PREFACE TO THE EDITION

It is with great pride and anticipation that we present this edition of the journal **International Journal of Judicial Science Research Studies (IJJSRS),** which brings together a diverse array of articles that delve into some of the most compelling and pertinent legal issues of our time. The selected works reflect the journal's commitment to fostering intellectual discourse on topics that bridge historical wisdom, modern challenges, and emerging legal paradigms.

The first article, *Incorporation of Kauṭilya's Principles in Modern Indian Legal Systems*, takes readers on a journey through history, exploring how the ancient wisdom of Kauṭilya's Arthashastra can be harmoniously integrated into contemporary Indian jurisprudence. The author thoughtfully demonstrates how these time-tested principles can provide innovative solutions to modern governance and legal dilemmas.

In *Preserving Privacy in a Digitally Secure World: A Legal Perspective*, the author addresses one of the most pressing challenges of the digital age—balancing technological advancements with the right to privacy. With a focus on evolving jurisprudence and regulatory frameworks, this article sheds light on the critical role of law in safeguarding individual rights in an increasingly interconnected world.

Corrupt Practice in Land Administration: Analysis of the Impacts towards Development's Prospects offers a sobering examination of the detrimental effects of corruption in land governance. The article provides a thorough analysis of its implications for equitable development, highlighting the urgent need for reforms to foster transparency, accountability, and sustainable progress.

The article *Traditional Knowledge and Bio-Piracy: Issues and Challenges* explores the exploitation of indigenous knowledge systems by global commercial interests. The author elucidates the ethical and legal complexities of bio-piracy, proposing measures to protect traditional knowledge while fostering equitable benefits for indigenous communities.

Finally, *Exploring the Education Rights of Rohingya Children in India* examines the intersection of human rights, migration, and education. This article navigates the legal and social challenges faced by Rohingya refugee children in accessing their right to education, offering valuable insights into policy reforms and inclusive strategies for their integration.

Together, these articles underscore the dynamic nature of legal scholarship and its potential to shape societal transformation. We hope this collection sparks meaningful discussions and inspires further research among academics, practitioners, and policymakers alike.

We extend our gratitude to the authors for their contributions and to our readers for their continued support. May this edition serve as both a source of knowledge and a catalyst for change.

Dr Dakshina Saraswathy
Chief Editor

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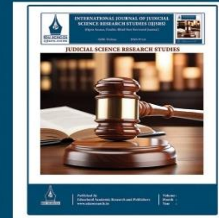
INTERNATIONAL JOURNAL OF JUDICIAL SCIENCE RESEARCH STUDIES (IJJSRS)
(Open Access, Double-Blind Peer Reviewed Journal)
ISSN Online: 3049-0618 ISSN Print:


Incorporation of Kauṭilya's Principles in Modern Indian Legal Systems

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Article information
Received: 27th November 2024
Received in revised form: 27th December 2024
Accepted: 30th January 2025
Available online: 21st February 2025

Volume:2
Issue:1
DOI: https://doi.org/10.5281/zenodo.14935026

Abstract

The foundation of Kautlya, sometimes Chanakya, a figment of a lawyer and political philosopher whose writing commenced in the fourth century BC, is significant in legal and political philosophy. Arthashastra, his foundational works, set the primary notions regarding laws, government, and justice in ancient India. Some of them still exist in the contemporary Indian legal system; his jurisprudence underscored Dandaniti (Rule of Law), Rajadharma (Dues of the King), and Vyavahara (Judicial Procedures). Under Kautilya, Arthashastra' s theories on judicial hierarchy, legal codification, rule of law, and anti-corruption policies are aligned with the Indian Constitution, Indian Penal Code (IPC), Code of Criminal Procedure (Crpc), and Prevention of Corruption Act, 1988. Specifically, it studies how these ideas help develop modern Indian law concerning constitutional law, administrative law, and human rights. This paper analyzes carefully the various court rulings and legislative actions that can bring forth how the notions of Kautilya are assimilated into the Indian legal theory for a robust and fair legal system. This study argues that by infusing Kautilya's principles, the present-day legal systems in India become more valid and effective; it further suggests other prospects for using these principles in tackling issues of contemporary law. Addendum: There is a reference in some court judgments to Arthashastra by the Indian legal system, thus underlining its historical and cultural importance. However, much of the modern legal approach, especially concerning the individual rights-based approach, cries against Kautlya's tenets. Modern legal systems stress social justice and equality as defined in the Indian Constitution and several international human rights treaties.

Keywords: - Arthashastra, Rajadharma, Dandaaniti, Indian Penal Code, Code of Criminal Procedure.

I. INTRODUCTION

This is the information that may most probably be considered by a great number of modern scholars to the effect that Kauṭlya is one of India's great ancient philosophers, economists, and political strategists. He is commonly known through his works by the name Chanakya or Vishnugupta. Kauṭlya is popularly said for writing Arthaśāstra which is one of the cornerstones of government, law, and statecraft. Arthaśāstra, which was compiled during the 4th century BCE, deals with the administrative-legal-financial aspects of governance, and many of those aspects are in today's courts in India. These views put Kauṭilya established the rule of law and the administration of justice, taxation, economic policy, and national security, all crashing the entire edifice as far as how governance was conceptualized for the kingdom fell (Boesche, 2002). From agelessness, it belongs, but it speaks in tones echoing concern into our present age. According to this approach, justice has two aspects: Dharma or righteousness and Danda or punishment. The other side always has been the insistence on carefully formulated legal procedures for the realization of justice through action by the government with fairness, accountability, and efficiency (Rangarajan ,1992)

Indian Constitution itself legitimizes all principles driving administrative law or separation of powers or reviews by courts. Besides supporting India's economic position over state-led industrialization and intervention with control over the

economy, it also implies the requirement of intervention by the government in economic affairs, as in Arthaśāstra. Kauṭilyan economic thought, as they say, gets covered in the monetary policies of the Reserve Bank of India, exactly as to its taxation structure, for it relates to control over issues of financial stability and markets (Sharma,2005). Except for minor divergences, the national security law now prevailing derives its spirit, inspiration, and guidance from all Kauṭilya's proclamations concerning espionage, secrets, and running security. The method involved in covert operation and counter-intelligence is, to a large extent, not dissimilar to that being used today for national security and defense purposes in the agencies - Research and Analysis Wing (RAW) and Intelligence Bureau (IB). The legislation country's Prevention of Corruption Act, 1988, the institution of the Central Vigilance Commission (CVC) mainly endorses Kauṭilya's viewpoint in terms of corruption control and efficiency in bureaucratic functioning (Singh,2015).

The relevance of Kauṭilya to somewhat modern India pertains to the law, economy, and specific legal and political movements toward governmental activism; this suggests that his thought processes may find outworkings in constitutional morality, economic strategies, judicial processes, and administrative processes and that the Arthaśāstra can be treated as a foundational text for both legal professionals and legislators. The study aims to analyze how the Kauṭilyan thoughts can influence the current Indian legal systems and further imbibe constitutional law, criminal law, the economic regulatory framework, and national security.

II. ARTHAŚĀSTRA

The second and third centuries of the BCE encompassed material from Kauṭilya's Arthashastra, which is a foundational text in Indian political and legal thought. This scholarly research examines with great insight the different and subtle understandings provided by the government or economy and military strategy in ancient India. Emphasizing the ethical and moral obligations of both leaders and people alike, thus fundamentally the Arthashastra is centered on the notion of dharma (Shamasastry 1915). Modern Indian legal systems demonstrate the recommendations found in Kauṭilya on principles of statecraft, justice, and administration: Other ideas expressed in Arthashastra such as rajaniti-his responsibility to uplift justice and people's welfare served as the foundation on which Arthashastra built this. (Rangarajan,1992) These designs are what modern Indian legal systems manifest their value of social justice and equality as built-in by the Constitution of India. Kauṭilya's ideals of due process and natural justice as seen in modern legal theories (Boesche ,2002) resonate with his emphasis on samyak vyavahara, or just behavior. Kauṭilya's pragmatic view on law is of rules that serve the collective welfare and also fit certain changing circumstances, a philosophy reflected in the dynamic legal system of India. These laws demonstrate the adaptability and forward-looking thinking on legal concepts of Kauṭilya through the most recent legislative amendments regarding digital privacy and cybersecurity. (Singh ,2022) Basic theories in Arthashastra, which are still relevant in various ways shaping modern Indian legal systems, can be said to have been enforcing its timeless legacy.

III. RAJADHARMA

According to the Arthasastra, the Rajadharma, or Duties of the Sovereign, is what provides for fair and orderly governance in society (Kautilya,1960). Even modern Indian statutes have incorporated this notion into the constitutional scheme which shapes the state's functioning and the state's relationship with its people. Rajadharma, as per the Arthasastra, is that the sovereign is duty-bound to protect his subjects, keep the law and order, and enhance the welfare of his people (Kauṭilya ,1960). This is the same idea emphasized by the Indian Constitution while establishing a duty of the state towards the life, liberty, and property of citizens (Art., 1950). An indemnity condition on behalf of and against the action or judgment of the administration is said to have highly affected the concept of Rajadharma in the development of administrative law in India (Sathe ,2018). The idea of Rajadharma, especially about human rights and social justice, has been referred to by the Indian courts in delimiting the sphere of state obligations to citizens. It does emphasize the welfare of the people that the state should preserve and care for its subjects, thus making Rajadharma have a deep impact on the already existing Indian legal systems.

