JUSTICE MAKING, JUSTICE SPACES, & JUSTICE USERS

EDITED BY DEAN D'CRUZ, REBONI SAHA, SIDDHARTH PETER DE SOUZA, VARSHA AITHALA, NAOMI JOSE, AND SHARADA KERKAR

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Contents

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SIDDHARTH PETER DE SOUZA, VARSHA AITHALA, NAOMI JOSE, SHARADA KERKAR, DEAN D'CRUZ AND REBONI SAHA

This book explores how design choices impact justice delivery in Goa and India. By examining the architecture and organization of institutions like courts, prisons, and police stations, it identifies barriers to justice and proposes ways to create a more inclusive and effective justice system.

JUSTICE USERS

Focus on individuals interacting with the justice system.

- **Where Fact Meets Context** examines biases in child custody disputes
- **Living in Bairro of São Tomé** highlights resident-tourist conflicts, expanding justice beyond conventional users
- **Justice in Planning** advocates for citizen involvement in city planning
- **The concept of Eco-Justice** explores the conceptions of eco-justice and its implementation through activities
- **Reflections on the Design for Justice fellowship** highlights how the DFJ Fellowship used design thinking to improve public access to justice in Goa's courts, prisons, and police stations

JUSTICE MAKING

Practices that challenge unjust systems and create inclusive spaces.

- **Planning Law in Goa** analyses the complexities of Goa's planning laws
- **Designing for Public Good** critiques AI's role in India's judiciary
- **Justice Making Lessons from Azad Maidan** highlights the role of public spaces in justice-making
- **Designed for Conflict** discusses conflicts within forest rights implementation
- **A Case Study of Mopa Airport** examines development projects in Goa and its impact on justice
- **Critical Reflection Supporting an Acquaintance at a Goan Police Station** examines personal encounters at a Goa police station, revealing broader contexts of sexual violence

JUSTICE SPACES

Locations where justice is experienced and contested.

- **Humanizing the Justice Experience** advocates for a human-centric approach in justice spaces
- **Digitalisation of Indian Courts** proposes better courtroom infrastructure
- **Ideas for inclusive justice spaces** contains case studies on various justice institutions in Goa

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1. Introduction

Siddharth Peter de Souza, Varsha Aithala, Naomi Jose, Sharada Kerkar, Dean D'Cruz and Reboni Saha

I N this book, we intend to identify design choices that have underlined how experiences with the justice system have manifested in Goa particularly, and India more generally. Design offers a methodology to systematize as well as order the world around us. It provides opportunities for direction, definition, control, as well as possibilities for making and remaking.[1] Using design as a lens, we are keen to understand how far such an approach can help with studying the forms of justice delivery, examining the purposes, processes as well as contexts of justice systems.

To reflect on the barriers that define and inhibit justice delivery, we explored the following questions:

- What makes the justice system stuck?
- What does it need to be?
- What do we need to do to move from status quo to vision?

These questions are important because they help situate firstly the understanding that people have of justice systems. Secondly, the questions help to detail the kinds of barriers that emerge in terms of people's relations with such justice systems. Thirdly, they balance the normative and descriptive, examining the difference between what works as well as what should work in terms of justice delivery. Fourthly, they also account for the experiences as well as the aspirations that people have of justice institutions as well as of their ideas of justice.

In structuring this project and organizing the book, we sought to identify the design choices made in institutions such as courts, prisons and

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[1] Hazel Clark and David Brody, eds., *Design Studies: A Reader* (London: Bloomsbury Visual Arts, 2022).

police stations, to ensure equal accessibility to all. We were also keen to recognize the methods undertaken to ensure fair distribution of resources across diverse types of users of justice institutions, irrespective of region, language, caste, gender, or class to name a few. Our exercise intended to investigate whether such spaces are designed to encourage participation, collaboration, as well as feelings of belonging among user groups. If not, we wanted to envisage the ways in which these spaces could be reimagined to introduce a variety of perspectives to help respond to users, and create spaces considering their world views.

The book therefore is an entanglement of justice spaces, justice users, and justice makers, because each of these areas demand processes that influence each other. As an exploration located at the intersection of law and design, this book is uniquely poised to offer reflections of the existing challenges in the Indian justice system while also offering creative speculation into what the justice system would look like if it considered alternative imaginations --- for instance, new spaces for conflict resolution.

It brings together a selection of essays by researchers, activists and practitioners who each reflect on questions of design for justice in interdisciplinary ways. It is a unique combination of perspectives from diverse stakeholders: subject experts like lawyers, architects, designers, planners along with activists, community members and policy professionals.

The essays are organized in three key sections, on justice making, justice spaces, and justice users and examine various aspects of infrastructure, policy making, mindsets, as well as regulation. Through case studies and theoretical reflections, the book unpacks some of the hurdles limiting possible responsiveness, accessibility, and relatability of these institutions for different user groups by taking Goa as the primary point of departure.

Justice Making

Justice making is about practice. It connects to the ways in which people from different standpoints find ways to challenge unjust systems, advocate for legal and policy reforms, and create inclusive spaces. It is a foundational element in the design of a just society. This active pursuit transforms justice from an abstract concept into a lived reality, guiding actions and policies that promote equity and harmony.

The essays collectively explore justice-making in various Goan contexts, illustrating how activists, planners, designers, policymakers, community leaders, indigenous groups, civil society organizations, protestors, legal challengers, and allies engage in addressing social, legal, and political injustices. These justice makers work to rectify disparities and support marginalized communities, demonstrating a multifaceted approach to promoting fairness and inclusivity within society. Their efforts highlight the importance of collective action in shaping and maintaining a just societal framework.

They clarify the perspectives that are visible and the views that are ignored, because they have not been voiced. In doing so, justice making looks at the consequences of citizen action, which could lead to resolutions or policies, both favourable or unfavourable.

