Manu, which were a set of legally enforceable rules. They reflected ideology and defended the caste system and

social inequality, essentially proclaiming that “only punishment rules all creatures, only punishment is awake over them when they sleep, the wise consider punishment (identical to) law.”³⁹

Subsequently, elements from various legal systems were gradually integrated into the Indian legal system. It should be noted that the Indian legal system exhibits characteristics of the Romano-Germanic, Anglo-Saxon, Hindu, and Muslim legal families, as well as systems of religious and customary norms. Naturally, this is due to the historical conditions of the formation of this ancient state and the prolonged colonisation of India (from the early 17th to the mid-20th centuries). The influence of the Romano-Germanic legal family is less pronounced; nevertheless, it is evident in the codification of public and private law norms, as well as the delineation and development of distinct branches of law.

The influence of the Anglo-Saxon legal family on the formation of India’s legal system appears more substantial. Despite Britain not being the first coloniser in India, it exerted a direct influence not only on the form of the state but also on the sources and structure of Indian law, “attempting to adapt local customary law to the objectives of efficient administrative governance.”

The system of sources of law in India is particularly interesting, encompassing statutes, delegated legislation, subordinate legislation, precedent, and custom. It should be noted that case law is recognised as a source of law in India, yet possesses a certain peculiarity. More specifically, only the decisions of the Supreme Court of India and the High Courts can be recognised as sources of law. This is clearly stated in Article 141 of the Constitution of India. Custom played an important role in the development of Indian law, but its role became secondary after India gained independence. This shift is due to the codification of the primary issues and concerns of Hindu law in numerous statutes. Moreover, custom can only be applied if expressly permitted by statute.

Notably, a distinctive feature of the legal system lies in the courts’ application of norms from various religious families based on “personal laws,” which codifies customs and traditions. These norms are applied exclusively to private individuals and only upon the application of a citizen. As an example, we can cite the Muslim Personal Law (Shariat) Application Act, 1937. Both Hindu personal law and Muslim personal law are directly applied in matters concerning the personal status of citizens and also regulate the legal status of minors, guardianship and custody, adoption, spousal property, maintenance obligations, inheritance, and other such personal and family matters. Simultaneously, determining the applicable “personal law” for an individual in India is quite complex, as each state is inhabited by adherents of various religious communities. Therefore, the norms of Indian law are binding on all citizens residing in India, irrespective of their nationality or religion.

³⁹ Cited by Leist, 2006, p. 39.

India has also absorbed the institutions of other legal orders. Despite the strong influence of British legal culture, India did not blindly duplicate the Anglo-Saxon legal system but acted selectively. The Indian Constitution of 1950 reaffirmed that the law created earlier continued in force; at the same time, the Supreme Court of India determined that British legal instruments applied unless they conflicted with national sovereignty. In 1960, the British Statutes (Application to India) Repeal Act was passed, repealing 258 British statutes.

2.2. Concept of State Sovereignty in India

Colonial India, shaped by the perspectives of both Muslim and British society, formulated, developed, and realised the ideas of independence. However, state sovereignty was questioned soon after its attainment as it was a “dynamic and interconnected process arising out of an “unstable mixture of law and violence.”⁴⁰ This understanding emerged shortly after India’s independence, which led to forceful solutions to territorial problems and victimisation of the population. Border disputes with its neighbours and internal conflicts threatened the unity of the country. Nevertheless, the accession documents explicitly affirmed India’s “sovereignty”, allowing individual principalities and states to join the federation on different terms, without the possibility of further secession into independent territorial entities. In doing so, the states “retained control over internal administration and were exempt from federal legislative powers, except in areas defined by law and further restricted by the terms of accession.”⁴¹ Thus, “the sovereignty resulting from the division of territory was presented as peace rather than betrayal, and the suffering of the survivors as a call to collective action and discipline.”⁴²

At the same time, a debate arose regarding the enshrinement of state sovereignty in the Constitution of India as a fundamental attribute of the state. One position argued that anchoring state sovereignty at the level of the fundamental law would lead to authoritarianism. From another perspective, sovereignty belongs to and emanates from the people.

B.R. Ambedkar, regarded as the “father of the Indian Constitution” and a proponent of Buddhism, “actively championed the cause of vulnerable segments of the population, advocating for social, intellectual, economic, and political freedom, and for equality between women and men, which also constitute the fundamental principles of Buddhism.” The appeal to Buddhist ethics and its philosophy of non-violence, which occurred both during the struggle for independence and the formative period of the young state, became the ideological foundation for

⁴⁰ Purushotham, S. (2021). *From raj to republic: Sovereignty, violence, and democracy in India* (p. 360). Stanford University Press.

⁴¹ Purushotham, 2021, p. 360.

⁴² Purushotham, 2021, p. 360.

transformation. By the time India gained independence, the state faced numerous deeply rooted problems, largely attributable to religion (Hinduism) with its “varna-caste” foundations, which presuppose that occupations are predetermined for individuals—not based on their aptitude or capacity for learning but solely on the social status of their parents. Thus, this predetermination deprives individuals of choice and prevents them from realizing their potential through dignified labour; people do not strive for a better life, and therefore “would rather starve than engage in other work, and the reason for this lies in the caste system. Caste has become the direct cause of mass unemployment in India.” Furthermore, “Hinduism is a religion not founded on morality.” The sole aim of this doctrine is to provide the state or society with a means to absolve itself of responsibility for the plight of the poor and the weak.

Therefore, in the context of independence and in order to strengthen statehood, the need to resolve a range of internal challenges increased significantly. These included poverty and employment; territorial disparities; low levels of health care and education; poor efficiency of industrial production; and environmental concerns (such as deforestation, air pollution in cities, and waste management issues).

Recognising the vulnerability of the state as a result of these circumstances, the country’s leadership came to a new understanding of state sovereignty based on the protection and care of human life and the strengthening of public order. It is these conceptions of sovereignty that were legally enshrined in the Constitution of India in 1950. Article 38 notes:

The State shall ensure a social order conducive to the welfare of the people. The State shall endeavour to promote the welfare of the people by securing and safeguarding as effectively as possible a social order in which social, economic, and political justice defines the essence of all institutions in which the life of the nation is embodied.⁴³

Even so, the term “sovereignty” appears sparingly in the Constitution of India, most notably in Article 51A(c)), which stipulates that it as the fundamental duty of every citizen of India to “maintain and protect the sovereignty, unity and integrity of India” (Art. 51A(c)).

2.3. Legalisation of India’s State Sovereignty

The legal entrenchment of India’s state sovereignty began in 1947 with the passage of the Indian Independence Act by the British Parliament, which gave the country the status of a dominion (sovereign state). In 1950, India adopted the Constitution, which is the supreme law of India. Note that the Constitution of India enshrines the rights of citizens to equality (Arts. 14–18), freedom (Arts. 19–21),

⁴³ Constitution of India. (2014). In D. V. Kuznetsov (Ed.), *Constitutions of the countries of the world: Chrestomathy. Part 4* (p. 414). Blagoveshchensk State University Press. (In Russian).

protection from exploitation (Arts. 22–24), freedom of religion (Arts. 25–28), culture and education (Arts. 29–31), and constitutional guarantees (Arts. 32–35), which are considered to be universal goods. In addition, the basic law of India enshrines the possibility of “reasonable restrictions” on the civil rights of citizens (such as freedom of speech and expression; the freedom to assemble peacefully and without arms; and the freedom to form associations or unions) that may be established by law in the interests of ensuring the sovereignty and integrity of India (Art. 19).

For example, the press has the right to exercise its freedom of speech and expression by publishing material that does not infringe on the rights of other citizens and that does not violate the sovereignty and integrity of India, the security of the state, public order, decency, and morality.⁴⁴ However, the people of India have the right to know about every public action of officials.⁴⁵ Thus, the right to freedom of speech can be restricted only when the interests of the state are encroached upon.

Although there is no clear definition of state sovereignty, the general conceptions of state sovereignty in the Constitution of India are enshrined in other statutory enactments. One such fundamental enactment is the Prevention of Unlawful Activities Act (1967). It states that unlawful activities are those which jeopardise the sovereignty of India.⁴⁶

The preamble to the Armed Forces (Special Powers of Armed Forces) Act (1990)⁴⁷ states that

the armed forces shall be used to assist the civil administration in rebellious districts, to prevent terrorist activities and any activity which jeopardises the territorial integrity of the country, seeks withdrawal of part of the territory from India or insults the national symbols such as the Constitution, the Anthem and the Flag of India.

Separate norms on state sovereignty are also contained in the subordinate legislation. For example, under the Passport Act 1967,⁴⁸ the powers of the passport office and control officials must be in the interest of the sovereignty, integrity, and security of India. It is noteworthy that the identity of the applicants is taken into account when considering passport applications, as their activities may pose a threat to the sovereignty and integrity of India even outside its territory. Therefore, a public authority can refuse to issue a passport on the ground of (possible) engaging in activities outside the state which are prejudicial to the sovereignty and integrity of India.

⁴⁴ *Prabha Dutt v. Union of India*, AIR 1982 SC 6.

⁴⁵ *State of California v. Raja Narain*, 1975 SCR (3) 333.

⁴⁶ Unlawful Activities (Prevention) Act of June 17, 1966. Legislative Department. https://lddashboard.legislative.gov.in/sites/default/files/legislative_references/1955-1967_0.pdf

⁴⁷ Indian Armed Forces Special Powers Act of July 5, 1990, No. 21. Pashkov Library. <https://constitutions.ru/?p=9363>. (In Russian).

⁴⁸ Passports Ordinance of May 5, 1967. Legislative Department. https://lddashboard.legislative.gov.in/sites/default/files/legislative_references/1955-1967_0.pdf

The Commissions of Inquiry Act⁴⁹ and the Telecom Regulatory Authority Act⁵⁰ emphasise that the exercise of powers of public authorities should not be exercised in any manner that is against the interests, sovereignty, and integrity of India, or the security of the state.

In light of emerging challenges and threats, it would be particularly relevant to place a little emphasis on digital sovereignty, as India, like other BRICS member states, is a “sovereignty hawk”⁵¹ in the field of information technology. Therefore, India is building its own media structure, including television and internet.⁵² Ensuring state sovereignty presupposes that the country has its own information platforms, search engines, network services, and mechanisms to control the dissemination of information and the processing, storage, and transmission of data. In this regard, the Information Technology Act⁵³ was enacted in 2000 to regulate the activities of authorised persons to capture and intercept any information transmitted through any computer resource that is against the interest of the sovereignty or integrity of India and the security of the state.

In 2021, the Government of India adopted the Information Technology Guidelines for Intermediaries (Information Technology Rules), which enshrine strict content moderation requirements for online platforms and contain numerous references to safeguarding state sovereignty.⁵⁴ In particular, they specify that on social media platforms, the operator shall monitor the posting of information that may create a substantial risk of harm to India’s sovereignty and integrity, state security, friendly relations with foreign states, or public order through the use of technology.

2.4. The Impact of Modern Technologies on Strengthening India’s State Sovereignty

The concept of state sovereignty in India entails the pursuit of independence within the high-technology sector of the economy. Technological self-reliance and

⁴⁹ Commissions of Inquiry (Amendment) Ordinance of May 14, 1986. Legislative Department. https://liddashboard.legislative.gov.in/sites/default/files/legislative_references/ord1986%20to%201995_0.pdf.

⁵⁰ Telecom Regulatory Authority of India Ordinance of January 27, 1996. Legislative Department. https://liddashboard.legislative.gov.in/sites/default/files/legislative_references/1996-2000_0.pdf

⁵¹ Zinovieva, E. S. (2024). BRICS on the way to acquire digital sovereignty? *Problems of National Strategy*, 2(83), 144–163. (In Russian).

⁵² Polikarpov, V. S. (2014). Information sovereignty of Russia and information-intellectual wars. *Information Counteraction to Threats of Terrorism*, 23, 285–290. (In Russian)

⁵³ Law on Information Technology of June 9, 2000. Department of Agriculture & Farmers Welfare. <https://agriwelfare.gov.in/en/ActsDigiAgr>

⁵⁴ Ministry of Electronics and Information Technology Notification, New Delhi, February 25, 2021. Ministry of Information and Broadcasting. <https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20%20Code%29%20Rules%2C%202021%20English.pdf>

competitiveness are closely linked to the active development, implementation, and widespread adoption of modern technologies.

To stimulate domestic production, initiatives such as “Make in India,” “Digital India,” “Startup India,” and the “Smart Cities Mission” were launched. The comprehensive “Digital India” programme aims to reform the activities of governmental bodies in the delivery of public services through the adoption of digital technologies and ensuring broad citizen access to mobile communications and internet resources. Under this program, Centres of Excellence are being established nationwide, bringing together representatives from government, academia, and industry. These centres foster advancements in virtual reality, big data, robotics, and artificial intelligence, while government agencies create conditions for their implementation. The Government of India regularly develops and publishes strategic documents defining development directions, goals, and regulatory tasks in innovative fields such as artificial intelligence, blockchain, robotics, computer vision, drones, etc. For instance, the Science, Technology, and Innovation Policy (STIP) emphasises India’s focus on unresolved challenges across all spheres of societal life to ensure public welfare and prosperity. Research solutions encompass diverse options for various regions and socioeconomic strata, concentrating on issues within specific domains of public administration. Such an approach also necessitates developing products, processes, and technologies that incorporate interaction, testing, and end-user feedback at early stages to ensure deployment, impact, and societal benefit.

Notably, the public communication program “Information for All” operates as part of “Digital India,” alongside the *Digital Saksharta Abhiyan* (DISHA), or National Digital Literacy Mission (NDLM). The latter was designed to train citizens in information technology and enhance nationwide digital literacy, enabling individuals lacking IT skills to participate effectively in the development of the state and society.

India places particular emphasis on creating favourable conditions for utilising modern technologies in specific economic sectors. Mechanisms for coordinating innovation implementation have been developed across various Indian ministries, including those responsible for agriculture, animal husbandry, veterinary science, entomology, wildlife conservation, and forestry.

Strengthening India’s state sovereignty is facilitated not only by a focus on domestic high-tech development but also by adapting and integrating imported technologies into diverse societal spheres. This process begins by defining needs based on resolved challenges and evolving methods for addressing remaining issues. To attract foreign capital (investments) while aligning with national priorities, India accords significant attention to startups. Significantly, India positions itself as a new technological hub.

Consequently, some experts predict technological leadership for India—potentially establishing it as the next “Silicon Valley”—for several reasons: close collaboration with China in the high-tech sector, intensive startup development, continuous pursuit

of new technologies and their integration into governance systems, and reduced risk for foreign investments.

Ensuring state sovereignty through the development of new technologies is feasible only under the condition of upholding human rights and freedoms. The personality, dignity, and privacy of citizens are guaranteed and protected by provisions on fundamental human and civil rights enshrined in the Constitution of India. However, considering the influence of modern technologies, additional legal frameworks are required to address rights such as the protection of digital identity, the right to access or refuse access to new technologies, and the protection of biometric and personal data, among others.

Conclusion

The present study has illuminated certain distinctive features of the public legal safeguarding of state sovereignty in the People's Republic of China and the Republic of India, yielding the following conclusions.

In China, the doctrinal foundation of public legal sovereignty assurance largely draws upon the tenets of Legalism, emphasising the creation of a strong state, the establishment of unified laws and administrative decrees binding on all citizens, and the imposition of severe penalties for offences. In practice, this is manifested through a legislative framework characterised by a relatively limited number of statutes, including unique laws such as the "Law on Countering Secession," alongside stringent sanctions for crimes undermining state sovereignty.

Concurrently, Confucianism retains significant ideological influence. This doctrine posits that safeguarding state sovereignty requires not radical coercive measures but rather trust-based relations between the populace and authorities. In matters pertaining to sovereignty, the Chinese government navigates between Confucian and Legalist philosophies, strategically invoking elements of both schools.

A central challenge in China's public legal sovereignty framework is the absence of equilibrium between state sovereignty and human rights. Achieving such balance constitutes the primary trajectory for developing legislation that is aimed at ensuring national independence. Adopting a logical approach would entail a gradual, phased process, accounting for the progressive growth of legal culture within both state institutions and society. It is therefore imperative that practical guarantees for fundamental personal rights—such as the rights to life, health, inviolability, honour, and dignity—be prioritised. Continuous refinement of legislation and law enforcement should subsequently shield political, economic, social, cultural, and other civil rights from infringement. This approach necessitates not only revising certain postulates of the sovereignty concept but also substantial legislative amendments and, crucially, transformative changes in the practical operations of state bodies, their officials, and civil servants. Following the example of the other BRICS nations, the comprehensive

adoption of administrative procedures that are designed primarily to protect citizens' rights and freedoms could represent a significant step forward.

India's public legal safeguarding of state sovereignty is founded on preserving its ancient culture and traditions while maintaining a balance between legally enshrined rights, freedoms, and spiritual values amid contemporary challenges. The pacifism of Buddhism and principles of tolerance, alongside the high degree of universality inherent in core Hindu values, underpin India's sovereignty concept, establishing the primacy of fundamental civil rights within its 1950 Constitution. Notably, explicit normative prescriptions concerning state sovereignty remain limited in Indian legislation. Nevertheless, in responding to emerging challenges, the Indian state not only preserves its independence and autonomy at the national and international levels but also prioritises the protection of human rights as the foundational source of state sovereignty.

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ARTICLE

Territories with a Special Regime in BRICS Countries

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Abstract. This research presents a comparative analysis of territories with special legal regimes in the BRICS member countries. It examines both the theoretical foundations and the practical aspects of the functioning of territories with special status. The study examines such features as the legal status, purposes, and ways behind their creation, as well as their impact on the socio-economic development of the country. Based on legal analysis and regulatory practices, the authors propose a classification of these territories into five categories: administrative, unrecognized (or with limited recognition), economic (special economic zones), ecological (specially protected natural areas), and ethnic. The findings of this study aim to contribute to a deeper understanding of the effectiveness and developmental prospects of such territories within the context of the legal framework of the Russian Federation.

Keywords: union territories; special administrative regions; special economic zones; protected areas.

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Introduction

The strategy for an economic partnership among the member countries until 2025 was formulated at the XI BRICS Summit.¹ This strategy defines the vector for sustainable development in three key areas: the economy, the social sphere, and ecology. Among the various instruments facilitating such development, the institution of territories with a special regime plays a crucial role, serving as mechanisms to address the satisfaction of specific priorities outlined in the strategy.

The special legal regime (status) of a territory is determined by special legislation, which applies to a specific geographic area and has a targeted orientation. In most cases, special regimes are typically established to stimulate economic growth, ensure security, protect the environment, or address other strategic objectives of the country.

¹ Strategy for BRICS Economic Partnership 2025 was adopted on the 11th BRICS Summit Brasilia Declaration, 2019. Ministry of Economic Development of the Russian Federation. <https://www.economy.gov.ru>

For the Russian Federation, as a multinational, developing country with the world's largest territory, studying the experiences of foreign countries in using their lands for the aforementioned purposes is of great importance.

1. Territories with Special Administrative Status

Modern models of state-territorial organization are characterized by trends of localization, regionalization, and globalization. In the course of their implementation, these dynamics often give rise to issues concerning groups of individuals residing in specific territories who seek to preserve a degree of autonomy for their region. To address these issues, many countries establish special administrative districts with varying levels of autonomy ranging from strong to weak, which are intended to serve as a compromise between local and central authorities.²

A notable example of this approach is the Indian territory of Jammu and Kashmir. Until recently, this region was the only state in India with its own constitution.³ However, it currently functions as a union territory with the lowest level of autonomy in the country.⁴

In some cases, regions are economically or politically weak and cannot function as independent administrative entities, necessitating central management. The institution of union territories in India provides a unique example of an agreement between states with a weak local self-governance and a strong central authority.

India currently has eight union territories,⁵ all of which are directly governed by the central government. These regions have central administration, which is overseen by governors who act as representatives of the President of India.

China, by contrast, has pursued a different path. While the Indian government has established control over union territories due to the impossibility of their functioning without central leadership, the People's Republic of China (hereinafter the PRC or China) has adopted a policy of non-intervention to preserve their capitalist structure of enclaves, positively influencing the overall economic development of the state and serving as an example of the strong autonomy.⁶

² Irkhin, I. V. (2019). *Territories with special status within federal states: A constitutional and legal study* (p. 217). INFRA-M. (In Russian).

³ Constitution of Jammu and Kashmir (1957). Jammu.com. <https://www.kashmir.jammu.com/political-constitution>

⁴ Baiguzheikova, Z. K. (2019). Evolution of the constitutional and legal status of the state of Jammu and Kashmir. In *Current issues of public law: Proceedings of the 18th all-Russian scientific conference of young scientists and students* (pp. 18–22). Ural State Law University. (In Russian).

⁵ Constitution of India (1949). National Portal of India. <https://www.india.gov.in/my-government/constitution-india>

⁶ Petrykina, N. I. (2019). An unconventional model of administrative autonomy of China–Hong Kong: The view of Russian researchers. *Administrative Law and Process*, 3, 50–55. (In Russian).

As a unitary country, China has developed a unique program of political, economic, and financial decentralization, complemented by autonomous administrative management, known as the One Country, Two Systems. According to this program, within the framework of the unitary state, there are two capitalist centers, currently designated as Special Administrative Regions (SARs)—Hong Kong and Macao—which operate with a high degree of autonomy and are not subordinate to central authorities.⁷

The necessity of establishing such a regime is justified by the high economic development of the regions, whose economic strength significantly contributes to the country's economic growth.

The SARs effectively represent “the states within the state.” They have their own constitutions (referred to as Basic Laws), governments, multi-party legislative bodies, legal systems, law enforcement agencies, immigration departments, and even the ability to participate in international relations.

Assessing China's current situation, it can be concluded that this practice has thus far demonstrated positive results, serving as an example of finding the right balance that maintains political stability, economic prosperity, and territorial integrity for the common good.⁸

On the other hand, it is important to note the temporary character of strong autonomies, as any state aims to have a symmetric territorial structure in order to ensure an equal distribution of central authority across its regions. For instance, in 2019, the Indian government revoked the special status of the state of Jammu and Kashmir, thereby integrating it more tightly into the territorial-administrative structure of the country as a union territory.⁹ Similarly, in China, the concept of Special Administrative Regions was formulated from the outset with the hope of returning Hong Kong and Macao under Beijing's sovereignty. According to Joint Declarations between the PRC, the United Kingdom, and Portugal, special autonomous regimes are in effect in Hong Kong until 2047¹⁰ and in Macao until 2049.¹¹

In the context of this section, it is also worth mentioning the institution of federal cities. The most structured example of such cities is found in Russia, where

⁷ Troshchinsky, P. V. (2015). The legal system of the People's Republic of China: Formation, development, and specific features. *Bulletin of the MSAL*, 5(9), 99–117. (In Russian).

⁸ Balgabaeva, G. B., & Novakova, O. V. (2018). Constitutional and legal status of Hong Kong and Macao after joining the PRC. *Asia and Africa Today*, 10(735), 26–31. (In Russian).

⁹ Khan, I. M. (2019, Dec. 23). *Kashmir crisis 2019: Between a rock and a hard place*. BBC. <https://www.bbc.co.uk/news/world-asia-50826419>

¹⁰ Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (1984). Constitutional and Mainland Affairs Bureau. <https://www.cmab.gov.hk/en/issues/joint3.htm>

¹¹ Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao (1987). Printing Bureau. <https://bo.io.gov.mo/bo/i/88/23/out01.asp>

there are three federal cities—Moscow, St. Petersburg, and Sevastopol. Each of these cities possesses a unique status, whether it be as the capital,¹² as a cultural center, or as a strategic military hub.¹³ A distinctive feature of federal cities in Russia lies in their legislative powers,¹⁴ significant autonomy in matters of local governance,¹⁵ and distinctive fiscal policies.¹⁶

Conversely, federal districts such as Brasília in Brazil and Addis Ababa and Dire Dawa in Ethiopia differ in that they are more directly subordinated to the central authorities.

The similarity among the special statuses of these institutions in the BRICS countries lies in the fact that in nearly all cases, the city is not dependent on decisions made by the surrounding administrative entities.

Thus, when discussing territories with a special administrative status, one can distinguish between weak autonomies (such as the union territories in India) and strong autonomies (such as the special administrative regions in China). Weak autonomies primarily serve as instruments to facilitate governance, while strong autonomies represent functioning models of effective decentralization for economic and coordination purposes.

2. Territories with Unrecognized Status

Today, the struggle over territories persists through various legal and political methods,¹⁷ resulting in regions with a disputed status that are not recognized by all states. The existence of the majority of conflict zones in the considered countries can be primarily linked to the history of statehood, as well as the consequences of colonization and decolonization.¹⁸

¹² Law of the Russian Federation of April 15, 1993 No. 4802-I "On the status of the capital of the Russian Federation." *Vedomosti of the Congress of People's Deputies of the Russian Federation and the Supreme Council of the Russian Federation*, 1993, No. 19, Art. 683. (In Russian).

¹³ Federal Constitutional Law of March 21, 2014 No. 6-FKZ "On the admission of the Republic of Crimea into the Russian Federation and the formation of new subjects within the Russian Federation—the Republic of Crimea and the federal city of Sevastopol." *Collection of Legislation of the Russian Federation*, 2014, No. 12, Art. 1201. (In Russian).

¹⁴ Znamenshchikov, A. O. (2019). Sevastopol: Features of local self-government within the framework of a federal city. *Management Consulting*, 5(125), 131–139. (In Russian).

¹⁵ Federal Law of October 6, 2003 No. 131-FZ "On the General Principles of the Organization of Local Self-Government in the Russian Federation 2003." *Collection of Legislation of the Russian Federation*, 2003, No. 40, Art. 3822. (In Russian).

¹⁶ Gurinovich, A. G., & Komarova, T. L. (2016). On some features of the legal regulation of the budget process in the Russian Federation in the current period. *Legal Thought*, 2(94), 94–101. (In Russian).

¹⁷ Cashman, G., & Robinson, L. C. (2021). *An introduction to the causes of war: Patterns of interstate conflict from World War I to Iraq* (p. 458). Rowman & Littlefield.

¹⁸ Andreev, K. Y. (2006). *Legal status of indigenous minorities in foreign countries: Reference book* (pp. 1–140). Institute of Scientific Information on Social Sciences, Russian Academy of Sciences. (In Russian).

An analysis of territories with disputed status in the BRICS countries has allowed for the identification of the following classification.

2.1. De Facto States¹⁹

Following the civil war in China in 1949, the government of the Republic of China relocated to Taiwan, retaining control over this territory. However, the PRC continues to consider Taiwan as part of its territory and does not recognize its independence.²⁰ As a result, Taiwan finds itself in a complex international position: it is not officially acknowledged as a sovereign state by many other countries yet it actively participates in global political and economic processes. Given the practical benefits of cooperation with the enclave, many states have adopted a model of “engagement without formal recognition,” which is gradually emerging as an institution in international law.²¹

The reverse situation is observed in the Russian territories of Abkhazia and South Ossetia. On August 26, 2008, the president of the Russian Federation signed a decree recognizing the independence of South Ossetia²² and Abkhazia.²³ These territories operate under their own constitutions and governance structures, yet Georgia continues to claim them as part of its territory. As a result, the official status of Abkhazia is formally enshrined as an autonomous republic in the Constitution of Georgia.²⁴

2.2. Territories within a Country that are Subjects to Territorial Claims by Neighboring Nations

The Hala'ib Triangle in Egypt is under Egyptian control and sovereignty; however, Sudan has territorial claims on it. The reason for this is the legal ambiguities left by the colonial power. In 1898, Britain transferred the region to Egypt and in 1902 to Sudan, without adopting any official act. The Hala'ib Triangle is strategically important and

¹⁹ Markedonov, S. (2018). De facto states: Post-Soviet space. *Vestnik RSUH. Series: Political Science. History. International Relations*, 1(11), 24–40. (In Russian).

²⁰ Yawen, L. (2015). China's policy on the Taiwan issue in the 21st century. *Kazan Bulletin of Young Scientists*, 3(4/12), 135–141.

²¹ Shevchuk, N. V. (2018). Involvement without recognition: A new dimension of the international legal status of de facto states. *World Economy and International Relations*, 66(6), 124–134. (In Russian).

²² Decree of the President of the Russian Federation of August 26, 2008 No. 1261 “On the recognition of the Republic of South Ossetia.” *Collection of Legislation of the Russian Federation*, 2008, No. 35, Art. 4012. (In Russian).

²³ Decree of the President of the Russian Federation of August 26, 2008 No. 1260 “On the Recognition of the Republic of Abkhazia.” *Collection of Legislation of the Russian Federation*, 2008, No. 35, Art. 4011. (In Russian).

²⁴ Constitution of Georgia (1982). Georgia's Virtual Vault. <https://vault.georgiaarchives.org/digital/collection/adhoc/id/9208/>

rich in natural resources, making it an especially valuable region. It is the only part of Egypt that is located not in the arid North African zone but in the fertile Afro-tropical zone, with a mild climate compared to the Sahara, access to the sea, and a significant amount of natural resources.²⁵

In Russia, such territories include the Kuril Islands, Crimea, and Sevastopol, as well as the Luhansk and Donetsk People's Republics, and the Kherson and Zaporizhzhia regions. There can be numerous reasons for territorial claims by other countries, but all of these territories are characterized by certain strategic significance (for example, access to the Pacific Ocean in winter through the Kuril Islands and the naval base in Sevastopol) and a strongly expressed will of the people to be a part of the Russian Federation (as exemplified by the 2014 referendum in Crimea and Sevastopol).

2.3. Tearless Lands

The region of Bir Tawil, bordering Egypt and Sudan, is often regarded as the only truly unclaimed region in the world. No country makes a claim to Bir Tawil because asserting claims on it would require relinquishing claims to the economically beneficial Hala'ib Triangle.

In conclusion, Russia serves as an illustrative case of a state with territories that have different types of disputed statuses. Various factors contribute to these disputes, such as the territorial succession of another state, the multi-ethnic composition of the population, the desire of certain peoples to gain autonomy, and significant tensions along certain border areas leading to territorial claims by neighboring countries.

3. Territories with Special Economic Status

Modern trends in economic development are focused on addressing key strategic priorities of a state or specific territory, such as diversifying the economic structure, social transformation, improving the business and investment climate, and creating and modernizing employment opportunities.²⁶ As a result, a new trend in public administration has emerged globally, which involves the delegation of certain governmental functions to specialized organizations for more professional and contemporary management. In this model, government agencies act merely as clients, coordinators, and overseers while the actual execution of these functions are carried out by specialized organizations whose core activities are related to

²⁵ Devina, Y. R. (2022). *Classification of territorial disputes by time of occurrence* (pp. 135–142). LLC VVM Publishing.

²⁶ Kozlova, N. A. (2015). Functioning of free economic zones. *China Bulletin of the Sholom-Aleichem Priamursky State University*, 4(21), 50–58. (In Russian).

providing such tasks and services. Meanwhile, their organizational and legal forms may vary.²⁷

This international institution is referred to as a Special Economic Zone (SEZ), which is characterized by the provision of a special territorial status or a regime for conducting entrepreneurial activities. SEZs stand out for their diversity of forms, depending on the intended purposes, such as external trade, stimulation of domestic business, overall economic development, and scientific-technical objectives.²⁸

In its most general form, SEZ is commonly defined as a region or part of a country with advantageous economic-geographic conditions, where a duty-free or preferential export-import regime is established, providing a certain trade and financial independence from other regions of the country.²⁹

The BRICS countries, as some of the world's largest economies, collectively possess relatively powerful financial reserves. For developing nations, establishing SEZs holds significant importance in improving the investment climate, fostering economic development, and diversifying exports. Attracting investments to the SEZs of the BRICS countries is one of the key objectives in expanding trade and investment cooperation.

The history of SEZs can be divided into waves of development. The first wave of countries that initiated SEZ programs emerged in the 1950s–1960s with Brazil and India.³⁰ A second wave followed (1980s–1990s), consisting of China, the United Arab Emirates (UAE), Iran, Egypt, and Russia. South Africa joined the third wave (2000s–2010s). Currently, Saudi Arabia and Ethiopia are in the initial stages of establishing SEZs.

It is important to note three main types of legal regulation for these territories, specifically a unified codified act (India, Iran, Russia); development strategies (Egypt, Saudi Arabia); and regional legislation and local acts (China).

Across all the considered countries, the following goals for creating Special Economic Zones are evident: job creation and increasing employment rates; promoting industrialization and creating additional forms of economic activity; boosting exports and attracting foreign direct investment; and addressing issues of scientific and technological lag.

Among the most successful BRICS countries in the functioning of SEZs are China and the UAE.

Some scholars attribute the successful development of China's SEZs to decentra-lized management, in which local authorities, who generally have a better understanding

²⁷ Petrykina, 2019.

²⁸ Borisova, E. V. (2016). *Organizational and economic improvement of investment activities in the Russian Federation* (p. 124). KnoRus Company. (In Russian).

²⁹ Komilov, S. D., & Gafarov, F. M. (2017). The role of free economic zones in the development of the investment potential of the region (on the example of the Republic of Tajikistan). *Problems of Contemporary Economics*, 3(63), 194–197. (In Russian).

³⁰ Krutikov, V. K., Fedorova, O. V., & Yakunina, M. V. (2017). Formation of special economic zones: Domestic and foreign practice. *Competitiveness in the Global World: Economics, Science, Technologies*, 8-4(55), 74–77. (In Russian).

of local peculiarities, played a crucial role in development by establishing comfortable infrastructure and implementing effective administration.³¹ In 1981, the central government formally granted local authorities the right to formulate special regulations on all economic matters for the subordinate special economic zones.

Other researchers attribute the success of China's special economic zones solely to the complete delegation of management powers to the private sector. However, the "Shenzhen miracle" reflects not just the efforts of the Guangdong Province but also the coordinated development across the entire country. Firstly, it is worth noting the efforts to combat regional disparities in development: provincial governments offer significant incentives in underdeveloped areas to ensure the even distribution of internal Chinese capital. Secondly, there is comprehensive development across the entire People's Republic of China, contributing to simultaneous growth in the country's economic potential. Finally, the timely execution of strategies and plans formulated in response to existing problems and challenges has been crucial.