IV. DANDAANITI

The essential character of Dandaneeti in today's Indian legal systems has been the codification of rules meant for the ends of justice and social order maintenance. For, as Kauṭilya looks at punishment scientifically, the crimes are classified in the Indian Penal Code (IPC) with punishment for committing the same (Singh ,2015). The IPC then gives priority to proportionality and deterrence fitting Kauṭilya's notion that measures punitive as such were indispensable tools to uphold social peace, to contain recidivism. Dandaneeti is the spirit of the entire laws which are interpreted and applied by the courts meant for administering justice. Major verdicts showing capital punishment and human rights picture the court's sincerity in delivering a judgment that thus reverberates Kauṭilya's view of a just judiciary (Boesche ,2002).The progressive ideas of Kauṭilya regarding punishment and correction are finding echoes now in the modern trend of reform systems in the criminal justice system couched in rehabilitation and restorative justice. Dandaneeti by Kauṭilya continues to inoculate the legal paradigm in India and gives a basis for modern legal precepts and procedures. It attempts to reach an orderly and just society through Indian legal systems based on the principles within the Arthashastra, thus establishing its contemporary relevance.

V. INDIAN PENAL CODE

The Indian Penal Code is the main and major form of law in India dealing with criminal justice. It was adopted in the year 1860. it draws much from Kauṭilya's Arthaśāstra, a work on law and government believed to be in the fourth century BCE. Commonly known by the name Chanakya, Kauṭilya stressed the need for a strong enforcement law and justice, with also protection for citizens that continue to be part and parcel of current Indian legal systems. This paper evaluates the congruence

between modern legal systems and how well India has borrowed Kauṭilya's court rules and incorporated them into its Indian Penal Code.

5.1 The Rule of Law and Judicial Authority

Kauṭilya emphasized the paramount importance given to dharma, or law, and placed it above the king's power. He pioneered an organized legal system under which court officials decided petitions according to set principles (Rangarajan 1992). Inspiration of Article 14 of the Constitution of India gives the idea of equality before the law, which therefore protects against arbitrary action by the state, and then upholds IPC against the rule of law (Bakshi ,2002).

5.2 Penalties and Offense Classification

Kauṭilya's Arthaśāstra describes various penalties such as fines and capital punishment. It divides crimes into treason (rājadroha), theft (steya), falsehood (dambha), and violence (himsa). The Indian Penal Code defines offenses under Section 121 (waging war against the state), Section 378 (theft), Section 420 (cheating), and Section 302 (murder). Both systems emphasize sentencing the concepts of proportionality and deterrent.

5.3 Safeguards for Women and Marginalized Sections

Kauṭilya supported financial security for widows and very high punishment for offenses against women, including rape, molestation, and domestic violence. Section 354 of the Indian Penal Code provides protections concerning the outraging of the modesty of a woman while Section 376 deals with rape. This is further strengthened by the Protection of Women from Domestic Violence Act, of 2005.

5.4 The Cause of Evidence in Judicial Processes

Both judicial systems depend on oral as well as documentary proof. In the same vein, with certain applications as in the Indian Evidence Act of 1872, the Arthaśāstra underlined the need to have witness evidence and cross-examination (Sharma ,2005).

5.5 Anti-Corporate Laws

Kauṭilya gave very strict rules to prevent the disloyal action of dishonest officials, massive fines, and getting rid of them from their offices (Rangarajan ,1992). Keeping up with such values is the Prevention of Corruption Act, of 1988, which prescribes fines for bribery and misuse of power.

But modern Indian law adopts freshness. Though it has many roots in Kauṭilya's concepts, such as the classification of crimes, enforcement of law methods, and all other government principles, it has put a very innovative line in its jurisprudence. His values, however, do still form part of defining the judicial system of India by laying down responsibility and justice.

VI. CODE OF CRIMINAL PROCEDURE

The procedures and concepts for criminal justice represented by Kauṭilya and the Code of Criminal Procedure (CrPC) have some parallels and some divergent paths. The court policy under the CrPC and that of Kauṭilya both emphasize the inquiry and trial principles under criminal procedure. The CrPC covers investigation procedures (Crpc, Chapters 154-176) and also trial procedures (Crpc, Chapters 225-327) while Kauṭilya insists on investigation and trial for purposes of establishing guilt (Arthashastra, Book 3, Chapter 11).

The basic agreement is that both systems have to prove some point in criminal procedures. The CrPC provides the admissibility of evidence under its rules, and Kauṭilya's policy requires evidence to be established in court procedure (Arthashastra, book 3, Chapter 11). These two systems provide guarantees for the preservation of civil rights, especially ones concerning the accused. The CrPC adopts clauses to protect such rights; thus, Kauṭilya theorizes about the importance of the rights of the accused (Arthashastra, book 3, Chapter 11) concerning the magnanimous right to counsel (CrPC, Section 303)10.

Whereas the CrPC emphasizes openness and accountability in the process of investigation, Kauṭilya's judicial theory sees this investigation as broad-ranging, employing spies and informants (Arthashastra, book 2, Chapter 5). The Kauṭilyan structure conflicts with the CrPC in marking the judge as an active participant in the investigation of crimes and the adjudication of guilt (Arthashastra, book 3, Chapter 11). Opposed to the CrPC favoring lenient modes, like imprisonment and fines, Kauṭilya's philosophy favors physical punishments, including cutting off limbs and the death penalty. (Book 4, Chapter 11)

The CrPC is a modern humane legal system, but some of Kauṭilya's ideas could serve to strengthen the Indian legal system. For example, Kauṭilya's emphasis on the strategic use of informers and spies could be smoothly incorporated into the CrPC through technological advances such as the use of surveillance cameras and forensic analysis in investigative processes. By advocating restorative justice practices including mediation and rehabilitation, one begins to merge Kauṭilya's emphasis on social order with the CrPC. Kauṭilya's emphasis on judges' training provides a framework for merging the CrPC through systematic training programs for judges, which cover issues of evidence-based decision-making and concepts of restorative justice.

VII. CONCLUSION

Assessing Kauṭilya's Arthaśāstra about contemporary Indian legal systems thus draws evidence of congruity in law enforcement and its systems, legal philosophy, and ideas of government. Besides their basic ideas, which are reflections of the legal constructs developed by Kauṭilya in the 4th century BCE, modern legal frameworks such as the Indian Penal Code (IPC)

and the Code of Criminal Procedure (Crpc) have evolved to face contemporary challenges. His deep views on justice, politics, procedural law, and public welfare have largely transformed the whole criminal and court system in India. One such key pillar of the constitutional and statutory framework is the legal thought of Kauṭlya, which contributes immensely to the rule of law. In the Arthaśāstra, Kauṭilya said that a king has to bow to laws, a viewpoint coinciding with Article 14 of the Indian Constitution which champions equality in the eyes of the law. Thus, both the IPC and CrPC embody this philosophy by assuring that all persons, irrespective of status, are covered by the same set of legal rules and afforded due process. There are considered prominent parallels in the system of infractions and related fines of Kauṭilya with modern judicial systems. As with the classifications in the Arthaśāstra, such as rājadroha (treason), steya (stealing), and himsa (violence), IPC segregates offenses according to their intrinsic nature and intensity. Proportional punishments tenet now fundamental in Indian jurisprudence were stressed in the legal framework he evolved regarding bailable or nonbailable offenses, graded sentencing systems, and judicial discretion within the criminal jurisprudence environment.

Criminal procedure and evidence-collecting mechanisms of the time of Kauṭilya are no different from present-day forensic and investigative methods. Provisions of the CrPC on investigation, witness questioning, and trial procedures highlight Kauṭilya's view on the need for corroborative evidence, cross-examinations, and multiple levels of appeals to somehow minimize the chances of erroneous convictions.

Modern laws aimed at enhancing accountability and transparency in government seem to parallel the anti-corruption measures he laid out: the Prevention of Corruption Act, 1988; the Lokpal and Lokayuktas Act, 2013. Kauṭilya highlighted the importance of protecting the poor, especially women and those in financial distress. His opinion about sexual offenses, the property rights of women, and maintenance have in particular influenced present legal safeguards such as the Domestic Violence Act of 2005, legal aid provisions stated in the CrPC, as well as IPC Sections 354 and 376 (of the assault and rape).

So, even if the Indian legal system has changed enormously, at the fundamental level, the concepts of justice, fairness, accountability, and security still strike a close chord with the ideals laid down by Kauṭilya in his court judgments. The conscience of a properly organized, evidence-based, and just system runs deep in the legal and constitutional fabric of India. Kauṭilya's ideas are still influencing the Indian state since they argue for a continuing relevance of ancient concepts to modern law systems.

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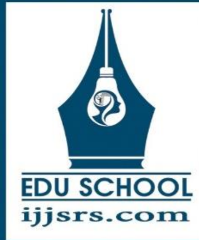

INTERNATIONAL JOURNAL OF JUDICIAL SCIENCE RESEARCH STUDIES (IJJSRS)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3049-0618 ISSN Print:

Preserving Privacy in a Digitally Secure World: A Legal Perspective

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Article information
Received: 13th November 2024
Received in revised form: 10th December 2024
Accepted: 23rd January 2025
Available online: 21st February 2025

Volume:2
Issue:1
DOI: https://doi.org/ 10.5281/zenodo.14935413

Abstract

This article explores the delicate balance between state security measures and the protection of individual privacy in our digital age. Governments around the world use digital surveillance tools to monitor communications and collect personal data in order to keep people safe. These measures serve national security goals but also carry a risk of encroaching on personal privacy. In this study, I review legal frameworks at both the international and national levels. Treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) set clear boundaries for state actions.The investigation looks at significant court rulings that establish precise guidelines for the boundaries of digital monitoring, such as Barbulescu v. Romania (2017). The study also closely examines the privacy risks associated with new innovations like big data analytics and artificial intelligence. The goal is to clarify the operation of legal tests such as proportionality and necessity and to offer suggestions that could assist legislators in improving regulations to safeguard society while defending individual rights..