The first essay titled **"Planning Law in Goa: Complexities, Contradictions and Confusion"** by Tahir Noronha explains the current planning laws in Goa through an analysis of the Goa Land Development and Building Construction Regulations 2010 (GLDBCR). It highlights the problematic relationship between urban planning and legal reform, showing how these dynamics impact people within those spaces. The study critiques the GLDBCR for failing to reduce regulatory complexity and streamline clearance processes, instead eroding democratic planning processes. By contrasting GLDBCR with regulations from other Indian states and the U.S., it argues that deregulation has compromised public interest, leading to technically unsound and socially unjust outcomes.

Urvashi Aneja and Dona Mathew's paper **"Designing for Public Good: Re-thinking Approaches to AI in Courts"** critically examines the adoption of AI in India's judicial system. They highlight that current AI implementations, which include automated translation and AI-enabled legal research, primarily serve judges and lawyers, thus overlooking broader stakeholder involvement. The authors argue that this creates a scenario of "organised irresponsibility," where fragmented accountability increases systemic risks and potential harms. To mitigate these issues, they advocate for a design framework rooted in "ethics of care," emphasizing community-led design, capacity strengthening, and purposeful openness to ensure responsible and inclusive AI innovation in courts.

In the third essay titled **"What does Azad Maidan teach us about justice making?"**, Sharada Kerkar and Siddharth Peter de Souza examine Azad Maidan, a significant protest space in Goa, highlighting its pivotal role in justice-making. Following Goa's liberation in 1961, Azad Maidan transformed from a colonial symbol to a site commemorating freedom fighters and became a hub for activism and dissent. The authors argue that public spaces like Azad Maidan foster democratic engagement, support social movements, and challenge state repression. Despite attempts to curb its function through surveillance, design changes, and legal restrictions, Azad Maidan remains crucial for public discourse and grassroots activism, emphasizing the spatial dimension of justice-making. The essay draws attention to the importance of accessible, visible, and inclusive public spaces in facilitating collective justice.

The paper titled **"Designed for Conflict: The Non-implementation of Forests Rights in Goa"** authored by Vasudha Sawaiker, Vidya Mary George and Shricharan Desai examines the enduring challenges surrounding the implementation of forest rights legislation in Goa. Despite the state's substantial forested areas, indigenous communities continue to confront unresolved land tenure issues and recurrent conflicts with both wildlife and the Forests Department. The research re-

veals the inadequate progress in granting title deeds under the Forest Rights Act of 2006, highlighting Goa's distinctively low rate compared to other regions. It advocates for an empowered indigenous civil society to oversee the effective implementation of forest rights, aiming to alleviate conflicts and safeguard community interests.

Alaknanda Shringare's paper, **"Development Projects and Neglected Justice Space: A Case Study of Mopa Airport,"** explores the implications of the recent development initiatives, focused on the construction of the Mopa Airport in Goa. Highlighting issues of land acquisition, inadequate compensation, and environmental degradation, the study emphasizes how such projects displace communities and disrupt livelihoods without adequate rehabilitation. Despite protests and legal challenges, the airport's construction continued, illustrating broader tensions between development agendas and justice. The research advocates for reevaluating development paradigms to prioritize community rights and environmental sustainability amidst economic growth pressures.

In the last essay, "**If My Lawyer Herself Is Not Confident, Is It Really Worth It? Critical Reflection of Supporting an Acquaintance at a Goan Police Station,"** Asawari Nayak recounts her experience of supporting an acquaintance who reported stalking and sexual harassment at a Goan police station. The author vividly retells the journey fraught with challenges, from the initial optimism of filing a complaint to the harsh realities of police negligence, victim-blaming, and the erosion of confidence in pursuing justice. The essay examines social representations of sexual violence, adopts a more self-reflexive approach to studying language and law, and skilfully connects personal experiences to broader political and cultural contexts.

Justice Spaces

Justice spaces are areas of symbolic power. They indicate how people live and experience justice. Patricia Branco (2016) calls the courthouse a "privileged public space of justice — taking into considera-

tion the circumstances of time, place of jurisdiction, the historical, political, regulatory, and socio-cultural contexts, as well as legal tradition".[2] Court decisions and language play a role in shaping people's sense of belonging and what spaces define it. In explaining the importance of the court space in the 'ritual' of a trial, Mulcahy (2011) remarks: "*Public buildings can both inspire and degrade those within them; they can calm or oppress. The spatial configurations of the courthouse and courtroom can confer prestige or dignity on those who use them or serve to undermine their credibility. Legal architecture can associate law with tradition and conservatism or can equally well symbolise a commitment to change and innovation. Courthouses can act as memorials to the past as well as reflecting aspirations for the future.*"[3]

The Commission on Trial Court Performance Standards uses five standards for access to justice that courts should strive to achieve:

- public proceedings: proceedings and other public business are conducted openly;
- safety, accessibility and convenience: facilities are safe, accessible and convenient to use;
- effective participation: opportunities to participate effectively are provided without hardship or inconvenience;
- courtesy, responsiveness and respect: judges and court personnel are courteous, responsive to public and respect everyone and
- affordable access: costs of trial court proceedings and records (time, money, procedures) are reasonable, fair, affordable.[4]

But justice spaces are not limited to courts. Borrowing from Rosalyn Deutsche (1998) who argues that public spaces have, by nature, always been exclusionary, based on markers like race, gender, class, sexuality,

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2   Patrícia Branco, "Courthouses as Spaces of Recognition, Functionality and Access to Law and Justice: A Portuguese Reflection," *Oñati Socio-Legal Series* 6 (January 1, 2016): 426–41.