The adoption of China's experience with special economic zones has led to the rapid growth of SEZs worldwide. The UAE has been particularly successful in implementing this model.

Given the necessity of utilizing capital generated from oil trade, as well as the constraints of natural resources and territory, the United Arab Emirates has astutely leveraged international collaboration (such as establishing the Persian Gulf Customs Union) and investments in cutting-edge technologies.³² The UAE has partially adopted and successfully implemented China's SEZ management. Additionally, the country's rapid economic growth is attributed to its domestic political efforts.

The SEZ model in the UAE is currently being replicated by Saudi Arabia, which operates four SEZs primarily aimed at attracting investors facing various Western sanctions. This is particularly relevant to the Russian market.

In the Russian Federation, several models of SEZs have been proposed, each with its own legislation, including special economic zones,³³ free economic zones,³⁴ and territories of advanced development.³⁵

³¹ Koval, A. G. (2020). Special economic zones as a factor of the development of BRICS states. *Latin America*, 11, 20–38. (In Russian).

³² Terekhova, A. V. (2022). A comparison of the experience of creating special economic zones in Shenzhen, Jebel Ali, and the Russian Federation. *Far Eastern Federal University Reports. Economics and Management*, 3(103), 63–75. (In Russian).

³³ Federal Law of July 22, 2005 No. 116-FZ "On Special Economic Zones in the Russian Federation." *Collection of Legislation of the Russian Federation*, 2005, No. 30 (Part 2), Art. 3127. (In Russian).

³⁴ Federal Law of November 29, 2014 No. 377-FZ "On the Development of the Republic of Crimea and the Federal City of Sevastopol and the Free Economic Zones on the Territories of the Republic of Crimea and the Federal City of Sevastopol." *Collection of Legislation of the Russian Federation*, 2014, No. 48, Art. 6658. (In Russian).

³⁵ Federal Law of December 29, 2014 No. 473-FZ "On Territories of Advanced Development in the Russian Federation." *Collection of Legislation of the Russian Federation*, 2015, No. 1 (Part 1), Art. 26. (In Russian).

It is noted that the activities of SEZs in Russia are more oriented towards satisfying the needs of the domestic market rather than exports.³⁶

Countries with the highest number of SEZs include China, India, and Russia.³⁷ However, the number of zones is not necessarily an indicator of their effectiveness. A common criticism of SEZs is that the state invests more financial and other resources into them than it receives in financial returns. Currently, Russia has only four special economic zones, located in the Lipetsk and Samara regions, in St. Petersburg, and in Tatarstan ("Alabuga"), which have shown satisfactory results. These four SEZs account for the dominant share of revenues from all Russian SEZs. Notably, the funds invested from the federal budget for the development of these SEZs have been lower than the volume of investment resources invested by residents.³⁸ The focus on the development of industries rather than on regions has created contradictions between the regions and the central government.

Blindly copying management models can lead to negative consequences in the implementation of special economic zones. In Iran, poor infrastructure and corrupt officials have transformed free zones into monopolized markets. In Russia, the replication of unsuccessful zones, including a convoluted system of support for investors, has resulted in significant government expenditures.

In Russia, Brazil, Egypt, India, and South Africa, the achievements of special economic zones have had little impact on the economic development of other regions. The number of people employed in SEZs has fallen short of the projections that governments had planned at their inception. Moreover, there is an imbalance between industrially developed and export-oriented SEZs on the one hand and lagging areas focused on the domestic market on the other. This situation leads to social problems and environmental challenges.

However, some positive effects are also observed. Although the contribution of SEZs to the overall economy of the country remains relatively small, they are crucial for the regions where they were established. The labor productivity in SEZs, primarily due to the use of more advanced equipment, exceeds the national average by at least twice.

Nowadays, new trends are highlighted in the development of SEZs worldwide, which include the formation of SEZs through partnerships between the host country's government and foreign developers. China is the most active participant in this trend. By working on the establishment of SEZs in other countries, including Russia, providing assistance in their creation and development, and entering

³⁶ Kuznetsov, A., & Kuznetsova, O. (2019). The success and failure of Russian SEZs: Some policy lessons. *Transnational Corporations*, 2(26), 117–140. (In Russian).

³⁷ Omi, K. (2019). *Extraterritoriality of free zones: The necessity for enhanced customs involvement* (WCO Research Paper No. 47). <https://www.wcoomd.org>

³⁸ Vilensky, A. V. (2020). Special economic zones of Russia: A turn to the regions. *Economics: Yesterday, Today, Tomorrow*, 8A, 381–389. (In Russian).

into cooperation agreements with developing countries, China has effectively become a franchisor state of SEZs. For example, in 1997, China and Egypt signed a memorandum in which China committed to being the main investor, sharing knowledge and experience in creating SEZs, assessing the status of the zones, and participating in construction.³⁹ In 2023, the China Civil Engineering Construction Corporation signed an agreement for joint development of SEZs in Ethiopia, aiming to establish a logistics, industrial, trade, and business center in Africa.⁴⁰

Overall, it cannot be denied that special economic zones serve as an important tool for developing national industry, enhancing export potential, and advancing socio-economic policies. However, they cannot be considered a universal and solely applicable instrument for economic development. Rather than simply replicating models from partner countries, it is essential to develop a more comprehensive and detailed approach to formulating a strategy for promoting SEZs. This involves creating a clear legal framework for their operation and a development plan for the surrounding areas and the entire state.

4. Territories with Special Environmental Status

Since the signing of the Memorandum of Understanding on Cooperation in the Field of Environmental Protection in 2018,⁴¹ the BRICS member countries have concurred that establishing “Specially Protected Natural Areas” (SPNAs) is one of the methods to combat the reduction of biodiversity, ensure the restoration of fragile ecological systems, and promote the sustainable use of natural resources.⁴²

Specially protected natural areas refer to land, water, and the airspace above them containing natural complexes and objects of special significance for nature conservation, scientific, cultural, aesthetic, recreational, and health purposes.⁴³

In the BRICS countries, there is no unified classification of specially protected natural areas, as the legislation of each state outlines various types of territories. Primarily, these areas include nature reserves, global natural heritage sites, wildlife sanctuaries, and national parks.

³⁹ Kostyunina, G. M., & Baronov, V. I. (2011). Transboundary free economic zones in foreign countries (using China as an example). *MGIMO Review of International Relations*, 2, 169–178. (In Russian).

⁴⁰ People's Daily. (2023, August 18). *A Chinese company has signed an agreement on the joint development of a special economic zone in Ethiopia*. <http://russian.people.com.cn/n3/2023/0818/c31520-20059835.html>. (In Russian).

⁴¹ BRICS. (2018). *Memorandum of Understanding on Environmental Cooperation*. <https://brics2023.gov.za/agreements-and-mous/>

⁴² Gavrilov, L. A. (2023). *Features of state regulation of specially protected natural territories in China* (pp. 132–135). Aeterna. (In Russian).

⁴³ Ozdeadzhieva, S. M. (2022). On the legal regime of specially protected natural areas. *State Service and Personnel*, 2, 116–118. (In Russian).

The main element of protection for such territories involves restrictions or an outright prohibition on economic activities within them. At the same time, each participating country in the alliance has its own ecologically and legally specific regulations, shaped by the population's mentality as well as the level and nature of social, economic, and legal development.

However, there are still some differences in the reasons for creating these zones. In China, the increase in population and the accelerated process of industrialization posed serious threats to the environment, becoming a driving factor for the creation of a national strategy and action plan to preserve biodiversity. This led to the establishment of various ecologically protected areas with the aim of optimizing their spatial distribution.⁴⁴ In South Africa and Egypt, the need to support the tourism industry was the primary reason for creating SPNAs. By preserving wilderness, these zones attract tourists and provide opportunities for local residents to earn income. In Russia, SPNAs combine the goals of preserving biodiversity and natural heritage with the development of sustainable ecological tourism.⁴⁵

By contrast, in South Africa, some of the currently protected areas were not chosen specifically for preserving the biodiversity within them but due to the availability of land or its unsuitability for commercial activities.⁴⁶

In nearly all of the countries under consideration, with the exception of China, Ethiopia, Saudi Arabia, and the UAE, unified legislation has been adopted. In these countries, legal regulation is fragmented, encompassing laws on environmental protection, land conservation plans, and international conservation treaties. This leads to difficulties in management. In China, for instance, existing laws do not cover all types of SPNAs, resulting in the absence of applicable laws in certain types of territories. Additionally, due to excessive coverage and ambiguous boundaries of SPNAs, local authorities often ignore even the established norms.

Many of the developing countries have come to the conclusion that creating SPNAs is economically unfeasible in the long run, and managing them with small budget allocations is inefficient. To overcome this issue, India and South Africa have widely adopted semi-governmental agencies specializing in SPNA management. The management mechanism within this framework is similar to that of Special Economic Zones. Functioning legally as subdivisions of respective committees or departments, they manage with a certain degree of autonomy within these departments and have complete freedom to conduct financial operations, develop policies, and make

⁴⁴ Lin, G. (2015). Features of state regulation of China's economy in modern trends. *Economics and Management: A New View*, 37(1), 56–60.

⁴⁵ Likhareva, T. S. (2023). Peculiarities of the development of ecological tourism on the basis of specially protected natural territories. *Service in Russia and Abroad*, 3(105), 104–113. (In Russian).

⁴⁶ Hoveka, L. N., van der Bank, M., & Davies, T. J. (2020). Evaluating the performance of a protected area network in South Africa and its implications for megadiverse countries. *Biological Conservation*, 248, 108577.

decisions regarding natural areas.⁴⁷ This provides another reason for creating SPNAs, which is connected to the development of the commercial sector.

In this context, it appears advisable to recognize that specially protected natural areas represent not only ecological value but also significant social value, as their existence is an indicator of a responsible attitude towards future generations.

Therefore, it is essential to coordinate the efforts of BRICS participants, specifically by creating a unified classification system of SPNA categories. Attention should also be given to issues related to the functioning regime of these areas, and establishing a shared database to monitor SPNAs is critical for ensuring effective management. Such a collaborative approach can enhance the effectiveness of conservation efforts and underscore the commitment to environmental and social responsibility for the benefit of future generations.

5. Special Ethnic Zones

All the countries examined in this study have a complex ethnic composition of the population and exhibit signs of ethno-territorial fragmentation.⁴⁸ Certain areas or regions within these countries are characterized by territories with a concentrated presence of ethnic groups that are national minorities. These minorities often advocate for greater autonomy in addressing internal matters within the territories they inhabit, taking into account the specifics of their culture, language, and traditions.⁴⁹ For instance, in Ethiopia, there are at least thirteen ethnic groups currently seeking more autonomy or regional status. Key hotspots include the Sidama, Wolayta, Kemant, Welkait, Kaffa, and Raya regions, as well as the borders between the Somali, Oromia, and Afar regions.⁵⁰ For this reason, states are compelled to pay increased attention to maintaining national integrity and finding legal means to overcome disintegrative tendencies through the creation of territories with a special ethnic regime.

The level of autonomy in these regions, similar to territories with special administrative regimes, can be divided into strong autonomy (territorial autonomy) and weak autonomy (specialized territories for the residence of ethnic minorities).

⁴⁷ Koroteev, G. D., & Ignatyeva, M. N. (2015). Foreign experience of legal regime for national and nature parks. In *System of environmental safety management: Proceedings of the IX International correspondence scientific and practical conference (Yekaterinburg, May 30–31, 2015)* (pp. 39–45). Ural Federal University. (In Russian).

⁴⁸ Mochalov, A. N. (2017). Territorial structure of the state as a way of managing ethnic diversity (constitutional and legal regulation in BRICS countries). *Law. Journal of Higher School of Economics*, 3, 134–173. (In Russian).

⁴⁹ Connor, W. (1994). *Ethnonationalism: The quest for understanding* (p. 29). Princeton University Press.

⁵⁰ Zolotukhin, I. N. (2022). Regional agenda of Ethiopia in modern geopolitical realities of Africa in Oikumenia. *Regional Studies*, 3(62), 143–150. (In Russian).

Additionally, in some countries, administrative-territorial divisions are explicitly based on ethnic criteria, giving rise to institutions such as ethnic federalism and ethnically defined states.

Some scholars note that the degree of ethnic autonomy in a region tends to depend on the size of the ethnic group: the larger the ethnic group, the more likely it is to demand not only self-governance but also participation in the political life of the country. Therefore, the choice of the method of territorial accommodation for an ethnic group and the determination of a particular “ethnic” region’s status often take on a compromise—and even a forced character—resulting from political concessions and agreements between the country’s leadership and its respective “ethnic” leaders.

5.1. Territorial Autonomies

Territorial autonomies involve endowing a public-territorial unit within a state with a certain degree of self-governance in resolving specific internal issues. In most cases, territorial autonomy is established in areas inhabited by national minorities and aims to protect their linguistic and cultural characteristics while giving self-governance.

For instance, in India, the Constitution provides for the creation of autonomous districts and autonomous regions on the “tribal territories” the establishment of their legislative bodies (councils), and the transfer of certain legislative powers to them to address issues of their internal organization in accordance with their traditions and legal systems (e.g., land use, inheritance, and marital and family relations). In turn, acts of the Indian Parliament or state legislature concerning matters falling within the competence of district and regional councils may apply within autonomous units only if approved by the respective council. Decentralization also extends to the judicial sphere: district and regional councils can establish courts to adjudicate disputes involving parties belonging to tribes registered within the corresponding autonomous district or autonomous region.

Currently, territorial autonomy continues to be employed in relation to ten districts located in the states of Assam, Meghalaya, Tripura, and Mizoram. However, the actual autonomous status also extends to the mountainous territory of the Darjeeling district (known as Gorkhaland) under Article 243ZC of the Constitution.⁵¹ In many cases, the creation of new states and autonomous districts in the northeast resulted from compromise and political agreements between Indian authorities and leaders of insurgent movements.⁵²

Territorial autonomy, as a means of organizing a polyethnic state, is most extensively utilized in China. A significant difference from India is that in China, it

⁵¹ Constitution of India (1949). National Portal of India. <https://www.india.gov.in/my-government/constitution-india>

⁵² Mochalov, A. N. (2017). Territorial structure of India in the conditions of ethnocultural diversity. *Journal of Foreign Legislation and Comparative Law*, 5(66), 62–68. (In Russian).

serves as the primary (and often only) method of accommodating ethnic minorities within a unitary state, whereas in India, it supplements the primary federal structure and applies exclusively to the indigenous peoples of the northeast, forming a third level of territorial organization alongside the federal and state levels.

China has designated five autonomous regions (Guangxi Zhuang, Ningxia Hui, Xinjiang Uygur, Tibet, and Inner Mongolia) within its territory. In total, there are 155 territorial units in China with the status of regional national autonomy.

In contrast to India, the legislative powers of autonomous territories in China are significantly restricted. Additionally, laws must undergo mandatory coordination with higher-level people's congresses. This situation is explained by the fact that, embedded in the hierarchical structure of state governance, territorial autonomy serves not so much as a compromise between the interests of national minorities and the overarching interests of the state but as a tool to convey the state ideology to non-Han peoples (who constitute 9% of the country's population) to shape their consciousness in line with this ideology and "integrate" them into a supra-ethnic socialist society. For this reason, some argue that China's national-territorial autonomy is not truly such and can be classified as specialized territories for the residence of ethnic minorities.

An important feature of Chinese autonomies is that the right to autonomy, or self-governance, is possessed by national minorities themselves, not public-territorial entities. The country's Constitution and the Law of Regional National Autonomy 1984 employ the phrase "nationality exercising regional autonomy." In contrast, in India and South Africa, ethnic and linguistic groups are not considered collective subjects with group rights. Therefore, it would be incorrect, for example, to assert that in South African KwaZulu-Natal, state power is exercised by Zulus, or that in Indian Tamil Nadu, it is exercised by Tamils.

5.2. Ethnic States

Ethnic states, which represent the highest degree of self-governance for territorial units, serve as a mechanism to counteract local population separatism when ordinary territorial autonomy is no longer able to contain centrifugal tendencies. In 1962, India reached such a compromise with its people, risking its territorial integrity. As a result of an agreement between the Indian government and Naga separatist leaders, the states of Manipur, Mizoram, Tripura, and Meghalaya were created, giving these federative units the right to have their representation in the Council of States.

Ethnic states exercise state power while taking into account the cultural and linguistic characteristics of the population. They have the authority to establish their own official language. Regional legal systems and the organization of regional institutions may also take into account national traditions⁵³.

⁵³ Gladun, E., & Zadorin, M. (2023). The system of indigenous peoples' protection in BRICS states: An overview of legal and litigation support. *BRICS Law Journal*, 10(4), 121–141.

5.3. Territories of Ethnic Minorities

Specialized territories (lands) designated for the residence of ethnic minorities are intended to preserve the traditional way of life of indigenous peoples. These territories may take the form of reservations, lands of ancestral habitation for indigenous people, national settlements, and similar arrangements.

In this context, decentralization and the territorial accommodation of minorities grant ethnic groups living in specialized territories the right to use traditional social organization institutions for self-governance in accordance with their customary legal systems (to the extent compatible with the country's legal system as a whole).

The legal regime of specialized territories may vary, but in most cases, it provides legal guarantees for the preservation of traditional livelihoods and the original habitat, without designating these territories as public-territorial entities. In India and Ethiopia (and to some extent, in China), collective political participation rights are recognized for small communities residing in concentrated areas, driven by the overall ethnic diversity of the countries. In India, the municipality of the mountainous Gorkhas in Darjeeling is integrated into the system of public authorities. In Ethiopia, the upper house of the federal parliament includes representatives of all nationalities and people.

Brazil serves as a prominent example of territorial accommodation for small populations. The lands of traditional habitation for indigenous peoples and African descendants are recognized as ancestral territories and enjoy special constitutional protection (Art. 232 of the Constitution). However, they are not considered subjects of public legal relations or elements of the political-territorial organization of the state. It is noteworthy that representatives of these ethnic groups do not claim ownership of the territories they occupy. As a result, they are endowed with the right to use (usufruct) the respective lands for residence and traditional livelihoods.

But in practice, within these territories, indigenous people live in accordance with their traditions and legal systems. There are known cases where members of indigenous tribes, having committed, for example, a murder, were exempt from punishment under the criminal laws of Brazil because they had already been subjected to punishment based on customary law.⁵⁴

The Brazilian model of territorial accommodation for small populations is also applied (with variations) in South Africa (in relation to the Bushmen and Khoi tribes), India (for the "Scheduled Tribes," predominantly in the so-called "tribal belt" in the central part of the country, the traditional habitat of Adivasis), and in Russia.

In the Russian Federation, the territories of residence for small-numbered peoples are primarily established to provide targeted support for their communities.⁵⁵ Existing

⁵⁴ Mochalov, A. N. (2017). Ethnic factor in constitutional regulation of territorial structure of BRICS countries. *Bulletin of Voronezh State University. Series: Law*, 4(31), 44–54. (In Russian).

⁵⁵ Astakhova, I. S. (2020). On the places of traditional residence and traditional economic activities of indigenous peoples of Russia: On the problem of developing criteria for inclusion (the experience of the Republic of Sakha (Yakutia)). *Society: Politics, Economics, Law*, 12(89). (In Russian).

federal laws in Russia provide specific benefits and priorities in areas of compact residence and economic activities; establish a special legal regime for land use, water resources, and forestry; and grant tax benefits and quotas for the use of biological resources.⁵⁶

In any case, the primary goal of creating such territories is not political, nor is it a response to regional separatism. Rather, the purpose is to protect the rights of indigenous peoples to land and natural resources as the foundation of their traditional livelihoods.

Speaking broadly about territories with a special ethnic regime, the research reveals a consistent pattern regarding territories with a special ethnic regime. In other words, the more complex the ethnic diversity and the more varied the types of identity contributing to ethnic-territorial fragmentation in society, the more diverse the methods of territorial organization and the constitutional forms of its consolidation. This pattern is most vividly observed in India, where all three institutions of ethnic territories are utilized due to the unique ethnic, linguistic, and religious composition of the population, which can be described as the most complex in the world.⁵⁷

Thus, ethnic federalism in India serves two purposes: firstly, it enables the territorial accommodation of large linguistic groups, and secondly, it “smoothes out” ethnic separatism among certain peoples in the northeast who have significant cultural differences from the peoples of the “main” part of India. Legislative territorial autonomy operates in the northeastern part of the country, while specialized territories (lands) are created in the central part of India for the accommodation of minorities who do not make separatist claims.

Conclusion

Based on the above, the following classification of territories with special legal regimes can be presented:

1. Administrative;
2. Unrecognized;
3. Economic;
4. Ecological;
5. Ethnic.

This list, however, should not be considered exhaustive. The active promotion of modern technologies and the digital environment, including work with artificial

⁵⁶ Burundukova, E. M., & Kostina O. V. (2020). Territories of traditional nature management of the indigenous small-numbered peoples of the North: Land use rights and their protection. *Current Issues of Modern Economics*, 10, 520–528. (In Russian).

⁵⁷ Kumar, A., Rudenko, V., & Filippova, N. (2021). Constitutionalization of national minority rights in BRICS countries (Brazil, India and Russia). *BRICS Law Journal*, 8(3), 30–66.

intelligence, as well as the need to strengthen the defense complex of countries, leads to the necessity of establishing new experimental territorial regimes, such as regulatory sandboxes or military grounds.

When considering the potential application of foreign experience of the countries under study in the domestic context, it is essential to take into account the unique characteristics of the economy, social policy, and geographical location. The adoption of successful practices from other countries requires the development of a strict normative legal framework through careful analysis and adaptation to the specific conditions and needs of our state, thereby ensuring both the effectiveness and sustainability of such territorial regimes.

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ARTICLE

Legal Framework and Development Models of Smart Cities: Key Takeaways across BRICS Jurisdictions

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Abstract. This study analyzes the experience of smart city development in core BRICS jurisdictions, namely Brazil, Russia, India, China, and South Africa. The legal frameworks, as well as approaches towards management and implementation of the smart city concept, are examined. The research is methodologically based on a multidisciplinary approach, incorporating the analysis of academic literature, legal acts, and program documents. The authors explore top-down and bottom-up approaches to the development of a smart city and conclude that both of the approaches have distinct advantages as well as certain limitations, which suggests the necessity of a combined model for both the regulation and implementation of relevant projects. The authors also maintain that BRICS as an institution may itself serve as a platform to share and create appropriate tools. Additionally, a specialized mechanism for knowledge exchange and capacity building could be instituted within BRICS, aimed at systematically documenting and disseminating best practices, technical standards, and key insights on smart city development among member-states.

Keywords: smart cities; BRICS jurisdictions; top-down and bottom-up approaches; legal regulation; implementation.

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Introduction

United Nations demographic data indicates that urban areas currently contain more than 55% of the world's population, with projections suggesting this figure will rise to 68% by 2050.¹ This relentless urban transition coincides with the worldwide digital transformation of society and its physical surroundings. The scientific and technological progress achieved in recent decades has become deeply embedded in urban residents' everyday experiences. Today, automated management systems such as "smart home" and "smart office" technologies, which regulate building engineering systems, have achieved widespread adoption. Having gained substantial footholds in private and professional domains, these intelligent systems are now being systematically implemented in public spaces, particularly in urban centers and major rural communities.

The "smart city" paradigm embodies the convergence of diverse digital innovations and Internet of Things (IoT) applications, which are principally aimed at optimizing urban infrastructure management. This developmental model seeks to improve living standards through urban informatics that enhance the provision of services and address citizen needs. Crucially, urban intelligence transcends the simple

¹ 68% of the world population projected to live in urban areas by 2050, says UN. (n.d.). U.N. Department of Economic and Social Affairs. <https://www.un.org/uk/desa/68-world-population-projected-live-urban-areas-2050-says-un>

deployment of information technologies by municipal authorities; its application fundamentally involves the ways in which these technological solutions enable comprehensive analysis, real-time monitoring, strategic planning, and effective governance of the urban ecosystem.² It is also worth noting that a smart city effort is a problem-oriented policy initiative. Its popularity resides in its technological promise to address wicked urban problems in traffic, public transportation, energy consumption, environment, public health, food safety, and social and economic disparities. It is apparent that cities with more serious urban pathologies are more likely to adopt and implement smart city initiatives.³

Russia launched its “Smart City” digital urbanization project in 2018 under the dual auspices of the national “Housing and Urban Environment” project and the “Digital Economy” program. This strategic initiative aims to develop an efficient, technologically advanced urban infrastructure management system while enhancing living standards through improved comfort and safety in urban areas.

The pandemic years accelerated digital technology adoption in Russia, even across sectors where online solutions were previously uncommon. However, digitizing urban spaces faces significant challenges, primarily in two areas. First, resource constraints limit progress. Russian city municipalities often lack funding and technical capacity to implement smart technologies. While major cities like Moscow, St. Petersburg, and Kazan, which often lead current nationwide smart city ratings,⁴ benefit from state grants and private investment, smaller towns and rural areas continue to struggle despite a pressing need for better services and governance tools. In response, Russia has started developing smart city startups and solution packages suitable for various municipality sizes.

Second, citizen engagement remains challenging. Although federal authorities have actively promoted digitalization through legislation, effective implementation requires more than just technology. Successful adoption requires coordinated efforts between state and local governments, particularly municipal bodies that directly interact with citizens. Local authorities must not only develop digital tools but also actively promote their use in community governance. These challenges highlight the need for balanced approaches that address both infrastructure gaps and participation barriers in Russia’s smart city development.⁵

² Larichev, A., Kozhevnikov, O., & Korsun, K. (2023). Legal regulation of smart city technologies in solving local issues in urban areas. *Law. Journal of the Higher School of Economics*, 16(3), 56, 59. (In Russian); see also Mills, D., et al. (2022). Evidence-based public policy decision-making in smart cities: Does extant theory support achievement of city sustainability objectives? *Sustainability*, 14(3), 1–23.

³ Yu, W., & Xu, Ch. (2018). Developing smart cities in China: An empirical analysis. *International Journal of Public Administration in the Digital Age*, 5(3), 76, 82; see also Albino, V., Berardi, U., & Dangelico, R. M. (2015). Smart cities: definitions, dimensions, performance, and initiatives. *Journal of Urban Technology*, 22(1), 3–21.

⁴ Information and analytical portal “Smart City.” <https://russiasmartcity.ru>

⁵ Larichev, Kozhevnikov & Korsun, 2023, pp. 73–74.

The legal foundation for smart city development remains fragmented, currently relying primarily on ministerial decrees from the Ministry of Construction, Housing, and Communal Services. Key regulatory instruments include the Order of April 24, 2019 No. 235/pr (which provides recommendations for the digitalization of urban infrastructure), as well as the Order of February 4, 2019 No. 80/pr (which facilitates the selection of municipalities for the purpose of implementing pilot initiatives within the framework of the project for the digitalization of urban infrastructure).⁶

According to the Ministry of Construction of Russia, “smart cities” in the country should adhere to the following principles: (a) human-centric design; (b) formation of a sustainable and safe urban environment; (c) observance of the balance of interests, principles of development, and opportunities; (d) accessibility and convenience of services; (e) integration, interaction, and openness; (f) continuous improvement of management quality; (g) emphasis on economic efficiency; (h) primacy of long-term solutions over short-term benefits; (i) application of the best available technologies.⁷

This context raises crucial questions regarding the priority domains for implementing “smart city” mechanisms as complex urban ecosystems. The challenge encompasses two key dimensions: (a) identifying innovative solutions that optimize urban processes through appropriate legal frameworks, and (b) ensuring effective technological integration into citizens’ daily lives. Comparative analysis of international experiences becomes particularly valuable in this regard, as it enables the identification of empirically validated smart city solutions while mitigating risks through incorporating lessons learned from other jurisdictions.

The BRICS countries hold particular significance in this context, where, in recent decades, serious attention has been paid to both digitalization processes and the development of innovative urban infrastructure. It is important to note that digital transformation is one of the main areas of partnership within BRICS, as evidenced by the Strategy for BRICS Economic Partnership 2025. The major BRICS documents also encompass declarations adopted at summits. For example, the Second Johannesburg Declaration of the BRICS countries, which was adopted at the XV Summit in 2023, contains provisions stating that the BRICS countries recognize the dynamism of the digital economy in enabling global economic growth.⁸ At the same time, it is understood that not all BRICS countries are at the same level of digital development (and this is also acknowledged in the above-mentioned Johannesburg declaration);

⁶ Larichev, Kozhevnikov & Korsun, 2023, pp. 60–61.

⁷ Order of the Ministry of Construction of December 25, 2020 No. 866/pr. Laws of the Russian Federation on Amendments to the Constitution of the Russian Federation. <https://legalacts.ru/doc/prikaz-minstroja-rossii-ot-25122020-n-866pr-ob-utverzhenii/>. (In Russian).

⁸ XV BRICS Summit Johannesburg II Declaration, Sandton, Gauteng, South Africa, August 23, 2023. 15th BRICS Summit. <https://brics2023.gov.za/wp-content/uploads/2023/08/Jhb-II-Declaration-24-August-2023-1.pdf>

therefore, it is the role of BRICS to address respective challenges, including the various digital divides. In this regard, the best practices of the individual member countries can serve as a benchmark for other participants, including in the sphere of introducing smart technologies into the urban environment.

The BRICS organization is rapidly expanding, now comprising ten member countries, as well as many more observer jurisdictions. However, for the purposes of this research, the experiences of only four member states, in addition to the aforementioned Russia, are examined. The states under review are either ones with very high percentages of urbanization, which leads them towards the search and implementation of innovative solutions for urban infrastructure development and management, or nations with a very extensive role of the central government within the process (such as India and China), or countries that rely mainly on local initiative in the analyzed sphere, demonstrating certain unique examples of smart city development and approaches to solving respective issues that are worthy of being explored (namely, Brazil and South Africa).

1. A Top-Down Approach: Cases of India and China

1.1. India: The Smart Cities Mission

India, with its 1.4 billion inhabitants, is not only the most populated country on Earth but also very urbanized. According to the 2011 census,⁹ there are 52 million-plus urban agglomerations in India. With sharp income gaps between various groups of urban dwellers, their unequal access to infrastructure and public services, and rapid territorial expansion of the countries' agglomerations, national and state public power systems have been faced with multiple challenges, prompting the search for structured solutions, which include the implementation of smart city mechanisms.

Much like Russia, India has been demonstrating a top-down approach to smart city development, largely driven by the Smart Cities Mission, a significant national initiative launched in 2015 with the ambitious goal of developing 100 smart cities across the country by the year 2020, although this deadline has since been extended.¹⁰ The project is being implemented by the Government of India through the Ministry of Housing and Urban Affairs, which, in turn, cooperates directly with the governments of the respective states.

The project's objectives, based on the program documents, include the creation of a favorable and sustainable urban environment; stimulation of economic growth and improvement of people's quality of life through development of local areas; and the effective use of technologies. According to the project, this BRICS state has

⁹ Population Census 2011. <https://www.census2011.co.in/>

¹⁰ Smart Cities Mission Data Portal. <https://smartcities.data.gov.in/>

planned to modernize 100 cities and thus improve the quality of life of more than one hundred million people.

A key feature of the Smart Cities Mission's implementation structure is the establishment of Special Purpose Vehicles (SPVs) in each selected city.¹¹ These SPVs are registered as limited liability companies under the Companies Act 2013 and are responsible for overseeing the entire lifecycle of smart city projects, including project appraisal, approval, the release of funds, implementation, evaluation, and ongoing monitoring.

The cities also have so-called Smart City Advisory Forums, which ensure interaction and consideration of the opinions of various stakeholders. At the state level, the implementation of the project mission is overseen by a High Powered Steering Committee (HPSC), which provides guidance and a specialized platform for the exchange of ideas regarding the development of smart cities. At the national level, implementation is overseen by an Apex Committee, which approves proposals for the Smart Cities Mission, monitors its implementation, allocates funds, and carries out a quarterly review of the activities of the entire system.¹²

The project is financed through multiple channels. The project's financial resources include central government funds and states' own resources, which are obtained from a variety of sources, such as user fees, beneficiary charges and impact fees, land monetization, debt, loans, etc. The project also provides for the use of innovative financing mechanisms (such as municipal bonds, pooled finance mechanisms, and tax increment financing (TIF)); leverage borrowings from financial institutions, including bilateral and multilateral institutions and both domestic and foreign sources; and the use of funds from the National Investment and Infrastructure Fund (NIIF).¹³

The Smart Cities Mission adopts a dual approach to urban development, focusing on area-based development and pan-city smart solutions. Area-based development involves targeted interventions in specific parts of the city through retrofitting existing areas, redeveloping brownfield sites, or developing entirely new greenfield areas. Pan-city initiatives, on the other hand, involve the application of selected smart solutions to enhance the existing city-wide infrastructure. Most importantly, the Mission provides a degree of flexibility, allowing individual cities to define their own unique concept, vision, and plan for becoming "smart" based on their specific local context and ambitions.¹⁴

¹¹ Gupta, S. (2019). Smart city paradigm in India: Gwalior, a case study. *Humanities & Social Sciences Reviews*, 7(4), 341, 343.

¹² Ministry of Urban Development, Government of India. (2015). *Mission Statement and Guidelines – Smart Cities* (pp. 16–17). [http://164.100.161.224/upload/uploadfiles/files/SmartCityGuidelines\(1\).pdf](http://164.100.161.224/upload/uploadfiles/files/SmartCityGuidelines(1).pdf)

¹³ Ministry of Urban Development, 2015, p. 14.

¹⁴ Anand, A., Sreevatsan, A., & Taraporevala, P. (2016). *An overview of the smart cities mission in India*. Centre for Policy Research (CPR), India. https://smartnet.niua.org/sites/default/files/resources/scm_policy_brief_28th_aug.pdf

Some of the project's achievements that are worth highlighting are the digitalization of public services in the country's largest agglomerations, which leads to improved coverage of citizens with public services for citizens, as well as the introduction of electronic platforms for residents' appeals. Many cities have launched digital services for managing city resources, increasing efficiency.