Keywords: - Privacy, Surveillance, Digital Technology, Human Rights, National Security

I. INTRODUCTION

The introduction of digital technology has changed how the government operates and how public safety is maintained. State organizations now monitor electronic communications and gather enormous volumes of data using advanced surveillance tools. These kinds of technologies are crucial for deterring crime and terrorism. However, they also raise significant issues regarding individual liberties and one's own privacy. The legal framework governing surveillance practices is examined in this article, along with the possibility that these precautions are implemented in an approach that upholds individual rights.

The emphasis is on both international pacts and domestic legislation that establish limits on the scope of surveillance. Achieving the right equilibrium between a state's obligation to safeguard its people and the requirement to respect individual privacy is the main topic of discussion. In addition to discussing the difficulties brought on by the quick speed of technological advancement, the article aims to investigate the legal standards that courts employ when evaluating surveillance practices.

II. LITERATURE REVIEW

The tension between state security needs and personal privacy has been the subject of numerous academic studies and legal opinions. The fundamental right to privacy is enshrined in international documents like the ICCPR and ECHR. Investigators observe that a single invasion of personal life must have a solid legal foundation and be tightly limited. Judicial decisions have shaped these standards; for example, in (Barbulescu v. Romania ,2017), the court emphasized that any surveillance of private communications should possess a specific legal definition and be overseen by the judiciary. Other cases, like (Zakharov v. Russia ,2015) and (Privacy International v. UK ,2021), have underscored the need for strong protections to avoid abuse.

Numerous legal experts have observed that the swift advancement of technology presents novel difficulties. Tools like artificial intelligence and big data can gather information at an unprecedented scale, raising the possibility of errors and bias in surveillance practices. There is a growing call in the literature for regular updates to the legal framework to ensure that the balance between state security and individual privacy remains fair and effective. This body of work lays the foundation for understanding the legal tests of necessity and proportionality that are central to the discussion.

III. METHODS

This study takes a comparative legal research approach. I have examined primary legal texts including international treaties such as the ICCPR and the ECHR, and national laws like the UK (Investigatory Powers Act ,2016) and the US (Foreign Intelligence Surveillance Act, (FISA) ,1978). I have also looked at pertinent court rulings that explain these statutes, focusing on the manner in which the legal system assess surveillance programs using the concepts of proportionality and necessity. Also, I read academic articles and commentaries that talk about how new tech might affect people's right to privacy. A comprehensive evaluation of legal standards from different jurisdictions has been made possible by this method. The analysis highlights the positive and negative aspects of the laws as they stand and pinpoints potential areas that could benefit from additional legal reform.

IV. RESULTS

The study's main conclusions on the subject of digital surveillance law are as follows:

- Legal Authorisation: There has to be a firm legal basis for every surveillance measure. Interfering with personal privacy without clear statutory authorization is arbitrary and random. This solid legal groundwork is provided by statutes like FISA and the UK Investigatory Powers Act.
- Judicial Oversight: To guarantee that monitoring never goes beyond what is required for public safety, the mechanism of judicial review is crucial. In order to make sure that state actions do not violate constitutional limits, courts can review whether surveillance procedures are up to par with legal requirements.
- Impact of Court Decisions: Laws governing surveillance must be very specific, according to precedents like Barbulescu v. Romania. The court determined that some forms of surveillance lacked adequate protections in the case of Zakharov v. Russia. The need for more stringent oversight of mass surveillance practices was brought to light by the Privacy International v. UK ruling.
- Challenges from New Technologies: The combination of AI with enormous data analysis allows digital tools to swiftly process massive amounts of data. There is a greater chance of data misuse and the introduction of bias into surveillance practices due to these technologies. There needs to be constant evaluation and reform of existing legal frameworks because they do not always deal with these technological concerns sufficiently.

These findings demonstrate the existence of a legislative structure for controlling surveillance, but also the ongoing need for this framework to be updated to keep up with the rapid development of new technologies.

V. DISCUSSION

With stringent legal checks in place, the results show that a reasonable compromise between state security and individual privacy can be achieved. Any intrusion must be supported by specific security needs, which is why it is essential that surveillance measures have a clear legal authorization. According to the principle of necessity, surveillance should only be conducted in cases where it is absolutely necessary to avert a specific danger. Constraints on surveillance should not be imposed beyond what is necessary to address the threat, as the principle of proportionality guarantees.

Decisions made by the courts have made these fundamental values very clear. The Barbulescu v. Romania case, for example, set a high standard for the legality of digital monitoring. The court insisted on precise definitions and strict limits to prevent abuses of power. The results from Zakharov v. Russia and Privacy International v. UK further underscore that any system of surveillance must include strong safeguards to protect personal rights.

Additional difficulties are brought about by new technology. Surveillance systems run the danger of bias and mistake when they use algorithms to process the enormous volumes of data collected and analyzed by digital tools. Careless data handling can compromise biometric technologies, such as face recognition systems. According to the study's findings, laws need frequent updates to account for new technologies. To avoid invasions of privacy, surveillance practices must be subject to effective judicial oversight within a transparent regulatory structure.

One important part of dealing with these problems is global collaboration. A person's privacy may be compromised by surveillance practices in another country due to the ease with which data can be transferred across borders. To ensure consistent privacy protections across the globe, it is important to work towards establishing international agreements and harmonizing data protection laws. The extent of surveillance can be limited and personal data can be protected regardless of where it is collected if nations cooperate and establish common standards.

According to the findings, impartial judicial review is an important part of this procedure. By checking whether the stated reasons for surveillance are legal, the courts act as the last check on governmental power. Government actions are legitimate and uphold individual rights when judicial decisions affirm this. A democratic society cannot function without this system of checks and balances, since individual rights must constantly be shielded from the possibility of governmental overreach.

The need of regular legal reform is also brought up in the discussion. Updates to current laws are necessary to account for emerging threats posed by rapidly developing technologies. The public and governmental organizations alike must have transparent rules regarding the collection, use, and sharing of digital data. A steady balance between public safety and individual privacy, even in the face of fast technological change, can be achieved with the help of these reforms.

A careful balance between security and privacy can be maintained, according to the investigation, when a state's actions are carefully checked by law. A well-drafted legal framework, combined with active and independent judicial oversight, provides the best means to keep state surveillance within acceptable limits. The evolving nature of technology calls for regular reviews of these laws so that they remain effective in protecting the rights of individuals without hindering the state's ability to maintain public safety.

VI. CONCLUSION

Digital surveillance, as this article demonstrates, is a vital tool for public safety, but it must be used within defined legal parameters to safeguard individuals' privacy. The legal framework, built on principles such as necessity and proportionality, provides a method to check state power. These regulations have been shaped in part by historic legal cases, which demonstrate the need for courts to closely monitor and define surveillance. New technologies introduce fresh challenges, and existing laws must be updated to address these risks.

Ongoing research is needed to examine how tools like artificial intelligence and big data affect privacy and to determine what further legal measures may be needed. Strengthening both international cooperation and judicial review will help keep surveillance practices fair and balanced. The debate over security and privacy continues as technology evolves, and the law must be ready to respond to these changes in a timely manner.

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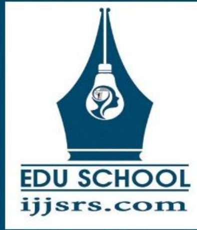
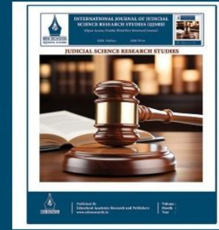


INTERNATIONAL JOURNAL OF JUDICIAL SCIENCE RESEARCH STUDIES (IJJSRS)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3049-0618 ISSN Print:



Corrupt Practice in Land Administration: Analysis of the Impacts towards Development's Prospects

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Article information

Received: 4th November 2024
Received in revised form:6th December 2024
Accepted:15th January 2025
Available online: 21st February 2025

Volume:2
Issue: 1
DOI: https://doi.org/10.5281/zenodo.14935446

Abstract

Land is never merely a resource or a way to make ends meet; it is a significant source of financial resources, a link to one's identity, and a social authority that fundamentally supports the conduct of humans, much of which is susceptible to corruption. Numerous land-related disputes escalate, and a range of effects are noted; however, the land itself is frequently not the only source of these effects; poor management practices also contribute to the issue.

Objectives

This paper aims to analyse the impact of corruption in land administration; and assess the maladministration practice of public officials as recognised as sole heavy prone to corruption.

Findings

Findings show that issues like land disposition/ allocation, Land valuation, land titling/identification, and land Planning use and investment (to mention a few) have major impacts on society since there is much room for corrupt practices to nourish. So, it is concluded that land and corruption are guises in fiction, requiring both individuals and public officials' willingness to fight against them.

Methodology

This article adopts qualitative and quantitative methods to review the existing literature to generate data, explore the bases of corruption in land administration, and analyse the impacts of corrupt practices.

Keywords: - Land, Land Administration, Corruption, Land Corruption, Maladministration practice.

I. INTRODUCTION

The United Nations Economic Commission for Europe coined the term "land administration" in 1993, along with its guiding principles, and it refers to a broad range of government systems and procedures that must be followed for operational purposes, whether they are official or unofficial. Various meanings have been presented to define land administration, and officially 1993 the United Nations Economic Commission for Europe (UNCEC) defines land administration as *the process of determining, recording and disseminating information about the ownership, value, and use of land and its associated resources*. Similarly to that, the UNECE guidelines further provide that, *the processes include the determination (sometimes called adjudication') of land rights and other attributes, surveying and describing these, their detailed documentation, and the provision of relevant information for supporting land markets* (FAO, (n.d.)). The UNCEC guideline emphasizes that its goal is to ensure that all the facilities required for the successful execution of processes including legislative structures, criteria,

land data systems, institutional structures, and the management and distribution of applications and technologies is in place. Furthermore, (Williamson & Steudler,2002) define land administration as ‘the processes of determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies.(Ashaye, 2010) also says that *land administration is considered to include land registration, cadastral surveying and mapping, fiscal, legal and multi-purpose cadastres and land information systems*. Land administration, Contrarily, land administration is recognized as a means of generating revenue from the land through sales, leasing, and taxes in addition to resolving conflicts over land ownership and use.