3   Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law*, A GlassHouse Book (Abingdon, Oxfordshire: Routledge, 2011).

4   Maria Dakolias, "Court Performance Around the World: A Comparative Perspective," *Yale Human Rights and Development Law Journal* 2, no. 1 (February 18, 2014): 87–142.

disability[5], we can surmise that justice spaces which are exclusively designed by spatial specialists — architects, builders etc. — remain exclusionary since they find no inputs in their design from systemic stakeholders — judges, court officials, staff, lawyers and litigants.

This book conceives 'Justice Spaces' broadly and inclusively, to include all spaces where people's rights are contested, including, police stations, collectorate offices, children's courts etc. People's perceptions of justice are informed by their experiences and conversations with others. We explore important questions like whose rights should be considered in determining the design of justice spaces and the extent to which this should manifest in the spaces themselves.

In the first essay under this theme titled "**Humanizing the Justice Experience: Learning from Human-Centric Service Design",** Arvind Lodaya examines a (human-centric) design thinking approach to improve the design and functioning of justice spaces, by examining a popular five-step method of the social design movement: Empathise, Define, Ideate, Prototype and Test. He conducts a comprehensive study of the 'experience journey' of the various stakeholders of the justice system, to identify the 'pain points' they encounter along the way, in terms of efficacy of the 'touchpoints' of physical infrastructure and back-end operations. This, he claims, throws up a 360-degree perspective of its various human, material/infrastructural and procedural issues, as well as a slew of opportunities for innovation and raising its operational as well as 'human' efficiency.

The second essay by Varsha Aithala on "**Digitalisation of Indian courts: Archiving judicial data**," explores judicial data archives as an important component of the digital infrastructure of Indian courts. It acknowledges the contribution of the e-Courts Mission Mode project in transforming India's court infrastructure through digitalisation of case records, data storage solutions and productivity enhancement, among others. Despite this, not enough effort has been made for

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5   Rosalyn Deutsche, *Evictions: art and spatial politics*, 2. Aufl (Online-Ausg.) (Cambridge Mass.: The MIT Press, 1998).

systematic identification, collation, indexation, preservation, and publication of judicial data for stakeholders — internal (litigants, lawyers, judges, court administration) and external (researchers, scholars, officials, policy makers and the public) through data archives — a valuable resource. The essay provides a roadmap for the design of an open and accessible judicial data archive for India.

The next essay titled **"Ideas for inclusive justice spaces in Goa"** is a detailed case study of three prominent justice institutions conducted by an interdisciplinary team of researchers namely Justice Adda, Kokum Trust Law and Design Fellows, selected from three educational institutions in Goa: Birla Institute of Technology and Science, Pilani—Goa, Goa College of Architecture and Salgaocar Law College. These justice spaces, a police outpost, the district collectorate office and a district and sessions court located in different parts of the state of Goa, provide the reader an accurate sense of the varied forms of justice institutions in the state, their unique roles, and their peculiar problems which impact access to justice The choice of fellows from these varied disciplines and different subject areas was deliberate, with the intention of allowing each fellow to bring to bear their own discipline's perspective on justice spaces. This design approach highlights the user and their ease of access to the system. The inferences drawn in the case study complement the learnings derived from a general population survey conducted in three different districts covering both rural and urban areas of Goa.

Under the theme of 'Justice Spaces' through the individual essays, we set out a broad, inclusive understanding of the concept, demonstrated through particular examples, specific challenges that these justice spaces encounter as a function of their design, and then, recommended actionable solutions tailored to the context in which the justice institutions are located vis-a-vis the state, their internal infrastructure and demographics.

Justice Users

In the figure of the justice user, one sees a coming together of justice making and justice spaces. The question of justice only becomes relevant when one considers the question — justice for whom? Without the figure of the justice user, justice as a space, justice as a process, becomes irrelevant. When justice systems are responsive to the needs of the users, they operate more effectively. There is greater respect for the law and decisions taken by justice systems are more likely to be respected.[6]

With the third quick slide panel the idea was to dive deeper into how the justice user intersects with justice making and justice spaces. Justice is achieved through the interplay between institutions and individual behavioral patterns.[7] But how often does the individual or the 'user' get consideration when conceptualising spaces and processes? Is justice truly rooted in an understanding of the individual or has the individual been sidelined in the process of creating institutions and codes?

In the third section on 'Justice Users' the papers drew on lived experiences to demonstrate the ways in which users have been regarded or disregarded when justice has been meted out. People and their concerns often get lost in the larger demands of economy and 'development'. Marginal communities, such as women in particular, often get sidelined and their voices are misrepresented and misinterpreted. Greater participation with room for every voice to be heard and each individual truth acknowledged would have a transformative impact on justice systems. Presenters spoke about representation in the justice system, and shared anecdotal experiences as justice users, advocates and educators. An important theme that emerged was the role of empathy in justice making and what it could do for the user. Lastly,

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[6] Maurits Barendrecht et al., "Delivering Justice, Rigorously," Trend Report, HiiL Trend Report (Netherlands: The Hague Institute for Innovation of Law, Netherlands, September 18, 2022), 6, https://dashboard.hiil.org/publications/trend-report-2021-delivering-justice/.

[7] Amartya Sen, *The Idea of Justice*, 1. Harvard Univ. Press paperback ed (Cambridge, Mass: Belknap Press of Harvard Univ. Press, 2011), 77.

presenters highlighted that justice users were varied in their motivations, needs and aspirations even though they may seem similar to each other in terms of shared cultural, social and economic identities.