However, interim monitoring of the project's outcomes shows mixed results. As of April 2025, 567 out of 8,058 approved projects have not been completed.¹⁵ Some of the drawbacks include an increase in the tax burden; increased supervision of citizens; failure to achieve a significant improvement in the quality of life of residents; inefficient spending of a significant portion of allocated funds; and weak involvement of citizens in consultations in the decision-making process.

Another problem is that despite their stated goals, India's smart cities do not in reality function as a tool for addressing chronic development imbalances. Some cities have more developed infrastructure and access to smart city technologies, while others remain lagging behind (Indian researchers S. Prahaj and H. Han refer to them as "edge cities,"¹⁶ which shows the difference in resource distribution and uneven management).

Under the "smart city" label, numerous initiatives are being pursued, including the establishment of big data processing centers and projects to modernize public spaces, infrastructure, and urban amenities. However, a substantial share of these projects fails to align with sustainable development objectives. For instance, roughly 40% of transport-related initiatives focus on expanding road networks, while only a small percentage prioritizes public transport development. Similarly, although around one-third of the projects target urban area development, issues related to public safety, environmental security, and technological risks—particularly in the context of the Internet of Things—receive comparatively limited attention. Overall, India's approach to smart urban systems remains fragmented.¹⁷

The examples of India's top-ranked smart city development areas illustrate this problem. For example, Bhubaneswar, located in the state of Odisha, consistently ranks among India's top ten smart cities. However, the city prioritizes area-based development, and the city's growth is mainly propelled by its concentration of educational institutions and Special Economic Zones (SEZs), accelerating urbanization and increasing its investment appeal. Key infrastructure such as the Information and Technology (IT) Incubation Center and the Golden Quadrangle NH-5 corridor significantly contribute to this attractiveness.

¹⁵ Ministry of Urban Development, Government of India. (2025). *National progress—smart cities mission (dashboard)*. <https://smartcities.gov.in/mission-dashboard>

¹⁶ Prahaj, S., & Han, H. (2019). Building a typology of the 100 smart cities in India. *Smart and Sustainable Built Environment*, 8(5), 400–414.

¹⁷ Shedrov, I. (2022). *Smart cities in India*. Russian International Affairs Council. <https://russiancouncil.ru/analytics-and-comments/analytics/umnye-goroda-v-indii/>. (In Russian).

Indore, a leading smart city in the state of Madhya Pradesh, has gained recognition for its advanced waste management systems and sustainable urban retrofitting approaches. The city has implemented technology-driven waste collection and processing mechanisms that have become benchmark solutions. However, a closer examination of Indore's Smart City Proposal reveals distinct investment priorities, with the majority of allocated funds directed toward slum redevelopment projects, parking infrastructure modernization, and road network improvements.¹⁸

The same, despite the presence of the program guidelines, can be said about the existing legal framework governing smart city development in India. There is no single, overarching law or regulation that specifically addresses the unique and multifaceted needs of smart cities. Instead, a patchwork of different laws and regulations applies to various aspects of smart city development, which can create challenges in coordination, implementation, and ensuring compliance.

1.2. China: Success through Centralization and Coordination

Similarly to India, China is densely populated and in recent decades has been experiencing rapid urbanization. To advance sustainable urban development, the establishment of smart cities has become a practical reality in China as well as a key direction for future urbanization. Currently, several hundred Chinese cities are undergoing smart city development, with four major clusters emerging in the Bohai Economic Rim, the Yangtze River Delta, the Pearl River Delta, and the central-western regions.¹⁹

The notion of "information cities," which emerged in the mid-2000s, has centered on urban informatization through the digitization of diverse public systems—including municipal governance and urban infrastructure—alongside their integration with information technology and the upgrading of telecommunications networks.²⁰

China's regulatory approach to smart city development is distinctly characterized by a strong, top-down directive from the central government,²¹ with the integration of smart city initiatives into overarching national strategic plans. Since 2014, smart city development entered a phase of national standardization. In December 2015, the government established the Inter-Ministerial Coordination Working Group for Promoting Smart City Development and issued the "Guiding Opinions on Promoting

¹⁸ Top 10 Smart Cities in India [2025 New Updated List]. (2025). Propacity. <https://propacity.com/blogs/top-10-smart-cities-in-india-2/>

¹⁹ Zabuzov, O. N. (2022). "Smart cities": Experience of Russia and China. *Great Eurasia: Development, Security, Cooperation*, 5-1, 1150–1153. (In Russian).

²⁰ Reshetnikova, M. S., Vasilyeva, G. A., & Tretyakova, S. S. (2021). China's place in the global smart cities market. *Innovative Economy Issues*, 11(4), 1997–2018. (In Russian); see also Qianzhan Industry Research Institute. (2019). *2019 market layout: Outlook on 2019 China smart city development competitive landscape*. <https://www.qianzhan.com/analyst/detail/220/190618-4ce4b615.html>

²¹ Yu & Xu, 2018, p. 81.

the Healthy Development of Smart Cities” to enhance interdepartmental coordination. Concurrently, propelled by emerging technologies including 3G/4G networks and cloud computing, pilot cities initiated explorations of localized collaborations across various application domains.²²

The Standardization Administration of China oversees the formulation of a comprehensive national smart city standard framework. This system spans multiple critical domains, including foundational principles, enabling technologies, infrastructure development, built and living environments, governance and service delivery, industrial and economic applications, as well as security and safety protocols. This focus on standardization aims to ensure interoperability, promote efficiency, and provide a clear framework for smart city construction and operation across the country, with numerous national standards already officially published.²³ Despite these efforts, China faces critical legal governance challenges in its smart city development. Prominent among these are issues related to data security, particularly given the vast amounts of data collected and processed in smart urban environments. Another significant challenge is data alienation, a phenomenon where individuals’ data seems to become separate from them, often in the commercial sector, raising concerns about control and potential misuse. The effectiveness of smart city data utilization is critically constrained by fragmented approaches to public data sharing, characterized by inconsistent implementations and a failure to establish standardized protocols across administrative levels.²⁴ These data governance issues frequently occupy an uncertain legal status, resulting from fragmented and delayed regulatory development.

However, in contrast to the Indian urban experience, Chinese cities have achieved significantly more coordinated and effective digital infrastructure implementation. One example of the application of smart city technologies is Beijing—the country’s capital and a large agglomeration. Beijing has emerged as a national leader in developing intelligent urban transportation services, implementing five core systems: (a) an integrated transportation information platform; (b) a comprehensive passenger information service system; (c) an advanced bus dispatching system utilizing continuous regional schedule analysis to optimize route allocation and service capacity; (d) an intelligent taxi dispatch system; and (e) an electronic toll collection (ETC) system employing vehicle-mounted transceivers with rapid-read capabilities.²⁵ Collectively, these intelligent transportation systems have dramatically

²² Qin, B., & Qi, S. (2021). Digital transformation of urban governance in China: The emergence and evolution of smart cities. *Digital Law Journal*, 2(1), 29, 35.

²³ Wu, J., & Novokshonova, Z. (2023). A comparison study of central governments’ participation in smart city projects in China and Russia. *E3S Web of Conferences*, 435, 05006.

²⁴ He, W., Li, W., & Deng, P. (2022). Legal governance in the smart cities of China: Functions, problems, and solutions. *Sustainability*, 14(15), 9738.

²⁵ Asaul, A. N., & Shuan, L. (2021). Current challenges and problems in building smart cities in China. *Scientific Review. Economic Sciences*, 2, 5–9. (In Russian).

enhanced Beijing's traffic management, providing an effective framework for addressing urban congestion and improving overall transportation efficiency.

Thus, China's experience in the field of "Smart Cities" is characterized by a high level of centralization and coordination, which can quickly and effectively introduce new technologies and solutions to urban problems. China has been actively investing in infrastructure development and building a digital ecosystem that includes a wide range of services for citizens. As Chinese scholars Wenxuan Yu and Chengwei Xu note, smart city initiatives are not only a technical policy solution, but also a political mission. Political and institutional support has been crucial for smart city development in China,²⁶ allowing the country to lead in the analyzed field.

2. Relying on Local Initiative: Cases of Brazil and South Africa

2.1. Brazil: Striving for National Policy and Thriving Local Practices

Brazil's legal and regulatory landscape for smart cities is currently evolving, with the Brazilian Charter for Smart Cities (CBCI),²⁷ published in 2020, being a significant guiding document. This charter serves as a political document outlining a public agenda for the digital transformation of Brazilian cities, along with a strong emphasis on both sustainable urban development and the integration of digital technologies across various sectors.

An important factor that contributes to the efficiency of smart technologies development at the urban level in Brazil is the existence of "Smart Cities" ("Cidades Inteligentes") definition, which frames the parameters of such, creating a benchmark for cities, communities, and authorities at various levels. This definition, outlined in CBCI, reads as follows:

cities committed to sustainable urban development and digital transformation, in their economic, environmental, and sociocultural aspects, which act in a planned, innovative, inclusive, and networking manner. They also promote digital literacy, collaborative governance and management, and the use of technologies to solve concrete problems, generate opportunities, offer services efficiently, reduce inequalities, and improve the quality of life of all people, ensuring the safe and responsible use of data and ICTs.

The definition reveals a strong emphasis on digital transformation, while acknowledging that smart city development extends beyond purely technological processes. Notably, Brazil's conceptualization of smart cities appears more circumscribed than India's broader interpretation, where virtually any urban improvement initiative qualifies under this designation.

²⁶ Yu & Xu, 2018, p. 87.

²⁷ Brazilian Charter for Smart Cities. (2020). Ministry of Regional Development, Brazil. <https://www.gov.br/mdr/pt-br/assuntos/desenvolvimento-regional/projeto-andus/carta-brasileira-para-cidades-inteligentes>

Although the CBCI offers a comprehensive framework of principles and recommendations, the City Statute (Law No. 10.257/2001) serves as a foundational legal instrument for urban policy in Brazil. It establishes sixteen core guidelines designed to steer municipal governance in fulfilling the social functions of cities and urban property. These guidelines are structured around key objectives, including environmental sustainability, collective welfare, public security, and the enhancement of citizen well-being. However, it is important to note that the majority of these established urban policy norms predate the emergence and widespread adoption of the smart city concept, indicating a potential need for more contemporary and specific regulations.²⁸

The development of a formal regulatory framework for smart cities in Brazil is further evidenced by the ongoing discussions surrounding the National Policy for Smart Cities. This national policy, currently under deliberation in the National Congress, is built upon the foundational principles and recommendations laid out in the CBCI. It aims to integrate digital transformation into sustainable urban development policies, programs, and actions, while also addressing the persistent issues of urban inequality present in Brazilian cities.

In 2021, Bill 976/2021, which establishes the National Smart Cities Policy (PNCI), was introduced in the Chamber of Deputies of the National Congress of Brazil. However, as of 2025, the bill was still under consideration.²⁹

Although the federal government encourages smart city development through programs and partnerships, at the national level the implementation of smart city performance and sustainability indicators is still in its infancy and the approach may vary from city to city. In this regard, there are various studies commonly found in the analytical literature that aim to identify basic indicators by which the development of smart cities in a country can be assessed.³⁰

Overall, the trends in Brazilian cities reflect the country's specific challenges and opportunities, such as issues of urban mobility, public safety and quality of life, as well as a growing recognition of the importance of technology and innovation for urban development. These trends are in line with global efforts to create smarter and more sustainable cities around the world.

The following are among the most frequently present indicators:

1. Energy Efficiency: the majority of Brazilian cities are interested in improving the energy efficiency of buildings, public transport, and urban infrastructure.

²⁸ Lima, E. G., et al. (2020). Smart and sustainable cities: The main guidelines of city statute for increasing the intelligence of Brazilian cities. *Sustainability*, 12(3), 1–26.

²⁹ <https://www.camara.leg.br/propostas-legislativas/2274449/>

³⁰ Felicio, E. A., et al. (2023). Smart cities: Practices and indicators adopted in Brazil. *Concilium*, 23(20), 458–472; Fachinelli, A., et al. (2022). *Smart cities of Brazil 2022: Performance of Brazilian capital cities*. Australia-Brazil Smart City Research and Practice Network. <https://www.citylivinglab.com/report-bra-aus>

2. **Waste Management:** waste management is a growing concern in this country, with particular attention being paid to the reduction, reuse and recycling of urban solid waste.

3. **Air Quality and Environment:** given the air pollution and environmental problems in urban areas, air quality and environmental preservation are key indicators.

4. **Sustainable Transport:** with intense urban traffic in major Brazilian cities, sustainable transport is becoming increasingly necessary, such as the use of efficient public transport and electric vehicles.

5. **Smart Urban Planning:** smart urban planning involves the efficient use of space, connectivity, and the creation of friendly public spaces.³¹

Despite the lack of uniform norms and standards for the development of smart cities at the national level in Brazil that are explicitly established by law, the Brazilian experience is interesting for its wide range of tools and approaches to the construction of smart infrastructure. A distinctive feature here is the presence of best practices for combining various elements of smart technologies, working synergistically to achieve the goals of creating a comfortable and sustainable urban environment. The significant powers and autonomy that municipalities possess to address local issues coupled with a relatively stable and adequate financial framework, within which city governments operate, contribute to the success of certain local practices.³²

One of the leaders in the rankings of smart cities not only in Brazil but also around the world is Curitiba, the capital of the state of Paraná, where urban transformation began in the late 1970s. The massive experiment in urban transport, greening, and social welfare developed in Curitiba allowed the city very early on win the U.N. Prize for its recycling innovative scheme and in 2010, the Sustainable Transport Award in Washington and the Globe Sustainable City Award in Sweden.³³ Curitiba demonstrates a striking example of the synergy of smart technology in the urban environment, featuring a transit system where dedicated bus lanes are combined with traffic light control, providing preferential movement of public transport. Such solutions are worth studying and scaling in agglomerations around the world, including those in the BRICS countries.

2.2. South Africa: Non-binding Framework, Inclusivity and Local Relevance

South Africa's regulatory approach to smart city development is primarily guided by the Smart Cities Framework (SCF), a non-binding framework developed by the Department of Cooperative Governance (DCoG) to support and coordinate smart city initiatives at the municipal level across the country. This framework emphasizes

³¹ Felicio et al., 2023, p. 469.

³² See, Afonso, J. R. R., & Araújo, E. A. (2006). Local government organization and finance: Brazil. In A. Shah (Ed.), *Local governance in developing countries* (pp. 381–418). The World Bank.

³³ Ferraro, L. (2025). *The first smart city in the world: Curitiba, Brazil*. Whatagreenlife. <https://www.whatagreenlife.com/the-first-smart-city-in-the-world-curitiba/>

the development of inclusive smart cities that are specifically tailored to the unique local context of South African municipalities and are designed to address the country's significant socio-economic challenges, which include poverty, inequality, and unemployment.

The SCF is built upon six interdependent guiding principles that are intended to inform decision-making related to the identification, planning, and implementation of smart initiatives and technologies. One of these principles includes ensuring that a smart city is "smart for all," meaning that initiatives should benefit all residents and communities, not just a select few. The framework also emphasizes using technology as an instrument to improve citizens' lives, rather than technology being the primary driver of development. Furthermore, it stresses that smart city initiatives should be shaped by and directly respond to the specific local context, taking into account socio-economic factors and the nature of the particular city or municipal area. The SCF also highlights the importance of being informed by the real needs of the community, embracing innovation, partnerships, and collaboration among various stakeholders and ensuring that smart city development is sustainable, resilient, and safe, in accordance with the U.N. Sustainable Development Goal No. 11.³⁴

In terms of data protection and privacy, smart city initiatives in South Africa must adhere to the Protection of Personal Information Act (POPIA). POPIA governs how personal data is collected, processed, stored, and shared, mandating that businesses involved in smart city technologies, particularly those utilizing IoT devices that collect personal information, must ensure compliance with this legislation. Additionally, the Cybercrimes Act in South Africa imposes obligations on businesses to prevent cybercrimes, including securing data and systems, which is especially crucial for ensuring the cybersecurity of interconnected devices within smart cities.³⁵

The implementation of the SCF in South Africa has a strong focus at the municipal level. The framework provides a structured process for municipalities to assess their "smart-readiness" before embarking on smart city projects. This process typically involves starting with baseline assessments to understand the current situation and the municipality's capacity, followed by the development of tailored support programs to facilitate the implementation of appropriate smart city initiatives.³⁶

The experience of two municipalities—the Steve Tshwete Local Municipality and the City of Cape Town—may be addressed to illustrate smart city development at the municipal level in South Africa.

³⁴ Department of Cooperative Governance and Traditional Affairs, South Africa (DCoG). (2023). *A South African smart cities framework*. https://www.cogta.gov.za/cgta_2016/wp-content/uploads/2023/01/Annexure-A-DCoG_Smart-Cities-Framework-1.pdf

³⁵ Barter, H. (2025). *The legal framework for Internet of Things (IoT) in South Africa*. Barter McKellar. <https://www.bartermckellar.law/commercial-law-explained/the-legal-framework-for-internet-of-things-iot-in-south-africa>

³⁶ Department of Cooperative Governance and Traditional Affairs, South Africa (DCoG), 2023.

The Steve Tshwete Local Municipality (STLM) is mostly rural with several urbanized centers, including Middleburg (with a population of more than 80,000 residents). Despite this, the municipality is actively working towards implementing the national Smart Cities Framework and has introduced its own Smart City Initiative. The municipality defines its smart city vision as one that makes decisions and governs through technologically enhanced engagement with its citizens, committed to providing universal access to services and information with socio-economic development and efficient service delivery at its core. The STLM's initiative, supported by the Anglo-American Municipal Capability and Partnership Programme (MCP), aims to localize the principles outlined in the SCF. The process follows a structured, multi-phase methodology encompassing (a) the evaluation of municipal smart readiness and (b) comprehensive data collection to support evidence-based decision-making for smart urban development. This approach prioritizes the identification of city-scale smart interventions that progressively optimize public service delivery and elevate living standards, while ensuring alignment with the Smart City Framework's foundational principle of social inclusion.³⁷

The City of Cape Town has adopted a strong data-driven approach in its journey towards becoming a smart city. The city has established a Digital City Strategy as its guiding framework for smart city development. Key initiatives include the development of an Open Data Portal in 2015, which provides public access to various city datasets, promoting transparency and enabling research and innovation. The city has also invested in the development of its IT infrastructure in order to improve administration and service delivery.³⁸ The Emergency Policing and Incident Command (EPIC) system is being integrated with the city's back-office platform and civil society groups to enhance public safety. Additionally, Cape Town has established a data science team to leverage data analytics for better decision-making.³⁹ These initiatives are guided by the city's transversal data strategy and research framework, which emphasize evidence-based decision-making and the importance of data sharing and partnerships. The city's approach is business-led rather than purely technology-led, ensuring that technology investments respond to clearly defined business needs.

To sum up, South Africa's regulatory strategy for smart cities is characterized by a decentralized, bottom-up approach, guided by a non-binding framework that places a strong emphasis on inclusivity and local relevance. This approach reflects

³⁷ CSIR. (2022, June). *A guide to establishing a municipal smart city initiative*. Urban Knowledge Exchange Southern Africa. https://www.ukesa.info/files/DMiCy0Yxm7eIAcZn4GUSrQft1u6F8gKj/Smart_City_Guide_CSIR.pdf

³⁸ International Growth Centre. (2023, January 23). *Data and research journey of a 'smart city': The City of Cape Town's practical approach towards evidence-based decision-making*. <https://www.theigc.org/blogs/data-and-research-journey-smart-city-city-cape-towns-practical-approach-towards-evidence>

³⁹ Boyle, L. (2020). *The way forward for the City of Cape Town and what it means to be 'smart' in Africa* (p. 32). Urban Real Estate Research Unit. <https://open.uct.ac.za/handle/11427/32097>

the country's diverse socio-economic landscape and aims to ensure that smart city development benefits all communities. Existing legislation on data privacy and cybercrime provides a foundational layer for responsible and secure implementation of smart city technologies.

Conclusion

The comparative analysis of smart city initiatives across BRICS nations reveals diverse approaches shaped by distinct governance models, socioeconomic contexts, and regulatory landscapes. While the overarching goal of enhancing urban livability through technology is shared, the pathways to achieving it vary significantly, offering valuable lessons for BRICS alliance.

Firstly, it is obvious that both the top-down and bottom-up approaches to smart-city development have certain distinct advantages as well as limitations. The top-down approach (employed in India and China) enables rapid scaling and centralized resource allocation but risks overlooking local needs, exacerbating inequalities (as seen in India's "edge cities"), and creating rigid implementation frameworks. China's emphasis on national standards fosters interoperability but faces challenges in data governance. The bottom-up approach (adopted in Brazil and South Africa) prioritizes local context, inclusivity, and community needs (e.g., South Africa's "smart for all" principle). However, these kinds of models often struggle with fragmentation, inconsistent progress, and reliance on municipal capacity and funding.

Therefore, it is evident that there is a need to foster hybrid governance models, which combine the strategic direction and resource allocation strengths of top-down approaches with the contextual sensitivity and innovation potential of bottom-up initiatives. National frameworks (like India's Mission or China's standards) should provide goals and minimum standards while empowering cities with the autonomy and resources to tailor solutions (like Brazil's municipalities or South Africa's SCF process). Cities across BRICS nations would greatly benefit from the implementation of such a model to address problems in securing resources for smart city development.

A common challenge across all analyzed jurisdictions is the lack of comprehensive, dedicated legal frameworks specifically designed for the complexities of smart cities. Brazil, India and Russia rely heavily on guidelines, orders, or policies under development, creating uncertainty. Therefore, it is particularly important to prioritize the enactment of comprehensive national laws on "Smart Cities" to provide a stable legal foundation beyond ministerial orders. Laws and guidelines, that explicitly embed principles of human-centricity, sustainability, and inclusivity. Brazil's attempt to pass such a law may serve as a valuable case example for consideration here.

It is also evident that critical issues such as data security, privacy (addressed partially by South Africa's POPIA), public data sharing, algorithmic accountability, and

citizen rights in digital spaces remain inadequately regulated across the majority of BRICS nations.⁴⁰ BRICS member countries should therefore collaborate to share best practices and develop model legislative principles to address these issues.

The analysis in this paper underscores the risk of technology becoming an end in itself⁴¹ rather than a tool for solving concrete urban problems. India's focus on road expansion over public transport and the potential for increased surveillance highlight misalignments with sustainable development and social equity goals. On the contrary, success stories like Curitiba's integrated transport system or Cape Town's data-driven service delivery demonstrate the power of technology applied strategically to enhance sustainability, efficiency, and inclusivity.

Furthermore, truly smart cities require active citizen participation in planning and decision-making. Frameworks like Brazil's CBCI and South Africa's SCF explicitly emphasize collaborative governance; however, translating this into practice remains a challenge. Therefore, clear mechanisms for multi-stakeholder engagement (including citizens, academia, and private sector) within national and city-level governance structures (e.g., strengthening bodies like India's Smart City Advisory Forums) should be established in order to address this demand.

Although smart technologies are innovative, the emphasis within their implementation should rather prioritize equity, sustainability, and concrete problem-solving. It is therefore crucial that smart city investments are explicitly linked to the U.N. Sustainable Development Goals (SDGs), particularly SDG 11 (Sustainable Cities and Communities).⁴² Moreover, smart city investments should also envisage mandates for rigorous sustainability and equity impact assessments for all smart city projects. It is worth noting that most BRICS declarations refer to the SDG, particularly stressing the need to proliferate sustainability in development in all spheres, including city growth (for instance, the Goa Declaration 2016, Brasilia Declaration 2019, and Johannesburg Declaration 2023).

Not only are certain aspects of smart cities development worth studying, but BRICS as an institution may also serve as a platform for sharing and creating appropriate tools. Support for smart city development initiatives is reflected in several BRICS declarations (Xiamen Declaration 2017, New Delhi Declaration 2021). The BRICS member states also host several large-scale events, dedicated to discussion of urban and local issues and finding solutions to connected problems. Among them are the BRICS Urbanization Forum, the Forum of BRICS Sister Cities and Municipalities, and the International Municipal BRICS Forum. In 2019, as part

⁴⁰ See also Vinogradov, V., & Estelle, Ch. (2024). IT giants vs. states in human rights regulation in digital space: A comparative review. *A&C-Revista de Direito Administrativo & Constitucional*, 24(98), 11–38.

⁴¹ See Isaev, I., Zenin, S., & Romyantseva, V. (2023). 'Power' and technological machines: Dreams are replaced by goal-setting. *BRICS Law Journal*, 10(1), 171–185.

⁴² See also Gladun, E. (2018). BRICS development through socially responsive economy. *BRICS Law Journal*, 5(3), 152–159.

of the latter forum, a draft roadmap for interaction between municipalities of the BRICS countries was developed, which included proposals to strengthen interaction between municipalities; transition to renewable, environmentally friendly energy sources; separate collection and appropriate recycling of waste, etc.⁴³ The already existing framework suggests that a more thorough knowledge exchange and capacity-building instrument within BRICS may be established, for instance, the BRICS Smart Cities Knowledge Hub, to document and disseminate best practices, technical standards, and lessons learned (both successes and failures) across member states. Such a center could facilitate peer-to-peer learning programs for city officials, technologists, and policymakers, as well as explore joint R&D initiatives and pilot projects addressing common BRICS challenges (e.g., affordable sustainable mobility, resilient infrastructure, and inclusive digital service delivery).

The journey towards truly smart, sustainable, and inclusive cities in the BRICS context is complex and ongoing. There is no single blueprint here. Success hinges on learning from diverse national experiences. This means acknowledging the pitfalls of fragmented implementation, top-down rigidity, technological determinism, and regulatory gaps, while embracing the opportunities presented by local innovation, strong standards, inclusive frameworks, and strategic technology application. By prioritizing human well-being, environmental sustainability, and social equity within robust legal and governance structures, and by harnessing the collective knowledge and collaborative potential of the BRICS alliance, member states can transform the promise of smart cities into tangible improvements in the quality of urban life for hundreds of millions of citizens. The imperative is to ensure that the “smart” city is fundamentally humane and sustainable.

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⁴³ The International Municipal BRICS Forum. <https://imbricsforum.com/about-forum/>. (In Russian).

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ARTICLE

Constitutional Foundations of Corporate Social Responsibility: Comparative Analysis of India and Brazil

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Abstract. Let us imagine a mix of corporate responsibility with constitutional values in order to bring up change in society. The paper is about how Corporate Social Responsibility (CSR) affects social and environmental welfare, especially given the mandatory Corporate Social Responsibility of India and the voluntary, Constitution-based Corporate Social Responsibility of Brazil. The Indian model as prescribed by statutory provisions of the Companies Act of 2013 provided for company contributions to public good in education, health, and rural development above all under institutionalized CSR compliance with constitutional provisions of social justice in absolute deviation to the looser CSR framework in Brazil far-fetched from the 1988 Constitution, which emphasizes rather corporate freedom—more of a labor right, biodiversity, social inclusion without any stringent regulatory mandates. The comparative analysis lies in both strengths and challenges for each of the two models structured compliance to the innovative but still overly illustrative engagement of Brazil in this case. Real-case studies like Tata Group and Vedanta Resources in India and Petrobras and Natura & Co in Brazil show how practices of CSR

imply within these countries. The article describes the concept of constitutionalism for sustainable development and in further terms carries on reforms towards more effective outcome-based CSR in keeping with national priorities to build up inclusive growth and ecosystem-friendly development. The comparative leg between corporate social responsibility and duty of obligation in the Constitution creates an advancement towards a far more equitable and sustainable future.

Keywords: Constitution; CSR; Companies Act; comparative analysis; India; Brazil.

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1. Introduction to CSR and Constitutional Principles

Corporate social responsibility (CSR) is the duty of a corporation to perform its activities in a manner that benefits, rather than harms, society or the environment. Over the years, CSR has transited from voluntary goodwill to mandatory obligations, especially for those big corporations whose actions would significantly affect society in general. The default premise of CSR is that corporations should stay accountable for the social and economic consequences of their acts and the activities in the environment in which they operate. Initially, CSR was organized around philanthropy and the occasional donation or community initiative was part and parcel of the goodwill attributed to that corporation. However, as corporate effects amplified, an increased need for more systemic contributions to society emerged. Today, this element forms part of corporate strategy. Nowadays, we even see the evolving legal CSR frameworks around the globe that require companies to use a certain percentage of their profit for social welfare spending. Today, businesses are, thus, being redefined as institutions that ought to engage proactively in sustainable development goals, including environmental protection, social equality, and economic progress. Globally constitutions form the bedrock requirements for ethical, social, or economic responsibilities which have the potential to guide the expectations of corporations regarding CSR. Generally speaking, constitutional provisions outline a nation's commitment to social justice, environmental care, and the affirmation of fundamental human rights. Nation states make these concepts a national legal framework to furnish conditions where corporate accountability coalesces with the public purpose. For instance, constitutions that are drafted for the protection of the environment or economic equity cast an expectation very strongly on corporations to positively contribute. In many developing economies like India and Brazil, an architecture under which the constitutions are built generally comprises not only a framework for entrenching rights but the constitution's specific responsibilities for corporations as well.¹ Such constitutions mandate the promotion of social justice and public welfare by governments, thereby indirectly motivating companies to adopt practices that may enter this category.²

Indeed, CSR is beyond compliance nowadays; instead, it has become a way for firms to inform their contribution to nation-building more meaningfully.³ Thus,

¹ Doe, J. (2020). The evolution of legal frameworks. *Law Journal*, 45(3), 200.

² Versteeg, M., & Zackin, E. (2016). Constitutions unentrenched: Toward an alternative theory of constitutional design. *American Political Science Review*, 110(4), 657–674.

³ Pattanayak, B. (2023, August 16). *CSR spending goes greener; health gets highest dose as companies rejig focus*. The Economic Times. <https://economictimes.indiatimes.com/news/company/cor->

the principles of equity and sustainability become those that set the imperative for corporate practices, influencing such as ethical operations and community contribution.⁴ Thus, studying the constitutional approach of CSR in India and Brazil is of special importance because these two cannot be wholly separated through their socio-economic issues common to all emerging economies, but both diverge in the way they have thus far developed unique paths for integrating CSR into their systems. India is one of those few countries that has enacted laws for mandatory CSR, and it reflects a great deal on structured corporate contributions. In contrast, Brazil places more emphasis on voluntary CSR, with the most encouragement through its Constitution and other legal norms. All that a comparative study can do involves understanding how different legal frameworks affect corporate functioning and societal results. India has the provision for mandatory CSR which is perhaps more effective in ensuring compliance while Brazil allows flexibility and adaptiveness to companies on how they would like to engage with their social responsibilities. Thus, this comparison yields insights into both the merits and demerits of the different approaches cited. Additionally, the text could also propose enhancements to align corporate goals with public welfare objectives.

2. CSR in India: Constitutional Mandates and Legal Framework

The Directive Principles of State Policy (DPSP) mentioned in Part IV of the Indian Constitution form a guideline for social and economic rights for state policies to ensure that it adopts measures that may enhance public welfare.⁵ Even though the DPSP is not enforceable in any court of law, it serves as a moral compass for legislative and executive actions. Example: Article 39—the state shall direct its policy towards securing the exercise of the right to adequate means of livelihood, fair distribution of wealth among all the citizens, and equal pay for equal work. This directly impacts CSR by prompting the companies to pour in activities that will work towards generating equality of income and welfare in society. Also, as per Article 41, the state shall secure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement. There is a close congruence between these principles to human welfare most commonly associated with corporate social responsibility kinds of programs that corporations are motivated to fund under CSR activity such as education, health, and employment generation. Thus, by aligning CSR activities with these DPSP provisions, companies stand to benefit

porate-trends/csr-spending-goes-greener-health-gets-highest-dose-as-companies-rejig-focus/articleshow/102755437.cms?from=mdr

⁴ Hohnen, P. (2007). *Corporate social responsibility: An implementation guide for business*. International Institute for Sustainable Development. https://www.iisd.org/system/files?file=publications/csr_guide.pdf

⁵ Government of India. (n.d.). *Part IV of the Indian Constitution: Directive Principles of State Policy*. <https://www.mea.gov.in/images/pdf1/part4.pdf>

society as well as reinforce constitutional values. Fundamental Duties under Article 51A of the Indian Constitution describe responsibilities in ethical terms, which are expected from the citizenry towards the state and society. Article 51A(g), for example, includes the aspect of protection and improvement of the natural environment.⁶ This generalizes an expectation not only on citizens but also on corporate houses regarding environmental protection and supports the CSR-based programs on environmental sustainability. Such CSR projects would involve initiatives like noise pollution abatement programs for companies or reducing carbon footprints and viable sustainable practices. Corporations in India are actively engaged in promoting their environmental responsibility through CSR, which ultimately reflects their correlative action to the constitutional value.⁷

The Companies Act, of 2013 has made a great difference in CSR in India. This established a statutory CSR⁸ in the following manner:

Section 135 mandates the application of CSR in companies whose net worth is rupee 500 crore or more; turnover is rupee 1000 crore or more; or net profit is rupee 5 crore or more.

Further, the provision states,

During any of the last three financial years, a company shall spend at least two percent of its average net profits earned during those three financial years on the activities specified in the schedule.

Exceptionally, India is one of the few countries to legally make CSR mandatory and emphasizes the role of corporate contributions for national development.⁹ Each company is required to form a CSR committee that formulates the CSR policy and monitors the implementation process concerning areas mentioned in Schedule VII of the Companies Act. For example, priority areas such as education, poverty alleviation, health care, environment sustainability, and rural development are presented. Under this Act, an annual report on CSR must be submitted and thus simplifies metrics regarding compliance and impact measurement.