Although the UNECEC created some guidelines on how to handle land administration; those guidelines are non-binding and are not infinite reform in land administration.

II. AN OVERVIEW OF LAND: DEFINITION OF LAND TENURE, TYPES, AND CATEGORIES

2.1 Definition of Land Tenure

The position that people and organizations have over land and land-based assets, including pastures, water, minerals, and trees, is known as land tenure. It is additionally referred to as a system that grants interested parties different land rights. Secured land can serve as a foundation for economic development and a motivation for investing, but uncertain title to property may end up in disputes, insecurity, and the disappearance of those most in need, including women, people of Indigenous descent, and the poor. When land is properly protected, it becomes a magnet for investment and a driver of revenue generation. Conversely, when it is not, societal conflicts are more likely to flare up. "To hold" is the French verb from which the English word "tenure" of land is derived. The ownership and possession of land by an individual is governed by the common law system. Who has the right, and for how long, to use a piece of land is defined by its tenure. In Tanzania, land is possessed by the president, who serves as a trustee for all citizens. An individual may legally possess land for a duration of 33, 66, or 99 years via a government-issued Right of Occupancy

2.2. Categories for Land Tenure

Land tenure can be classified into three distinct types: general, village, and reserved. To better serve the public, the President can rezone village land as either general or reserved. "General land" refers to any piece of property that fails to meet the requirements to be classified as reserved or village land, as well as any village land that is unoccupied or underutilized, falls under this category. There are a few ways to get land in Tanzania: buying it, inheriting it, grabbing it, or having it allotted to you by the government. Though the land has three categories of tenure, it retains only two forms and these are granted the right of occupancy (Section 2, Land Act) and customary right of occupancy(Section 2, Village Land Act) Both rights (Granted Right of Occupancy and Deemed Right of Occupancy) are secured by certificates of occupancy governed by the land statutes.

III. UNDERSTANDING OF CORRUPTIONS, FORMS, AND ACTS OF CORRUPT

3.1. Corruption

The term "corruption" has taken on various meanings from scholars in various fields. Instead of defining corruption, the acts are merely described by several of the instruments. Many writers have written about corruption and offered their own unique interpretations of the term, which leads to a wide range of possible meanings. According to many investigations, Corruption is a huge issue in developing countries like Tanzania, making it difficult to provide social services effectively. For instance, the (SADC Protocol against Corruption,2000) defines corruption as *any act that includes bribery or any other behaviours about a person entrusted with responsibilities in the public and private sectors that violates their duties and is aimed at obtaining undue advantages of any kind for themselves or others*. (Art. 1, SADC Protocol against Corruption, 2000) Meanwhile, the AU Convention on Prevention and Combating Corruption (Art. 3, AU Convention on Prevention and Combating Corruption, 2003) defines corruption as *the acts and practices, including related offences prescribed therein.*

The World Bank Control of Corruption Index, Transparency International, and the Corruption Perception Index are just a few of the organizations that have been vocal about the negative impact corruption has on development and have promised to enact policies to combat corruption more effectively and limit the likelihood of individuals benefiting financially from corrupt practices. The World Bank Report of 2008.(Bolongaita, 2010) states that corruption *is the single greatest obstacle to economic and social development*.

Corruption, according to Transparency International (TI), is a major problem in the modern world since *[I] it undermines good governance, fundamentally distorts public policy, leads to the misallocation of funds, harms private sector development and particularly hurts the poor*. Corruption is defined in a similar way in the Oxford English Dictionary as *dishonest or illegal behaviour, especially involving people in authority, typically involving bribery*. A number of writers from the social sciences, law, and the humanities have provided distinct definitions of corruption; these include Hussein, Kibwana, Riara, Klitgaard et al., and Klitgaard itself. Alternatively, it has been noted by others that the term corruption is frequently oversimplified and used solely to characterize the function of anti-graft authorities. The concept of a narrow definition always makes it easier to do illegal things. (Vorster, 2013) further states, "corruption is a ubiquitous phenomenon intensified by the worldwide expansion of trade, the existence of global crime syndicates, the expansion of international aid to underdeveloped countries, the internet, and governments with weak prosecuting systems" . asserts that ‘*corruption in various forms has been with humankind from the earliest times. In the present time, corruption is rampant and occurs in multiple manifestations.* The biggest problem, according to reports, is corruption, which impedes the world's economic and social development and undermines development by destroying and weakening the institutions to fight against corruption (Reviro, 2004)

(Shabbir & Anwar, 2007) emphasise that *in support of the above, the holy books including* (The Quran, 2:11, 2:27, 2:30, 2:205, 5:32, 2:188) *and* (The Bible, Matthew 26:14-16; Mark 14:10-11*) provide some scriptures to address and prohibit human beings from indulging in bribery*.

Additionally, (Masabo & Maina, 2009) contend that *the Holy Bible has many references to corruption. It attributes corruption to a deceitful lust for corrupting things on this earth like gold and silver*. Masabo and Maina further state that *according to the Bible, corruption blinds the eyes of the wise and twists the words of the righteous*; and Ryan emphases that *corruption exists as long as there are entities in power and money to encourage, and it is categorised by extensive bribery* (Ryan, 2000)

3.2. Forms of Corruption

Forms of corruption are normally identified from the acts people perform and always lean by various names such as 'petty corruption' and 'grand corruption', 'passive corruption' and 'active corruption', and 'passive bribery' and 'active bribery'. These forms deliberate the action of an official who directly or indirectly through an intermediary request or receives advantages of any kind whatsoever for himself or a third party or accepts the promise of such advantages, except that performance is not that of an official but of anyone whosoever (Art. 2, EU Convention on the Fight against Corruption, 1997) However, it is remarkable that each form seems to present nearly the same meaning. Considering the fact that there are a great number of other types of corruption that have been mentioned, it is likely that public and private officials who engage in grand and petty corruption do so with the intention of enriching themselves in an illegal manner. Due to the fact that they are the most prevalent types of corruption, this article will concentrate on the two most well-known types of corruption: grand and petty

The avarice of the already wealthy, both locally and globally, is a major motivating factor in grand corruption, which is characterized by massive deals involving high-ranking public officials and multinational trading or investment firms. Corruption at the highest tiers of political structures occurs when state and local officials are given the authority to legislate on behalf of the public, only to use it to further solidify their own power, prestige, and fortune. According to Rose-Ackerman, widespread disillusionment with the government, the system of statute, and economic stability results from grand corruption, which affects even the highest echelons of government. (Doig & Theobald, 2000) stated that grand corruption was often motivated by greed; it dealt with highly placed individuals who exploited their position to extract large bribes from representatives of transnational corporations, arms dealers, drug barons and the like, who appropriated significant payoffs from contract scams, or who simply transferred huge amounts of money within banks.

Petty corruption is another form of corruption that refers to uncertain sums of money and has also been called 'low level' and/or 'street level' corruption. This kind of corruption points out that people's participation is more or less daily and come across public management services such as hospitals, schools, local licensing authorities or police or taxing authorities, among others. 'Speed' or 'grease' money means a form of corruption where lower-level officials seek and receive small amounts of money in exchange for expediting a legitimate process. These officials are junior officials who are ostensibly serving the public.

With this form of corruption, it is understood that public officials undertake dishonest transactions with officials to obtain services of one kind or another. Corruption of this kind is often found in the supply of assistance, which are supposed to be freely available to the public. People who live in societies where the average salary is extremely minimal are far more inclined to engage in various forms of petty corruption as a means of sustaining themselves. The perception of petty corruption as a transaction in which multiple individuals can fulfil each of their duties has persisted. On the one hand, one can justify corrupt practices by citing more pragmatic prevailing norms, like 'everyone is doing it' or 'it is needed to survive,' while simultaneously condemning corruption in relation to official rules and ideal conceptions of public management.

3.3. Acts of Corruption

Numerous national and international instruments establish offences that call for the criminalisation of acts of corruption concerning public officials, officials of a foreign state and individuals. This list is one of the tools that can be used to demonstrate that corruption does in fact exist. The African Union Convention.(Art. 4, African Union Convention against Corruption, 2001) states that *the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she can exert any improper influence over the decision-making of any person performing (sic) functions in the public or private sector in consideration thereof, whether the undue advantages is for himself or herself or anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the supposed influence leads to the intended result.*

Further, the SADC Protocol (Art. 3, Southern African Development Community Protocol against Corruption, 2000) stipulate that *any public officer or a person who is willing to solicit for himself or herself to offer or grant a promise to assist either directly or indirectly any goods or monetary value in terms of a gift with a promise in exchange for any act during office tenure and that conduct is for the benefit of either that person or another person or entity is guilty of an offence.*

Further to that, the ECOWAS (Art. 6, Economic Community of West African States Protocol on the Fight against Corruption, 2001) highlights that *any person who either directly or indirectly through a third party receives any object of pecuniary value such as a gift, offer, promise or advantage of any nature whether for himself, herself or another person, in exchange for an act or an omission in the discharge of his, her or their duties.*

Furthermore, the United Nations Convention against Corruption (Art. 15, United Nations Convention against Corruption, 1977) provides that *the solicitation or acceptance by a public official, directly or indirectly, of undue advantage, for the official himself or herself for another person or entity, so that the official acts or refrains from acting in the exercise of her his official duties.*

Each piece of evidence demonstrates that there is a subset of the population that is willing to break the law in this manner, so it makes sense to criminalize these acts. Each of the previously mentioned bits of legislation were put into place with the intention of making individuals make payments for their unethical conduct.