The first paper by Albertina Almeida **"Where Fact Meets Context: Need for Equitable Approach in Social Fact Judging"** examines the court process for child custody disputes and how the outcome, outlook, and stereotypes of judges influences their decisions, using contextual examples. The paper discusses how the justice user, in this case primarily women, often have to contend with social facts that are often influenced by racial, gendered, and class-based assumptions. Consequently, the interpretation and application of legal principles are heavily influenced by the court's perception of reality. The real lived experience of the justice user is sidelined in favour of socially accepted narratives. The paper recommends that the court's judgment must consider diverse realities, and stories should be included in the curriculum of the judicial academy, to build capacity not only for judges but also for lawyers.

The second paper **"A Reflection on Living in the *Bairro of São Tomé"*** by Aurobindo Gomes Pereira expands on the idea of the justice user to include those outside conventional justice institutions who resort to alternative ways of addressing infringement of rights. It looks at St Tome in Goa and its gradual evolution into a tourist hotspot and the consequent impact on the original residents, focusing particularly on the impact of the pandemic. St Tome is now being used as a backdrop for social media influencers, disregarding the place and its culture, with the primary focus being on getting clicked. This problem is not limited to St. Tome but is widespread across the world, leading to over-tourism instead of sustainable tourism. The conflict between citizens of the place and tourists demonstrates the need for local stakeholder working groups to identify sustainable forms of tourism. In exploring this dynamic the paper highlights how our understanding of the justice user needs to be located in a network of justice users, often with competing needs.

The third paper in this section is titled "**Justice in Planning: Inclusive and Equitable Distribution**". In the paper Dean D'Cruz and Reboni Saha reflect on the importance of citizens as stakeholders in imagining equitable land use planning. The paper proposes that justice users should not be perceived simply as passive recipients but as active contributors to the creation of just spaces. Taking the example of the Goa TCP department the paper explores how exploitative practices from the colonial era have resulted in a system that is manipulated through biased interpretations and amendments added to acts for personal gains. The paper emphasizes the need to focus on local systems and recognizes the importance of considering ecology as a stakeholder along with anthropocentric models. Existing indigenous systems were moving in the right direction as they acknowledged the inevitable correlation of nature with human existence and included protection of the environment as part of its function.

The fourth paper by Nandini Velho, Srisrividhiya Kalyanasundaram, Yamini Srikanth and Salil Subedi **"Exploring the Concept of Ecojustice in the Classroom and Among Citizens"** discusses conceptions of social justice and eco justice and how the latter is defined as being pro-animal and anti-human. It proposes an alternate understanding of eco justice as an inter-human and inter-species concept and as a way to include the non-human world in justice-driven conservation. This calls for a wider conversation on what eco justice would entail as a lived experience that engages all citizens. The paper looks at activities in classrooms that could open discussions on eco justice, by linking the mental and physical. The paper discusses the impact of alternative pedagogical strategies in developing a more intersectional understanding of eco justice.

The fifth paper by Naomi T Jose, **"Reflections on the Design for Justice Fellowship"** is an observational piece on the structure and purpose of the DFJ fellowship that was the lynchpin for this project initially. It critically examines the pedagogical approach adopted and how it impacted the kind of solutions proposed by those who participated in the

fellowship. The paper offers a snapshot view of the fellowship, covering the initial logic behind the project, the structure of the fellowship and the experience itself.

Conclusion

In this book presented as a collection of essays, we have looked at a wide variety of issues. These include questions of governance and management, where for instance, the essays explored the ways in which institutions could be more people friendly by guiding users through the bureaucracy, identifying systems for assistance as well as mechanisms that improve service delivery. The essays also tackled aspects of developing a culture of justice which is critical as a means to challenge as well as weed out biases that may exist within the system and to encourage professionalism. Such an approach also requires appropriate systems of justice to engage with communities, be inclusive and ensure that no one is left behind. Establishing such a culture would ensure various forms of accountability and that discriminatory actions would be punishable.

Such actions require the building of interest in the law among communities, finding ways to make it less intimidating, and also enabling training for officers of justice institutions, in order that they have the opportunity to retrain and refresh their perspectives. The essays reflect the importance of building collaborations where people work together in consultative ways, where participation is encouraged, and diverse points of view are not only included but also acted upon in systematic ways. This would instill greater accountability of systems, and ensure participation by people providing them with a voice in the functioning of the justice system.

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Part I
Justice Making

PLANNING LAW IN GOA: COMPLEXITIES, CONTRADICTIONS AND CONFUSION

BY TAHIR NORONHA
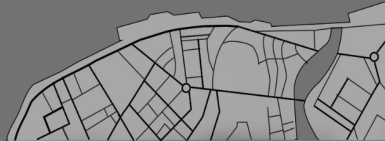
- The essay explores the impact of amendments to the *Goa Land Development and Building Construction Regulations* (GLDBCR) Act 2010, a unique law originally aimed at simplifying land-use rules in Goa

- Perspectives from various stakeholders illuminate an evolving planning landscape in Goa, emphasizing complexities, contradictions, and public opposition to the GLDBCR amendments. Legal, justice, and technical critiques form crucial aspects of the analysis.

GLDBCR STAKEHOLDERS` PERSPECTIVES

- **Architects:** for case of designing buildings
- **Agriculturists:** Face economic constraint when cultivating land.
- **Real Estate Developers:** seek investment opportunities
- **Public Interest Planners:** regulate land for societal benefits

GLDBCR & AMENDMENTS

- Recent amendments raise concerns
  - Potential redundancy of land-use plans
  - Decreased transparency in the process
  - Lack of public engagement in bye-law changes
  - One-size-fits-all model ignores socio-economic disparities
- Over 6,000 objection letters, widespread protests
- A cautionary tale about the influence of select interest groups

JUSTICE AND TECHNICAL CRITIQUE

- **Justice Concerns:** Lack of public engagement in bye-law changes
- **Technical Issues:** One-size-fits-all model ignores socio-economic disparities
- **Influence of Stakeholders**: Real estate interests shaping planning regulations

JUSTICE adda KOKUM
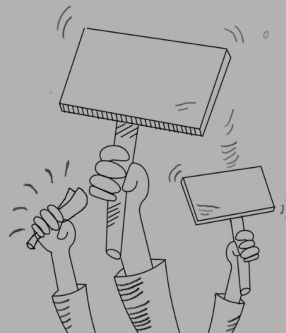
2. Planning Law in Goa: Complexities, Contradictions and Confusion

Uniform building and planning regulations, compelling or self-conflicting?