2.1. Key Amendments and Implementation Mechanisms

These amendments, together with the Companies Act, provided excellent strengthening to the CSR obligations. The 2019 amendments placed heavier penalties on non-compliance with this act, while the 2020 amendment stipulated that companies that do not spend amounts on CSR requirements shall transfer

⁶ Government of Rajasthan. (2024). *Article 51A: Fundamental duties under the Constitution of India*. https://rshrc.rajasthan.gov.in/writereaddata/ActsRulesOrders/202208291219467911156Article_

⁷ Pattanayak, 2023.

⁸ Ministry of Corporate Affairs, Government of India. (2019, January 18). *Invitation of public comments on the report of high-level committee on corporate social responsibility*.

⁹ Upadhyay, N. K., & Rathee, M. (2021). An analysis of corporate social responsibility in India with special reference to COVID-19 situation. *Revista do Curso de Direito da Universidade Candido Mendes*, 1(1), 42–61.

the unspent funds to any of the government-approved funds.¹⁰ The emphasis lies on accountable CSR funding that is also used effectively. Compliance measures enhanced by CSR audits and a robust reporting framework have been set up under the Ministry of Corporate Affairs. The government now monitors CSR compliance through these means, while public disclosure would allow it to track transparency and accountability.¹¹ With time, Corporate Social Responsibility has been superseded by Environmental Sustainability in the nation. Because of policy-making changes at national levels and the noise made about global commitments for climate action, most CSR components are diverted towards other necessities within its fold. Perhaps, such acute prohibitory tendencies in CSR expenditure would not be recorded or may even further decrease from what has been recorded in the years 2023–2024 on account of the diversion of funds into action on climate or biodiversity or solid waste management, or into a combination of all these.¹² This probably fuelled or even accelerated further because India has to become net-zero by 2070, and already companies are combining efforts in the greenhouse with investments in green technologies. Some particular statistics from the Ministry of Corporate Affairs (MCA) show that about 35% of the mobilization of CSR funds will be on environmental initiatives for the year 2023, and continues to grow phenomenally by leaps and bounds every year.¹³ Such funding by these companies' continued projects, such as the Swachh Bharat Mission and Clean Ganga Mission, adds up to the collective national objectives on the environment set by these companies. The latest is a renewed political will of companies, like Tata Consultancy Services (TCS), or Reliance Industries, to launch new CSR programs focusing on renewable energy interventions, reforestation, or carbon offset schemes.

The focus on education and skill development remains a priority for CSR programs in India, especially with the evolving demands of a digital economy. The National Education Policy (NEP) 2020, which aims to overhaul the education system by 2040, has inspired companies to participate actively in upskilling and digital literacy programs. Corporations such as Infosys and Wipro have developed partnerships with educational institutions to provide STEM education, coding workshops, and digital skill-building programs to underserved communities. Data for 2023–2024 shows that nearly 30% of CSR spending in India is allocated to education-related initiatives, with a strong emphasis on enhancing employability for youth.¹⁴ This focus

¹⁰ Ministry of Corporate Affairs, Government of India. (2019). *The Companies (Amendment) Act, 2019*. Government of India. https://www.mca.gov.in/Ministry/pdf/AmendmentAct_2019.pdf

¹¹ Ministry of Corporate Affairs, Government of India. (2020). *The Companies (Amendment) Act, 2020*. Government of India. https://www.mca.gov.in/Ministry/pdf/AmendmentAct_2020.pdf

¹² Pattanayak, 2023.

¹³ Tax Management India. (2024). *Corporate social responsibility: Legal perspective and practical approach*.

¹⁴ Protean Tech. (2024). *Global comparison: CSR in education*. <https://proteantech.in/articles/global-comparison-csr-in-education>

is expected to increase, especially as the government and industries strive to address the growing skills gap in the technology and manufacturing sectors.¹⁵

Indian companies, interestingly, have taken to making healthcare one of the key priorities under corporate social responsibility after the COVID-19 pandemic.¹⁶ These included public health infrastructure improvement programs, telemedicine access programming, and community health programs, which are about 25% of the total CSR spending by the company in 2023. The pandemic highlighted the need to build health resilience. To this end, companies such as Biocon and Dr. Reddy's Laboratories are funding projects focusing on vaccinating, managing chronic diseases, and nutrition programs for the underserved.¹⁷ Apart from that, schemes such as Ayushman Bharat and Pradhan Mantri Jan Arogya Yojana have motivated private companies to set up their facilities for rural healthcare, where medical access is less. These schemes also add to the broader canvas of universal health coverage and are a testament enough to the increasing integrative use of resources by corporations in public health-related initiatives.¹⁸

Now there will be moving by 2023 to 2024 from the very urban poor CSR programs out completely into remoter and more undeveloped areas.¹⁹ Lately, one recent development is an alteration of companies' CSR Policy by MCA, where, as per measure, engagement in projects that are defined as directly benefiting the local communities where they have a presence is strictly the mandate of companies. This will not only further the socio-economic development of rural areas but also compel companies to build stronger ties with the municipalities. Heavy corporations like Mahindra & Mahindra, and ITC Limited have taken initiatives directed towards better agricultural practices, water conservation, and inspiring rural entrepreneurship. For instance, "e-Choupal" even provides farmers digital access to agricultural data, market knowledge, and good earning potential. Hindustan Unilever's Project Prabhat has initiatives focusing on community development in rural areas in areas like sanitation, health, and education.²⁰ With the 2021 amendment requiring the transfer of unutilized CSR funds to government initiatives or the application for ongoing projects within

¹⁵ Sarkar, J., & Sarkar, S. (2015, August). *Corporate social responsibility in India: An effort to bridge the welfare gap*. Indira Gandhi Institute of Development Research. <http://www.igidr.ac.in/pdf/publication/WP-2015-023.pdf>

¹⁶ Upadhyay & Rathee, 2021.

¹⁷ Dr. Reddy's Laboratories. (2023). *Sustainability Report 2022–2023*.

¹⁸ Angell, B. J., Prinja, S., Gupta, A., Jha, V., & Jan, S. (2019). The Ayushman Bharat Pradhan Mantri Jan Arogya Yojana and the path to universal health coverage in India: Overcoming the challenges of stewardship and governance. *BMJ Global Health*, 4(3), e001562.

¹⁹ Chakrabarti, D. (n.d.). *Recent amendments to the CSR rules and implications for the not-for-profit sector*. Pacta. <https://www.pacta.in/blog/Recent-Amendments-to-the-CSR-Rules-and-Implications-for-the-NotforProfit.html>

²⁰ Hindustan Unilever Limited. (2023, December 26). *10 years of Prabhat, HUL's community development initiative*. <https://www.hul.co.in/news/2023/10-years-of-prabhat-huls-community-development-initiative>

three financial years, compliance is becoming a key focus for companies.²¹ This brought to view the transparency aspect since it must now disclose CSR spending in detail in the annual report. The 2023 MCA National CSR Awards offers gifts in the form of incentives to report on and execute projects highly, which also recognizes companies that excelled in their CSR planning and execution, as well as impact assessments.²² According to the latest numbers,²³ nearly eighty percent of the qualifying companies in India comply with Section 135 of the Companies Act which prescribes CSR expenditure for those companies having certain revenue and profit thresholds.

An emerging business trend now dominating India's corporate sector is digital transformation and technology-driven CSR. Technologies such as data analytics, artificial intelligence, and cloud computing enable organizations to track CSR outcome measurement, social impact assessment, and stakeholder beneficiary engagement for better effectiveness. For example, IBM India applies artificial intelligence tools in the evaluation of the educational growth of students at its CSR-supported schools, giving insights as to where to improve.²⁴ Another aforementioned case is the Jio Platforms digital literacy program, launched in association with rural schools, introducing children to online resource sites and resource provision for inclusivity. Technology-led CSR is becoming important in scaling impact and reaching many beneficiaries, even in those distant locations where the traditional way fails.

2.2. Real Case Studies on CSR and Example Interns in India

2.2.1. Tata Group – Performance by CSR in the Area of Social Justice

Tata Group being the threshold of CSR in many ways has its marks all over social development projects education, healthcare, rural development, and environmental sustainability. In 2023, the Tata group launched Tata STRIVE, a project dedicated to skill-building for young people and women in unreached areas. So far, this project has thus trained over 100,000 people in market-aligned skills, giving pathways to employment and self-reliance. The broad-based holistic long-haul agenda, rooted in social and equity strategy, comes from Tata, which is aligned with the U.N. SDGs.²⁵

²¹ Ministry of Corporate Affairs, Government of India. (2021). *The Companies (Amendment) Act, 2021*. Government of India.

²² Ministry of Corporate Affairs, Government of India. (2023). *National CSR Awards*. Government of India. <https://www.mca.gov.in/content/csr/global/master/home/national-csr-awards/national-csr-awards.html>

²³ Institute of Chartered Accountants of India. (2020, December). *Handbook on Audit of CSR Activities*. <https://csr.icaai.org/wp-content/uploads/2021/01/Handbook-on-Audit-of-CSR-Activities-Final.pdf>

²⁴ IBM Newsroom. (2020, July 16). *CBSE collaborates with IBM to integrate AI Curriculum in 200 schools across India*. <https://in.newsroom.ibm.com/2020-07-16-CBSE-IBM-AI-Curriculum>

²⁵ Srivastava, A. K. (2012, January). *Corporate social responsibility: A case study of TATA Group*. ResearchGate. https://www.researchgate.net/publication/271249875_Corporate_Social_Responsibility_A_Case_Study_Of_TATA_Group

2.2.2. Collaborating Reliance Industries and Swachh Bharat Mission

The CSR measures largely match the pledges made by Reliance Industries under this mission. The centralization of sanitation and hygiene work has now moved to sanitation beyond 200 village sites in the year 2023–2024 under the caption of toilet construction, hygiene education, and waste disposal expenses.²⁶ Such support will indeed make effective utilization of most of the state-level provisions for public health and hygiene for poorer rural communities; thus showing how “CSR” can project itself into national policy for impact.

2.2.3. Infosys: CSR in Education and Sustainability

Infosys, the leading developer of IT services worldwide, pursues a very unique kind of CSR. This is through education, the environment, and the development of rural areas. Infosys Foundation itself funds several programs, including those on digital learning platforms for underserved schools, women empowerment projects, and environmental conservation programs.²⁷ In 2023, Infosys launched a shrunken version of the Carbon Neutral Program for which the company achieved carbon-neutral under its Indian operations and set a notable example in the area of corporate sustainability.

3. CSR In Brazil: Constitutional Framework and Legal Structure

The Brazilian Constitution of 1988 is distinguished from other such enormous, progressive pieces of legislation that proclaim with considerable weightage the principles of social justice, environmental responsibility, and labor rights. This Constitution drafted in a time of political transformation very closely mirrors the commitment of the country to social inclusion and environmental stewardship.²⁸ The incorporation of values within the constitutional framework thus provides a very solid basis for Corporate Social Responsibility compelling alignment of companies with their operations and national objectives for social and environmental well-being. By the provisions of such a constitution, Brazil was made a world super actor in sustainable development, where not only the individuals and the government but also the corporations contribute to achieving such plenary goals.²⁹ Thus, some

²⁶ Skill Council for Green Jobs. (2024). *Annual report 2023–24*. <https://sscgj.in/wp-content/uploads/2024/10/Annual-Report-2023-24.pdf>

²⁷ Infosys. (2024). *Carbon neutral program*. <https://www.infosys.com/about/esg/environmental/emission/carbon-neutral-program.html>

²⁸ Alvarado, A. (2018). The Brazilian Constitution of 1988: A comparative appraisal. *Revista de Investigações Constitucionais*, 5(3), 137–148.

²⁹ Borges, M. L., Anholon, R., & Cooper, R. E. (2017). Corporate social responsibility (CSR) practices developed by Brazilian companies: An exploratory study. *International Journal of Sustainable Development & World Ecology*, 24(5), 421–431.

critical research organizes the requirement for preserving the environment for future generations, protection of indigenous rights, and fairness in labor. In effect, the Constitution provides a moral and legal basis that advances CSR while creating expectations concerning companies' meaningful participation in societal welfare. For instance, the Principle of Social Justice embedded throughout the document encourages business practice through which inequalities are reduced and inclusive growth follows. Most efforts to support sound corporate responsibility have gained approval by building communities, strengthening biodiversity, and improving workplace conditions.

Adherence of economic activity to principles of social welfare and environmental conservation anchors the 170th Article of the Constitution of Brazil, one of the most relevant articles regarding CSR³⁰. The article, in defining that development permits neither exclusionary social justice nor degrading of the environment by itself, insists on harmonious balance in all these about the economic interests of the nation. Article 170 has important implications for corporate social responsibility as it requires businesses to contribute to broader goals of social and environmental justice. Ultimately, from the premise that social function is an important aspect of economic activity, Article 170 refers to companies concerning their societal and environmental impacts. This principle resulted in the development of robust regulatory frameworks leading to preventing pollution, protecting the rights of workers, and promoting ethics in business practices. Corporations that are based in Brazil are hence expected to follow rigorous environmental standards as regards community development and contribution to the welfare of employees. This disposition to social justice can be seen in various sectors—from agriculture to mining—where companies are urged to take sustainable and equitable practices as part of their commitments under CSR.

The actual environmental framework of Brazil contains some of the most rigorous standards in the whole world, especially because it houses the Amazon rainforest, which serves global purposes in both biodiversity and climate stability.³¹ For example, the National Environmental Policy Act requires that every major project begins with an Environmental Impact Assessment. Such assessments require multinationals to assess the long-term ecological and social impacts of their activities, in addition to thrusting for greater transparency and accountability in all sectors, including agriculture, energy, and mining.³² Besides, Brazil has also begun putting in place

³⁰ Mattei, J., & Boratti, L. (2017). Constitutional environmental protection in Brazil: A rights-based approach. In P. Fortes, L. Boratti, A. Palacios Lleras & C. Crawford (Eds.), *Law and policy in Latin America* (pp. 327–345). Palgrave Macmillan.

³¹ European Parliament. (2020). *EU policies – Delivering for citizens: Corporate social responsibility (CSR) and its implementation into EU Company Law*. European Parliament, Policy Department for Economic, Scientific, and Quality of Life Policies. [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU\(2020\)658541_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541_EN.pdf)

³² Borges, Anholon & Cooper, 2017.

mechanisms to monitor and punish deforestation activities for the past years in reaction to rising international criticism. Sustainable land-use rules are increasingly expected from companies to ensure the prevention of such land destructions within ecologically sensitive zones. CSR in Brazil typically includes forest conservation, reforestation, and environmental education. For example, large agribusiness corporations are now investing in sustainable agricultural practices that lessen the rates of deforestation, along with the objective of the national government to safeguard the Amazon and other critical habitats.

Through the labor law generosity the country received, Brazil has solidified one of the pillars of corporate social responsibility as its labor laws. The Brazilian Consolidation of Labor Laws, CLT, is a robust mass of legal obligations imposed on companies with regard to the rights, safety, and welfare of workers to ensure good practice of labor ethics in the corporate environment.³³ Largely, it enforces, among other things, fair compensation and working hours as well as, safety protocols at the workplace thus making the CLT perhaps the most employee-centric labor law in existence anywhere in the world. Violation of these legal stipulations by employers cost them extremely high penalties by way of hefty fines and bans of operation. It is in this that labor rights are enshrined in CSR for Brazil, in that economic development goes hand in hand with employees' welfare. Companies then are expected to comply not only with minimum statutory requirements but also go beyond to add in things like skills development, health benefits, and career development opportunities to their employees. Thus, it becomes the effort of labor and corporate social responsibility integration in Brazil to make the corporations pay attention to gender equity, workplace diversity, and work-life balance, advancing thereby the social justice agenda incorporated in the Constitution.

Petrobras, the state-owned oil major of Brazil, is representative of an example of a corporation involved in the whole spectrum of practices related to social responsibility in environmental protection and crisis management.³⁴ Since it is quite a huge company, its oil extraction and processing operations have created serious impacts on Brazil's ecosystems. Petrobras faced great pressure to assume environmentally responsible conduct after periodic oil spills, such as the high-visibility spills in the cities of Rio de Janeiro and Sergipe. The company thus responded by adopting advanced spill prevention technologies, emergency response protocols, and environmental restoration programs. Indeed, Petrobras has gone beyond these programs and committed itself to the development of renewable energy research projects and making finances available for biofuels and solar projects that are sinking

³³ ICLG. (2025). *Employment and labour laws and regulations: Brazil*. <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/brazil>

³⁴ Vieira, R. A., et al. (2021). Corporate social responsibility and its effects on the sustainable development goals: A perspective from Brazil. *Journal of Cleaner Production*, 299, 126870.

to a more firsthand source of energy.³⁵ In addition, Petrobras fosters community initiatives aimed at awareness or conservation programs, especially in the areas affected directly by its operations. Such programs entail creating awareness programs and promoting education among local communities about biodiversity preservation and sustainability practices. The activities of CSR as demonstrated by Petrobras lie at the confluence of corporate responsibility and environmental sustainability, and the journey undertaken by the company demonstrates the tribulations that face huge corporations in the performance of their economic interests in the global economy vis-a-vis their environmental and social accountability.³⁶

Among the several Brazilian cosmetics, Natura &Co is a skyrocketing company that prides itself as one of the best in the entire world marking for internationalism when it comes to sustainable development and ethical sourcing.³⁷ Their brand built around biodiversity conservation and social responsibility is through natural ingredients sourced from Amazon. The company has partnered and collaborated with indigenous communities and local farmers and ensured that these communities have a financial benefit from all that Natura does. In addition to this, the promotion of economic inclusion, such as that of local farmers, by establishing supply chain partnerships ensures that Brazil is at the same time saving its ecological wealth by promoting sustainable harvesting practices. One aspect of the varied features of Natura's CSR approach is its Carbon Neutral Program, which is actively reducing carbon emissions but without making up for the emissions that remain through reforestation and other offset projects. So, giving shape and making the company a leader in corporate environmental accountability, for that the company also packages all products to be environmentally friendly and recyclable within the least possible impacts. This broad and complete approach by the company's CSR is a model showing that corporations can have profitability while serving environmental conservation and social development.

Brazil's recent advancements in CSR policies and environmental targets in response to climate change are notable for 2023–2024. It is in Brazil to set specific new goals for carbon and deforestation reduction and invite corporations to enhance their share of national targets at the time. The latest official data released by the Brazilian Ministry of Environment shows a growth in contributions by companies to CSR projects especially those that deal with the environment. Such spending is said to have registered an increase of around 15% this year as compared to last year with a sizeable part of the cash spending going to conservation and renewable energy projects in the Amazon. Furthermore, the Ministry of Labor also reported increased compliance by companies

³⁵ Borges, Anholon & Cooper, 2017.

³⁶ Petrobras. (2023). *2023 Sustainability Report*. https://issuu.com/estantepetrobras/docs/petrobras_relatorio-rs-2023-en

³⁷ Keating, C. (2021, July 12). *Inside Natura & Co's alternative vision for the Amazon*. Trellis. <https://trellis.net/article/inside-natura-cos-alternative-vision-amazon/>

to labor codes because businesses generally invest more in enhancing employee welfare standards for their CSR obligations. Gender equity initiative adoption among Brazilian businesses increased by 20% in 2023 to join the very relevant global trend for diversity and inclusion.³⁸ This was influenced by global pressures, particularly on agribusiness and mining. Brazil implemented stricter regulations for commodity operation disclosures to promote ethical and sustainable sourcing.

4. Comprehensive Explanation of the CSR Spending and Impact Table (2023–2024)

The table provides a comparative analysis of Corporate Social Responsibility (CSR) spending and its impact in India and Brazil for the fiscal years 2023–2024, based on the latest available data. This analysis highlights the differences in CSR implementation, sectoral allocations, funding mechanisms, and priority areas in both countries. Below is a detailed breakdown of the key aspects:

Table 1: **CSR Spending and Impact in India and Brazil (2023–2024)**

Aspect	India	Brazil
Total CSR Spending	– Prescribed CSR Amount: ₹14,267 crore – Actual CSR Spent: ₹14,003 crore – Percentage of Prescribed Amount Spent: 98.15%	– Funds Raised through Sustainable Bonds: R\$20.5 billion (approximately \$3.6 billion) through two bond issues in November 2023 and June 2024 – Funds Allocated to Environmental Projects: 9% (R\$1.9 billion) as of July 2024 – Funds Allocated to Social Initiatives: R\$8.2 billion
Sector-wise Contribution to CSR	– Banking & Finance: 18% – Oil Drilling, Lubricants & Petrochemicals: 18% – Metals, Mining & Minerals: 16% – Power and Heavy Engineering: 11% – Miscellaneous: 10% – Computer Software and IT: 7% – Others: 20%	– Environmental Initiatives: 50–60% of ESG bond proceeds earmarked for projects such as Amazon rainforest protection – Social Initiatives: 40–50% of ESG bond proceeds allocated to programs addressing social issues

³⁸ G20 Brasil. (2024, July 3). *Women and International Business: Brazilian program pushes female entrepreneurs to conquer the world*. <https://www.gov.br/g20/en/news/women-and-international-business-brazilian-program-pushes-female-entrepreneurs-to-conquer-the-world>

Aspect	India	Brazil
Geographical Distribution	– Top States Receiving CSR Funds: Data not specified in the provided sources	– Amazon Rainforest Protection: Significant focus of environmental CSR efforts, with funds allocated from ESG bonds
Key Initiatives and Impacts	– COVID-19 Relief Efforts: During FY 2019-20 to FY 2021-22, companies exceeded compliance requirements to support pandemic relief and health infrastructure – Education and Healthcare: Continued focus areas for CSR activities	– Amazon Rainforest Protection: Allocation of ESG bond proceeds towards environmental projects aimed at reducing deforestation and promoting sustainable development – Social Programs: Significant investment in social initiatives, including programs to address inequality and promote social welfare

Notes:

- In India, the CSR spending data reflects a high compliance rate, with 98.15% of the prescribed amount being utilized. The sector-wise distribution indicates a diverse allocation of funds across various industries.

- In Brazil, the introduction of ESG bonds has facilitated significant funding for both environmental and social projects. However, as of July 2024, only 9% of the allocated funds had been utilized for environmental projects, indicating a need for accelerated implementation.

This comparative analysis highlights the proactive approaches both countries are taking towards CSR, with India demonstrating robust compliance in corporate spending and Brazil leveraging innovative financial instruments to address environmental and social challenges.

Explanation of the Table

Corporate Social Responsibility (CSR) plays a crucial role in addressing social, environmental, and economic challenges in both India and Brazil. The total CSR spending in these two countries for the fiscal years 2023–2024 reflects their distinct approaches to corporate responsibility. India, with its mandatory CSR framework under Section 135 of the Companies Act, 2013, witnessed a prescribed CSR amount of ₹14,267 crore (\$1.7 billion) for eligible companies. Out of this, companies actually spent ₹14,003 crore (\$1.68 billion), achieving an impressive compliance

rate of 98.15%.³⁹ This indicates that the Indian corporate sector has been largely successful in meeting its legal obligations towards CSR spending. In contrast, Brazil does not have a mandatory CSR requirement and instead relies on voluntary corporate contributions, often tied to Environmental, Social, and Governance (ESG) investments. During 2023-24, Brazil raised R\$20.5 billion (~\$3.6 billion) through ESG bonds, which were primarily directed towards environmental and social projects. However, as of mid-2024, only 9% of these funds (R\$1.9 billion) had been allocated to environmental projects, while 40-50% (R\$8.2 billion) went towards social initiatives. Brazil's reliance on ESG-linked funding mechanisms represents a shift towards sustainable finance, allowing corporations to align their contributions with global environmental commitments.⁴⁰ However, the slower rate of fund deployment highlights the challenges in ensuring the effective utilization of these resources for meaningful impact.⁴¹

CSR contributions in India and Brazil vary significantly by sector, reflecting the economic priorities and corporate structures of each nation. In India, industries such as banking and finance (18%), oil, petrochemicals, and lubricants (18%), metals, mining, and minerals (16%), power and heavy engineering (11%), and information technology (7%) are the primary contributors to CSR activities. The high contribution from the energy and mining sectors indicates a focus on sustainability initiatives, particularly in areas related to environmental conservation and rural development. The banking sector's significant participation underscores the importance of financial inclusion programs and microfinance initiatives that promote social development. In contrast, Brazil's CSR spending is primarily driven by environmental conservation efforts, given the country's rich biodiversity and the global significance of the Amazon Rainforest.⁴² Approximately 50–60% of ESG bond proceeds were directed towards environmental initiatives such as deforestation prevention, biodiversity conservation, and sustainable land-use practices. Meanwhile, 40-50% of the funds were allocated to social initiatives, including programs aimed at improving education, healthcare, and labor rights. This demonstrates that while both countries emphasize social welfare, India's CSR is largely driven by legal mandates across a diverse set of industries, whereas Brazil's approach is more flexible and often dictated by sustainability-linked financial instruments.⁴³

³⁹ Protean Tech. (2024, May 11). *Current sector-wise allocation in CSR*. <https://proteantech.in/articles/current-sector-wise-allocation-in-csr-05112024/>

⁴⁰ World Bank. (2024, February 8). *Brazil's sovereign sustainable bond: Financing a greener, more inclusive, and equitable economy*. <https://www.worldbank.org/en/news/feature/2024/02/08/brazil-sovereign-sustainable-bond-financing-a-greener-more-inclusive-and-equitable-economy>

⁴¹ CSRBOX. (n.d.). *CSR projects and funding in India*. <https://csrboximpact.in/>

⁴² Reuters. (n.d.). *Corporate social responsibility (CSR) news and analysis*. <https://www.reuters.com/>

⁴³ Sarkar & Sarkar, 2015.

Geographical distribution of CSR funds in both India and Brazil reveals important trends in corporate social investments. In India, CSR spending has traditionally been concentrated in urban and industrial hubs, reflecting the location of major corporate offices and production facilities.⁴⁴ However, in recent years, there has been a shift towards rural and underserved regions, particularly in the wake of the COVID-19 pandemic. Key government-backed initiatives such as the Ayushman Bharat healthcare scheme, digital literacy programs led by Infosys and TCS, and sanitation efforts under the Swachh Bharat Mission have directed CSR funds towards improving rural infrastructure and access to essential services. In contrast, Brazil's CSR spending is heavily focused on the Amazon Rainforest, a region of immense environmental importance. Corporate funds from ESG bonds are increasingly being used to finance reforestation projects, sustainable agriculture, and pollution control measures. Additionally, there is growing corporate involvement in labor welfare and social security programs, particularly in industries such as mining and agriculture, where worker rights and environmental sustainability are critical issues. The targeted allocation of funds in Brazil towards environmental conservation underscores the country's commitment to global climate action, but it also raises concerns about whether sufficient resources are being directed towards broader social issues beyond the Amazon.

The impact of CSR initiatives is best understood through the key programs that corporations have implemented in both India and Brazil. In India, post-COVID healthcare initiatives have seen high levels of corporate investment, with companies contributing to the development of public health infrastructure, telemedicine expansion, and vaccination drives. Education remains a core focus area, with corporations actively investing in digital literacy and skill development programs. Companies such as Tata Consultancy Services (TCS) and Infosys have played a significant role in expanding access to technology-based education in underserved communities. In the energy and environmental sectors, large conglomerates such as Reliance Industries have continued to channel CSR funds into renewable energy projects, reforestation, and carbon offset programs. Meanwhile, Brazil's CSR landscape is deeply influenced by its environmental commitments.⁴⁵ The government has leveraged ESG bonds to encourage private sector participation in sustainability programs, with companies increasingly investing in Amazon Rainforest protection and sustainable development projects. Social programs aimed at addressing inequality, labor rights, and public health have also received substantial funding, with corporations playing a key role in supporting marginalized communities. However, one of the key challenges in Brazil remains the effective and timely deployment of funds, as delays in utilizing ESG bond proceeds could undermine the intended impact of CSR initiatives.

⁴⁴ CSRBOX. (n.d.). *CSR projects and funding in India*. <https://csrboximpact.in/>

⁴⁵ Reuters. (n.d.). *Corporate social responsibility (CSR) news and analysis*. <https://www.reuters.com/>

Overall, the CSR landscape in India and Brazil reflects two distinct models of corporate responsibility.⁴⁶ India's structured and mandatory CSR framework ensures high compliance rates and systematic allocation of resources to key social and environmental sectors. However, challenges remain in terms of ensuring the meaningful impact of CSR spending, as some companies may focus more on compliance rather than long-term social transformation. In contrast, Brazil's voluntary and ESG-driven approach allows corporations greater flexibility in defining their CSR priorities, particularly in relation to environmental sustainability. While this model fosters innovation and corporate engagement in sustainability, it also presents challenges in ensuring consistent and equitable distribution of CSR benefits across different sectors and regions. The evolving nature of CSR in both countries highlights the need for continuous policy refinement, stronger monitoring mechanisms, and increased corporate accountability to maximize the social and environmental benefits of corporate contributions.

5. Comparative Analysis of CSR in India and Brazil

5.1. Mandatory Compulsion vs. Voluntary Commitment

The CSR in India additionally differs from Brazil's with regard to regulatory framework out of which the social responsibility shapes its practice within the corporate structure in both countries. India Mandatory CSR Model: Among a handful of laws constituting CSR for companies obligations, Section 135 of the Companies Act, 2013 prodded the organization or corporation to part a portion of its profit to CSR expenses by mandating that such companies allocate at least 2 percent of the average net profits in the three preceding financial years for CSR activities. According to this statutory provision, companies must spend profits out of such voluntary goodwill contributions, irrespective of what they might profess in their public relations endeavors regarding philanthropy. It's systematic corporate involvement: Corporations have matched their inputs into national development programs with regulatory CSR programs and matched their input with priorities of government. Mandatory CSR creates pools of resources that become huge in terms of population for education, health care, and rural development all of which touch upon areas very critical to the socio-economic future of India.

Nevertheless, the model has its drawbacks:

1. Superficial Compliance. Some entities simply treat CSR as a financial obligation with little consideration for meaningful impact. Such cases abound, and an even more pronounced presence of tick-box initiatives still prevails.
2. Fund Diversion. CSR programs have been condemned by companies that alleged having constructed a brand personality through improving their reputation rather than actual social uplifting as per the intent of social responsibility.

⁴⁶ Protean Tech. (2024, May 11). *Current sector-wise allocation in CSR*. <https://proteantech.in/articles/current-sector-wise-allocation-in-csr-05112024/>

CSR in Brazil is primarily voluntary, with constitutional principles emphasizing social justice, labor rights, and protected environments. The basic social liabilities of a company are defined in *Article 1 of Brazil's 1988 Constitution* in very broad terms. It stresses that economic activities should indeed do positive things in terms of welfare and conservation through even greater enhancement. But, of course, it has not made CSR a compulsory financial obligation under that Constitution. It has left to the corporations themselves the analysis of what and how far there has been involved in beholding social responsibility.⁴⁷

There are merits to the Brazilian voluntary model: contributes to the freedom and flexibility of the corporation; an open workplace may freely evolve a specific CSR policy, a two-variable one that pursues the objectives and under their core values, therefore leading to more innovative and sustainable initiatives. In turn, most are from states where the legal mechanisms and policy commitments to environmental and labor rights are stronger. This voluntary commitment has allowed for mostly non-controversial initiatives, which otherwise relate to the preservation of the Amazon rainforest, ethical employment, and community benefits. The disadvantages of the voluntary model in Brazil are as follows: 1. There is no legal foundation for CSR, it usually varies a lot from industry to company. 2. CSR is supposed to be voluntary; that is why companies make short-term profits over social investment priority, leading to an insufficient state of budget for really urgent problems relating to society or the environment.

5.2. CSR Focus Areas

In India and Brazil, different areas are accorded priority in terms of CSR investment, keeping in view the socio-economic divergences and developmental aspirations of both countries. India's priority areas: The CSR framework of India prioritizes education, health, sanitation, and rural development. The Companies Act of 2013, prescribes certain thematic areas under which, as far as possible, CSR spending ought to relate. During 2023–2024, very large proportions of CSR funds were expected to go toward education and skill development, especially in rural and other underserved places. Other significant public health programs, sanitation (notably falling under the Swachh Bharat Mission), and poverty alleviation are priorities that stem from India's aim to better living standards and socio-economic equity.

1. Educational Programs: Many multi-national companies like, Infosys and Tata Consultancy Services (TCS), are basically introducing skill development and digital literacy programs which go well in tandem with India's NEP to further close the gap in skills.

2. Health Initiatives: Most companies have turned to developing health infrastructure and designing public health programs after COVID-19 to build resilience from pandemic facilities and go further to improve access in distant regions.

⁴⁷ Organisation for Economic Co-operation and Development. (2022, January 1). *OECD responsible business conduct policy reviews: Brazil*. https://www.oecd.org/en/publications/oecd-responsible-business-conduct-policy-reviews-brazil_19232c6a-en.html

3. Rural Development: Mahindra and Mahindra continue to invest their resources into rural upliftment through innovations in the agricultural sector as well as better water management initiatives targeting the agricultural base of India.

Brazil's Priorities-CSR initiatives mainly revolve around environmental conservation, sustainable development as well as labor rights. Because of the ecological significance of the Amazon rainforest, it is always presumed that Brazilian firms will gather and organize multiple initiatives to protect the environment and biodiversity. Labor rights also take precedence, as the Brazilian Constitution emphasizes, ethics adopt welfare for workers.

Prominent examples include:

1. Environmental Upholding: By actions that threaten the communities and biodiversity of the area, most companies, like Natura &Co, adopt a green policy towards the Amazon. Such a way of Natura is often perceived as revolutionary in the context of corporate social behavioral responsibility to the world's environmental goals in sustainable sourcing from the Amazon.

2. Employment and Social Welfare: The legislation also determines the employment practices in the company, since the Brazilian labor laws advocate for adequate standards of labor within the companies. There are strict labor policies to ensure a safe working environment and just working conditions for employment which echo the relevant constitutional provisions regarding rights to labor in Petrobras.