IV. LAND CORRUPTION AND PRACTICE

In both the acquisition and management procedures, corrupt practices can manifest as land corruption. Offering bribery to register property, change land titles, gather details, process cartographic surveys, and establish acceptable land utilization plans are all examples of corruption in land administration. The 2011 TI report found a significant relationship between a country's land sector corruption and its total public sector corruption. The paper further provides that *small-scale to high-level bribery and fraud are examples of the types of corrupt practices that can be found in the land industry. In general, bribery in this sector can be described as extensive and lacking efficient methods of control.*

Furthermore, the TI report emphasises that *the corruption that occurs in land administration can take the form of small bribes that need to be paid to register property, change or forge titles, acquire land information, process cadastral surveys, and generate favourable land use plans.*Those who are unable to pay the bribes are thus left out. Because bribery discourages compliance with land laws, it leaves these laws vulnerable to abuse. Some of the nations with the worst land services include Burundi, Tanzania, Kenya, and Uganda. A few instances of land administration maladministration that greatly aid in the spread of corruption are provided below.

4.1 Land Urbanization

Land urbanization is still going on, and there's a lot of competition for land, which makes land administration hard. The United Nations Population Estimates and Statistics Agency predicts that by 2050, There will be over 9 billion people on the planet, up from 7 billion in 2012. Nearly 75% of this population will call cities home. In the same vein, (UN-Habitat, 2018) stipulates that *as rapid urbanization around the world continues to be a global concern, with over 60 per cent of the world's population expected to live in cities by 2030 and nearly 70 per cent by 2050.* Corruption in land management poses a threat as the demand for and value of land resources rise, which in turn creates opportunities for enrichment. Manipulators in urban areas evict residents and seize their land. For instance, (The Global Corruption Barometer, 2013) stated that *in five people who had contact with land administration services reported having paid a bribe to land services*. Likewise, in (The East African Bribery Index, 2015) repeatedly showed that bribery is rife in the land services sector in East Africa (Zinnbauer, 2015) Similarly,(Chiweshe, 2021) says that *urban land provides spaces for understanding the intersection of politics, money and corruption in post-colonial Africa.* During the process where individuals seek to own land, people give bribes to public officials to speed up processes, collusion between parties to drive prices down and officers deliberately extorting bribes by obstructing a deal's completion (Zuniga, 2018).Similarly, the PCCB report (Prevention of Corruption Bureau Research and Control, 2005) stipulates that *the survey and mapping sector has two areas of corruption; the land survey process and approval of survey plans. Corruption emerges due to a lack of transparent service charge mechanisms.* The PCCB report further stipulates that *survey officials demand payment for services they offer while all such dues are paid in full when one processes the letter of offer.*

4.2 Land Titling / Identification

The most crucial aspect of land management is land identification and titling, which specifies the location, ownership, and boundary. The United Nations recognized Land as having a pivotal position in human history in 1976. A great deal of other progress, including increased agricultural output and urbanization, can be traced back to it. Identification is a fundamental and essential part of land identification and titling as a science because it contains information that is useful for many things. Duplicate allocation, owner identification delays, and procurements made during the certificate of occupation procedures are the main causes of corrupt practices. It has been discovered that, despite following the proper distribution procedures, land officers frequently assign the same plot to several people for the benefit of themselves. It has come to light that certain land officials intentionally prolong the process in order to collect bribes in exchange for the issuance of permission for transferring particular titles of occupancy, so anyone hoping to get their title certificate should be prepared to pay a bribe. Because land officials do not have clear-cut criteria to deny or grant the necessary consent, the permission for disposing phase is also believed to be a situation wherein bribery happens.

4.3 Land Disposition and Valuation:

It is possible to bribe these two potent tools of coercion. The procedure has demonstrated that there exist numerous problems with valuation, including heuristics, corruption, variations, and erroneous results. Valuers' misconduct which can include negligence, professional dishonesty, incompetence, or unethical behavior is frequently blamed for these issues. Since the accountable party may opt to under-or overvalue the property, corruption is thought to have an enormous adverse effect on land disposition and valuation, as indicated by the aforementioned evaluation process problem. occupational field. Bribery can occur during price negotiations, to have the process expedited, or to prevent officials from obstructing the deal. When powerful politicians or public officials have a personal investment in one step of the process, corruption is more likely to occur. Also, the PCCB Report found that this is a common practice for valuers to mistakenly assign a parcel of land as the subject property when in fact it is not.

4.4 Land Use Planning and Investment

There has been a recent uptick in consumer demand for ground as a result of population growth. A lack of surveyed plots, encouraged unchecked development, and illogical land use, especially in urban areas, are all results of planning's inaction in the face of rising demand and intense competition for available land. Town planners are corrupt because they have a stranglehold on the planning process, which includes approving schemes, asking for planning consent, and determining whether a building can change uses. Opportunities for illicit enrichment presented by land acquisitions are a typical catalyst for corruption. Enhanced corruption risks and large sums of money are common side effects of investing in the industry. Investments have the potential to corruptly pay off local officials and powerful people in order to purchase property for construction projects, lease property, or buy property outright. The development and use of land is also typically easy to control. Because decision-makers must strike a balance between the competing interests of different stakeholders, including landowners, by limiting their rights to use and their discretion to build, the process exposes people to corruption. According to the 2005 PCCB report, the public is pressured to pay officials with undocumented funds in order to expedite the tedious and slow approval process of urban detailed plans.

According to the UN report, corruption is increasing in the biofuel sector, which is not surprising considering that many countries with weak leadership are desirable destinations for this type of investment.

V. THE IMPACTS OF CORRUPT ACTIVITIES IN LAND ADMINISTRATION

Corruption in land administration increases levels of poverty and hunger because it reduces access to land (Zuniga, 2018) It has been noted that the impact of corruption is especially significant in developing countries (Sachs, 2017;Palmer, Fricska, & Wehrmann, 2009;De Schutter, 2016) UN-Habitat points out that *the fear of eviction may prevent people from operating to their maximum potential or investing in their neighbourhoods, in turn, reduces the revenue from taxes and services charges, and the uncertainty associated with insecure tenure may hinder external investments and the improvement of services such as water and sanitation (UN-Habitat, 2004)*.(Knight, 2022) insists that *corruption can be used to overcome obstacles to acquiring land, including circumventing community consent, environmental or social safeguards, or regulations related to the use of land*. Furthermore, there is evidence to suggest that *land corruption harms the environment, driving land grabbing and misallocation of land which can lead to deforestation, degradation, and land conversion, among other impacts. Land corruption erodes the effectiveness and credibility of efforts to address the climate crisis.*

Bribery is another way in which land corruption affects poverty. People are more vulnerable to bribery and, therefore, more likely to pay bribes. This vulnerability to bribery can increase poverty in two ways: i) the payment of bribes can account for a considerable proportion of a poor household's income; and ii) The unethical practices of land services may deter poor people from managing their land, endangering their prospects for land entitlement and means of subsistence.

Because it encourages investment in land and extractive activities, land corruption has both positive and negative indirect effects on economic inequality. According to World Bank study findings, enormous scale acquiring of land for farming operations can boost nations in many ways, including by adding jobs, increasing wages and local savings, drawing in new residents, providing possibilities for local small businesses, and improving the system.

Corruption in land administration makes it harder for women to own land, which impacts how they use and control the land they do own. As a result, women are less able to have a say in land use decisions and lose out on the financial prospects that accompany term stability, both of which exacerbate gender disparity. Unauthorized conversion of customary land to commercial land occurs in many African countries as a result of corrupt practices surrounding large-scale land-based investments. Due to the male-dominated decision-making process surrounding the possession of land, women face increased vulnerability when they do not own any property of their own.

Also, a lot of wars break out because of corrupt land administration. The acceptance of fraudulent titles by the land registration office leads to the allocation of identical land parcels, which is a form of conflict that corruption facilitates. Political and social unrest often stems from the "grabbing" of property.

VI. CONCLUSION

Weak land administration systems, limited legislation, weak institutions, lack of transparency, lack of effective oversight institutions and reduced social participation are among the drivers of corruption in land administration. To improve land governance, the government has to ensure that the issue of corruption is well addressed.

Organize a land management system is a key condition to prevent corruption. Good practices in the reform of land management are to simplify the administrative system, reduce steps and prevent. opportunities for corruption.

Increase transparency is key to preventing corruption and to hold authorities and institutions to account. It should be present to help minimise ambiguities and misinterpretations. Transparency is achieved by full public disclosure of documents around investment deals and land title certificates. It should be promoted by allowing public access to land administration documents, such as maps, land and urban plans, and to the findings of accountability institutions (Wheatland, 2016).

Ensuring accountability in land administration would improve service delivery and ensure the integrity of government actions. One way to increase accountability is by including strong and effective oversight institutions, such as parliamentary committees, anti-corruption commissions and law enforcement bodies (Transparency International & FAO, 2011) Along with top-down accountability, social responsibility is commonly praised for its role in fighting corruption.