Tahir Noronha

THERE is a global movement for reducing planning, design, and construction standards in developing nations[1] promoting competitive markets and denser, sustainable development. The movement is spearheaded by real estate stakeholders and supported by industries aligned with construction. In 2010, Goa was one of the first Indian states to institute uniform land use regulations and building by-laws that applied across all 3,702 sq. km. in the state. This essay expands on the history of planning laws and regulation in India, and the public interest objectives of urban and regional planning, asking if uniform regulations in the case of Goa, suit the development needs of the state. Analyzing uniform regulations from a technical and justice perspective, the paper highlights substantive and democratic tradeoffs in the policy shift.

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1   Dowall, David E. "The Benefits of Minimal Land Development Regulation." *Habitat International* 16, no. 4 (January 1, 1992): 15–26; Sridhar, Kala Seetharam. "Impact of Land Use Regulations: Evidence from India's Cities." *Urban Studies* 47, no. 7 (June 1, 2010): 1541–1569; Manville, Michael, Paavo Monkkonen, and Michael Lens. "It's Time to End Single-Family Zoning." *Journal of the American Planning Association* 86, no. 1 (January 2, 2020): 106–12.

Planning in the public interest

State-led planning should always relate to public interest.[2] Transparency, public participation and social welfare form the basis for just and equitable planning. There is a sense of legitimacy when the state carries out urban and regional planning. Similarly, as planning is seen as an act of the state, it must adhere to bureaucratic administrative systems which includes a state planning department, politically appointed planning boards, procedural public hearings and enforcement of plans and regulations. The legitimacy of state-led planning often legitimizes the administrative side as well. However, this is not necessarily the case. Bachrach and Baratz write about the mobilisation of power in public action, arguing that all political organizations have a political bias. They call for public policy that initiates from investigating institutional bias.[3] In the field of planning, John Forester argues that public agencies can exercise a particular form of mobilized power, by leveraging information and setting the agenda.[4] Barach & Baratz emphasize that distinctions between important and unimportant issues, have to be understood in relation to the dominant values and the political myths, rituals, and institutions which tend to favour vested interests of one or more groups, relative to others."[5] Put simply, the status quo favours powerful actors. If non-state actors can influence the process of planning to reflect their specific private interests, it is possible to hijack or compromise public planning and risk jeopardising the credibility of planning itself.

This paper focuses on the processes by which spatial plans and regulations are created and implemented in Goa. The processes by which spatial plans and regulations are born and exercised form an intricate mechanism by which the state dispenses social welfare and safeguards

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2   Moore, Terry. "Why Allow Planners to Do What They Do? A Justification from Economic Theory." *Journal of the American Institute of Planners* 44, no. 4 (October 1, 1978): 387–98.

3   Bachrach, Peter, and Morton S. Baratz. "Two Faces of Power." *American Political Science Review* 56, no. 4 (December 1962): 947–52. https://doi.org/10.2307/1952796

4   Forester, John. *Planning in the Face of Power*. University of California Press, 1988.

5   Bachrach and Baratz, 1962.

public interest. This is the 'design' by which the state exercises its legitimacy through plans, and arguably the procedures and outcomes within this design are just! This paper examines one instance in the spatial planning history of Goa — the creation of the Goa Land Development and Building Construction Regulations (GLDBCR) from 2008 to 2010 — to reveal processes by which public interest planning can get hijacked, resulting in technically unsound plans but also the loss of legitimacy in the eyes of the wider public. These 'processes' often occur in the backdrop of formal planning and slip into a maze of techno-bureaucratic jargon which is often out of the reach of the general public.

In his article "Planning in the Face of Power", John Forester cautions about the political nature of planning, as he advocates "progressive planning" which is conscious of misinformation and jargon. Progressive planning involves the design of reforms that combat structural biases, especially agenda setting by leveraged groups.[6] In the case of Goa, the design of the GLDBCR has not met these goals.

The following sections explain the difference between byelaws and planning regulations, elucidate the legal basis for the GLDBCR and critique the law from a technical and justice rationale.

The legal framework for architecture and planning in India

There are several legal conditions which need to be met before an architectural design can become reality. Architects and designers must know this information, as the design of built space is greatly influenced by these conditions. They specify height, form, fenestration, materials, and sometimes even architectural detailing. Conditions are imposed by the state in the form of permits. Permits are of two primary types: Planning Permits that assess land use and serviceability and Building Permits to assess suitability for occupation.

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[6] Forester, John. *Planning in the Face of Power*. University of California Press, 1988.

Planning Permits and Developmental Control Regulations

The Constitution of India put the use and improvement of land — spatial planning — in the state list.[7] This means that spatial planning is completely within the jurisdiction of the State Legislature and the States of the Union are empowered to formulate ways to plan their own jurisdiction.

The norm in planning across India has been that the state develops a planning Act but devolves Building Permits to local bodies. This norm was initiated by the passage of the Delhi Development (DD) Act in 1957, by the Union Government.[8] The first Delhi Master Plan (MPD) was arguably a success.[9] Spurred by the positive feedback, the Town and Country Planning Organisation went on to develop a Model Town Planning Law based on many of the principles in the DD Act, and over the next two decades, most States of the Union implemented Acts derived from the Model Law.[10]

The model law gives a framework[11] upon which plans should be prepared. It recommends that a comprehensive plan should consist of the following:

A report, which provides context, outlines the methodology, details the forecast and mentions salient projects and investments.