5.3. Monitoring and Compliance

There are diverse ways of doing things: India has a mandatory structured model while Brazil has much more informal one and some advocacy models. Monitoring Mechanisms in India: CSR activities are subject to rigorous scrutiny in India with the Ministry of Corporate Affairs (MCA) and as per enforcement of requirements for reporting as per provisions of the Companies Act of 2013. In their annual report along with stating the nature, impact, expenditures, and outcomes, companies report CSR programs and activities therein. The National CSR Awards then give a prize for adherence through recognition of companies with benchmark CSR programs. One such mandated requirement set in place through the latest provisions is that all unspent CSR amounts should go to a fund notified by the government or have it spent on CSR activities within the timeframe of three years. Such measures add to accountability. All of these factors contribute to maintaining transparent systems while also encouraging often superficial compliance by promoting the principle of financial impact on companies.

Brazil's Advocacy-Based Monitoring: In Brazil, as a matter of fact, CSR compliance entirely depends on environmental and social advocacy groups, and it is through them that corporations can be held accountable to the constitutional principles of social justice and environmental responsibility. In particular, non-governmental organizations and civil society groups are attempting to monitor corporate activities

as far as environment-related issues in the Amazon are concerned. Thus, Brazil's National Environmental Council (CONAMA) has laid guidelines towards which corporate CSR, especially concerning sustainable development, can be set, but the enforcement of it is quite softer than in India.⁴⁸ This softer regulatory environment would promote very innovative CSR programs, but it may also cause the kind of unevenness in standards and reliance on voluntary goodwill by corporations.

5.4. Challenges and Criticism

Each country has its unique challenges in establishing and maintaining successful CSR initiatives.

India: Mandatory corporate responsibility scheme of India has directed public resources for welfare initiatives, but has faced several criticisms: 1. Enforcement Issues: Genuine implementation of CSR is recognized as a problem area. Most companies do at least minimum requirement compliances with very little or no impact in some areas. 2. Cosmetic Compliance: Mandating corporate social responsibility sometimes encourages a check-the-box approach whereby companies interpret it as more of a financial tributary rather than an ethical tributary. 3. Resource Misdirection: There are misuse complaints regarding CSR funds like spending for branding instead of effective projects.

Brazil: Like many other countries with a voluntary CSR regime, Brazil also has its share of issues that include: 1. Inconsistent Engagement: Voluntary CSR leads to many inequalities among industries, ranging from some that invest heavily in social welfare and others with almost no investment. 2. Difficulties in Implementation: The absence of legally bound, uniform CSR standards tends to create dual-impact niches in the corporate sector.⁴⁹

Comparative analysis between CSR in India and Brazil arguably introduces two entirely different approaches to understanding corporate responsibility, one in the legal and the other in the economic context. India has made its CSR institutionalized and mandatory, while enforcing rigid contributions this framework misses points where real corporate dedication needs to be manifested. Brazil differs, although it encourages voluntary adherence, the most disparate model of all taking shape with regard to its industrial sectors. However, as with both countries, CSR covers the arena concerning social justice, environment, and economic development; thus, they clearly shed light on CSR as applicable in emerging economies. Over time, as the global evils evolve, their permutations with the smart compulsion of mandates and voluntary acceptance will certainly define CSR in India and Brazil, and perhaps well beyond.

⁴⁸ França, A. M. S. de, & Maia, P. (2024). Corporate social responsibility in Brazil and China: A (not so) contrasting regulatory framework. In *Proceedings of the 2024 8th International Seminar on Education, Management and Social Sciences (ISEMSS 2024)* (pp. 808–814).

⁴⁹ Borges, Anholon & Cooper, 2017.

6. Case Studies on Legal and Compliance Challenges in CSR

6.1. India

6.1.1. Infosys Foundation: Education and Environmental Programs

Being the backbone of corporate social responsibility in India, the Infosys Foundation has certainly excelled in education and environment.⁵⁰ It has set a precedent in India's corporate social responsibility landscape as it emerges with the mandatory recognition of CSR under the Companies Act of 2013. Since then, the activities have primarily been in fulfilment of CSR and alignment with national priorities.

1. Educational Initiatives: Infosys Foundation has undertaken specific educational initiatives aimed at the underprivileged. This comprises infrastructure funding for schools, scholarships, and even contributing to efforts aimed at digital literacy which eradicates the educational gap between rural and urban areas. For example, the Foundation took the initiative to launch in partnership with the National Digital Literacy Mission a countrywide digital literacy program to enable skill development for rural youth and women in the areas of digital to have an accessible future. In this regard, Infosys is complementing its CSR activities with that of the Government to bring about "Digital India."

2. Environmental Sustainability: A further bunch of programs by the Foundation is aimed at water conservation, reforestation, and sustainable energy. Infosys is one of the few Indian companies that committed themselves to carbon neutrality at the very start of the trend and continues to support PDs such as rainwater harvesting and solar energy installations in backward areas. These environmental initiatives are consistent with a larger vision of sustainability as the CSR expenditure of Infosys on any of these activities would directly identify a surefire pressing ecological requirement.

There-up, there were successes; but then there were obstacles which merited the assertion that the Infosys Foundation could do more than it was doing to communities across India. As dissimilar income levels exist in populous India, some critics would say that, though impressive, CSR initiatives of Infosys are less than required and leave out too many communities that are both varying and resource-deficient. The compliance challenge also lies in directing funds for measurable and sustainable impacts, especially in areas where the roots of social issues run deep.

6.1.2. Vedanta Resource Controversy: Mining Activities and Environmental Violation Compliance

Despite all the numerous legal cases and public uproar against Vedanta's alleged environmental crimes and its purportedly callous approach towards local communities, the most likely lay open the country-specific profile of business ethics between ethical duties and business interest. One of the largest mining companies

⁵⁰ Mudda, S., & Laxmana, P. (2019). Corporate social responsibility: A study on Infosys Ltd. *International Journal of Research in Engineering, IT and Social Sciences*, 9(5), 379–385.

has managed to position itself in India with its possible frequent clashes with law and society, like Vedanta. And, if talking about corporate social responsibility failures, the mining giant faced in its operations in the areas of bauxite mining in Odisha and the copper smelting plant at Thoothukudi, Tamil Nadu. In the protests of 2018, while Vedanta claimed damages to the environment, violence broke out due to skirmishes at Thoothukudi. Environmental activists accused Vedanta of contaminating water bodies and harming public health; as a result, the government shut down the factory, thus demonstrating the power of local communities and environmental laws to save social responsibility.⁵¹ Legal Implications and CSR Disruptions: The company sustained legal repercussions in the form of fines and orders from the courts. Additionally, extensive negative media coverage almost condemned the company; this affected it even more adversely than what penalties had done. There had been intervention from the National Green Tribunal (NGT) and the Supreme Court of India in some cases that severely bound the companies on environmental and social parameters. These legal skirmishes show the need for robust CSR policies consistent with environmental and community welfare to mitigate reputational and financial risks. The case of Vedanta is an all-legal reminder of the necessity of CSR in environmentally sensitive industries. It reminds a corporation that failure to comply with CSR in India not only brings legal repercussions but also destroys people's trust, necessary for long-term business sustainability.

6.2. Brazil

6.2.1. Vale SA and the 2019 Brumadinho Dam Collapse

The disaster of the Brumadinho dam stands out as one of the foremost examples of a CSR failure by Brazil, causing serious economic, social, environmental, and legal impacts on Vale SA, the largest mining company in Brazil. It reflects how the inability to comply with CSR principles causes widespread harm in dire need of a better regulatory eye.⁵²

1. The Disaster and its Immediate Effects: In January of 2019, more than two hundred and seventy people died due to toxic sludge released by the dam collapse in Brumadinho; which was accompanied by very severe environmental destruction to the area. The dam burst had been spewing sensational headlines on Vale's failure to comply with safety and environmental standards, throwing concerns over negligence and lack of ethics in corporate affairs of the mining industry.⁵³

⁵¹ Das, S. (2018, September). *Vedanta's billions: Regulatory failure, environment and human rights*. ResearchGate. https://www.researchgate.net/publication/350790045_Vedanta%27s_Billions_Regulatory_failure_environment_and_human_rights

⁵² Primo, P. P. B., Martins, C. A., & Araujo, J. M. (2021). Mining dam failures in Brazil: Comparing legal post-disaster decisions. *International Journal of Environmental Research and Public Health*, 18(21), 11346.

⁵³ Fornero Aguiar, A. C., et al. (2022). Business, biodiversity, and innovation in Brazil. *Perspectives in Ecology and Conservation*, 20(4), 215–223.

2. Legal and CSR Implications: Millions of dollars in fines and legal actions against Vale followed the tragedy. The provision in the 1988 Constitution that required corporate compliance with environmental and social welfare became the basis for the Brazilian government to hold Vale legally accountable. Vale should not have been responsible for compensating the victims alone but also for the environmental rehabilitation of the affected areas. The legal framework, bolstered by the norms of social justice and environmental protection, enabled the Brazilian courts to sentence Vale with heavy punishment, very indicative of the commitment Brazil has made in principle toward CSR, even if not as stringent in regulatory terms.

3. Long-Term CSR Commitments: As a company, Vale has had a firm commitment: the improvement of activities concerning corporate social responsibility following the investment in advanced security technologies coupled with investments in the environmental restoration program.⁵⁴ This misfortune is but a reminder of how poorly done CSR can lead to severe consequences, thus forcing the companies to have business practices in line with constitutional values.

6.2.2. *Social and Environmental Programs by Ambev*

Ambev, the biggest company in the beverage industry in Brazil, sets an example for other companies in CSR by adhering to its activities of sustainability and social responsibility, which fits into the constitutional expectations of responsible corporations in Brazil.

1. Water conservation and sustainable packaging: Ambev invests a lot in water conservation as part of the CSR strategy in the sense of viewing water as an invaluable treasure for its operations and that of local communities. Under the pledge that Ambev has made, recycling technologies and water treatment plants have been incorporated into the production process so that it can help reduce used water. In addition, Ambev has sustainable packaging solutions, such as recycled and biodegradable materials, and ties related business goals to environmental sustainability.⁵⁵

2. Community Development Programs: Ambev participates in community development projects too in rural areas and under-served communities. These include the funding of educational programs and healthcare initiatives expected to help living standards while also promoting social equality as seen in how a corporate initiative can shift away from simply making profits as a priority towards national welfare goals.

Environmental and social responsibility benchmarks put by Ambev to the score of CSR compliance in Brazil.⁵⁶ In touch with Article 15 principles, this weight of the

⁵⁴ Borges, Anholon & Cooper, 2017.

⁵⁵ Martins, M. B., Ferreira, M. C., & Costa, C. S. (2021). Sustainability and green marketing challenge: Brazilian brewing industry case study. *Brazilian Journal of Operations & Production Management*, 18(4), 1–16.

⁵⁶ Fornero Aguiar et al., 2022.

company in a corporate sense regarding socially and environmental just matters in the solely positive image of the company has laden its burden by any movements that can lead to a body of law against it in legal contexts.

Major CSR Projects and Their Impact

This table will present *real case studies* of successful CSR initiatives from major corporations, demonstrating their real-world impact.

Company	Country	CSR Initiative	Impact (2023–2024)
Tata Group	India	Tata STRIVE (Skill Development)	100,000+ youth trained in vocational skills
Reliance Industries	India	Swachh Bharat Mission Support	Sanitation improved in 200+ villages
Infosys Foundation	India	Digital Learning for Rural Students	1 million+ students benefited
Petrobras	Brazil	Amazon Rainforest Protection	Invested \$100 million in reforestation
Natura & Co	Brazil	Sustainable Sourcing from Amazon	Direct economic benefits for 3,000+ Indigenous families
Vale S.A.	Brazil	Environmental Disaster Recovery (Brumadinho)	\$7 billion allocated for compensation and ecosystem restoration

7. Challenges and Future of CSR in Both Countries

7.1. India

One of the major issues concerning corporate social responsibility in India is the allocation of funds. India Companies Act of 2013 mandates certain companies to spend at least 2% of their average net profits on CSR. In practice, that money is most often spent in urban or semi-urban dirt where infrastructure is close to non-existent. The sheer number of perks denies coverage to yet-to-be-heard areas. Recent data from the Ministry of Corporate Affairs show how much CSR money gets spent by metropolitan areas while much less flows to its rural realities when it comes to hospitals and schools. Transparency in CSR activities remains a major challenge. Even as legislation mandates the companies to report on CSR activities, the disclosure whether or not the funds have been put into use or impact base measures is inconsistent. Some companies, opting for surface compliance, do not reflect meaningful contributions to society. Without standardization of methods to measure and disclose CSR results, the effectiveness of CSR as a tool in being an agent of change is otherwise limited, as companies now take compliance to be more important than impact. Also, transparency and monitoring need to be

improved to address these concerns. One such measure is adopting outcome-based reporting with a focus on measurable impacts, like improvements in literacy rates, access to health care, and sanitation, to ensure that the CSR funds really benefit communities. In addition, closer cooperation with local governments and NGOs can improve the reach and relevance of CSR initiatives, so that they can capture rural and underserved areas fairly in CSR contributions. One of India's most intense issues concerning CSR is accessibility, as many companies strive to carry any effective CSR value to remote/tribal territories, which have severe logistics, culture sensitivity, and even infrastructure difficulties as they stand to approach value.⁵⁷

For example, while the Northeast and parts of Chhattisgarh and Odisha are relatively disorganized by accessibility, there is a poor understanding of local acceptance and experimentation with CSR activity-related alternative resources, eventually being the more needful for social investments.⁵⁸ Many organizations may find these barriers substantially effective in not allowing companies to allocate per resource even though these areas are mostly in greatest need of social investments. In such cases, the corporation could go for a decentralized CSR policy to cope with the problem. By such means of local CSR offices or grassroots organizations, corporations would extend their outreach and at the same time customize their project to address regional requirements. This also has a public involvement side that can be topped by ensuring that the proposed activities are discussed and accepted by the local population. The more physically practical approach, of course, by adopting digital platforms for education, health, and financial inclusion, can draw in these remote communities so that CSR activities will yield many immediate and real consequences. There are several reforms and programs that can be undertaken to transform the way CSR works in India.

To induce companies into baloney-less rapprochements with the public, it could be held that first of all creating a performance package based on social outcomes for CSR programs would encourage them to consider long-term impacts instead of short-term compliance. Healthcare, Education, and Environmental Protection, among others, could be given tax incentives or recognition from government agencies if they show significant contributions in those areas. For example, social impact assessments could be integrated into CSR reports for the assessment of the effectiveness of various interventions so that CSR investment can really reflect national development priorities. India may also consider the establishment of a centralized CSR fund that can pool resources from various companies into gigantic but very focused interventions that are otherwise not received well by areas. The

⁵⁷ Gao, Y., & Li, L. (2019). The impact of corporate social responsibility on firms' financial performance: Evidence from China. *Journal of Corporate Social Responsibility and Environment Management*, 26(3), 665–674.

⁵⁸ NITI Aayog. (2018). *Strategy for New India @75*. Government of India. https://niti.gov.in/sites/default/files/2019-01/Strategy_for_New_India_0.pdf

Ministry of Corporate Affairs could collaborate with local governments to manage this fund so that properly targeted applications of the CSR initiatives could be made by channelling their activities toward priority areas. Thus, companies would also attain mega-project feasibility on the CSR front.

7.2. Brazil

The CSR challenges are quite specific to Brazil: the economic instability and illegal enforcement of environmental laws make these quite unique challenges in the field. Most countries are voluntary in CSR frameworks, with very few being based on mandatory regulations. High levels in some industries can be found while not in others. While some companies are aggressive towards environmental and social activities, many neglect them during economic downturns when budget constraints force corporations to displace social commitment for profitability. Much of the economic uncertainty brought by the features of high inflation and rapidly changing GDP growth rates over the years does not allow companies to implement efficient and organized CSR programs. There are other problems in Brazil, one being continuous inconsistency in the enforcement of environmental laws. The Amazon rainforest and rich biodiversity make Brazil a point of attention in global environmental matters because illegal deforestation and mining activities persist within the ecosystems. Though it is included in the Brazilian constitution, the emphasis on the environment and social responsibility becomes quite meaningless in the absence of a cohesive, enforceable CSR policy, as most companies can operate under the radar in remote areas where regulators can hardly patrol. Brazil could do with stronger legal frameworks that made CSR mandatory for high-impact industries such as mining, agriculture, and manufacturing. Clear guidelines and tougher punishment for fines on environmental pollution could encourage adherence by many other companies. In addition, there could be increased governmental supervision with partnerships with international environmental organizations, thereby taking Brazil to a more balanced and responsible level of CSR.⁵⁹

Voluntary CSR makes it possible for corporations to define their social impact, but it does have its downsides, particularly in a diverse country like Brazil, where those disparities regionally influence the distribution of CSR benefits.⁶⁰ For example, some companies may decide to focus their CSR programs only on cities where they have a presence—thus developing an uneven distribution of CSR resources, which leaves rural and indigenous communities disadvantaged. Sector-specific CSR mandates that make it obligatory for corporations in critical sectors, such as energy, agriculture, and infrastructure, to adopt sustainable practice initiatives would make voluntary CSR more effective. Tax incentives for affected companies

⁵⁹ Fornero Aguiar et al., 2022.

⁶⁰ Borges, Anholon & Cooper, 2017.

that participate in environmental and social initiatives can promote more robust CSR participation. Additionally, public-private partnerships can be very prominent in addressing some of the gaps created by healthcare, education, and infrastructure within disadvantaged regions.

7.3. CSR Impact Measurement: India vs. Brazil

This table will *compare how CSR impact is measured*, giving insights into the effectiveness of corporate contributions.

Impact Area	India (Measurement Method)	Brazil (Measurement Method)
Education	Student Enrollment, Digital Literacy Growth, School Infrastructure Data	Literacy Rates, University Partnerships, Scholarships Funded
Healthcare	Number of Patients Treated, Vaccination Drives, Hospital Infrastructure	Community Health Centers, Public Health Index
Sanitation & Water	Rural Sanitation Coverage, Waste Management Projects	Water Quality Monitoring, Waste Reduction Metrics
Environmental Sustainability	Carbon Emission Reduction, Reforestation Initiatives	Deforestation Rate, Biodiversity Conservation
Labor Rights & Social Welfare	Workforce Diversity Reports, Wages & Benefits	Employment Rates, Workplace Safety Compliance

From now on, India can strengthen its CSR efforts through outcome-based reporting and further accountability. Given that CSR will be an integral part of corporate strategies, it should not too be far-fetched for them to think and move towards an objective outcome-based evaluation of CSR as outcome measurement rather than cost and expense-based accountability. Such an important direction guarantees accountability from enterprises not only for expenses but also for the impacts created by such initiatives within communities. Such a shift could include reforming CSR guidelines to become data-driven impact assessments, resulting in a better accountability mechanism and producing better ways of evaluating the effects of CSR programs India can achieve a more transparent and efficient CSR environment by encouraging companies to measure and report the socioeconomic impacts of their activities. Further, technology-driven solutions like blockchain for transparent reporting and AI-powered monitoring systems may also help corporations measure the real-time impact of CSR activities and change strategies accordingly.

In Brazil, the future of CSR would incorporate its practices in the legal requirements, especially in sectors with severe environmental damage and social impacts, such as mining and agriculture.⁶¹ An example would be the provision of CSR requirements for

⁶¹ Fornero Aguiar et al., 2022.

those sectors by government mandate to establish in their licensing requirements such as reforestation, biodiversity conservation, or community development. It might also explore a system of withholding tax incentives for companies that show consistent CSR commitment, especially in areas of high impact like Amazon. The incentive would urge more companies to adopt CSR practices and could thus drive a shift from a voluntary model to one only motivated by fiscal benefits. Brazil, however, could also strengthen its environmental and labor regulations to ensure operation by companies in their extractive industries with clearly defined social and environmental dimensions.

The recognition of the possible cross-sector partnerships between corporations, governments, and these organizations is one of the most valuable trends that can be attributed to the future of CSR in India and Brazil.⁶² In both countries, synergies of this nature can be established between large CSR projects that will include efforts from all stakeholders concerned. For instance, partnerships with international environmental groups can help Brazilian companies put into practice sustainable operational practices. Such partnerships may not be the same for Indian companies because their counterparts can partner with local governments to extend the CSR footprints into the rural and tribal areas of the country. Another emerging trend is the incorporation of CSR into the ESG (Environmental, Social, Governance) criteria. With many global investors tapping into companies having good ESG ratings, CSR will be predominant in corporate sustainability strategies in both India and Brazil. Coupling CSR activities with ESG will enable companies to attract foreign investments while demonstrating a commitment to ethical practices.

Conclusion and Suggestions

CSR has been ingrained into the advancement of sustainable development and social justice in India and Brazil. Each specific country, however, has unique constitutional foundations and regulatory frameworks guiding corporate responsibility. The principle of constitutionalism, that is, governmental authority defined, limited, and governed by law, serves as a backdrop against which the CSR enactment would take place in both countries. CSRs derive their sustenance in building wider, generally public welfare, environmental conservation, and social equity interests that assure that businesses are not profit-oriented only but work to meet public welfare under constitutional mandates for societal advancement. By embedding CSR in constitutional values, both India and Brazil emphasize the role of corporations as stewards of the public good and environmental custodians.

In India, CSR is much in tune with the constitutional values in a notable respect, which defines the role of the state with regard to social welfare, in the corresponding

⁶² Jäppinen, T., Maula, M., & Piekkari, R. (2016). Enhancing the impact of cross-sector partnerships: Four impact loops for channeling partnership studies. *Journal of Business Ethics*, 135(1), 1–20.

Directive Principles of State Policy, as stated in the Indian Constitution. It requires by Companies Act of 2013 CSR expenditure on certain companies to adopt constitutionalism, whereby it ensures that corporate profits will benefit public welfare and national development goals. Here, constitutionalism will ensure that corporate actions are in line with a country's democratic principles which advocate for equitable growth and social justice. In India, the constitutional principle of social justice recognizes the needs the corporations must fulfil: education, healthcare, sanitation, and environmental protection. Hence, making it compulsory in law, from the Indian government's perspective, could enforce the corporations' constitutional accountability in acting in the public interest. Over time, CSR in India was aiming beyond just spending on profits and coming to represent a basic obligation of corporations reflecting the fundamental constitutional values of equity and social welfare. Adhering to these principles can enable Indian corporations to bridge socioeconomic gaps and economies in channelizing government efforts towards inclusive development for disadvantaged sections. Thus, to rein in this effect, CSR in India would need to carry forward with the required integration of outcome-based assessments beyond monetary compliance measurement into social benefits. This would improve accountability as well as ensure that social advancement is indeed contributed by the CSR activities. Further, while embedding CSR in constitutionalism, Indian corporations would further contribute to the democratic ideals of public accountability and equitable resource redistribution.

CSR has basically everything to do with environmental protection and social welfare in Brazil owing to its constitutional commitments in these two aspects. The Brazilian Constitution of 1988 lays down sustainable development principles, social inclusion, and rights at work, framing CSR as one more constitutional mandate supplementing voluntary compliance. To fulfil this constitutional value of environmental conservation demands that Brazilian companies, especially those related to high-impact areas like mining and agribusiness, should adopt sustainable practices and decrease their environmental footprints. Brazilian CSR is generally voluntary but occurs under a framework of constitutionalism which makes national value of social responsibility. This perspective empowers civil society organizations, community groups, and environmental advocacy movements to hold corporations accountable to constitutional principles. For instance, constitutional laws were cited to hold corporate accountability and environmental restoration after incidents like the Brumadinho dam collapse of Vale SA. Thus, the application of constitutional values underscores the involvement of the public in Brazil's CSR practice because it ensures that what corporations do is aligned with environmental justice and social equity. Brazil could move into integrating other mandatory features pertaining to industries whose corporate action is of great environmental or social consequence into the CSR practice; thus, this would cement CSR as a dimension of Brazil's constitutional commitment to public welfare alongside corporate freedom

against public accountability. Moreover, providing incentives for high-impact CSR projects would encourage a wider embrace of constitutional values and also make corporations active stakeholders in sustainable development.

Thus, given below is an example of how a CSR approach can be directed towards constitutionalism: A strong foundation is being built for CSR under constitutionalism in that it relates sustainable businesses to the national objectives of welfare and democracy. Even in India and Brazil, there are such corporeal definitions of expectation from corporations under constitutionalism, giving a somewhat specific shape to the contributions expected to be made by them toward social welfare and environmental viability. This is because India's whole model of mandatory CSR makes corporations responsible under the law, whereas Brazil's takes it to the constitutional stature as a way of motivating voluntary compliance and community-centered development. Again, one could proclaim that in the future both countries may integrate their approaches further, as far as CSR is concerned, with constitutional mandates. Having said that, India could further increase the impact of its application under CSR by emphasizing more outcome-based evaluations and making it important for such initiatives to yield measurable social benefits. Thus, CSR, moored in constitutionalism, carries the prospect of being a backbone of sustainable development and social equity within the territories of India and Brazil. Each of the two democracies has its own distinctiveness in its prescription and dealing on the part of social investment, telling lessons on the possibility of weaving constitutional values into the fabric of civic obligation for corporations rendering such organizations stewards of public welfare and guardianship of the environment. It is in the principle of constitutionalism that CSR becomes fiduciary on the democratic ideals and the greater good and transforms it from just being an enterprise tool into including growth and social equity. With the constitutional frame embedded in CSR, India and Brazil point out the very need for public accountability and ethical governance. The future of CSR lies in producing a corporate mentality that treats CSR as a constitutional duty and not a business obligation or even voluntary. However, the more such countries include evolving their CSR architecture to reflect constitutional values, the greater possible transformity will be injected into societies becoming more justly and resilient.

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ARTICLE

Role of the Judiciary in Victim Compensation in India – With Special Reference to Data Collected from the State of Odisha, India

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Abstract. This study examines the legal and legislative framework for victim compensation in India, focusing on the Code of Criminal Procedure's provisions and their interpretation by the courts, using data collected from lower courts in the state of Odisha. A robust framework to provide financial assistance to victims of crime has now been incorporated into section 357 (newly incorporated Bhartiya Nagarik Suraksha Sanhita, i.e., BNSS, Section 395 of BNSS) of the "Code of Criminal Procedure 1973" (hereinafter CrPC) in accordance with the recommendations of the Law Commission. According to section 357 of the CrPC, the victim may only receive compensation from the court in appropriate cases, and upon conviction, the accused must pay the compensation himself. This provision gives judges extensive authority to decide on compensation based on the specific facts and circumstances of each case. Furthermore, section 357-A CrPC (Section 396 BNSS), introduced in the 2009 amendment, also provides for compensation from state funds. Consequently, victim compensation has become standard practice, regardless of whether section 357 or section 357-A of the CrPC is invoked. Apart from these statutory provisions, there are several cases in which the Supreme Court has emphasised the significance of

victim compensation, further elaborating on when and how the judiciary should use its discretion in granting compensation. This article examines and analyses how the judiciary has applied its discretion in interpreting and using the legislative provisions in the course of rendering victim justice. It examines the situations in which there are no guidelines in the statute to aid the court in assessing the amount payable and explores whether and how this gap has been addressed by the courts. The study also reviews several Supreme Court judgements that remind the criminal courts of the special powers vested in them to ensure complete and effective justice for the parties. Finally, the study assesses the implementation of these decisions by the lower courts in the state of Odisha to evaluate whether the judiciary's intervention has been conducive to providing justice for the victim.

Keywords: Criminal court, criminal procedure; CrPC; Supreme Court; victim; compensation; judiciary; India: Odisha.

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Introduction

Monetary compensation to victims of crime is considered a primary aspect of reparation for the harm or injury suffered by the victim as a crime consequence. Financial aid, while unable to erase the emotional scars that require time to heal, nevertheless mitigates the victim's pain and suffering. "The Code of Criminal Procedure 1973" (CrPC) (now BNSS), "The Probation of Offenders Act 1958," "The Constitution of India," "The Fatal Accident Act 1976," and other significant laws collectively form the basis of India's legal system concerning compensation for victims of crime. The data for this study were collected during the period when the Code of Criminal Procedure, 1973 (CrPC) was in force. However, with the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the CrPC was replaced. It is pertinent to note that the content of the relevant section referred to in this study remains substantially unchanged in the BNSS. Therefore for clarity's sake we have referred to CrPC provisions throughout this paper. Among these, section 357 CrPC is the main avenue for compensation for victims, which defines the judges' position as shareholders in awarding compensation and also serves as the focus of our research. Under this section, at the time of passing judgement, the trial court, appellate court, High Court or Court of Session in revision may order that compensation be paid to the victim from the fine amount imposed on the accused. This establishes that the "quantum of compensation" should not be more than the fine amount ordered to be paid by the accused under section 357(1) of the CrPC. Thus, the limit specified in the applicable criminal section of the offence would clearly determine the sum of the fine.

In cases where offences are not punishable by a fine, the court may alternatively order the accused to pay compensation; however, the accused must still have been found guilty and convicted by the court (sec. 357(3) CrPC). Various factors are taken into account by the court before awarding compensation under this provision, such as the paying capacity of the accused, the nature of harm, the manner in which the victim was inflicted etc. When compensation is realized from the fine amount, it is limited to such amount; however, there are no restrictions on the quantum of compensation awardable when the convict is ordered to pay the compensation.¹ Subsection (3) of section 357 empowers the court to compensate the heirs and dependents for losses incurred in the event of a crime victims demise. Therefore, the new section has expanded the criminal court's authority to leniently award compensation to a victim of a crime for his loss or injury, even in situations when the fine is not a component of the sentence—a task that often falls within the purview of a civil court.²

While using its authority of revision, the High Court, Court of Session, or Appellate Court may also issue an order for compensation (sec. 357(4) of the CrPC). A compen-

¹ Barman, S. (2017). Victims' right to appeal under Indian criminal justice. *MSSV Journal of Humanities and Social Science*, 1(2), 87–99.

² Shukla, A. (2020, June 13). *Victim compensation—need of the hour*. Centre for Criminal Justice Administration. <https://ccjarnlnu.wordpress.com/2020/06/13/victim-compensation-need-of-the-hour>

sation order of this kind does not preclude the aggrieved party from seeking further damages in a civil court, enforcing the private law remedies in a tort. Thus, the sum of compensation that can be granted to a victim will rely on the strength of the argument and the manner in which the lawyer presents the client's case; above all, the goal is to win the judge's sympathy.

Consequently, it is clear from the provisions that are outlined under section 357 that (a) compensation can be granted in cases of conviction and where a fine forms a part of the sentence; (b) the court is empowered to grant compensation even when a fine forms a part of the sentence; (c) the provisions give ample power to the court to determine the amount of compensation; and (d) the provisions also empower the appellate courts to grant compensation. The courts' discretion—notably, their ability to award compensation and their failure to document a justification when refusing to do so—is the primary target of the current legislative framework.

It goes without saying that the entire legislative perspective and the judicial decision-making have revealed many shortcomings in the current legal system regarding compensation; as a result, the entire legal system needs to be redesigned. Sometimes, compensation granted under section 357 CrPC is insufficient for full restoration of a victim. For this reason, various commissions have recommended the enactment of a more comprehensive law on compensation. The Law Commission Report of 1996 clearly states that the state should provide assistance to victim with its own funds in the situations such as acquittal and in situations where the wrongdoer is not traced but the victim is identified, and even when the offence is proved.³ The Malimath Committee further recommended that it is the obligation of the state to provide compensation in all serious crimes and that a separate victim compensation law should be drafted by the parliament. Under this proposal, the compensation law would contain provisions for the establishment of funds such as a "Victim Compensation Fund," which would be administered by the Legal Services Authorities.⁴ Furthermore, the 154th Law Commission Report suggested that the principles relating to compensation needs to be reviewed. It should not be confined to fines, penalties and forfeitures realized from the accused. As a result, section 357A was incorporated into the CrPC where a scheme was established under which all homicide victims or their bereaved relatives, victims of rape, acid attacks and victims of grievous hurt could be compensated from the state fund. Under this scheme, the victim may directly apply for compensation, or the trial court judges may also make a recommendation for compensation to the District Legal Services Authority.⁵

³ Srinivasan, M., & Eyre Mathew, J. (2007). Victims and the criminal justice system in India: Need for a paradigm shift in the justice system. *Temida*, 10(2), 51–62.

⁴ Chockalingam, K. (2010, August). *Measures for crime victims in the Indian criminal justice system* (pp. 97–109). The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI). https://unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf

⁵ Mohanty, A. (2022, March 27). *Detailed analysis of victim compensation in India*. Law Insider. <https://www.lawinsider.in/columns/detailed-analysis-of-victim-compensation-in-india>

Thus, it may be concluded from the discussion above that judges have considerable discretion under these laws: they determine the amount and circumstances under which they wish to provide compensation, as well as the factors that influence their decision. However, the provisions and the rulings of the Supreme Court demand that judges exercise reasonable judgement when considering whether or not a case qualifies for compensation. Further, they must specify the reasons for both granting and declining compensation. However, it is surprising to see that there are a number of cases in which the compensation awarded is significantly less despite this wide discretionary power expressly provided in the letter of the law and that moreover, the court offers no reason for such a low amount of compensation. The considerations of the courts in granting compensation have been diverse and the subsequent section captures some of the decisions and the observations of the courts while granting compensation.

In *Hari Kishan v. Sukhbir Singh*⁶ it was observed that

the trial courts very rarely use the compensation provisions, possible due to their lack of awareness of the object of the provision. Hence, the Supreme Court had to issue a mild reprimand while urging the courts for liberal use of this provision for meeting the end of justice as a measure of responding appropriately to the crime and reconciling the victim with the offender.⁷

Apart from the recommendations of law commissions and the wide discretionary power of judges, the Supreme Court has also given notable decisions on important aspects of compensation, while emphasizing the priority of victims.

The case of *Delhi Domestic Working Women's Forum v. Union of India*⁸ pertained to the rape of seven women in a train by some army personnel. One of the suggestions mooted in this case was to set up a Criminal Injuries Compensation Board having regard to the Directive Principles contained under Article 38(1) of the Constitution of India. Furthermore, it was recommended that compensation for victims be awarded by the Court upon conviction of the offender and by the Criminal Injuries Compensation Board, regardless of whether or not a conviction has taken place. This board would take into account the pain, suffering and shock, as well as any loss of earnings due to pregnancy and the expenses of childbirth resulting from the crime.