Citizens' participation in land governability improves the compliance of those actors with the policy.(Deininger, Selod, & Burns, 2012) says that *land sectors will gain legitimacy if the policy is backed by political and social consensus rather than being perceived as captured by interest groups*. On the other hand,(Zakout et al., n.d.) says that *the affected population should be involved in the identification of land parcels and their demarcation.* Similarly, in 1989 the International Labour Organization

C169 Indigenous and Tribal Peoples Convention– for the countries ratified that, *for indigenous peoples to have fair consultation and participation, some measures must be considered: guarantee equal bargaining power free from threats and manipulation, and to provide all the information, with enough time for the community to study it, and in a language understood by the community.*

The improvement of human resources management should establish certain conditions and systems that can reduce the potential for corruption in government, ultimately demanding or receiving a bribe is an individual decision. Some measures can be implemented to discourage corrupt activity. The first is to help government employees make challenging choices by creating and sharing institutional guidelines and staffing procedures. To motivate land administrators to act ethically, the guideline should contain both incentives and penalties.

When it comes to public administration, education is a powerful tool for promoting integrity because it lowers society's tolerance for corruption and helps to prevent it. Last but not least, a meritocratic system of hiring could help shift institutional culture far from corruptive personal interests and toward the public good.

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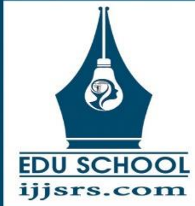
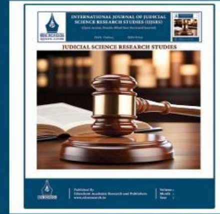


INTERNATIONAL JOURNAL OF JUDICIAL SCIENCE RESEARCH STUDIES (IJJSRS)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3049-0618 ISSN Print:



Traditional Knowledge and Bio-Piracy: Issues and Challenges

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Article information

Received: 25th November 2024
Received in revised form: 16th December2024
Accepted: 24th January 2025
Available online: 21st February 2025

Volume:2
Issue:1
DOI: https://doi.org/ 10.5281/zenodo.14935714

Abstract

There have been several foreign insurgencies in India's past. Its verdant landscapes and storied past have earned it the title of "treasure island" in Western perception. Midnight on August 14, 1947, India finally ended two centuries of British dominance. Nevertheless, a fresh "unarmed intellectual rebellion" started with the pilfering of biotic riches and the associated traditional knowledge. This article delves into the nationwide and global legal framework while discussing traditional knowledge and bio-piracy. Additionally, some well-known instances of biopiracy were covered, with India coming out on top in each. To help in the battle to protect TK from environmental degradation, the author provides some specific suggestions towards the final section of the article.

Keywords: - Traditional Knowledge, IPR, Bio-piracy, Biodiversity, Indigenous Knowledge.

I. INTRODUCTION

India has two of the world's most biodiverse regions—the Eastern Himalayas and the Western Ghats—and is renowned for its vibrant traditions and rich cultural heritage. It also scores seventh among mega-diverse countries with a Bio-diversity Index of 303.63. In his magnum opus, "The Customs of the Kingdoms of India," Marco Polo made India the spice capital of the world and laid the foundation for the Spice Road. It is this multi-faceted cultural background that makes India unique. Our traditional knowledge (TK) is an indispensable part of our identity and has been playing a pivotal role in shaping our cultural distinctiveness. Realising this, the western world has, since the last few decades, started showing significant interest in our very own TK.

Even though, a part of this knowledge has been preserved by proper documentation, yet a significant portion of these has still remained undocumented. Finding the original owner of the knowledge is also a major hassle because it is so hard to track down where this body of information came from.

Bio-piracy implies the act of commercially misappropriating biological resources/materials and the knowledge associated therewith without consent. Some have even used the term "theft of nature" to describe this phenomenon. Biologists engage in bio-piracy when they "illegally collect indigenous plants by corporations who patent them for their own use," according to Dr. Vandana Shiva.

II. CONCEPTUALISING TRADITIONAL KNOWLEDGE

The World Intellectual Property Organization (WIPO) has attempted to provide some order to the concept of Traditional Knowledge (TK), therefore, even though no such thing as a universally accepted definition exists. TK is defined as knowledge that includes know-hows, skills, and standards which had been cared for, developed, maintained, and continued through numerous eras. A more expansive concept of TK has been proposed by WIPO to include both broad and specific contexts. In its broadest meaning, TK includes both the information itself and the ways in which culture has traditionally been expressed (TCE). In its narrowest sense, however, only knowledge which is derived from deliberate intellectual effort is considered TK. This encompasses traditional knowledge, abilities, and innovations in fields such as architecture, farming, fishing, etc. The

fact that TK is 'traditional,' leading us to believe it should be out of date, causes us to doubt its veracity. Just to be clear, how did human clans manage to stay afloat in an era devoid of technological advancements? People had figured out ways to survive by applying what they knew, and they had been successful. The knowledge referred to as "traditional" or "indigenous" is fundamentally the same information that enabled human flourishing millennia ago. "Defining traditional knowledge is not simple and has become the focus of much discussion and research," as correctly stated. Traditional knowledge (TK) is defined by UNESCO as the creations, techniques and knowledge acquired by indigenous and community groups globally. It primarily relies on firsthand experience, has been transmitted through decades, and has become an essential component of the local environment and culture. Berkes defined TK as "a cumulative body of knowledge, practice and belief, evolving by adoptive processes and handed down through generations by cultural transmission, about the relationship of human beings (including humans) with one another and with their environment, an attribute of societies with historical continuity in resource use on a particular land". When it came to carrying out the World Heritage Convention, the importance of involving local, traditional, and native populations was recognized by the World Heritage Committee in 2007. In addition to the four pillars of World Heritage- Credibility, Conservation, Capacity Building, and Communication, the committee had pushed for the addition of "communities" as the fifth pillar of the strategic goals.

III. FAMOUS BIO-PIRACY CASES: INDIA

3.1. Bt-Brinjal Case

On February 15, 2020, the Bengaluru-based non-governmental organization Environment Support Group (ESG) submitted a formal complaint to the Karnataka Biodiversity Board, alleging that the US-based seed corporation Monsanto, along with its Indian affiliates- the Maharashtra Hybrid Seeds Company (Mahyco), the University of Agriculture Sciences (UAS) in Dharwad district, and Sathguru Management Consultants Private Limited, acting as a coordinator for USAID (United States Agency for International Development) and Cornell University had deliberately violated the stipulations of the Biodiversity Act and appropriated indigenous brinjal cultivars to create a genetically modified variant. In May 2011, the Karnataka Biodiversity Board, following an investigation, notified the NBA that "two companies accessed six local varieties for the development of Bt. Brinjal in the state without prior approval from the State Biodiversity Board/National Biodiversity Authority." Subsequently, in June 2011, the NBA resolved to initiate court proceedings against the implicated parties. Alleging severe failures in the implementation of laws governing the conservation, protection, and access to India's biotic wealth, the ESG petitioned the Karnataka High Court in 2012 with a writ of summons, naming the National Biodiversity Authority (NBA), the Ministry of Environment and Forests, the Karnataka State Biodiversity Board, the State of Karnataka, and the Union of India as parties at fault. Case transfer to the National Green Tribunal (NGT) occurred in 2013. As of November 2022, the highest court in India, the Supreme Court, ordered the Karnataka High Court to resume hearing the biopiracy PIL that it had previously submitted to the National Green Tribunal (NGT).

3.2. Neem Case:

The neem tree is referred to as "the tree that cures everything" or Sarva Roga Nivarini, acknowledging its numerous applications in medicine and other domains. One more reason the neem is called a "tree for all seasons" is exactly that. Timber, fuel, agriculture, medicine, laxatives, and toiletries are just a few of its many multi-purpose uses. Girija Prasanna Majumdar's Sanskrit abori-horticulture treatise Upavana-Vinoda recommends neem for sick plants, sails, and cattle. The neem's curative and therapeutic qualities, as well as its contribution to India's traditional medicine, are acknowledged in Kautilya's Arthashastra. The Western world has long ignored conventional methods of medicine and the neem's value. Ayurveda and traditional Indian medicine have gained popularity in the West as people worry about the potential negative effects of allopathy and pharmaceuticals.

Robert Larson started bringing neem seeds to the United States in 1971 from his business importing timber. In 1985, Larson obtained authorization from the United States Environmental Protection Agency (EPA) for his extracts from pesticidal neem, Margosan-O, and a patent after completing a battery of tests to ensure the product's safety and efficacy. Three years down the road, in 1988, he transferred the patent privileges to the multinational agrochemical corporation W. R. Grace in the United States. Proposing "a technique for managing fungi on plants utilizing hydrophobic extracted neem oil," In 1990, W. R. Grace and the United States of America, represented by its Secretary of Agriculture, submitted a patent application to the European Patent Organization. The European Patent Office granted applicants a European Patent in 1994. The Research Foundation for Science, Technology and Natural Resource Policy (RFSTE) in Germany, the International Federation of Organic Agriculture Movements (IFOAM) in the United States, and Magda Aelvoet, a representative of the European Parliament from 1994 to 1999 representing Brussels, Belgium, who chaired the Greens, submitted a legal objection following the publication of the patent by the European Patent Office (EPO). Claims were made that the patent granted by the European Patent Office (EPO) failed to satisfy the five fundamental criteria for patentability: (i) originality, (ii) inventive step, (iii) insufficient disclosure, (iv) ambiguous language, and (v) contravention of moral principles. Subsequently, in 2000, the European Patent Office annulled the patent.

3.3. Turmeric Case

The University of Mississippi Medical Center's Suman K. Das and Hari Har P. Cohley, both of Indian descent, submitted a patent proposal to the USPTO in 1993. The application's stated goal was to seek a patent for a turmeric-based wound treatment method. The patent, which encompassed the sole shipment and retailing of turmeric, was granted by the USPTO in 1995.