A map, which charts out the spatial implications of the plan. The map highlights the relationship between land-use, infrastructure and connectivity.

A matrix of Development Control Regulations (DCR), which stipulate the intensity and permissible uses of every item in the map.

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[7]   The Constitution of India, (1950). *Schedule VII - State List*.

[8]   Jain, V. (2019). Examining the Town Planning Scheme of India and Lessons from Land Readjustment in Japan. *ADBI Working Paper Series, 1037*.

[9]   Wengoborski, S., & Singh, J. N. (2013). "Creating the City of Delhi: Stories of Strong Women and Weak Walls." In H.-C. Petersen (Ed.), *Spaces of the Poor* (pp. 147–168). Transcript Verlag.

[10]   Kumar, A., Vidyarthi, S., & Prakash, P. *City Planning in India, 1947–2017.* Routledge India, 2020. https://doi.org/10.4324/9781003055969

[11]   Town and Country Planning Organisation, "Model Town and Country Planning Act" 1962,

The DCRs block out the ground coverage, floor area ratio (FAR), surface parking and setbacks. The DCRs can also specify any exceptions and relaxations to the norm. Best practices including the Federal Governments' Urban and Regional Development Plans, Formulation and Implementation (URDPFI) Guidelines,[12] advocate simplified DCR, with minimum relaxations and exceptions in order to facilitate organised development.

The comprehensive plan needs to be shared with citizens, their inputs considered and changes that are in the interest of the public incorporated. After the finalisation of the plan, it has statutory authority. Development needs to conform to its provisions.

Building Permits and Byelaws

DCR are separate from building byelaws. DCR focuses on regulating land and density to prevent overloading of services, mobility and utilities. Building byelaws cater to public health concerns. They stipulate fire safety, ventilation, and sanitation standards for construction. Byelaws are municipal functions in the British system and were codified as municipal functions through the 74th Constitutional Amendment Act, 1992.[13] Urban or town planning is a discipline which does not delve into details of safety and sanitation at a building level. This is a matter which architects and public health engineers are qualified to regulate. Given the differing expertise needed, it is prudent to keep the functions of DCR and byelaws separate. This is not always the case in India, where a movement to combine the two is growing.

There is a basis for simplifying and combining planning and building laws, especially in developing nations. Proponents argue that these regulations impede land supply and limit the ability of developers

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[12] "Urban and Regional Development Plans, Formulation and Implementation." Guidelines. New Delhi: *Town and Country Planning Organisation, 2015*.
[13] The 74th Constitutional Amendment Act, (1992).

to respond to housing demand.[14] Complicated approval procedures limit competition in the housing market by creating barriers to entry. This slows down housing production, restricting its ability to meet changes in demand. Further, navigating permits within India's complicated administrative framework, requires knowledge or money, thus imposing additional hurdles on weaker sections of the society.[15] Both of these are legitimate justice considerations in a country like India, and there is a rationale for reducing red-tape and fast-tracking affordable housing projects. However, a blanket application of this policy across all building permits could lead to concerns.

Resultantly, advocacy groups in India attempt to paint building permits as an unnecessary transaction cost. They group building permits with octroi and excise licenses under the ambit of "license raj".[16] Licenses are vilified as governmental overreach and obstructive to free-market and economic development interests. The idea of administrative reforms to make the construction process more efficient for developers and more uniform for administrators has caught on recently.[17] The most common manifestation of this reform was through a single approval for planning and building. Several states including Haryana (2017), Gujarat (2017) and Tamil Nadu (2019) have already enacted similar laws.[18] Karnataka and several other states are considering following suit.[19]

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[14] Dowall, David E. "The Benefits of Minimal Land Development Regulation." *Habitat International* 16, no. 4 (January 1, 1992): 15–26.

[15] Sridhar, 2010.

[16] Aghion, Philippe, Robin Burgess, Stephen J. Redding, and Fabrizio Zilibotti. "The Unequal Effects of Liberalization: Evidence from Dismantling the License Raj in India." The American Economic Review 98, no. 4 (2008): 1397–1412.

[17] Kedia, Ajay. "Real Estate Needs a Single-Window Clearance System – Construction Week India." *Construction Week* (blog), January 17, 2022. https://www.constructionweekonline.in/people/real-estate-needs-a-single-window-clearance-system.

[18] Srivathsan, A. "In Tamil Nadu, Uniform Building Code a Mixed Bag." The Hindu, February 16, 2019, sec. Tamil Nadu. https://www.thehindu.com/news/national/tamil-nadu/in-tamil-nadu-uniform-building-code-a-mixed-bag/article26293211.ece.

[19] DHNS. "Soon, Uniform Land, Building Rules in Urban Areas across State." *Deccan Herald*, June 29, 2017. https://www.deccanherald.com/india/karnataka/soon-uniform-land-building-rules-2012901.

In 2008, the government of Goa introduced the Goa (Regulation of Land Development and Building Construction) Bill (GLD bill). The state legislators make the following claims in the bill's statement of objects and reasons:

There are presently four state Acts,[20] two state regulations[21] and municipal regulations[22] in force which all deal with issues of land development and building construction in the state.[23]

There are conflicts in jurisdiction between the building byelaws and the state regulations.

The Planning and Development Authority (Development Plan) Regulations, 2000 contained both DCR and byelaws. These regulations were required to apply to "planning areas" or critical areas that were quickly growing.[24]

The municipalities that were not planning areas had only municipal byelaws. They mentioned that "the zoning regulations are not covered comprehensively in the said byelaws."