In *Abdul Rashid v. State of Odisha & Others*,^{9,10} the Supreme Court expanded the scope of compensation under Article 21¹¹ of the Constitution of India. The Court clarified that compensation is not limited to cases involving state wrongdoings but

⁶ AIR 1988 SC 2127.

⁷ Lakhawat, A. (n.d.). Compensation: A Ray of hope. *Legal Services India*. <http://www.legalservicesindia.com/article/2036/Compensation:-A-Ray-of-Hope>

⁸ AIR 1995 SC 14.

⁹ 2014 (1) ILR 202.

¹⁰ For more info, see, *Abdul Rashid v. State of Odisha & Others* (2014). <https://www.courtktutchehry.com/Judgement/Search/t/434590-abdul-rashid-vs-state-of>

¹¹ Right to life and personal liberty. Indian Kanoon. <https://indiankanoon.org/doc/1199182/>

also applies to victims of crimes committed by private individuals. Through this judgement, the scope of Article 21 was broadened beyond granting compensation only when the state or its functionaries are held responsible for certain act, extending it to ensure rehabilitation of the victims, including their families, even in cases where the crime is committed without the state's role or its functionaries.¹²

In *Ankush Shivaji Gaikwad vs. State of Maharashtra*,¹³ the Court emphasised that compensation may be granted or denied only on solid grounds. The provision not only empowers the court, it also imposes a duty to apply its mind in every case before awarding compensation. Whether the court has applied its mind or not can best be determined by the reasons it records for granting or not granting compensation.¹⁴ These rulings unequivocally show that compensatory justice jurisprudence has developed gradually yet steadily in India and continues to acquire fresh perspectives.¹⁵

In *Laxmi v. Union of India*,¹⁶ the Supreme Court showed particular compassion towards acid attack victims by exceeding the amount of compensation beyond that had been prescribed under the statute, taking into account the gravity of the offence. The Court observed that in some states, compensation for victims of acid attacks was fixed at a very small amount and inadequate for rehabilitation, particularly given the several, costly plastic surgery procedures as well as other therapies these victims often need. To address this, the Court prescribed a minimum amount of compensation and directed that it be increased where necessary. This decision is widely regarded as satisfactory, as it takes into account all aspects of statutory rules relating to acid attacks, while prioritizing victims' rehabilitation needs.¹⁷

Although higher or appellate courts also have the power to grant compensation under section 357(4) CrPC, the present paper analyses the judicial reasoning at the trial court level, where the question of granting compensation first arises before the court. Since the higher courts in India have consistently delivered pro-victim rulings with regard to compensation and the implementation of compensation provisions, lower courts in India are bound by these decisions given by the Supreme Court. Therefore, in order to evaluate whether trial courts are implementing section 357 in a liberal manner consistent with the judicial mandates of the Supreme Court, this

¹² Restitution and rehabilitation of victims of crime. Shodhganga. <https://shodhganga.inflibnet.ac.in/bitstream>

¹³ AIR 2013 SC 770.

¹⁴ Dube, D. (2018). Victim compensation schemes in India: An analysis. *International Journal of Criminal Justice Sciences*, 13(2), 339–355.

¹⁵ Misra, P., & Chantia, A. (2011). Compensatory jurisprudence in India with special reference to dispensation of justice to the victims of rape: A critical appraisal. *Indian Journal of Human Rights Studies*, 1, 8.

¹⁶ AIR 2014 SC 427.

¹⁷ Bajpai, G. S., & Gauba, S. (2016). *Victim justice: A paradigm shift in the criminal justice system in India*. Thomson Reuters.

study has conducted a qualitative research by interviewing various trial court judges in the state of Odisha. In granting compensation, judges are faced with several key questions, including: (a) what factors should be taken into consideration for granting compensation; (b) whether the court should enquire into the economic background of the offender; (c) whether the principles of natural justice must be strictly followed in such cases while granting compensation and (d) whether courts should adopt a liberal or rigid approach in dealing with this provision.

Victim Compensation under BRICS Nation. It is vital to look at how other developing nations handle this important component of criminal justice in order to obtain a more comprehensive understanding of the efficacy of victim compensation systems. A broad set of countries, including the BRICS nations (Brazil, Russia, India, China and South Africa), face difficulties in ensuring timely and equitable access to justice for victims of crime. Despite variations in legal systems and governance structures, each BRICS nation has developed a distinct framework for victim compensation that reflects a range of socio-legal concerns. Examining these systems would offer insightful comparisons and can assist in locating best practices that could be pertinent to bolstering India's compensation plan.

Several legislative structures in Brazil promote victim compensation. The Federal Constitution, 1988, specifically Articles 5 and 6, explicitly guarantee the right to moral and monetary damages for abuses of individual rights, including offences against honour and privacy. This constitutional recognition elevates compensation to the status of a basic entitlement, reflecting a compassionate and victim-centred approach. In addition, other legislation, such as Articles 186–188 and Articles 927–954 of the Brazilian Civil Code (Law No. 10,406/2002), in particular regulate civil liability and require offenders to reimburse victims for any harm to their person or property. To obtain restitution, victims may participate in criminal proceedings as civil parties under the “Code of Criminal Procedure (Decree-Law No. 3,689/1941).”

In Russia, the Criminal Procedure Code of the Russian Federation (2001) is the main law that deals with victim compensation. It permits victims to seek compensation as civil claimants in criminal cases. Articles 1064–1101 of the Russian Federation's Civil Code, in particular, define general tort responsibility and set out for the payment of material damages as well as, in certain situations, moral damages. Article 52 of the Russian Federation's Constitution protects victims' rights to justice and compensation, while Article 53 permits lawsuits against the government for illegal acts committed by its representatives. The Russian government has also approved some international human rights agreements, such as the “European Convention on Human Rights,” which have an impact on domestic victim rights, particularly through rulings from the European Court of Human Rights (ECHR).

In China, Articles 101–106 of the Criminal Procedure Law of China, which govern victim compensation, permit victims to pursue civil damages as a component of criminal proceedings (referred to as a “collateral civil suit”). In particular, the Tort

Liability section (Arts. 1165 and 1183) of the People's Republic of China's Civil Code 2021 offers compensation for monetary and psychological harm brought on by illegal activities, including crimes. In some circumstances involving personal harm or death, emotional distress damages may be awarded. Both financial and limited non-financial losses are covered by the State Compensation Law of the PRC, which regulates claims against the government for illegal acts such as wrongful detention or mistreatment by state personnel. China does not have a centralised national compensation fund for victims of crime, even though several regions have introduced local pilot programmes for these victims.

In South Africa, there is no comprehensive government fund for compensating the crime victims. However, there are various pieces of legislation in South Africa that address victim. The Republic of South Africa's 1996 Constitution contains provisions which grant some fundamental rights to victims of crime, including the right of the victim to access the courts, which is enumerated in section 34, enabling victims to seek legal remedies. The court has the power to order the criminals to provide compensation to the victim for their loss incurred during the criminal trial (sec. 300 of Criminal Procedure Act 51 of 1977.) The victim also has a right to receive compensation under the Domestic Violence Act. There is also a legal provision for the establishment of a Criminal Assets Recovery Account, into which the state collects and deposits the assets of the offenders, from which victim can then request compensation from that account. The victim can additionally seek compensation through the civil courts, as is the case in India and several other countries. The civil court has the power to grant compensation for the medical expenses, economic losses and emotional suffering of the victim.

1. Research Methods

Thus far, we have examined the Supreme Court's decisions on the aspects in relation to the variables that have been used for the empirical data collection in Odisha concerning victim compensation under CrPC. These variables have been mapped against the decisions (*ratio decidendi*) of the Supreme Courts. The implementation of these variables has been observed based on empirical data collected from various courts in the state of Odisha, as reflected in the descriptive results. Based on the provisions, we have mapped the variables, and in the same vein, identified the Supreme Court cases that have delivered decisions based on those aspects.

The primary variables selected for this study are as follows:

- Application of compensation laws in a liberal manner;
- Prioritising of compensation orders;
- Determining the accused's paying capacity;
- Hearing the accused before fixing the quantum of compensation;
- Default sentences in matters of non-payment of compensation;
- Awarding compensation in cases of acquittal.

All of these variables were selected after mapping them against the provisions.

Table 1: **Mapping of variables with the *ratio decidendi* as determined by the courts**

Ratios given by the courts	Variables
Liberal application of compensation laws	1. Number of cases in which compensation has been granted <i>suo motu</i> ?
Prioritising compensation orders	2. Types of cases in which compensation is not awarded 3. Compensation is awarded even when a fine is not part of the sentence
Hearing the accused before fixing the quantum of compensation	4. Accused is heard in accordance with the principles of natural justice before fixing the quantum of compensation
Default sentence for non-payment of compensation	5. Default sentence of imprisonment is imposed on the accused for default of payment of compensation
Adequate amount of compensation received by victims even in cases of compromise between the parties or an acquittal	6. Recommendation to a DLSA for victim compensation in cases where the trial ends in acquittal
Enquiry by the court into the paying capacity of the accused before determining the quantum of compensation	7. Criteria for determining case eligibility for compensation is based on accused's paying capacity

1.1. Data Collection

For the purpose of our study, eight districts were selected, and responses were obtained from 55 judges. All the session courts of these eight districts fell under the purview of this study. For this purpose, the researchers had to obtain permission from the High Court of Odisha, which was granted after reviewing the questions in the interview schedule prepared by the researchers. The data has been collected through personal interviews of the judges using a structured interview schedule.

1.2. Data Analysis

The following methods were employed for the analysis of the data in our study:

1. Qualitative analysis of the judgements of Supreme Courts and High Courts was conducted to identify the factors considered while granting compensation to the victims.

2. Descriptive analysis of the variables was performed using the data collected from courts in the state of Odisha.

3. The variables collected were mapped against the factors identified in Supreme Court judgements.

1.3. Hypothesis

It is hypothesised that compensation laws are implemented in the state of Odisha in accordance with the judicial precedents set by the Supreme Court.

2. Judicial Responses on Victim Compensation

Despite specific provisions in place for victim compensation that grant wide discretion to the courts, the factors guiding the exercise of such discretionary powers have not been addressed much by the statutes. Some of the gaps have been addressed by the higher courts while dealing with the plight of these victims. The judiciary in India has made considerable effort to interpret the relevant laws in accordance with international treaties and agreement.

2.1. Responses of the Judiciary to the Selected Variables

The responses of the judiciary to the selected variables, as evidenced from judicial decisions and empirical data, have been examined and discussed below under the following key factors that influence the exercise of discretionary powers in awarding compensation to victims.

2.1.1. Compensation Provision Applied Liberally

From the provisions enumerated in section 357, it is clearly evident that judges play an extensive role in the process of granting compensation. Firstly, the judges have wide discretion in granting compensation when passing a sentence and can order full or partial payment of the fine. Secondly, judges have discretion to grant compensation to the victim even in cases where a fine is not included in the sentence. Additionally, the judges can also make a recommendation for compensation to the District Legal Services Authority (DLSA) if the trial court finds that the compensation awarded under section 357 is insufficient for the victim's rehabilitation or where the case ends in acquittal or discharge and the victim still requires rehabilitation.

Furthermore, the Supreme Court has expressed disappointment that courts do not apply their legal authority under this section as freely and liberally as could be expected. When the Punjab and Haryana High Court petitioned the Supreme Court of India to rule on the legality and propriety of compensation granted under section 357 of the CrPC, the court urged all courts in India to use their discretionary authority liberally in order to better serve the interests of justice. This authority is designed to reassure victims that they are not forgotten in the criminal justice system and that their right to justice shall be upheld.¹⁸

¹⁸ Vibhute, K. I. (1999). Victims of rape and their right to live with human dignity and to be compensated: Legislative and judicial responses in India. *Journal of the Indian Law Institute*, 41(2), 222–236.

There are various judgements of the Supreme Court and high courts of different states which also give judges wide power to use the compensatory provisions liberally as illustrated in the case below.

In *Ankush Shivaji Gaikwad v. State of Maharashtra*,¹⁹ the Supreme Court emphasised that, although the court has the discretion to award compensation under 357, it is still customary for the court to apply its mind in matters of compensation in every criminal trial and to record its decisions regarding compensation with proper justification. Further, the Supreme Court observed that even though there have been a series of judgements regarding compensation, section 357 has been ignored time and again. The Supreme Court also stressed that the court needs to give a solid reason for denying the compensation. When deciding the quantum of compensation, the court must consider the offender's history and financial situation, then assess the extent of the loss suffered by the victim and only then strike an appropriate balance to grant fair compensation.

From the above case analysis, we may conclude that the Supreme Court demands reason based judgements in every case where compensation is not given, and it also clearly mentions that the provision for liberal use of the compensation law has been often ignored by the trial court. There is no doubt from the above discussion that courts encourage the liberal application of the established provisions in ensuring justice for victims.

2.1.2. Compensation Orders Given Priority

The precedent set by the Supreme Court, as seen in the above case, unambiguously indicates that the Court has accorded primacy to the principle of compensation.

The Supreme Court in *Hari Krishna & State of Haryana v. Sukhbir Singh*²⁰ not only directed all the courts to exercise section 357 liberally but also mandated awarding adequate compensation in cases where the accused is released on admonition, probation or even when parties enter into a compromise. Many of the criminal cases are prematurely concluded due to a compromise between the parties, without adequately considering the suffering of the victim. Therefore, in light of this, the Supreme Court ordered the granting of fair and reasonable compensation, taking into account the facts and circumstances of each case, the nature of the crime, the veracity of the claim and the paying capacity of the accused.

Apart from the Hari Krishan case, another relevant precedent is *State of Madhya Pradesh (MP) v. Mehtab*.²¹ In this case the respondent was found guilty of causing death through negligence. The Supreme Court held that the accused must give the deceased person's heirs a compensation payment of Rs 2 lakh as per his financial

¹⁹ AIR 2013 SC 770.

²⁰ AIR 1988 SC 2127.

²¹ AIR 2015 SC 197.

capacity, and if this amount is not paid, the accused would undergo rigorous imprisonment for a period of six months. Furthermore, if the amount fixed is deemed inadequate, the state is obliged to pay an additional amount u/s 357A. Thus, the ultimate responsibility for victim restoration in case the accused is unable to pay rests with the state.²²

*Baldev Singh v. State of Punjab*²³ is another case where compensation was given priority over imprisonment. In this instance, the Supreme Court held that an order of compensation would be more befitting than a sentence of imprisonment.²⁴

From the above case laws, it can be concluded that the Supreme Court has consistently promoted the liberal application of the compensation law. The main intention is that the victim should be rehabilitated for the injury received due to the failure of state machinery to provide protection to its citizens. The court further ordered compensation even in cases of compromise between the parties. However, despite the remarkable judgement of the Supreme Court in the *Hari Krishna* case to compensate the victim of crime under section 357(3), subsequent judgements, such as *Brij Lal v. Prem Chand*,²⁵ *State of U.P. v. Jodh Singh*,²⁶ *State of Mysore v. Tyhappa*,²⁷ *N.B. Panth v. State*²⁸ and *Gur Swami v. State*,²⁹ show a different approach. In these cases, the Court awarded compensation to the victims of crime only out of the fine amount, thereby reflecting a more pro-offender stand rather than a pro-victim stand.

2.1.3. Compensation Based on the Paying Capacity of the Accused

When compensation is ordered at the time of judgement under section 357 CrPC, it is mandatory to assess the paying capacity of the accused. The Supreme Court has emphasised in several cases that an enquiry must precede the granting of compensation.

In *Manohar Singh v. State of Rajasthan and Ors*,³⁰ for instance, the Supreme Court clarified that punishing the accused and compensating the victim are two distinct aspects. While determining compensation, the court must consider certain factors from the victim's perspective, including medical and other expenses borne by

²² Kakkar, J., & Ojha, S. (2009). An analysis of the vanishing point of Indian victim compensation law. *Journal of Indian Law and Society*, 2, 313–340.

²³ AIR 1995 SC 593.

²⁴ *Id.*

²⁵ AIR 1989 SC 1661.

²⁶ AIR 1989 SC 1822.

²⁷ AIR 1962 Mys. 51.

²⁸ AIR 1977 SC 892.

²⁹ AIR 1995 SC 1177.

³⁰ AIR 2015 SC 266.

the victim, pain and suffering and loss of earnings due to the crime, as well as the financial capacity of the accused.

Similarly, in the *Ankush Shivaji Gaikward v. State of Maharashtra*,³¹ the court held that an enquiry must be conducted in order to ascertain the paying capacity of the accused. However, such an enquiry is not required if the accused's financial capacity is clearly evident from other sources at the time of trial. Where such information is not revealed in the trial record, it becomes mandatory for the court to conduct an enquiry.

In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*,³² the Supreme Court again emphasised the conducting of an enquiry in order to determine the paying capacity of the accused. The court held that the powers under this section must be exercised liberally and fairly. The amount of fine or compensation must not be excessive. Certain factors, such as motivation of the offence, the pecuniary gain likely to have been made by the offender and the means of the accused to pay the fine must be considered before fixing the amount of compensation. In several other civil law countries, the prosecutor or another court-appointed person is assigned to assess the paying capacity of the accused.³³

From the above case law analysis, it can be concluded that the true purpose of section 357 has been recognised by the Supreme Court. Compensation under section 357 is typically collected from the accused, and imposing a fine or compensation without knowing the financial condition of the accused could prove futile. Therefore, knowing the financial capacity of the accused is said to be an important aspect in granting compensation under section 357, which all courts in India must assess and consider so as to fully fulfil the fundamental purpose of section 357.

2.1.4. Compensation Determined After Hearing the Accused

In *Mangilal v. State of Madhya Pradesh*,³⁴ the appellant, who had been found guilty under section 302 IPC,³⁵ filed an appeal before the Supreme Court. The Supreme Court concluded that before awarding compensation under section 357(4), an opportunity should be given to the accused to present his side of the case. The logical conclusion drawn from this ruling is that if the appellate court wants to grant compensation, it must first allow the accused the chance to be heard. This ensures that the necessary factors, including the necessity to grant compensation, the accused's financial ability to pay and other relevant considerations, are duly considered.

³¹ AIR 2013 SC 770.

³² AIR 2007 SC 528.

³³ Srinivasan & Eyre Mathew, 2007.

³⁴ AIR 2004 SC 1280.

³⁵ Section 302 in the Indian Penal Code, 1860, outlines the punishment for murder. Indian Kanoon. <https://indiankanoon.org/doc/1560742/>

Similarly, in *Dharmesh and Anr. v. State of Gujarat*,³⁶ the court firstly held that a judgement should be delivered only after hearing all the arguments and points of law. Secondly, upon conviction of the accused, the judge must hear the accused on the question of sentence, unless the accused is released on probation of good conduct and admonition (sec. 360 CrPC), and only then pass sentence as per the law.

In this context, the Supreme Court in *Palaniappa Gounder v. State of Tamil Nadu and others*³⁷ further opined that all courts must consider the nature of the crime, the injury the victim has suffered, the justness of the claim, and the paying capacity of the accused etc., when fixing the quantum of fine or compensation. All of these aspects related to the accused can only be properly assessed by the court if the accused is given an opportunity to be heard, which would naturally be post-conviction. Based on the aforementioned case analysis, the Supreme Court noted that a court must hear an accused person before determining the amount of compensation, in accordance with the principles of natural justice.

2.1.5. Default Sentence for Non-Payment of Compensation

When the accused is ordered to pay compensation u/s 357 of CrPC, the provision itself is silent on the consequences of non-payment of compensation by the accused. If the compensation amount is not paid and no default sentence is given for non-payment of compensation, the amount ordered for compensation is of no use and the very purpose of awarding compensation is undermined.

The following case laws illustrate how the Supreme Court has dealt with this issue of non-payment of compensation.

In *Rachhpal Singh v. State of Punjab*,³⁸ the Supreme Court held that the High Court had no material to assess the pecuniary condition of the accused; nevertheless, in keeping with the objective of section 357, the Court considered the case fit for granting compensation. Moreover, upon considering the materials on record, the Court also found the appellants reasonably affluent to pay the compensation, although it reduced the amount from Rs. 2 lakhs to Rs. 1 lakh each. In this case, the Supreme Court held that the High Court had ordered compensation and also a default sentence in lieu of compensation without assessing the financial capacity of the accused. Therefore, the Supreme Court directed that, in such cases, courts must ensure the accused's financial capacity before fixing both the compensation and default sentence.

In the case of *K. A. Abbas H.S.A. v. Sabu Joseph*³⁹ also, the Supreme Court imposed a default sentence in case of non-payment of compensation under section 357(3) of the CrPC. It further observed by the Court that:

³⁶ Criminal Appeal No. 432 of 2021 (arising out of SLP (Crl) No. 673/2021).

³⁷ AIR 1977 SC 1323.

³⁸ AIR 2002 SC 2710.

³⁹ Criminal Appeal No. 1052 of 2010.

The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice.

In both *Hari Singh v. Sukhbir Singh*⁴⁰ and *Balraj v. State of UP*,⁴¹ the Supreme Court held that all courts are open to impose a default sentence on non-payment of compensation under section 357(3) of the CrPC after taking into consideration certain factors when passing an order of compensation where a fine is not part of the convict's sentence. First and foremost, the amount of compensation must be reasonable and appropriate, considering the particular facts and circumstances of each instance. Additionally, while calculating the amount of compensation, the type of offence committed, the veracity of the victim's claim and the accused's financial situation might all be taken into account.

When there are multiple accused, they are directed to pay equal amounts of compensation unless there is considerable disparity in their ability to pay. Furthermore, the court may also pass permit making payments on an instalment basis. Lastly, the court has the authority to enforce the order by imposing a penalty for nonpayment.⁴² It is well established that section 357(3) CrPC allows for the imposition of imprisonment for failure to pay reparation. This provision aims to uphold victims' rights within the criminal justice system. In some situations, compensation may better serve the interests of justice than detention, since the accused may still evade payment in the absence of a default sentence, and imposing an additional fine would prove impractical. Therefore, to guarantee meaningful enforcement and to prevent defeating the intent of the provision, courts must take into account the accused's financial situation when granting compensation.

2.1.6. Compensation in Cases of Acquittal

It has been clearly mentioned in section 357A of the CrPC that the victim can receive compensation even in the event of an acquittal. The primary objective of the provision is that the victim should be rehabilitated irrespective of whether there is a discharge or an acquittal.

In the case of *Suresh and Anr. v. State of Haryana*,⁴³ the Supreme Court underlined this objective of section 357A of the CrPC as under:

The object and purpose of Section 357A CrPC is to enable the court to direct the state to pay compensation to the victim where the compensation under

⁴⁰ AIR 1988 SC 2127.

⁴¹ AIR 1995 SC 1935.

⁴² Dattu, H. A. (2010). *K. A. Abbas H. S. A. v. Sabu Joseph Anr., Supreme Court of India* (pp. 1–11). Indian Kanoon.

⁴³ AIR 2015 SC 227, Criminal Appeal No. 420 of 2012.

section 357 of the CrPC is not adequate for where the case ended in acquittal or discharge and the victim is required to be rehabilitated.

As the higher courts in India have delivered a number of landmark decisions with regard to compensation to make the compensation law more effective, the lower courts in India are mandated to follow the decisions given by the Supreme Court; only then, in the true sense, can victim restoration through compensation be realised. To examine the ground realities of whether lower courts are implementing the provisions of compensation in line with the CrPC and following the rules made by the Supreme Court or not, an empirical study was conducted by interviewing various judges in the state of Odisha in the eastern part of India.

3. Practices of the Trial Courts in Awarding Compensation: Evidence from an Empirical Study in the State of Odisha

The Supreme Court and the provisions discussed so far clearly indicate the practices that lower courts are expected to follow while granting compensation to the victims of crime. The frequency distribution below illustrates the practices actually observed by the lower courts in the state of Odisha.

Table 2: **Use of compensation provision set by the Supreme Court**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Court should use the compensation provision liberally	Suo motu compensation granted in the last ten years			
		More than 50% of the cases	4	7.3
		Less than 50% of the cases	16	29.1
		In all cases that ended in conviction	14	25.5
		In no cases	3	5.5
		No case experience	1	1.8
		Never had a relevant case	10	18.2
		Percentage/data not available	2	3.6
		Recommended to the DLSA	5	9.1
		Total	55	100.0

From the above table, we can see that only 29.1% of the judges grant compensation in less than 50% of the cases they have decided. This means that they use the power granted to them by the statute only rarely. In addition, 25.5% of the judges responded that they grant compensation only in cases of conviction, even though the statute allows compensation to be granted at the time of judgement even in cases of acquittal. Only 7.3% of the total judges grant compensation in more than 50% of the cases. Furthermore, 5.5% of the judges admitted having tried such cases but did not grant compensation at the time of judgement. It is therefore clear that, contrary to the intention of the legislature and the mandates of the Supreme Court, this provision is used by the judges only in a limited number of cases.

Table 3: **Compensation orders given priority**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Adequate compensation should be given to the victim even in case of compromise	In what kind of cases do you not award compensation			
		Where the victim contributed to the offence	2	3.6
		In less serious cases and if the victim/witness is hostile	25	45.5
		In cases of acquittal	16	29.1
		In cases of compromise	1	1.8
		When there is inadequate evidence	1	1.8
		Depends on case-specific factors	1	1.8
		Mistake of fact	3	5.5
		Unanswered	5	9.1
		Total	54	98.2
	System		1	1.8
	Total		55	100.0

Most judges (45.5%) stated that the victim turns hostile in the majority of cases, and that in such situations, they do not award compensation. Additionally, in less

serious cases, compensation is usually not given. A number of judges opined that the victim turning hostile is a very common occurrence. Further, 29.1% of the judges reported that they do not grant compensation in cases of acquittal. Some judges mentioned that they do not grant compensation in the event of a compromise between the parties, although this number is very small. However, the Supreme Court has clearly stated several times that even in cases of compromise, the victim is to be compensated, as he or she has suffered a loss due to the act of the accused. In a few cases, compensation is not awarded when there is inadequate evidence or a mistake of fact.

Table 4: **Compensation based on the paying capacity of the accused**

Ratio given by courts	Variable	Sub-variable	Judges' responses	Frequency	Percentage
Paying capacity of the accused to be considered before fixing the quantum of compensation	Cases eligible for compensation	By the impact on the victim			
			Yes	50	90.9
			No	2	3.6
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0
		By the paying capacity of the accused			
			Yes	16	29.1
			No	36	65.5
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0
		By the gravity of the offence			

			Yes	50	90.9
			No	2	3.6
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0
		By the impact on the society	Yes	33	60.0
			No	19	34.5
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0

According to the above table, the majority of the judges, i.e. 90.9% of the judges, grant compensation based on the impact on the victim. This indicates that the victim is given priority when determining whether the case is eligible for compensation or not.

Furthermore, the table shows that 29.1% of the judges consider the paying capacity of the judges, whereas 65.5% of the total judges do not take it into account. However, the statutory rule is that the paying capacity of the accused should be a considering factor in granting compensation, as the compensation amount is to be collected from the accused. The Supreme Court in various cases, as discussed above, has directed lower courts to make this an important consideration while granting compensation and has even ordered that an enquiry into the paying capacity of the accused must be conducted, particularly when it is not clear at the time of trial. Unfortunately, most judges still ignore this aspect while granting compensation.

It is also concluded that 90.9% of the judges consider the gravity of the offence as a significant factor for granting compensation. Only 3.3% of the judges did not consider it as a factor for granting compensation and also did not provide any specific reason for neglecting to consider it.

An additional 60% of the judges responded that impact on the society is a relevant factor for granting compensation, whereas 34.5% of the judges did not consider this factor in granting compensation.

Table 5: **Compensation determined after hearing the accused**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Accused must be heard before determining the quantum	Whether accused is heard before determining the amount of compensation			
		Yes	31	56.4
		No	24	43.6
		Total	55	100.0

The table above shows that 56.4% of the judges hear the accused before fixing the amount of compensation, while 43.6% of the judges do not hear the accused before fixing the quantum of compensation. The Supreme Court has repeatedly given decisions in this regard that the accused should be heard as per the principles of natural justice before compensation is decided. Yet, the majority of the judges do not hear the accused and are also often ignorant about the decisions given by the Supreme Court in this context.

Some judges also opined that they do not hear the accused directly regarding compensation but instead study the case files to infer whether the accused is able to pay. However, none reported conducting any enquiry into the economic background of the offender, despite explicit directions from the Supreme Court in multiple cases.

Other judges responded that they hear the accused only in warrant cases and not in summons cases. Some judges explained that the accused is usually heard at the time of sentencing which addresses this matter of hearing the accused; however, this hearing typically addresses the overall case rather than the issue of compensation specifically. A few judges reported that in order to ascertain the economic background, they simply ask a few indirect questions.

Table 6: **Default sentence for non-payment of compensation**

Ratio given by courts	Variable		Frequency	Percentage
Imposition of default sentence for non-payment of compensation	Whether imprisonment is imposed on the accused for default in payment of compensation ordered u/s 357(3)			

		Yes	17	30.9
		No	32	10.9
		Never come across such a situation	6	58.2
		Total	55	100.0

The above table reveals that 58.2% of the judges do not impose a default sentence upon non-payment of compensation, while 30.9% of the judges do. Once again, the Supreme Court has clearly mentioned that a default sentence should be given to the accused in cases of non-payment of compensation. However, most of the judges interviewed believed that a default sentence can only be given for non-payment of a fine and not for non-payment of compensation. They were largely ignorant about the decisions of the Supreme Court in connection to this provision.

Table 7: **Compensation in cases of acquittal**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Adequate amount should be given to the victim in cases of acquittal	Whether recommendation to the DLSA is made in cases of acquittal			
		Mostly	2	3.6
		Sometimes	13	23.6
		Never	31	56.4
		Not tried	2	3.6
		Never recommended	7	12.7
		Total	55	100.0

From the above table, it is revealed that 56.4% of the judges never recommend compensation in cases of acquittal. The field investigation conducted further reveals that in practice, judges generally do not recommend the matter to the DLSA either in cases of acquittal. Only in cases of conviction is such a matter forwarded to the DLSA for compensation. About 23.6% of the judges recommended the matter for compensation

to the DLSA in cases of acquittal, while 12.7% of the judges reported that they never make such recommendations for compensation in instances of acquittal.

These data clearly demonstrate that despite the explicit provision in section 357A of the CrPC regarding recommending compensation to the DLSA, as well as the reinforcement of this provision by the Supreme Court in its various rulings, judges neglect to recommend compensation to the DLSA in cases of acquittal, even when the trial court determines that the compensation awarded under section 357 is clearly inadequate for the victim's rehabilitation.

Conclusion

Previously the CrPC did not contain any special law for rendering justice to the victims through compensation. However, following the 2009 amendment and the establishment of Victim Compensation Schemes in various states, some solace was extended to the victims. Nevertheless, to date, there is no such special law in India that provides an exhaustive framework on victim compensation. In the absence of such legislation, the Supreme Court has taken various positive actions to protect the rights of the victims. By adopting the concept of restorative justice, the Court has awarded compensation or restitution, leading to a notable increase in the amount of compensation granted to the victims in various cases.

In order for these victim compensation reforms to be truly effective, the judiciary must become more sensitised. While the policy of the criminal justice system is becoming more victim-orientated and some positive steps have been taken through various amendments and judgements, loopholes persist in implementation. The judges must not only be highly efficient in their understanding of the laws in place but also understand the true meaning of providing justice to victims. The victims must not be at the mercy of the judge, rather it is pertinent to convert the compensatory provisions into a legal mandate so that judges cannot misuse their discretionary power in granting justice.

It has been further observed from the above analysis that the judges in the state of Odisha are often not even aware of the decisions of the Supreme Court regarding victim compensation, with a stereotypical approach still prevailing in the justice system. Further, there is no standard technique applied for granting compensation. The judges keep no record or provide reasons in cases where compensation has not been granted. In practice, granting compensation mostly depends upon the paying capacity of the accused, when in fact the unfortunate reality is that there is little scope for ascertaining the economic condition of the accused. The court makes no effort to determine the economic background. Therefore, in this situation, as is common, it is practically not even possible for the accused to pay compensation as prescribed by law, and only a very small number of cases result in successfully enforced compensation orders.

This study also highlighted that judges in Odisha, in the majority of instances, simply conclude that it is not practically possible to know the paying capacity of the accused, nor do they consider conducting an enquiry, as they believe it is not a requirement under the provision. As a result, the Supreme Court's decisions in this regard remain largely unimplemented. Our field observation confirms that section 357 is among the most underutilised provisions. In some instances, rather than granting compensation directly under section 357 CrPC, the courts prefer to recommend the matter to the DLSA, their reason being that in most of the cases they handle, the accused persons come from low economic backgrounds. They claimed that even if they were to order compensation, the amount is often not practically feasible to collect, and there have been several instances where the accused has failed to pay the fine amount as well, which is owed to the government.

On the question of imposing a default sentence for non-payment of compensation, the Supreme Court has clearly stated time and again that a default sentence should be given in cases of non-payment of compensation. Yet, the sad reality is that no court in Odisha consistently imposes default sentences in cases of non-payment of compensation. It can thus be concluded that the judges in Odisha are not following a uniform pattern in granting compensation. Some judges approach the problem from a historical perspective, others from a philosophical viewpoint and still others from the standpoint of social utility. Based on the findings the hypothesis that "Compensation laws are implemented in the state of Odisha in accordance with the judicial precedents set by the Supreme Court of India" is disproved. The study reveals that in practice, the implementation of victim compensation laws in the state of Odisha does not align with the standards or practices established by the Supreme Court.

Based on the findings of the study, the following recommendations are suggested:

1. Amend the CrPC to bring about more clarity on the substantive right of victims to receive compensation. Additionally, judges in the lower judiciary should be more sensitised when handling compensation matters.