Growing turmeric, a tropical herb made from the plant's flowering rhizomes, is most common in east India. It has many uses and is typically ground into a powder. In addition to its many medicinal uses, turmeric powder has a long history of being utilized in Indian cuisine and household products. It has been used for everything from wound healing (in the form of haldi ka lep) to coloring and flavoring food, and even as a cosmetic (thanks to its anti-septic and skin-brightening effects) and litmus test. The CSIR, an Indian government agency, challenged the patent's authenticity in 1997 by submitting a formal complaint to the USPTO. The patent was nullified by the USPTO in response to the CSIR's objections in the same year that the complaint was filed.

IV. BASMATI RICE

The private American firm Rice Tec of Alvin, Texas, got a patent for "Basmati rice lines and grains" in 1997. The long, thin grains and fragrant Basmati rice are well-known. The Indian subcontinent, particularly Pakistan, Nepal, and Sri Lanka, along with specific regions of India and Pakistan, are traditional locations for its cultivation. The Hindi word basmati, meaning "fragnant," is an etymological ancestor of the English word. Waris Shah, a poet from Punjab, supposedly made a reference to Basmati rice in his 1766 epic Heer Ranjha. Agriculture and Processed Food Products Export Development Authority (APEDA), an Indian organization contested the patent awarded to Rice Tec by the USPTO on Basmati. The USPTO annulled the patent after reviewing all of India's submitted facts and documents. Kasmati, Jasmati, and Texmati are just a few of the names that Rice Tec has applied for registration. Because they were so confusingly identical to Basmati, those were likewise rejected. According to Dr. Vandana Shiva, *"theft involved in the Basmati patent is, therefore, threefold: a theft of collective intellectual and biodiversity heritage on Indian farmers, a theft from Indian traders and exporters whose markets are being stolen by Rice Tec, and finally a deception of consumers since Rice Tec is using a stolen name Basmati for rice which are derived from Indian rice but not grown in India, and hence are not the same quality"*.

IV. BIO-PIRACY: CAUSES AND EFFECTS

Causes:
There are a number of potential causes for bio-piracy. Most importantly,

- Financial Enrichment: Multinational corporations misuse traditional knowledge to generate business and financial profit without providing adequate reimbursement to the expertise holders or practitioners.
- Lack of Codification: Traditional knowledge (TK) is primarily viewed as a category of intellectual property privileges, that have consequently favored multinational corporations while making TK increasingly vulnerable to exploitation.
- Lack of Knowledge and Awareness: The majority of individuals possessing this knowledge are affiliated with indigenous or tribal communities. Their ignorance and unawareness render them more susceptible to mistreatment.
- Gap in Management: A significant deficiency exists in the handling of traditional knowledge, rendering it more vulnerable to misappropriation.
- Globalization and Market Expansion: Globalization and market expansion have increased demands for natural resources.

Effects:

- Loss of biodiversity.
- Unlawful loss of resources for communities.
- Over-exploitation of TK.
- Genetic erosion
- Inequitable distribution of natural resources.
- Ecological disruptions
- Unsustainable distribution of natural resources
- Concentration of wealth in the hands of few.

V. BIOPIRACY: INTERNATIONAL AND DOMESTIC LEGAL PARADIGM

	INTERNATIONAL	DOMESTIC
1.	THE INTERNATIONAL LABOUR ORGANISATION	THE BIOLOGICAL DIVERSITY ACT, 2002
2.	THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS AND THE UNITED NATIONS FORUM ON INDIGENOUS ISSUES	THE PATENT ACT, 1970
3.	THE WORLD INTELLECTUAL PROPERTY ORGANISATION	THE GEOGRAPHICAL INDICATIONS ACT, 1999
4.	UNESCO	THE PROTECTION OF PLANT VARIETIES AND FARMERS RIGHTS ACT, 2001
5.	WORLD TRADE ORGANISATION	THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS ACT, 2006
6	THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)	TRADITIONAL KNOWLEDGE DIGITAL LIBRARY (TKDL)

VI. CONCLUSION

Bio-piracy constitutes a significant impediment to the environmentally friendly use and conservation of biological resources. Intellectual property laws are used as a cover to violate the fundamental liberties of indigenous and tribal communities. When our nation's biotic wealth is depleted, we lose a valuable asset. Various strategies can be implemented to safeguard traditional knowledge and mitigate, if not eliminate, the risk of biopiracy. These comprise:

- Introduction of a sui-generis system for protection and preservation of TK.
- Protection under IPR regime is not adequate as IPR requires novelty, inventive step and originality. It is very difficult to prove those as a criterion for protection in the context of TK.
- For the effective functioning of TKDL, it should collaborate with local NGOs.
- It is important to educate indigenous, tribal, and other marginalized communities about their privileges and wealth. The Bio-diversity boards ought to motivate them to take part in conversation exchanges.
- Bio-diversity Management Committees and Biodiversity Boards should work in co-operation with these local communities.
- Access and Benefit Sharing Schemes should be more effectively used.
- The government should promote the engagement of communities of indigenous people in the application of this knowledge system.
- Incentive schemes must be allocated to these communities.

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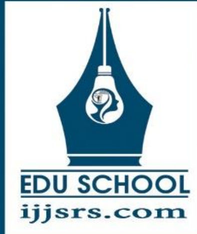

INTERNATIONAL JOURNAL OF JUDICIAL SCIENCE RESEARCH STUDIES (IJJSRS)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3049-0618 ISSN Print:

Exploring the Education Rights of Rohingya Children in India

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Article information

Received: 28th November 2024
Received in revised form: 9th December 2024
Accepted: 15th January 2025
Available online: 21st February 2025

Volume:2
Issue:1
DOI: https://doi.org/ 10.5281/zenodo.14935833

Abstract

The Rohingya refugee crisis has several persons affected by the serious violation of education rights among many Rohingya young people. This essay outlines the many hardships faced by Rohingya children, including poverty, language barriers, statelessness, and limited academic resources concerning protecting their educational rights in India and Bangladesh. While human rights laws provide a global semblance of educational rights, the reality is that the Rohingya child is prejudiced and excluded from official educational systems. This writing examines the legislative frameworks, initiatives, and undertakings directed at the realization of the educational rights of Rohingya children. It argues that the right to education is in itself a passport to a future and empowerment and social integration for Rohingya children. It recommends the measures governments, NGOs, and international organizations can take to help these children access an inclusive and equitable education.

Keywords: - Rohingya children, Education rights of refugees, Access to education, Human rights law, Inclusive education, Equitable education.

I. INTRODUCTION

In India, the educational rights of Rohingya children find themselves at a complicated intersection, intermingled with migration, human rights, and public policies, giving rise to numerous challenges. The Rohingya fled persecution in Myanmar and crossed over to neighboring countries, particularly India, into a state of uncertainties, social stigma, and the asylum process in search of a decent living. The hurdle with perhaps the most basic, yet difficult to secure, human right for Rohingya children would be the right to education. Education is a good instrument for their empowerment, social cohesion, and economic development. Significant hurdles for Rohingya children include a lack of documentation, language barriers, and minimal financial support from the government (Ahmed, 2020). While local initiatives and government programs exist to mitigate some of these problems, without any cohesive national framework, too many children are likely to slip into the cracks (Khan, 2021). At the same time, various NGOs and international agencies continue to fight for reforms to guarantee that education for all refugee children constitutes not only a service but also a basic human right (Human Rights Watch, 2018). In this way, the study assesses the education-related status of Rohingya children in India, evaluates the efficiency and effectiveness of programs currently provided by the government, and offers recommendable solutions to address the gaps identified. This is an important contribution to refugee rights discourse and the right to education as an instrument for social justice and sustainable development.

II. ROHINGYA CRISES

Currently, a big humanitarian crisis has unfolded such as the one with Muslims, who have been subject to persecution in Myanmar. It was around August 2017 when Myanmar began a military violent crackdown leading to the migration of approximately 742000 Rohingyas to Bangladesh. One can best put the long-standing systemic discrimination and violence

coupled with statelessness and persecution of the Rohingya people over the years in that they have been denied citizenship since 1982. Their survival seems to depend on humanitarian aid in all those packed refugee camps in Bangladesh. The UN names them among the most persecuted minority groups in the world. Still, the issue is unresolved under which the Rohingya live in poor conditions with no opportunity for ensuring a safe return back to Myanmar.

III. ROHINGYA CHILDREN

The Rohingya youth living in India find it extremely challenging to ensure an excellent education. Although the Indian government is making efforts to cover basic needs, these children find it quite difficult to enter schools owing to inadequate documentation, language problems, and even discrimination (Human Rights Watch, 2019). Children from the very populous Rohingya community have to attend makeshift schools in refugee camps without infrastructure, qualified teachers, or basic provisions for learning (UNHCR, 2022). REI (Rohingya Education Initiative [REI], 2020) claims that only nearly about 10% of "Rohingya" children can access some form of education in India through established channels; over 60% of them don't have any access. It brings into stark light the ominous fact that the Rohingya child would be exposed to child labor, trafficking, and other exploitative conditions, thus amplifying the danger lurking. The Indian government's disinclination to regard the Rohingya as refugees has left them with poor access to government schools and learning resources (Rohingya Education Initiative [REI], 2020). Also, such differences in education, competency, and opportunity have built a gulf between the Rohingya children and others and have led to their continued marginalization and exclusion.