Finally, rural areas had neither zoning regulations nor byelaws.

Thus, the legislators argued the need for uniform regulations "to facilitate the authorities to follow the regulations, byelaws and rules" across the entire state of Goa.

This bill was enacted into the GLD Act in 2008 and detailed regulations were prepared by 2010. The essay will critique the GLDBCR from a justice and technical lens, bringing up concerns arising from the broad nature of these uniform regulations vis-a-vis the rationale given for the Act.

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[20] The Goa Town and Country Planning Act, 1974, the Goa Panchayat Raj Act, 1994, the Goa Municipalities Act, 1968 and the City of Panaji Corporation Act, 2002.

[21] The Planning and Development Authority (Development Plan) Regulations, 1989 and the Planning and Development Authority (Development Plan) Regulations, 2000.

[22] Municipal Council Building Bye-laws and Regulations 1987

[23] The Goa (Regulation of Land Development And Building Construction) Bill, *as introduced* 2008.

[24] Town and Country Planning Organisation, "Model Town and Country Planning Act" 1962.

Arguments against the GLDBCR

Planning entails forecasting and regulating growth for a given time-frame or horizon. It includes socio-economic factors and impacts a large section of society. On the other hand, byelaws are scientific or engineering requirements to ensure safety. Rationales to update a plan need to be compelling and comprehensive.[25] Scientific innovation alone is sufficient to justify updating the byelaws. In this vein, the public are less likely to engage in byelaw reform than planning reform, because they view it as a complicated or scientific venture that needs specific knowledge.

Justice arguments

As mentioned above, the role of a Town and Country (or Urban and Regional) Planner is preparing existing land use maps, based on true information on the ground. The planner is then responsible for communicating with all stakeholders: State departments, federal agencies, "prominent non-officials" including business leaders and elected representatives, and the public; gathering visions and developmental needs. The third step requires the planner to forecast growth and use that information to spatially present a roadmap for the next few years in the form of a "comprehensive" plan.[26] Plans concern everyone, as development that follows the plan can impose negative spillovers onto the community.[27] Most of the impacts in a plan are drawn on a map, (allowing members of the public to see visuals and correlate information with their understanding of the neighbourhood). Often, residents also have the most accurate knowledge about their neighbourhood.[28] Therefore, if given the opportunity, public participation in planning leads to better outcomes. This is why the public is often motivated to participate in plan updates.

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[25] Altshuler, Alan. "The Goals of Comprehensive Planning." *Journal of the American Institute of Planners* 31, no. 3 (August 1, 1965): 186–95. https://doi.org/10.1080/01944366508978165.

[26] "Model Town and Country Planning Act." New Delhi: Town and Country Planning Organisation, 1962. GIPN-S2-I-Health/62.

[27] Moore, 1978.

[28] Forester, 1988.

The public does not participate with the same interest in building byelaw changes. Unlike plan updates, byelaw changes do not need accompanying visuals, and can be published as text in the newspaper. The technical-sounding text of the byelaws alienates the general public, who often struggle to understand the implications of the change upon reading it. The legitimacy of the state government generally means that even professional stakeholders are less likely to scrutinize updates to byelaws. For example, the amendments to the GLDBCR in 2019 received just one suggestion from the Indian Institute of Architects. Painting the GLDBCR are "mere byelaws" and publishing only the changed text resultantly limits suggestions to the GLDBCR, excluding public knowledge that may lead to better outcomes.

The most concerning contradiction of the GLDBCR is the potential infringement on Municipal and Panchayat powers to plan and regulate their own settlements. These powers were devolved through the 73rd[29] and 74th Constitutional Amendment Acts of 1992. By 1992, the Government of India believed a three-tiered governance structure, with local issues concentrated with accountable local government, is beneficial for India's holistic growth.[30] Had the federal government and Parliament continued to believe that local authorities lacked the capacity to adequately discharge these responsibilities, the elected representatives from all the states would not have passed this Constitutional Amendment with a super majority.

Technical arguments

The GLDBCR's one-size-fits-all model for planning and building regulations can lead to problems. This approach does not account for socio-economic disparities and diverse developmental needs across different geographies within the state.

Proposals for and suggestions to byelaws, need to come from experts in the field of engineering and architecture, who are at the forefront of research and the profession. The sub-committee for the 2022 GLDBCR

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[29]   The 73rd Constitutional Amendment Act, (1992).
[30]   The 74th Constitutional Amendment Act, (1992).

committee regrettably lacked this expertise, comprising real estate developers, members of the chamber of commerce, the director of municipal administration, director of panchayat, one engineer and one architect, nominated by the respective institutes. The 2022 amendments include removal of road-right of way restrictions and allow for constructions in hazardous areas. Both these suggestions made in the absence of any technical justification indicate that the sub-committee did not have the requisite knowledge to take an appropriate stance on the amendments.

Finally, the GLDBCR assigns the Chief Town Planner of the state as the authority for deciding whether a project is compliant with the byelaws and DCR. A planner may be able to handle appeals to DCR, as it is a matter of planning theory and forecast. But a planner with a background in economics or geography would not have the technical expertise to arbitrate on byelaws. This is a major technical issue emerging from the GLD Act and GLDBCR reforms.

Who benefits from GLDBCR?

Why did the Goa Assembly act in contravention of this constitutional mandate 16 years later in 2008? Veteran journalist Sandesh Prabhudesai gives us the answer in his book *Ajeeb Goa ki Gajab Politics*.[31] 90% of Goan politicians in the assembly cohort of 2017-2022, were directly or indirectly involved in the real estate industry. Some are civil contractors, or developers, others have shares and investments in local real estate firms.