2. Clearly outline the legal requirements to standardise the amount of compensation based on the type of crime and its detrimental impact on the victim rather than leaving it entirely to the discretion of the courts.

3. Establish a formal methodology for assessing victim impact so as to ensure consistency, transparency and impartiality in dealing with cases, including awarding compensation.⁴⁴

4. Develop standardised methodologies for determining the appropriate level of compensation or establish electronic databases that can consider and calculate the economic standing of defendants.

⁴⁴ Bajpai & Gauba, 2016.

5. Based on previous court rulings, create and publish compensation tables or charts organized according to the nature and gravity of the offence, financial damage and other such factors that the Supreme Court deems relevant. These can serve as standards to encourage uniformity and certainty in awarding victim compensation.

While the CrPC and Supreme Court rulings provide a robust framework for victim compensation, this study demonstrates that inconsistent practices in lower courts, gaps in implementation and a lack of overall judicial awareness impede the effective restoration of victims. These findings underscore the urgent need for enhanced judicial sensitisation, explicit legislative clarity and greater standardisation of procedures—particularly at the lower court levels—to ensure that victims receive meaningful and timely justice.

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ARTICLE IN RUSSIAN

Legislative Ideas of the Russian Parliament on the Rights of Indigenous Peoples of the North in the Period from 1990s till 2024: Barriers and Priorities

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Законотворческие идеи российского парламента по правам коренных малочисленных народов Севера в период с 1990-х по 2024 г.: проблемы и перспективы

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Abstract. The article describes the key legislative initiatives on the rights of indigenous small-numbered peoples of Russia introduced in the period from the 1990s to 2024. The adoption of the new democratic Constitution of Russia in 1993 instigated the development of indigenous people's rights and their guarantees introduced by the Article 69 aimed to protect indigenous peoples' ethnocultural identity. At the same time, basic federal laws in the field of indigenous communities' self-government and traditional environmental management appeared only in the early 2000s. However, a broad public and parliamentary discussion took place continuously, which characterizes Russia as one of the most advanced jurisdictions in the world in the field of guarantees of the indigenous communities' rights. This study provides an overview of 37 bills on the rights of the indigenous population of Russia.

Статья посвящена важнейшим законодательным инициативам по правам коренных малочисленных народов Севера России в период с 1990-х по 2024 г. Полноценное становление правового института гарантий прав коренных малочисленных народов началось с принятия новой демократической Конституции России 1993 г., которая в статье 69 прямо закрепляет конституционные гарантии прав аборигенного населения на защиту своей этнокультурной самобытности. Вместе с тем базовые федеральные законы в области общинного самоуправления и традиционного природопользования появились лишь в начале 2000-х гг. Тем не менее широкая общественная и парламентская дискуссия велась практически непрерывно, именно поэтому в настоящее время Россия является одной из самых передовых стран в мире в области нормативного закрепления гарантий прав коренных сообществ. В данном исследовании представлен обзор на 37 законопроектов по правам аборигенного населения России.

Keywords: legislative process; indigenous peoples; Russia; parliament.

Ключевые слова: законодательный процесс; коренные народы; Россия; парламент.

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I. Introduction

Введение

Законодательные новеллы в области этнонациональной политики можно отследить на официальном сайте Государственной Думы Федерального Собрания Российской Федерации. Даже если это законопроект, а не принятый федеральный закон, тем не менее можно выстроить цепочку актуальных для общества проблем, которые, так или иначе, фигурировали во внутривнутриполитической повестке России на протяжении последних 30 лет.

Поиск по ключевым словам, связанным с тематикой правового статуса и защиты прав коренных малочисленных народов, показал наличие не менее 37 законопроектов, часть из которых получила оформление в качестве полноценного федерального закона.

Комплекс вопросов, которые предстояло решать законодателям в России, достаточно внушителен. Он включает в себя такие темы, как:

- правовой статус «коренных» и «некоренных» народов;
- непосредственно конституционные гарантии прав коренных народов;
- правовой статус «индигенных/аборигенных общин»;
- «этнический паспорт» для установления бенефициаров конституционных гарантий;
- «территории традиционного природопользования» как особый вид – «особо охраняемых природных территорий»;
- «индигенные общины» и «территориальное общественное самоуправление»;
- избирательные права и гарантии прав коренных народов;
- вопросы о соотношении статуса и полномочий региональных властей и индигенных общин;
- правовые нюансы «альтернативной гражданской службы» для лиц из числа коренного населения;
- «этнические квоты» для реализации представительства в региональных «парламентах»;
- «этнологическая экспертиза» как оценка влияния индустриального проекта на культуру, традиции и обычаи коренных общин;
- земельные права коренных малочисленных народов;

- особые «аборигенные» гарантии на биоресурсы;
- «советы представителей» коренных народов при главах муниципалитетов как гарантия принятия управленческих решений в интересах коренного населения;
- «социальная пенсия» и расширение списка бенефициаров на ее получение;
- приоритетная государственная поддержка «кочевникам»;
- «аборигенный реестр» как инструмент статистического учета бенефициаров конституционных гарантий;
- запрет на исключение коренного народа из Единого правительственного перечня;
- «традиционное рыболовство»;
- «традиционная охота» и т.д.

Важно обратить внимание, что это далеко не все вопросы, относящиеся к «этническим» и «культурным правам» аборигенных сообществ, однако они фокусируют внимание на наиболее важных политико-правовых и социальных процессах в контексте законотворческой мысли отечественных парламентариев за последние десятилетия.

Необходимо отметить, что в рамках подготовки аналитической статьи и удобства восприятия текста, а также с учетом доктрины права «коренной народ», «коренной малочисленный народ», «аборигенный/индигенный народ» и аналогичные термины использовались как синонимы.

II. Methodology

Методология

В статье используются общие методы и принципы научного познания (прежде всего в рамках политической и правовой науки):

- системно-структурный метод, который позволил проанализировать общую структуру современной российской политики в области защиты прав коренных малочисленных народов, отраженной в законодательном процессе;
- формально-юридический метод, с помощью которого были обработаны и проанализированы законопроекты по релевантной тематике в период с 1990-х по 2024 г.;
- методы анализа и синтеза, которые позволили сформировать аналитический обзор по ключевым идеям законопроектной деятельности российского парламента за последние 30 лет в области этнополитики и гарантии прав коренных малочисленных народов;
- компаративный метод, который помог проследить взаимосвязь российской внутренней политики в области этнических прав с зарубежным опытом.

Цель исследования – выявление основных трендов государственной политики по защите прав коренных малочисленных народов за последние 30 лет.

Объект исследования – совокупность общественных отношений, связанных с «аборигенными правами».

Предмет исследования – федеральные законопроекты, научная литература.

III. Review of Research Articles related to Legal and Political Spheres on Current Legal Initiatives in Russia and Abroad

Обзор научных публикаций в зарубежной и российской правовой и политической сфере по актуальным правовым инициативам

Обзор зарубежной и отечественной научной литературы последнего десятилетия по релевантной проблематике позволяет сделать вывод о феноменальной схожести большинства проблем в науке и практике в отношении коренных народов вне зависимости от географического положения и политического режима конкретной страны. Это прежде всего такие вопросы, как:

- «аборигенное членство» и «идентификация в качестве индигена» на индивидуальном и коллективном уровнях (на примере Финляндии)¹;
- применимость международных стандартов по защите земельных прав коренных народов в странах, которые не ратифицировали конвенции Международной организации труда по данному вопросу (в частности, Индонезия)²;
- «аборигенные права» на водные ресурсы и доступ к водным объектам³;
- учет «аборигенных прав» при оказании медицинских услуг (на примере Канады)⁴;
- право на «культурную самобытность» коренных народов и дискуссия о «культурной гегемонии» больших этнокультурных сообществ⁵;
- проблематика закрепления конституционных гарантий прав коренных народов в основополагающих юридических актах государства (на примере Австралии)⁶;
- компаративный анализ конституционного закрепления гарантий прав коренных народов в двух различных по своему историческому развитию юрисдикциях: на примере Австралии, Новой Зеландии, Канады – с одной стороны, а также Боливии и Эквадоре – с другой⁷;

¹ Sarivaara, E., Maatta, K., & Uusiautti, S. (2013). Who is indigenous? Definition of indigeneity. *European Scientific Journal. Special Edition*, 1, 369–378.

² Fahmi, C., & Siddiq Armia, M. (2022). Protecting indigenous collective land property in Indonesia under international human rights norms. *Journal of Southeast Asian Human Rights*, 6(1), 1–25.

³ Gupta, J., Hildering, A., & Miesiedjan, D. (2014). Indigenous people's right to water under international law: A legal pluralism perspective. *Current Opinion in Environmental Sustainability*, 11, 26–33.

⁴ Nelson, S. E., & Wilson, K. (2021). Rights and health versus rights to health: Bringing indigenous peoples' legal rights into the spaces of health care services. *Political Geography*, 85, 102311.

⁵ Kulwinder, S. G. (2021). *Right to cultural identity of indigenous peoples under international human rights law*. SSRN. <https://ssrn.com/abstract=4637001>. <https://doi.org/10.2139/ssrn.4637001>

⁶ Abimbola, S., Lo, S. N., & Stewart, P. (2023). Enshrining a first nations voice to Australian parliament will advance global health equity. *The Lancet. Global Health*, 11(12), E1844–E1846.

⁷ Gussen, B. F. (2017). A comparative analysis if constitutional recognition of aboriginal peoples. *Melbourne University Law Review*, 40(3), 867–904.

- оценка создания российского федерального «аборигенного реестра» для учета коренных малочисленных народов⁸;
- вопросы теоретического осмысления правовой природы «аборигенных прав» на различных уровнях общественно-политического регулирования⁹;
- вопросы «натурализации» коренных народов в системе государственной регистрации при получении гражданства¹⁰;
- оценка степени «культурной изменчивости» латиноамериканских индейцев после контакта с белыми колонизаторами¹¹;
- дифференциация подходов в области здравоохранения в отношении коренных народов с учетом расовых и этнических характеристик¹²;
- формирование «легитимной модели» политического представительства коренных народов, состоящей из трех базовых элементов: признания, защиты и деколонизации¹³;
- вопросы «методологии идентификации коренных народов» (на примере Австралии, Бразилии, Канады, Новой Зеландии и Соединенных Штатов Америки)¹⁴;
- влияние механизмов «этнического квотирования» на «законодательное разнообразие» (на примере 11 стран Азиатско-Тихоокеанского региона)¹⁵;
- «гендерные этнические квоты» в целях защиты представительства женщин из числа аборигенных общин в представительных органах государственной власти¹⁶;

⁸ Fondahl, G., Filippova, V., & Savvinova, A. (2023). Introducing a registry of indigenous persons in Russia: Rationale and challenges. *Space Population Societies*, 2020/1-2.

⁹ Fuentes, C. A., & Fernández, J. E. (2022). The four worlds of recognition of indigenous rights. *Journal of Ethnic and Migration Studies*, 48(13), 3202–3220.

¹⁰ Van Genugten, W., Meijknecht, A., & Rombouts, B. (2014). Stateless indigenous people(s): The right to a nationality, including their own. *Tilburg Law Review*, 19(1–2), 98–107.

¹¹ Espín-León, A., Jimeno-Morenila, M. L., Pertegal-Felices, A., & López, J. A. (2019). Identification of factors of indigenous ethnic identity: A case study on the Waorani Amazonian ethnicity. *Research & Innovation Forum*, 515–524.

¹² Gartner, D. R., Maples, C., Nash, M., & Howard-Bobiwash, H. (2023). Misracialization of indigenous people in population health and mortality studies: A scoping review to establish promising practices. *Epidemiologic Reviews*, 45(1), 63–81.

¹³ Williams, M., & Schertzer, R. (2019). Is indigeneity like ethnicity? Theorizing and assessing models of indigenous political representation. *Canadian Journal of Political Science*, 52(4), 677–696.

¹⁴ Madden, R., Coleman, C. E., Mashford-Pringle, A., & Connolly, M. (2019). Indigenous identification: Past, present and a possible future. *Statistical Journal of the IAOS*, 35(10040), 1–5.

¹⁵ Tan, N., & Preece, C. (2022). Ethnic quotas, political representation and equity in Asia Pacific. *Journal of Representative Democracy*, 58(3), 347–371.

¹⁶ Hughes, M. M. (2018). The combination of gender and ethnic quotas in electoral politics. In *Gender parity and multicultural feminism: Towards a new synthesis* (pp. 97–118). Oxford University Press.

- проблемы «этнической интеграции» и «политического представительства» коренных народов¹⁷;
- теоретическое осмысление понятия «этническая демократия» в контексте применения «этнических квот» в парламентской системе государства¹⁸;
- разграничение понятий «самоуправление», «управление», «автономия», «самоопределение»¹⁹;
- «аборигенное самоуправление» в Австралийской Федерации²⁰;
- практические вопросы и проблемы «этнологической экспертизы» (на примере Республики Саха (Якутия))^{21,22};
- проблемы отсутствия единой методологии проведения «этнологической экспертизы» на уровне федерации²³;
- дискуссия относительно земельных прав кочевников из числа коренных народов²⁴;
- земельные права «кочевых» и «оседлых» аборигенов: проблема разграничения²⁵;
- прикладной характер Конвенции о ликвидации всех форм расовой дискриминации в отношении земельных прав кочевников из числа аборигенного населения²⁶;
- проблема уравнивания двух категорий «этнос обществ» – «коренных малочисленных народов» и «национальных меньшинств» в законодательной и правоприменительной практике России²⁷;

¹⁷ Tan, N. (2022). Introduction: Quotas, parties and electoral design – mechanisms and effects of ethnic representation in diverse societies. *Journal of Representative Democracy*, 58(3), 339–346.

¹⁸ Bird, K. (2014). Ethnic quotas and ethnic representation worldwide. *International Political Science Review*, 35(1), 12–26.

¹⁹ Kuokkanen, R. (2019). Indigenous self-government structures in Canada, Greenland, and Sápmi. In *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender* (pp. 60–136). Oxford University Press.

²⁰ Vivian, A., Jorgensen, M., & Reilly, A., et al. (2017). Indigenous self-government in the Australian Federation. *Australian Indigenous Law Review*, 20, 215–242.

²¹ Pavlova, M., & Nikolaeva, S. (2022). On the importance of native consultants in ethnological impact assessment in Sakha Republic. *Arctic Yearbook*, 1–12.

²² Basov, A. S. (2018). Dialogue and bureaucratic procedures: Ethnological impact assessment in the Republic of Sakha (Yakutia). *Siberian Historical Research*, 2, 91–123. (In Russian).

²³ Funk, D. (2018). “Ethnological expert assessment”: A Russian experience in evaluating the social impact of industrial projects. *Etnograficheskoe Obozrenie*, 6, 66–113. (In Russian).

²⁴ Gilbert, J. (2012). Land rights and nomadic peoples: using international law at the local level. *Nomadic Peoples*, 16(2), 78–83.

²⁵ Gilbert, J. (2007). Nomadic territories: A human rights approach to nomadic peoples’ land rights. *Human Rights Law Review*, 7(4), 681–716.

²⁶ Gilbert, 2012.

²⁷ Kryazhkov, V., & Sukhanov, K. (2023). National minorities and small indigenous peoples in Russia: Legal problems of their identification. *Comparative Constitutional Review*, 32(6), 90–115. (In Russian).

– перспективы развития национального законодательства России по вопросу правового статуса «территорий традиционного проживания и традиционной хозяйственной деятельности» коренных народов Севера²⁸;

– федеральные законодательные новеллы в области защиты прав коренных народов²⁹;

– историческая ретроспектива и политико-правовой опыт в сфере регулирования прав «иногородцев», «туземного населения» и «коренных малочисленных народов» в России с имперских времен до настоящего времени³⁰.

В следующем параграфе, посвященном анализу парламентских законодательных инициатив по правам коренных народов России, будет продемонстрирована схожесть проблематики, отраженной в научной литературе, с реальной практикой реализации конституционных гарантий.

IV. Parliamentary Lawmaking Process and Indigenous Peoples **Парламентский законотворческий процесс и коренные народы**

Номер законопроекта, статус	Категория, тематика	Содержание законодательной инициативы
Законопроект № 94700302-1 ³¹ Статус: законопроект не принят	Принятие рамочного закона о правах коренных народов	Ключевые вопросы: ✓ дискуссия о принятии «рамочного закона» по гарантиям прав коренных малочисленных народов России; ✓ закрепление права на «этнические квоты» и гарантированное представительство малочисленных народов в органах государственной власти и на уровне муниципалитетов, в том числе с учетом специфики регионов на основе соглашений с общинами

²⁸ Kryazhkov, V. A. (2023). Places of traditional residence and traditional economic activity of indigenous peoples of the North, Siberia and the Russian Far East: Legal aspect. *State and Law*, 8, 84–95. (In Russian).

²⁹ Kryazhkov, V. A. (2023). Federal legislation on the indigenous peoples of the North, Siberia and the Far East of Russia: Novels of recent years. *State and Law*, 4, 72–83.

³⁰ Kryazhkov, V. A. (2022). Indigenous peoples of the North, Siberia and the Russian Far East: The evolution of legal status from tsarist times to the present day. *State and Law*, 6, 68–78.

³¹ Законопроект № 94700302-1 «Основы правового статуса коренных малочисленных народов России». Дата регистрации: 23.06.1994. URL: <https://sozd.duma.gov.ru/bill/94700302-1>. Статус: Отклонен.

<i>Законопроект № 97802467-2</i> ³² Статус: законопроект принят в форме федерального закона	Принятие рамочного закона о правах коренных народов	Принятие Федерального закона от 30.04.1999 № 82-ФЗ «О гарантиях прав коренных малочисленных народов Российской Федерации»
<i>Законопроект № 96700175-2</i> ³³ Статус: законопроект принят в форме федерального закона	Принятие рамочного закона об общинах коренных малочисленных народов	Принятие Федерального закона от 20.07.2000 № 104-ФЗ «Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации»
<i>Законопроект № 43913-3</i> ³⁴ Статус: законопроект не принят	«Этнический паспорт»	Ключевые вопросы: ✓ выдача документа, подтверждающего этническое происхождение человека, в том числе относящегося к коренному народу
<i>Законопроект № 97801904-2</i> ³⁵ Статус: законопроект принят в форме федерального закона	Территории традиционного природопользования	Принятие Федерального закона от 07.05.2001 № 49-ФЗ «О территориях традиционного природопользования коренных малочисленных народов Российской Федерации»
<i>Законопроект № 69946-3</i> ³⁶ Статус: законопроект не принят	Автономия общин в создании «территориального общественного самоуправления»	Ключевые вопросы: ✓ возможность наделения общин коренных малочисленных народов правами «территориального общественного самоуправления»

³² Законопроект № 97802467-2 «О гарантиях прав коренных малочисленных народов Российской Федерации». Дата регистрации: 11.09.1997. URL: <https://sozd.duma.gov.ru/bill/97802467-2>. Статус: Опубликован.

³³ Законопроект № 96700175-2 «Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации». Дата регистрации: 14.12.1996. URL: <https://sozd.duma.gov.ru/bill/96700175-2>. Статус: Опубликован.

³⁴ Законопроект № 43913-3 «О внесении дополнений в Федеральный закон “О гарантиях прав коренных малочисленных народов Российской Федерации”». Дата регистрации: 28.12.2000. URL: <https://sozd.duma.gov.ru/bill/43913-3>. Статус: Отклонен.

³⁵ Законопроект № 97801904-2 «О территориях традиционного природопользования коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации». Дата регистрации: 06.06.1997. URL: <https://sozd.duma.gov.ru/bill/97801904-2>. Статус: Опубликован.

³⁶ Законопроект № 69946-3 «О внесении дополнения в статью 7 Федерального закона “Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации” (в части предоставления общинам коренных малочисленных народов права территориального общественного самоуправления)». Дата регистрации: 15.03.2001. URL: <https://sozd.duma.gov.ru/bill/69946-3>. Статус: Отклонен.

<i>Законопроект № 285462-З</i>³⁷ Статус: законопроект принят в форме федерального закона	«Этнические квоты» в «региональных парламентах»	Принятие Федерального закона от 07.02.2003 № 21-ФЗ «О временных мерах по обеспечению представительства коренных малочисленных народов Российской Федерации в законодательных (представительных) органах государственной власти субъектов Российской Федерации»
<i>Законопроект № 245457-З</i>³⁸ Статус: законопроект не принят	Лишение права регионов регулировать отдельные вопросы деятельности общин коренных народов	Ключевые вопросы: ✓ изначально ошибочная законодательная инициатива, так как вопросы регистрации общин относятся к предмету федерального регулирования, а вопросы защиты исконной среды обитания и традиционного образа жизни малочисленных этнических общностей – к предмету совместного ведения Федерации и регионов
<i>Законопроект № 289906-З</i>³⁹ Статус: законопроект не принят	Дополнительные условия для замены службы в армии по призыву «альтернативной гражданской службой»	Ключевые вопросы: ✓ для замены армейской службы «альтернативной гражданской службой» предлагалось установить требование, согласно которому лицо должно относиться к коренному народу, иметь место жительства в местах традиционного проживания и традиционной хозяйственной деятельности коренных народов, и иметь желание на такую замену.

³⁷ Законопроект № 285462-З «О временных мерах по обеспечению представительства коренных малочисленных народов Российской Федерации в законодательных (представительных) органах государственной власти субъектов Российской Федерации». Дата регистрации: 17.01.2003. URL: <https://sozd.duma.gov.ru/bill/285462-3>. Статус: опубликован.

³⁸ Законопроект № 245457-З «О внесении изменений в Федеральный закон «Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации» и статью 12 Федерального закона «О гарантиях прав коренных малочисленных народов Российской Федерации» (об исключении из текста закона слов «законов субъектов Российской Федерации» и уточнения порядка регистрации изменений общин коренных малочисленных народов)». Дата регистрации: 07.10.2002. URL: <https://sozd.duma.gov.ru/bill/245457-3>. Статус: отклонен.

³⁹ Законопроект № 289906-З «О внесении изменений в статью 9 Федерального закона «О гарантиях прав коренных малочисленных народов Российской Федерации» и в статьи 2 и 4 Федерального закона «Об альтернативной гражданской службе» (о прохождении коренными малочисленными народами альтернативной гражданской службы)». Дата регистрации: 30.01.2003. URL: <https://sozd.duma.gov.ru/bill/289906-3>. Статус: отклонен.

		Также устанавливалось требование направления лиц из числа коренных народов для прохождения «альтернативной гражданской службы» на прежнее место работы с традиционным хозяйствованием; ✓ депутаты отклонили законопроект, посчитав, что нынешняя редакция закона и так дает право на замену армейской службы лицам из числа коренных народов, а дополнительный критерий, который касается «изъявления желания» для прохождения «альтернативной гражданской службы» в конкретной организации, связанной с традиционным хозяйствованием, – при его отсутствии – может послужить основанием для отказа в альтернативной гражданской службе
<i>Законопроект № 74051-4⁴⁰</i> Статус: законопроект не принят	«Этнические квоты» в «региональных парламентах»	Ключевые вопросы: ✓ до момента окончательной отмены «этнических квот» в представительных органах государственной власти в регионах для коренных народов в 2005 г. (и, соответственно, отмена ст. 13 Федерального закона от 30.04.1999 № 82-ФЗ «О гарантиях прав коренных народов») эта инициатива предусматривала определить такие «квоты» для аборигенов Севера
<i>Законопроект № 74086-4⁴¹</i> Статус: законопроект не принят	Территории традиционного природопользования	Ключевые вопросы: ✓ законопроектом уточнялось определение «территорий традиционного природопользования» в части указания только на «территории районов проживания коренных народов Севера, Сибири и Дальнего Востока»

⁴⁰ Законопроект № 74051-4 «О внесении изменения в статью 13 Федерального закона “О гарантиях прав коренных малочисленных народов Российской Федерации”». Дата регистрации: 13.07.2004. URL: <https://sozd.duma.gov.ru/bill/74051-4>. Статус: снят с рассмотрения в связи с отзывом.

⁴¹ Законопроект № 74086-4 «О внесении изменения в статью 1 Федерального закона “О территориях традиционного природопользования коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации”». Дата регистрации: 13.07.2004. URL: <https://sozd.duma.gov.ru/bill/74086-4>. Статус: передан в Совет Государственной Думы (отклонен).

<i>Законопроект № 415981-4</i>⁴² Статус: законопроект не принят	Расширенный статус уполномоченных представителей коренных народов	Ключевые вопросы: ✓ самые широкие полномочия представителей коренных народов: разработка и экспертиза законов и иных нормативных правовых актов всех уровней; участие в осуществлении контроля за использованием земель, общераспространенных полезных ископаемых и иных природных ресурсов в местах традиционного проживания и традиционной хозяйственной деятельности малочисленных народов
<i>Законопроект № 52072-5</i>⁴³ Статус: законопроект не принят	Расширенный статус уполномоченных представителей коренных народов	Ключевые вопросы: ✓ дублирование положений законопроекта № 415981-4, но с учетом замечаний после парламентских слушаний
<i>Законопроект № 81536-5</i>⁴⁴ Статус: законопроект принят в форме федерального закона	Утверждаемый Правительством России Перечень мест традиционного проживания и традиционной хозяйственной деятельности коренных народов	Принятие Федерального закона от 05.04.2009 № 40-ФЗ «О внесении изменений в Федеральный закон “О гарантиях прав коренных малочисленных народов Российской Федерации”»

⁴² Законопроект № 415981-4 «О внесении изменений в некоторые законодательные акты Российской Федерации по вопросу защиты конституционных прав и законных интересов коренных малочисленных народов Российской Федерации (в части защиты конституционных прав коренных малочисленных народов Российской Федерации)». Дата регистрации: 05.04.2007. URL: <https://sozd.duma.gov.ru/bill/415981-4>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

⁴³ Законопроект № 52072-5 «О внесении изменений в некоторые законодательные акты Российской Федерации по вопросу защиты конституционных прав и законных интересов коренных малочисленных народов Российской Федерации». Дата регистрации: 29.04.2008. URL: <https://sozd.duma.gov.ru/bill/52072-5>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

⁴⁴ Законопроект № 81536-5 «О внесении изменений в Федеральный закон “О гарантиях прав коренных малочисленных народов Российской Федерации” (в части совершенствования законодательства правового статуса коренных малочисленных народов Российской Федерации)». Дата регистрации: 08.07.2008. URL: <https://sozd.duma.gov.ru/bill/81536-5>. Статус: опубликован.

<i>Законопроект № 375125-5</i>⁴⁵ Статус: законопроект не принят	Безвозмездное срочное пользование абorigенными участками на срок до 49 лет	Ключевые вопросы: ✓ законопроектом предлагалось предоставление земельных участков в безвозмездное срочное пользование лицам, относящимся к коренным малочисленным народам, а также их общинам на срок до 49 лет с правом пролонгации
<i>Законопроект № 448425-4</i>⁴⁶ Статус: законопроект не принят	Исконная среда обитания коренных народов	Ключевые вопросы: ✓ законопроект представлял собой самостоятельный федеральный закон, необходимость разработки которого была вызвана тем, что в местах традиционного проживания и традиционной хозяйственной деятельности малочисленных коренных народов ведется интенсивная добыча углеводородного сырья, что наносит огромный ущерб исконной среде обитания, традиционному образу жизни и традиционному природопользованию, а действующий закон об экологической экспертизе, по мнению инициаторов законопроекта, не позволяет провести полноценное определение нанесенного ущерба исконной среде обитания этих народов, что приводит к необоснованному снижению компенсационных выплат
<i>Законопроект № 448428-4</i>⁴⁷ Статус: законопроект не принят	Исконная среда обитания коренных народов	Ключевые вопросы: ✓ законопроект дополнял иной законопроект № 448425-4 «Об исконной среде обитания коренных народов», уточняя

⁴⁵ Законопроект № 375125-5 «О внесении изменений в некоторые законодательные акты Российской Федерации по вопросу приобретения прав на земельные участки лицами, относящимися к коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации, и их общинами». Дата регистрации: 15.05.2010. URL: <https://sozd.duma.gov.ru/bill/375125-5>. Статус: отклонен.

⁴⁶ Законопроект № 448425-4 «О защите исконной среды обитания, традиционного образа жизни и традиционного природопользования коренных малочисленных народов Российской Федерации (в части установления правовых гарантий защиты исконной среды обитания, традиционного образа жизни и традиционного природопользования коренных малочисленных народов Российской Федерации)». Дата регистрации: 29.06.2007. URL: <https://sozd.duma.gov.ru/bill/448425-4>. Статус: отклонен.

⁴⁷ Законопроект № 448428-4 «О внесении изменений в отдельные законодательные акты Российской Федерации в связи с принятием Федерального закона «О защите исконной среды обитания, традиционного образа жизни и традиционного природопользования коренных малочисленных народов Российской Федерации»». Дата регистрации: 29.06.2007. URL: <https://sozd.duma.gov.ru/bill/448428-4>. Статус: отклонен.

		отдельные правовые формулировки в ряде федеральных законов, в том числе: определение «этнологической экспертизы»; упоминание «проектной документации»; упоминание «преимущественного права лесопользования» и др.
<i>Законопроект № 436308-6⁴⁸</i> Статус: законопроект не принят	Права иных «этнических общностей» на вступление в аборигенную общину и освобождение от налогообложения	Ключевые вопросы: ✓ законопроект касался членства в аборигенной общине, предусматривая, что по решению общего собрания (схода) членов общины малочисленных народов в члены общины могут приниматься представители других этнических общностей при условии, что в создаваемой общине малочисленных народов не менее половины членов общины являются лицами, относящимися к малочисленным народам
<i>Законопроект № 436457-6⁴⁹</i> Статус: законопроект не принят	Этнологическая экспертиза	Ключевые вопросы: ✓ законопроект представлял собой самостоятельный федеральный закон, который по своей сути устанавливал общефедеральные стандарты «этнологической экспертизы»; ✓ законопроектом было предусмотрено осуществление «компенсационных выплат» за негативное влияние промышленной деятельности на жизнь, быт и культуру аборигенов

⁴⁸ Законопроект № 436308-6 «О внесении изменений в Федеральный закон “Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации”». Дата регистрации: 24.01.2014. URL: <https://sozd.duma.gov.ru/bill/436308-6>. Статус: возвращен субъекту права законодательной инициативы (отклонен).

⁴⁹ Законопроект № 436457-6 «Об оценке воздействия на исконную среду обитания, традиционный образ жизни и традиционное природопользование коренных малочисленных народов Российской Федерации». Дата регистрации: 24.01.2014. URL: <https://sozd.duma.gov.ru/bill/436457-6>. Статус: возвращен субъекту права законодательной инициативы (отклонен).

<i>Законопроект № 792582-6</i>⁵⁰ Статус: законопроект не принят	Расширение перечня бенефициаров на биоресурсы, а также перечня самих объектов биоресурсов	Ключевые вопросы: ✓ законопроектом предлагалось внести изменение в Налоговый кодекс РФ, расширяющее перечень объектов животного мира и объектов водных биологических ресурсов, которые не будут признаваться объектами налогообложения для целей ведения традиционного образа жизни
<i>Законопроект № 794429-6</i>⁵¹ Статус: законопроект не принят	Права родственников лиц из числа коренных народов на водные биоресурсы	Ключевые вопросы: ✓ законопроектом предлагалось дополнить Федеральный закон от 20.12.2004 № 166-ФЗ «О рыболовстве и сохранении водных биологических ресурсов» с распространением гарантий на близких родственников лиц из числа коренных народов, в том числе: на супруга, супругу, родителей, детей, усыновителей, усыновленных, родных братьев и родных сестер, дедушек, бабушек, внуков
<i>Законопроект № 708686-6</i>⁵² Статус: законопроект принят в форме федерального закона	Советы представителей коренных народов при главах муниципалитетов	Принятие Федерального закона от 13.07.2015 № 256-ФЗ «О внесении изменения в статью 7 Федерального закона «О гарантиях прав коренных малочисленных народов Российской Федерации»»

⁵⁰ Законопроект № 792582-6 «О внесении изменений в отдельные законодательные акты в части расширения прав коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации по осуществлению рыболовства в целях обеспечения ведения ими традиционного образа жизни и осуществления традиционной хозяйственной деятельности, а также улучшения условий жизни и благосостояния». Дата регистрации: 14.05.2015. URL: <https://sozd.duma.gov.ru/bill/792582-6>. Статус: возвращен субъекту права законодательной инициативы (отклонен).

⁵¹ Законопроект № 794429-6 «О внесении изменений в Федеральный закон «О рыболовстве и сохранении водных биологических ресурсов» в части расширения прав близких родственников лиц, относящихся к коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации». Дата регистрации: 18.05.2015. URL: <https://sozd.duma.gov.ru/bill/794429-6>. Статус: возвращен субъекту права законодательной инициативы (отклонен).

⁵² Законопроект № 708686-6 «О внесении изменения в статью 7 Федерального закона «О гарантиях прав коренных малочисленных народов Российской Федерации» (в части полномочия по образованию при главах муниципальных образований советов представителей коренных малочисленных народов)». Дата регистрации: 26.01.2015. URL: <https://sozd.duma.gov.ru/bill/708686-6>. Статус: опубликован.

<i>Законопроект № 984312-6</i>⁵³ Статус: законопроект не принят	«Этнический паспорт»	Ключевые вопросы: ✓ законопроектом предполагалось расширить полномочия федеральных органов государственной власти, наделив возможностью утверждать положение о формировании и ведении «реестра лиц, относящихся к коренным малочисленным народам Российской Федерации»; ✓ наделить органы муниципалитетов полномочиями по формированию и ведению реестра
<i>Законопроект № 984635-6</i>⁵⁴ Статус: законопроект не принят	Расширение перечня бенефициаров на «социальную пенсию»	Ключевые вопросы: ✓ законопроектом устанавливалась «социальная пенсия» не только для лиц из числа коренных малочисленных народов Севера, но и проживающих в Сибири и на Дальнем Востоке
<i>Законопроект № 42057-6</i>⁵⁵ Статус: законопроект не принят	Унификация терминологии	Ключевые вопросы: ✓ законопроект уточнял сферу действия Федерального закона от 30.04.1999 № 82-ФЗ «О гарантиях прав коренных народов», устанавливая такие понятия, как «традиционное природопользование», «традиционная хозяйственная деятельность», «представители других этнических общностей», «места традиционного проживания и традиционной хозяйственной деятельности», «обычаи малочисленных народов» и др.