IV. EDUCATION RIGHTS OF REFUGEES

The enhancement of educational rights for refugee children, including Rohingya children in India, has been facilitated through international legal systems and state policies stressing education as a fundamental human right. Even though India has not ratified the 1951 Refugee Convention and the 1967 Protocol, Article 22 of the UN Convention on the Rights of the Child enjoins equality of basic education access to these refugees with that of nationals (UNHCR, 2010). Besides, Article 26 of the Universal Declaration of Human Rights (UDHR) and Article 28 in the Convention on the Rights of the Child (CRC) reinforce every child's free and compulsory primary education entitlements from every stratum of society (UNICEF, 2019). Article 21A of its Constitution thus implements the Right to Education (RTE) Act, 2009, as free schooling for all, although India does not have a refugee law. Such statelessness, lack of documents, and social discrimination accentuate altogether Rohingya children's challenges (Ahmed, 2020). Although some of the Rohingya children are in informal learning centers or schools organized by NGOs, they sometimes do not have appropriate accreditations, hence denying them a chance at higher education or job placement (Khan, 2021). The continuous campaigning of human rights groups shows that legislation inconsistencies are still existing thus endangering innumerable children at the risk of exclusion. Educational rights require an amendment of the policy to bring refugee children into mainstream educational systems, offer language support, and facilitate a streamlined documentation process. This benefit from maintaining those rights for Rohingya children is also dependent on India's overall commitment to human rights and sustainable development.

V. ACCESS TO EDUCATION ROHINGYA CHILDREN

The educational experiences of Rohingya children in India are fraught with hardship. Rohingya children remain marginalized and excluded, although the Indian state strives towards free and compulsory education for all children. Various factors, like the lack of documentation, language barriers, and cultural differences, serve as hurdles to Rohingya children accessing formal education (Hossain, 2018). Having gained access to education, Rohingya children nevertheless undergo discrimination and harassment by fellow students and even their instructors. Different programs of non-formal education have been set up for the educational needs of Rohingya children. Run mainly by NGOs, these programs provide language courses, vocational training, and non-formal education (UNHCR, 2010). These clearly illustrate that Rohingya children have an uphill task in accessing schooling. The Indian government and international agencies must recognize and formally register the status of Rohingya refugees to address such urgent matters. Furthermore, measures should include formal education access, funding and resourcing alternative programs, and extensive training and support for teachers so they can better meet the needs of Rohingya children.

VI. HUMAN RIGHTS LAW

The promotion and preservation of the educational rights of Rohingya children in India will largely depend on the enforcement of human rights law. International human rights treaties, including the Convention on the Rights of the Child (CRC) and the Universal Declaration of Human Rights (UDHR), bind India even in the absence of its signature on the 1951 Refugee Convention or its 1967 Protocol. These documents explicitly state that the right to education is, without distinction as to nationality or legal status, a human right for every child (UNHCR, 2010). India became a party to the Convention on the Rights of the Child in 1992, which makes it clear that every state shall respect and ensure the right of every child to free and compulsory primary education without any kind of discrimination (UNICEF, 2019). Rohingya children are beset with a lot of obstacles in accessing formal education; these range from the lack of legal identity to social prejudice and the uneven enforcement of the Right to Education Act, of 2009 (Khan 2021). Human Rights groups, including Human Rights Watch and Amnesty International, continue to urge India to live up to its international obligations to provide education to Rohingya children without discrimination (Human Rights Watch, 2019). Besides, Indian courts have occasionally intervened to protect the rights of refugees, affirming that the right to life guaranteed by the Indian Constitution under Article 21 vests in all persons, including refugees (Ahmed, 2020). Nonetheless, more legislation and policy reform need to be done to realize human rights

law in its true practical sense. Upholding these rights would not only bind India to its commitment to human rights but also afford young Rohingya the much-needed opportunities to develop and integrate.

VII. INCLUSIVE EDUCATION

However, education is guaranteed broadly and generally to every child, regardless of his or her background, nationality, or legal status. Inclusive education thus ensures equally quality access to education for every child of varying backgrounds, nationalities, and legal statuses. It has also meant that traditional Rohingya children within India depend on this inclusive education as it largely paves the way for their integration into society, personal growth, and long-term stability. Getting all the Rohingya children involved in mainstream education becomes a challenge in India, even with national policies supporting inclusive education and international obligations in favor of current human rights on education for all. This requires comprehensive strategies, a holistic approach involving community-oriented direct assistance, legal reforms, and policy projects.

Specifically, under the international legal systems, Article 26 of the Universal Declaration of Human Rights (UDHR) and Article 28 of the Convention on the Rights of the Child (CRC) enunciate the right to education. The documents emphasize that for all children from diverse backgrounds, guaranteed access must be free and compulsory education. Even though India hasn't signed the 1951 Refugee Convention, it has ratified the CRC, thus signifying its commitment to observance of the educational rights of every child including, refugees. The Right to Education (RTE) Act of 2009 by which India mandates free and compulsory education to all children within the age limit of six-and-fourteen years. This is, however, contradicted in applying the law to Rohingya migrants due to legal ambiguities and bureaucratic hurdles.

Certain barriers affect access to education for Rohingya children in India, even where legal provisions exist. In several public educational institutions, enrollment requires ID for entry via documents like Aadhaar cards or issuance certificates. Most Rohingya refugees lack any valid documentation, which proves a major deterrent in their case (Ahmed, 2020). Due to language barriers, children mostly speak Rohingya or Burmese- they face challenges in educational institutions where Hindi or English is the medium of instruction (Rahman, 2022). The stigma associated with being a refugee child manifests openly through exclusion or rejection by local governments and schools alike (Human Rights Watch, 2019). To add to the grievance, the families of the Rohingya children suffer utter poverty which is a great hindrance to providing education. This leads to the drop-out syndrome which in turn leads to the escalating of child labour which is a common phenomenon of refugees. (Khan 2021).

A few well-thought-out undertakings will recuperate the inclusive education of the Rohingya children. The elimination of paperwork for school admission would constitute an important first step allowing refugee children to pursue educational opportunities without such red tape standing in their way. Language programs assisting Rohingya children would also aid in the establishment of bilingual schooling, thus helping the children to cope with the curriculum better. Training for teachers would create more inclusive classrooms, allowing them to embrace diversity in their classrooms and meet the particular needs of refugee children (Ahmed, 2020). While community-based learning centers and schools run by NGOs play an important role in bridging the educational divide, they would further achieve the goal of offering recognized education if supported and recognized by the Government. A national policy promoting inclusive education applicable to all children in India would rely heavily on actually operating the inclusion of refugee children under the RTE Act about integration within the regular school system. Inclusive education signifies a huge step towards educational equity and social justice and is therefore a huge moral commitment. To ensure access to quality education for the Rohingya children, intensified collaboration among government bodies, civil society, and international organizations is extremely crucial. For India to keep its promise of universal education, the legal, language, and financial barriers preventing Rohingya children from having an education and acquiring skills for a better tomorrow must be dealt with.

VIII. EQUITABLE EDUCATION

The constitution of India has guaranteed the right to access quality education for each student, irrespective of caste, creed, gender, and socioeconomic status. Hence the educational rights of the children belonging to the Rohingya clan cannot be denied. These children are kept aloof from education because of proper documentation. The NEP 2020 asserts that "education is the greatest single tool for promotion of social justice and equality" while emphasizing the necessity of ensuring fair and inclusive education. The framework prioritizes educational issues facing children from extremely poor socioeconomic backgrounds, particularly refugees and those with disabilities.(Ministry of Education, 2020).

Very few of the Rohingya children residing in India can get an education. Most of them crossed over from Myanmar owing to violent persecution; however, they are left without most of the proper documentation required to directly enter a school. The Supreme Court of India sees each kid, Rohingya refugees included, to have equal rights to access quality education, free from any discrimination. Still, as seen from this decision, many Rohingya children are left behind in educational institutions if they lack Aadhaar cards as they are mandatory identity documents in India (Times of India, 2025). Article 21A of the Indian Constitution further reiterates that the denial of educational opportunities to Rohingya children is a deprivation of a constitutional right to education. Not only the constitutional guarantees, but even the international human rights instruments strengthen this right, the most important being the Convention on the Rights of the Child (CRC) adopted by India. UNCRC says that every child in whichever country or with immigrant status is entitled to receive education (UNICEF, 1989). Given these urgent issues, NEP 2020 includes some projects aimed at facilitating education for all children that would including the refugee Rohingya population. The projects include free and compulsory education for all children, up to fourteen years, constructing inclusive educational institutions to accommodate and cater to different backgrounds, and implementing special programs to address the educational needs of children from economy-disadvantaged groups (Ministry of Education, 2020).

It is therefore complemented by some policy recommendations, although most grassroots efforts seek to improve educational opportunities for Rohingya children in India. The NGOs, including the Rohingya Human Rights Initiative, help Rohingya children with advocacy and education services. Such initiatives include providing legal assistance, educational resources, and community support to Rohingya families, (ROHRIngya, 2025) as they close the policy-practice gap. Ensuring that all children, including Rohingya refugees, have access to quality educational opportunities, therefore, depends on ensuring fair access to these opportunities. The NEP 2020 forms a comprehensive umbrella along with grassroots efforts to redress current issues and promote the educational rights of Rohingya children living in India. It is these kinds of steps that will ensure India stays engaged with social justice, fairness, and therefore inclusiveness of every child.

IX. CONCLUSION

To reach social justice and inclusion finally, all Rohingya children living in India should have equal access to educational possibilities. Grassroots activities also support it; the National Education Policy 2020 offers the full structure for tackling major problems including systemic, and institutional discrimination and inadequate documentation. Regarding human rights, India has both constitutional and international obligations notably under the UN Convention on the Rights of the Child to guarantee appropriate education for Rohingya children. India can guarantee that every child—refugee or not—receives similar educational possibilities through inclusive legislation and cooperative community-driven enterprises. The project seeks to give every kid the chance to flourish, learn, and thrive so that an egalitarian and inclusive society empowered by the Rohingya children may result. If one hopes for a futuristic egalitarian and unified future for everybody, then address these disparities in the sphere of education.

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