⁵³ Законопроект № 984312-6 «О внесении изменений в Федеральный закон от 30 апреля 1999 г. № 82-ФЗ «О гарантиях прав коренных малочисленных народов Российской Федерации» и отдельные законодательные акты». Дата регистрации: 27.01.2016. URL: <https://sozd.duma.gov.ru/bill/984312-6>. Статус: возвращен субъекту права законодательной инициативы (отклонен).

⁵⁴ Законопроект № 984635-6 «О внесении изменений в Федеральный закон «О государственном пенсионном обеспечении в Российской Федерации» (в части унификации терминологии и условий назначения социальной пенсии коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации)». Дата регистрации: 28.01.2016. URL: <https://sozd.duma.gov.ru/bill/984635-6>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

⁵⁵ Законопроект № 42057-6 «О внесении изменений в Федеральный закон «О гарантиях прав коренных малочисленных народов Российской Федерации» (в части дополнения и уточнения понятийного аппарата, определения порядка отнесения граждан Российской Федерации к коренным малочисленным народам Российской Федерации, а также утверждения методики возмещения убытков, причиненных в результате нанесения ущерба исконной среде обитания коренных малочисленных народов Российской Федерации)». Дата регистрации: 23.03.2012. URL: <https://sozd.duma.gov.ru/bill/42057-6>. Статус: отклонен.

<i>Законопроект № 1033568-6</i>⁵⁶ Статус: законопроект не принят	Право безвозмездного пользования земельными участками на срок до 49 лет	Ключевые вопросы: ✓ законопроект был связан с наделением лиц, относящихся к коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации, и их общин правом безвозмездного пользования земельными участками, расположенными на территориях традиционного природопользования
<i>Законопроект № 1184180-6</i>⁵⁷ Статус: законопроект не принят	Запрет «двойного членства» в коренных общинах	Ключевые вопросы: ✓ законопроектом предлагались изменения в законе об общинах, направленные на установление запрета быть учредителем либо членом в двух и более общинах одновременно; ✓ основная мотивация инициаторов законопроекта была связана с необходимостью устранения правового пробела, делающего возможным двойное и более использование средств государственной поддержки и льгот, предоставляемых представителям малочисленных народов и их общинам
<i>Законопроект № 1026256-6</i>⁵⁸ Статус: законопроект не принят	Приоритетная государственная поддержка кочевникам	Ключевые идеи: ✓ законопроектом предусматривалось принятие самостоятельного федерального закона в части приоритетного предоставления мер государственной поддержки коренным народам, ведущим кочевой образ жизни

⁵⁶ Законопроект № 1033568-6 «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросу приобретения прав на земельные участки лицами, относящимися к коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации, и их общинами». Дата регистрации: 01.04.2016. URL: <https://sozd.duma.gov.ru/bill/1033568-6>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

⁵⁷ Законопроект № 1184180-6 «О внесении изменений в Федеральный закон “Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации”». Дата регистрации: 29.09.2016. URL: <https://sozd.duma.gov.ru/bill/1184180-6>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

⁵⁸ Законопроект № 1026256-6 «О государственной поддержке лиц, относящихся к коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации, ведущих кочевой образ жизни (в части приоритетного предоставления мер государственной поддержки лицам, относящимся к коренным малочисленным народам Севера, Сибири и Дальнего Востока Российской Федерации, ведущим кочевой образ жизни)». Дата регистрации: 23.03.2016. URL: <https://sozd.duma.gov.ru/bill/1026256-6>. Статус: отклонен.

<i>Законопроект № 275182-7⁵⁹</i> Статус: законопроект принят в форме федерального закона	Унификация терминологии	Федеральный закон от 27.06.2018 № 164-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации в части приведения к единообразию терминологии, касающейся коренных малочисленных народов Российской Федерации»
<i>Законопроект № 275099-7⁶⁰</i> Статус: законопроект не принят	Унификация терминологии	Ключевые идеи: ✓ законопроект был направлен на унификацию терминологического аппарата
<i>Законопроект № 332762-7⁶¹</i> Статус: законопроект принят в форме федерального закона	Полномочия Правительства Российской Федерации по утверждению порядка и методики возмещения убытков коренным народам	Федеральный закон от 26.07.2019 № 234-ФЗ «О внесении изменений в статьи 5 и 8 Федерального закона “О гарантиях прав коренных малочисленных народов Российской Федерации”
<i>Законопроект № 785133-7⁶²</i> Статус: законопроект принят в форме федерального закона	«Аборигенный реестр»	Федеральный закон от 06.02.2020 № 11-ФЗ «О внесении изменений в Федеральный закон “О гарантиях прав коренных малочисленных народов Российской Федерации” в части установления порядка учета лиц, относящихся к коренным малочисленным народам»

⁵⁹ Законопроект № 275182-7 «О внесении изменений в отдельные законодательные акты Российской Федерации в части приведения к единообразию терминологии, касающейся коренных малочисленных народов Российской Федерации». Дата регистрации: 29.09.2017. URL: <https://sozd.duma.gov.ru/bill/275182-7>. Статус: опубликован.

⁶⁰ Законопроект № 275099-7 «О внесении изменения в статью 123.16. части первой Гражданского кодекса Российской Федерации (в части приведения к единообразию терминологии, касающейся коренных малочисленных народов Российской Федерации)». Дата регистрации: 29.09.2017. URL: <https://sozd.duma.gov.ru/bill/275099-7>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

⁶¹ Законопроект № 332762-7 «О внесении изменений в статьи 5 и 8 Федерального закона “О гарантиях прав коренных малочисленных народов Российской Федерации”». Дата регистрации: 05.12.2017. URL: <https://sozd.duma.gov.ru/bill/332762-7>. Статус: опубликован.

⁶² Законопроект № 785133-7 «О внесении изменений в Федеральный закон “О гарантиях прав коренных малочисленных народов Российской Федерации” в части установления порядка учета лиц, относящихся к коренным малочисленным народам». Дата регистрации: 29.08.2019. URL: <https://sozd.duma.gov.ru/bill/785133-7>. Статус: опубликован.

<i>Законопроект № 1195263-7</i>⁶³ Статус: законопроект не принят	Социальная пенсия не только для аборигенов Севера, но и для всех остальных коренных народов	Ключевые вопросы: ✓ предлагалось расширить перечень бенефициаров на получение социальной пенсии по старости, предоставив ее не только в отношении коренных малочисленных народов Севера, но и в отношении лиц из числа коренных народов, не проживающих в районах Севера; ✓ в качестве обоснования в «Пояснительной записке» к законопроекту было указано, что отсутствие в числе граждан, имеющих право на досрочный выход на пенсию, жителей соседних с северными муниципальными районов, имеющих аналогичные суровые условия проживания
<i>Законопроект № 112487-8</i>⁶⁴ Статус: законопроект не принят	О пределе в 50 тыс. человек для статуса «малочисленного народа»	Ключевые вопросы: ✓ законопроектом предлагалось закрепить положение о том, что народы, которые были включены в Единый перечень коренных малочисленных народов Российской Федерации, не могут быть из него исключены (в том числе при превышении популяционного предела в 50 тыс. человек); ✓ в официальном отзыве Правительства РФ было отмечено, что процедура исключения малочисленных народов из Единого перечня законодательством не предусмотрена, в связи с чем превышение предела численности не является основанием для исключения малочисленного народа из Единого перечня

⁶³ Законопроект № 1195263-7 «О внесении изменений в статью 11 Федерального закона «О государственном пенсионном обеспечении в Российской Федерации» (в части расширения гарантий пенсионного обеспечения коренных малочисленных народов Крайнего Севера)». Дата регистрации: 17.06.2021. URL: <https://sozd.duma.gov.ru/bill/1195263-7>. Статус: отзыв законопроекта (на стадии внесения в Государственную Думу).

⁶⁴ Законопроект № 112487-8 «О внесении изменений в статью 1 Федерального закона «О гарантиях прав коренных малочисленных народов Российской Федерации» (в части уточнения порядка ведения Единого перечня коренных малочисленных народов Российской Федерации)». Дата регистрации: 22.04.2022. URL: <https://sozd.duma.gov.ru/bill/112487-8>. Статус: снят с рассмотрения в связи с отзывом (отклонен).

<i>Законопроект № 28409-8⁶⁵</i> Статус: законопроект принят в форме федерального закона	Совершенствование закона об общинах	Принятие Федерального закона от 20.10.2022 № 403-ФЗ «О внесении изменений в Федеральный закон “Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации”
<i>Законопроект № 309477-8⁶⁶</i> Статус: на стадии рассмотрения	Закон о «традиционном рыболовстве»	Ключевые вопросы: ✓ актуальный законопроект, который находится на рассмотрении Совета Государственной Думы в 2024 г., направленный на изменение порядка осуществления рыболовства в целях обеспечения ведения традиционного образа жизни и осуществления традиционной хозяйственной деятельности; ✓ законопроектом предлагается убрать излишние административные барьеры, исключив подачу заявки и сдачу отчетности для физических лиц, урегулировав вопрос путем установления нормы добычи (вылова) водных биоресурсов (объем (количество, вес), разрешенных для добычи (вылова) лицом, относящимся к коренным малочисленным народам или его представителям, при осуществлении традиционного рыболовства
<i>Законопроект № 48132-8⁶⁷</i> Статус: на стадии рассмотрения	«Традиционная охота»	Ключевые вопросы: ✓ законопроект уточняет понятие «традиционная охота», а также закрепляет гарантии на традиционную охоту для лиц, которые не относятся к коренным, но ведут традиционный образ жизни и являются соседями коренных народов

⁶⁵ Законопроект № 28409-8 «О внесении изменений в Федеральный закон “Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации” (в части совершенствования порядка создания и деятельности общин коренных малочисленных народов)». Дата регистрации: 01.12.2021. URL: <https://sozd.duma.gov.ru/bill/28409-8>. Статус: опубликован.

⁶⁶ Законопроект № 309477-8 «О внесении изменений в Федеральный закон “О рыболовстве и сохранении водных биологических ресурсов” (в части регулирования рыболовства в целях обеспечения традиционного образа жизни и осуществления традиционной хозяйственной деятельности коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации)». Дата регистрации: 07.03.2023. URL: <https://sozd.duma.gov.ru/bill/309477-8>. Статус: на рассмотрении Совета Государственной Думы.

⁶⁷ Законопроект № 48132-8 «О внесении изменений в статью 3 Федерального закона “О гарантиях прав коренных малочисленных народов Российской Федерации” и статью 19 Федерального закона “Об охоте и о сохранении охотничьих ресурсов и о внесении изменений в отдельные

V. Conclusion

Заключение

Анализ законодательных инициатив российского парламента за последние 30 лет показал достаточно высокую активность парламентариев в разработке актуальных нормативных правовых актов, а также внесения изменений в действующие нормативные правовые акты, которые касаются самых разных аспектов жизни и деятельности коренных малочисленных народов.

Порядка десяти законопроектов были приняты в форме федеральных законов, в том числе объединив в себе самые разные инициативы после доработки отклоненных проектов. Законодательство России получило три базовых закона о гарантиях прав коренных народов, об общинах, о территориях традиционного природопользования, а большое количество иных федеральных законов было дополнено статьями, которые касаются прав коренных народов на биоресурсы, охоту, доступ к водным объектам.

Вместе с тем, как отмечает профессор В. А. Кряжков, законодательного регулирования требуют такие вопросы, как регламентация этнологической экспертизы, участие аборигенных представителей в принятии решений, затрагивающих права и законные интересы коренных народов, приоритетность доступа к рыбопромысловым участкам и охотничьим угодьям, к водным биоресурсам, создание территорий традиционного природопользования федерального значения, правовой режим традиционного оленеводства и др.³²

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³² Kryazhkov, V. A. (2023). Federal legislation on the indigenous peoples of the North, Siberia and the Far East of Russia: Novels of recent years. *State and Law*, 4, 72–83.

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CONFERENCE REVIEW

Emerging Voices, Shared Frameworks: Student-Led AI Legal Reflections Within Indo-Russian Student Panel “Navigating the Legal Challenges of Artificial Intelligence in the Digital Age: Ethics and Regulations”

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1. Introduction: BRICS and the Imperative of Inclusive AI Governance

In today's globalized world, transnational academic collaboration has become a crucial driver in shaping adaptive and equitable regulatory approaches to rapidly evolving technologies. This is particularly relevant for the BRICS countries—Brazil, Russia, India, China, and South Africa—where accelerating technological development demands urgent interdisciplinary strategies for the governance of artificial intelligence (AI). Across these jurisdictions, significant growth is evident in both research output and educational performance, with notable increases in the volume and quality of academic publications, particularly in high-impact journals.¹

A recent bibliometric analysis of 3,580 publications on STEM education between 2014 and 2023 identified China, South Africa, India, Brazil, and Russia as the leading contributors, with China occupying a dominant position.² Similar patterns are evident in higher education and online learning. In 2023 alone, publication counts related to online higher education reached 366 for China, 267 for India, 254 for South Africa, and 94 for Brazil, while Russia was represented by only two publications.³ These figures underscore both the dynamism and the unevenness of research engagement among BRICS nations in key areas of digital and educational transformation.

Academic and institutional networks within the BRICS framework further enhance cooperation. The BRICS Universities League now includes approximately 60 leading universities from member states, while the BRICS Network University brings together over 1,000 higher education institutions and research bodies, increasingly integrating affiliated institutions from partner countries.⁴ The recommendations of the 16th BRICS Academic Forum (2024) highlight strategic priorities such as promoting academic mobility, expanding digital learning, ensuring mutual recognition of qualifications, and advancing both technical and humanistic education.⁵

¹ Kim, E., Ramakrishnan, S., & Chiu, J. L. (2025). Polarization in BRICS and G7: Scopus-indexed journal production trends (2013–2023). *Publications*, 13(1), 9–25.

² Fayzullina, A. R., et al. (2024). A review of STEM education research in BRICS countries: An analysis of research trends. *Frontiers in Education*, 9, 1410069.

³ Masalimova, A. R., et al. (2024). Analyzing trends in online learning in higher education in the BRICS countries through bibliometric data. *Frontiers in Education*, 9, 1409013.

⁴ TV BRICS. (2024, August 30). *BRICS cooperation in the field of education*. <https://tvbrics.com/en/bricslife/brics-cooperation-in-the-field-of-education/>

⁵ BRICS Think Tanks Council. (2024, May). *Recommendations of the 16th BRICS Academic Forum 2024 to the Leaders of BRICS Countries*. <https://bricsthinktankscouncil.org/knowledge-base/recommendations-of-the-16th-brics-academic-forum-2024-to-the-leaders-of-brics-countries/>

2. Youth Scholarship as Vectors of Context-Sensitive Insight

Within this broader context, the III International Youth Law Forum *Law Afterknown: Law Beyond the Ordinary*, held on May 16, 2025 at the University of Tyumen, underscores the growing importance of international academic dialogue. The **Indo-Russian student panel “Navigating the Legal Challenges of Artificial Intelligence in the Digital Age: Ethics and Regulations”** offered a compelling illustration of the urgent need for coordinated legal paradigms capable of addressing both technological disruption and ethical imperatives. The panel’s discussions reinforced the call for interdisciplinary scholarship and culturally informed legal frameworks – an area where BRICS countries can offer unique perspectives through shared experience and collaborative knowledge production.

The scholarly contributions of emerging researchers, presented during this forum, highlight context-sensitive insights that can enrich policy dialogues in both domestic and international arenas.

3. Metaphors, Misconceptions, and the Need for Linguistic Precision

Ilya Levin’s (University of Tyumen, Russia) research is profoundly relevant within the rapidly evolving domain of artificial intelligence. The metaphorical constructs employed to represent AI are more than rhetorical devices—they actively shape conceptual frameworks adopted by policymakers, organizations, and the public. Such metaphors may engender either unwarranted alarm or unrealistic expectations, thereby skewing discourse and influencing regulatory decisions. For instance, depicting AI systems as “therapists” implies emotional comprehension that current algorithms demonstrably lack, potentially placing vulnerable individuals—particularly those seeking mental health support—at risk of misplaced reliance.

This concern resonates in the Indian context, where AI-based mental health chatbots face criticism for fostering therapeutic misconception. Users may overestimate the system’s understanding and emotional capacity, while professionals caution that reliance on such tools could delay access to licensed care and exacerbate psychological distress.⁶

The implications of linguistic imprecision extend directly into the legal sphere. Legislation formulated on the basis of metaphor-induced misconceptions may fail to address genuine hazards or, conversely, stifle innovation. This tension is particularly salient in India and Russia, where rapid AI expansion coincides with complex social and regulatory frameworks, as well as cybersecurity concerns. India’s establishment

⁶ Halder, S. (2025). Developing mental health support chatbots in India: Challenges and insights. *Annals Indian Psychiatry*, 9(1), 99–101; Chowdhury, A. (2025, July 22). *AI therapy in India: Mental health solution or digital Pandora’s box?* Boom Live. <https://www.boomlive.in/decode/ai-therapy-india-mental-health-solution-risks-benefits-29081>

of the IndiaAI Safety Institute under the Safe and Trusted Pillar of the IndiaAI Mission reflects an effort to ensure AI systems remain contextually appropriate, ethically aligned, and socially reflective.⁷

Russia, recognizing the risks of unregulated AI deployment, has enacted legislation introducing liability for harm caused by experimental AI systems. The law mandates civil-liability insurance, investigative commissions to assess AI-related incidents, and safeguards to enhance transparency and accountability when AI technologies cause harm to individuals or property.⁸

Together, these case studies reinforce Levin's thesis: imprecise AI metaphors are far from innocuous. They distort public understanding, and legal frameworks grounded in metaphor rather than empirical reality risk both failing to protect citizens and impeding ethical innovation.

4. Legal Ambiguities Around Digital Continuity

Equally compelling is **Ekaterina Nazarova's** (University of Tyumen, Russia) examination of digital immortality and its juridical uncertainties. Her analysis of the commercialization of posthumous digital identities and the lack of robust frameworks for digital inheritance exposes psychological, social, and legal risks. These include unauthorized data exploitation, commodification of identity, and deprivation of "algorithmic oblivion." Beyond individual rights, these issues carry implications for mourning processes, collective memory, and human dignity.

In India, the absence of explicit legal frameworks governing digital inheritance has created tangible distress. Families have often been barred from accessing a deceased relative's Gmail or WhatsApp accounts despite features such as Google's Inactive Account Manager.⁹ Legal experts have called for reforms, including amendments to the *Indian Succession Act* and recognition of digital assets in wills. Yet, such measures remain overdue.¹⁰

⁷ Agrawal, A. (2024, October 13). *Govt mulls setting up artificial intelligence safety institute*. Hindustan Times. <https://www.hindustantimes.com/india-news/govt-mulls-setting-up-artificial-intelligence-safety-institute-101728833433153.html>; Jeevanandam, N. (2024, October 15). *MeitY hosts consultation for establishing India AI safety institute under IndiaAI mission's safe and trusted pillar*. IndiaAI. <https://indiaai.gov.in/news/meity-hosts-consultation-for-establishing-india-ai-safety-institute-under-indiaai-mission-s-safe-and-trusted-pillar>

⁸ TAdviser. (2025, June 19). *Regulation of artificial intelligence*. https://tadviser.com/index.php/Article:Regulation_of_artificial_intelligence

⁹ Legal Service India. (n.d.). *Who inherits your data? The legal gap in India's digital legacy*. <https://www.legalserviceindia.com/legal/article-21052-who-inherits-your-data-the-legal-gap-in-india-s-digital-legacy.html>

¹⁰ NLIU Law Review Blog. (2025). *Digital estate inheritance law: A need of the hour to balance the rights of posthumous privacy and legal heirs*. <https://nliulawreview.nliu.ac.in/blog/digital-estate-inheritance-law-a-need-of-the-hour-to-balance-the-rights-of-posthumous-privacy-and-legal-heirs/>

In Russia, President Putin's 2019 law formally recognized "digital rights" within the Civil Code, acknowledging that such rights can be transferred or exercised. However, practical mechanisms for managing posthumous digital legacies remain underdeveloped.¹¹ Studies show that heirs frequently struggle to identify and access online accounts. Proposals for both state-supported and private-sector models to manage "digital heritage" demonstrate that current legislation, while symbolically significant, is insufficient without functional structures.¹²

These BRICS-specific developments affirm that Nazarova's concerns are not merely theoretical but urgent. Without enforceable laws and institutional mechanisms, survivors navigate a digital afterlife fraught with ambiguity and ethical risk.

5. Linguistic Diversity and Algorithmic Bias in Machine Translation

Anton Gordeev's (University of Tyumen, Russia) critical analysis of censorship in neural machine translation (NMT) highlights how ideological and jurisdictional bias can infiltrate AI systems. Language conveys meaning but also embodies cultural identity and political nuance. When NMT systems impose ideological or regulatory filters—whether overtly or covertly—there is a risk of eroding linguistic diversity and distorting minority voices, especially in multilingual states like India and Russia.

In India, where linguistic plurality is central, NMT systems often struggle with under-resourced languages and biased representations. The absence of comprehensive parallel corpora for many of India's 22 constitutionally recognized languages hinders equitable translation. Even for widely spoken languages such as Hindi and Bengali, NMT systems frequently misinterpret idioms, producing literal or erroneous translations that undermine local dialects and expressions. These distortions carry ideological consequences by privileging dominant norms over minority voices.

In Russia, ideological filtering and narrative control influence AI-driven translations of politically sensitive content. Russian NMT models—shaped by state-mandated censorship through institutions such as Roskomnadzor—risk perpetuating systemic bias and erasing dissenting voices.

Gordeev's call for transnational standards to mitigate algorithmic bias is therefore critical. In India, equitable NMT demands investment in diverse datasets and community-driven frameworks, while in Russia, safeguarding plurality requires transparent model governance and protections for linguistic freedom. Cross-BRICS collaboration could reconcile cultural specificity with technological integrity, ensuring AI respects rather than overrides linguistic diversity.

¹¹ Suberg, W. (2019, March 13). *Russia adopts Digital Rights Law that forms the basis of digital economy development*. CoinTelegraph. <https://cointelegraph.com/news/russia-adopts-digital-rights-law-that-forms-the-basis-of-digital-economy-development>

¹² Sergeeva, A., Gerlit, R., & Krcmar, H. (2020, May 27). *Digital inheritance: A comparative analysis of legal frameworks in civil law jurisdictions*. Jusletter IT. https://author.weblaw.ch/magnoliaAuthor/jusletter-it/en/issues/2020/27-Mai-2020/9_5_digital_inherita_d5b9cdd9ae.html

6. Cultural Intelligence and Justice: AI in Literary-Legal Contexts

Viacheslav Shilov's (University of Tyumen, Russia) interdisciplinary study applies AI models to the literary-property dispute surrounding Chekhov's "*Uncle Vanya*." His analysis illustrates both the transformative potential and inherent limitations of AI in legal-cultural contexts. While AI can efficiently process large volumes of precedent data, it lacks the capacity to discern cultural nuance, ethical complexity, and emotional resonance—factors essential to informed adjudication. This underscores the imperative of hybrid models of justice in which AI complements, rather than supplants, human judgment.

In India, the judiciary's experiments with AI case prediction and legal research raise similar concerns. Studies demonstrate that AI systems developed in Western contexts may fail to capture cultural nuances central to Indian jurisprudence, potentially leading to biased outcomes. Brazil has faced comparable challenges, where AI-driven adjudication struggles with the country's diverse cultural and legal traditions.

These examples reinforce Shilov's argument: while AI can be a valuable tool in legal proceedings, it must not replace human judgment. In culturally diverse societies, integrating contextual and ethical sensitivity is indispensable.

7. Legal Personality and Autonomous Agency: Personhood & Liability

The works of **Egor Kucherenko** and **Nikita Kalashnikov** (University of Tyumen, Russia) address foundational issues of AI personhood and liability. The attribution of legal personality to non-human entities raises profound theoretical and practical challenges, while existing tort frameworks are inadequate for the consequences of autonomous AI agents such as self-driving vehicles. Their analyses emphasize the need for forward-looking legislation capable of accommodating decentralized decision-making and novel responsibility structures.

In India, the legal status of AI remains underdeveloped, with no explicit recognition of AI as a legal person. However, Indian jurisprudence has demonstrated flexibility in granting legal personhood to non-human entities. For instance, the Supreme Court has recognized the legal personality of Hindu idols in the case of *Yogendra Nath Naskar v. C.I.T.*, allowing them to own property and represent themselves in court. Additionally, the Uttarakhand High Court in *Mohd. Salim v. State of Uttarakhand* granted legal personhood to the Ganga and Yamuna rivers to facilitate their protection. These precedents suggest a potential pathway for extending legal personhood to AI systems, particularly those with significant autonomy and impact on human affairs.¹³

¹³ Fastrack Legal Solutions. (2025, March 21). *Balancing AI and algorithms: Assessing the Indian constitution's compatibility*. <https://fastracklegalsolutions.com/ai-and-indian-constitution/>; Vats, K. (2025). Beyond human hands: Rethinking legal status and responsibility for AI in India. *IJLSSS*, 3(4), 115–130;

Regarding autonomous vehicles, India's existing legal framework is ill-equipped to address the complexities introduced by AI-driven transportation. The *Motor Vehicles Act*, 1988, does not account for self-driving technologies, leading to regulatory gaps.

In Russia, while policymakers have initiated debates on AI regulation, comprehensive legislation addressing AI personhood and liability is still lacking. This gap underscores the necessity of new legal frameworks to balance accountability, innovation, and public protection.¹⁴

These examples from BRICS countries highlight the urgent need for legal reforms that recognize the evolving role of AI in society. Establishing clear legal personhood and liability frameworks for AI systems is essential to address the challenges posed by autonomous technologies and to ensure that responsibility is appropriately assigned in cases of harm or misconduct.

8. Indian Student Contributions

The Indo-Russian forum also featured numerous insightful contributions from Indian students, underscoring the value of bottom-up perspectives in global AI governance debates.

Ms. Rupal Devi, a law student at Bhagat Phool Singh Mahila Vishwavidyalaya University, India, presented on the topic "Wired for Justice: AI, Ethics, and the Law in a Digital World." In her presentation, she emphasized the expanding role of artificial intelligence in diverse aspects of life, particularly within the justice delivery system. She highlighted that the Supreme Court of India employs SUVAS (Supreme Court Vidhik Anuvaad Software), an AI-powered platform translating judgments from English into vernacular languages to enhance access to justice. She also drew attention to SUPACE (Supreme Court Portal for Assistance in Court Efficiency), a portal designed to assist judges and judicial officers with legal research, case status management, and data mining of case law to reduce pendency and delays. In addition, she noted that numerous Indian start-ups now employ AI-driven technologies for dispute resolution, with online dispute resolution portals proliferating over the last decade.

Rupal further examined pressing concerns associated with AI deployment. She discussed the 2018 Uber self-driving car accident, which illustrates unresolved questions of liability in AI-driven systems. She also raised the issue of mass surveillance through facial recognition, increasingly used for crime prevention, detection, and evidence gathering, and underscored the risks of algorithmic bias in digital technologies. For example, Amazon withdrew an AI-based hiring tool

Kunhambu, A., & Rohatgi, A. (2021, September 9). *Artificial intelligence and the shift in liability*. iPleaders. <https://blog.iplayers.in/artificial-intelligence-shift-liability/>

¹⁴ ApniLaw. (n.d.). *An analysis on legal challenges for autonomous vehicles in India*. <https://www.apnilaw.com/legal-articles/acts/an-analysis-on-legal-challenges-for-autonomous-vehicles-in-india/>; Vats, 2025.

that systematically discriminated against women candidates, while the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) algorithm, widely used in U.S. courts, has been criticized for producing racially biased bail and sentencing decisions.

She additionally emphasized the disruptive potential of deepfakes and related technologies, which may undermine the credibility of electronic evidence in judicial proceedings and erode public confidence. Referring to the principle that “justice must not only be done, but also appear to be done,” she warned that deepfakes threaten to compromise this foundational tenet. Finally, she considered regulatory frameworks, including European legislation, India’s *Digital Personal Data Protection (DPDP) Act, 2023*, and *Russia’s National AI Strategy, 2019*, concluding that the integration of AI into justice systems must ensure accountability, transparency, and fairness, while recognizing that justice cannot be fully automated without meaningful human oversight.

The second presentation, delivered by **Ms. Mouli Singhal** of Symbiosis Law School, Noida, India, was titled “Towards Transparent and Ethical AI: Legal Challenges of Algorithmic Bias and Data Privacy in Cross-Border Regulation of AI.” She examined in depth the ethical and legal biases inherent in AI systems, focusing particularly on algorithmic discrimination and data privacy. She observed that in BRICS nations, legislation governing AI and data protection remains underdeveloped, leaving citizens’ rights vulnerable. As BRICS countries account for approximately 42% of global pollution and are also among the largest providers of digital services, the absence of robust legal safeguards is particularly concerning.

Mouli emphasized the significance of the *DPDP Act, 2023*, recently enacted in India, as a step toward addressing privacy concerns. Nonetheless, she argued that algorithmic bias, often rooted in flawed datasets, continues to pose risks of discrimination in critical areas such as dispute resolution, economic policymaking, and welfare distribution. Drawing a comparison to the European Union, which mandates transparency in algorithmic processes, she noted that most BRICS+ nations are still in the process of developing enforceable standards to prevent bias and discrimination. She further discussed challenges of digital sovereignty, data colonialism, and localization, which complicate cross-border regulation. Highlighting divergences in legal approaches across BRICS countries, she underscored the difficulties these present for multinational corporations and the establishment of unified governance frameworks. Her presentation concluded with a call for innovative legal tools – such as algorithmic impact assessments, enforceable transparency requirements, and cooperative data governance models – as essential to aligning AI development with democratic principles, human rights, ethics, and fairness.

Ms. Vrinda Mandal and Ms. Srishti Agarwal presented a paper entitled “Reassessing Informed Consent in the Age of Artificial Intelligence: A Legal Paradox?” They explored how patients can make rational and informed decisions about medical care in contexts increasingly shaped by AI. The paper addressed challenges arising

from AI's "black box" problem and its tendency toward hallucination, which highlight issues of opacity, unpredictability, and reliability. This epistemic gap complicates disclosure obligations and threatens the substantive validity of consent. Their analysis drew on frameworks including the EU AI Act, GDPR, the Personal Data Protection Law (PDPL), and sector-specific health regulations, revealing significant limitations in addressing the lifecycle risks of AI-powered healthcare. They proposed an adaptive consent management system and a shared accountability model, stressing jurisprudentially that no technological innovation should erode fundamental rights, particularly those connected to healthcare and the right to life.

Astitva Kumar Rao, from Dr. B. R. Ambedkar National Law University, Sonapat, Haryana, India, presented "The Digital Dilemma: Ensuring Human Rights in the Regulation of Artificial Intelligence." He emphasized the rapid expansion of AI across multiple domains of life and the urgent need for a coherent legal framework in India. Although some states have adopted preliminary AI-related legislation, the country lacks a comprehensive national law. The *DPDP Act*, 2023 addresses certain privacy-related issues, yet gaps in consistency and the absence of international standards continue to hinder effective governance. He highlighted the potential implications of AI for international humanitarian law, healthcare regulation, gender rights, and cybercrime.

Finally, **Ms. Reeva Rana** (Bhagat Phool Singh Mahila Vishwavidyalaya University, India) presented "AI's Negative Impact on Our Well-Being and Lives." She analyzed AI's adverse consequences for human rights, including privacy violations, cybercrime, racial discrimination, and gender-based inequalities. She cited the use of facial recognition technologies in China's Xinjiang region, where surveillance systems have been employed to monitor the Uyghur Muslim population, raising serious concerns of mass discrimination and cultural repression. She further highlighted the dual-use nature of AI technologies, noting their potential to facilitate ethnic cleansing. Additional examples included Amazon's gender-biased hiring system and the COMPAS algorithm in U.S. courts, which has been shown to disproportionately classify Black defendants as high risk. These cases, she argued, reveal systemic risks that demand urgent regulatory attention.

9. Conclusion: Harmonizing BRICS Institutional Narratives with Grassroots Scholarship

In an era characterized by profound technological transformation and evolving geopolitical dynamics, the BRICS consortium emerges as a pivotal platform for developing inclusive, culturally attuned, and resilient frameworks for AI governance. By leveraging shared objectives and pooled regulatory capacities, BRICS nations are uniquely positioned to articulate normative alternatives to prevailing Western-centric or unilateral models.

Within this broader geopolitical context, student-led research emerging from forums such as the University of Tyumen's *Youth Law Forum* illustrates the significance of bottom-up, context-specific scholarship. By addressing critical issues—ranging from metaphorical misrepresentations of AI and digital inheritance to translation bias, algorithmic personhood, and liability—these contributions not only enrich academic debates but also provide valuable input for policy dialogues in both India and Russia. Their interdisciplinary insights demonstrate the capacity of young scholars to refine regulatory discourse, introduce pragmatic considerations into governance proposals, and contribute to the creation of a genuinely pluriversal AI agenda grounded in local realities rather than externally imposed frameworks.

In sum, the synergy between BRICS-level institutional coordination and student-driven intellectual inquiry holds considerable promise. It fosters innovation across multiple levels, bridges institutional ambition with ethical responsibility, and supports the development of AI governance models that are technologically advanced while remaining socially and culturally responsive. As BRICS nations chart their collective trajectory, the integration of emerging scholarship into governance structures will be essential to realizing the potential of technology for inclusive, equitable, and sustainable development.

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