The GLD Act and the subsequent GLDBCR originated from a request made by groups that represent the real-estate industry, one of which is the Confederation of Real Estate Developers of India (CREDAI). CREDAI's objectives are surprisingly similar to the statements and objects of the bill. CREDAI (established in 1999) puts "streamlining approvals" and "promoting proactive policies for the real estate

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[31] Prabhudesai, Sandesh. *Ajeeb Goa's Gajab Politics*. Repro Books, 2022.

profession" as its core objectives.[32] CREDAI and other local industry groups have aggressively pushed the agenda of de-regulating the construction industry, and creating a "single window system."[33] CREDAI's argument treats housing, construction and land as a commodity.[34] In doing so, it ignores the environmental and social costs of public health and well-being that planning and building reforms protect against.[35]

Controversial amendments to the GLDBCR

The Regional Plan for Goa 2021 (RPG-21) was finalized in 2009. This plan was a broad-brush plan applied across the state of Goa.[36] The GLDBCR came up within a year of application of RPG-21. The first rules prepared under the GLD Act largely codified the broad DCR stipulated in RPG-21 as well as the byelaws from the statutes that it replaced. The GLDBCR remained unchallenged for the next 12 years. Architect groups often buzzed with queries about the complicated nature of some clauses in the statute. A few notable planners like Edgar Ribeiro, retired chief planner of the TCPO and Vinayak Bharne, associate professor at USC often cautioned real estate stakeholders at conferences of the murky nature of the GLDBCR.[37] But their voices were a minority, and the GLDBCR remained uncontested.

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[32] CREDAI NCR. "About CREDAI National," November 1, 2002. http://www.credaincr.org/about_credai_national.php.

[33] Roy, Ruchira. "CREDAI Demands Single Window Clearance System to Speed up Approval Processes." *The Economic Times*. July 20, 2012. https://economictimes.indiatimes.com/wealth/personal-finance-news/credai-demands-single-window-clearance-system-to-speed-up-approval-processes/articleshow/15057041.cms.

[34] Ostrom, Elinor, and Daniel H Cole. *Property in Land and Other Resources.* Lincoln Institute of Land Policy, 2011.

[35] Freilich, Robert H., and Bruce G. Peshoff. "The Social Costs of Sprawl." *The Urban Lawyer* 29, no. 2 (1997): 183–98.

[36] Nielsen, Kenneth Bo, Solano Da Silva, and Heather Bedi. "Land Use Planning, Dispossession and Contestation in Goa, India." *Journal of Peasant Studies* 47, no. 6 (2020): 1301–26.

[37] Ribeiro, Edgar F. "Architects Need Freedom" *Panel Discussion on Architecture and Sobit Goem.* Goa 365. February 2, 2019, accessed December 22, 2022. https://goa365.tv/general/E/architects-need-freedom-edgar-ribeiro/goa365.tv/general/E/architects-need-freedom-edgar-ribeiro/05974.html.

This changed when Chandrakant Kavlekar, the Minister for Town and Country Planning constituted a sub-committee to study and propose amendments to the GLDBCR in 2021. Kavlekar personally requested an amendment to regularize unauthorized constructions larger than 500 square meters in area.[38] The sub-committee statutorily consisted of bureaucrats and professional representatives. However, anthropologist and indigenous rights activist Sebastiao Rodrigues alleges that the professional representatives had vested interests.[39] Rodrigues states that the representative of CREDAI already is an interested party. Further, he alleges that the nominated representatives of the Goa Chamber of Commerce and Industry, the Institute of Engineers and the Indian Institute of Architects were cherry-picked and their primary business was not in the professional / consulting sphere, but rather in real estate development.[40]

The draft clauses of the GLDBCR were published in a regional newspaper and made available for scrutiny at the office of the chief planner of Goa in Panaji. Unlike planning consultation, spatial implications, presentations and even copies of the amendments were not shared with residents or local governments.[41] The amendments proposed unscientific sweeping changes across the board. From devising a process to regularise illegal construction to allowing golf-courses, residential schools, film-cities and other development activities into Goa's fragile agricultural land. The sweeping amendments threatened to render the zoning maps prepared as a part of plans irrelevant. Because the GLDBCR was applied across the state, DCR prepared in plans by PDAs or otherwise, which followed a systematic process, would be overruled

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[38] Kavlekar, Chandrakant. "Note on Regulations," June 7, 2021.

[39] Rodrigues, Sebastiao. "When State Turns Scam: Curious Case of Goa TCP Amendment 2022." *Bharat Mukti Morcha* (blog), September 5, 2022. http://bharatmukti.blogspot.com/2022/09/when-state-turns-scam-curious-case-of.html.

[40] An RTI filed in this matter seeking details as to the co-opted members of the steering committee was not provided by the Government. The insufficient reply has been appealed.

[41] Silva, Cruz. "Objection to the Proposed Amendments to the Goa Land Development and Building Construction Regulations," September 26, 2022.

immediately![42] Ribeiro's warning[43] of the potential of sweeping unscientific reforms by the mere tweaking of a few sentences almost came true. They did not, largely because of an active civil society that opposed these activities vehemently.[44]

Goans mobilized in large numbers to protest the amendments, spurred by a multi-pronged awareness campaign orchestrated by Goencho Avaaz, Goa Foundation, Goa Bachao Abhiyan, Goyche Fudle Pilge Khatir and the Federation of Rainbow Warriors.[45] The consolidated effort, along with the assistance of opposition legislators Viresh Borkar and Cruz Silva resulted in over six thousand objection letters from citizens during the four-week consultation process. Not one professional came out publicly in support of the amendments.

In July 2023, the 2022 amendments were passed with minimal changes, the Golf Course provision was omitted, as was the extra height to certain projects. The dilution of subdivision regulations, removal of minimum right-of-ways for projects under 180 housing units and allowing 1000 sqm construction in agricultural areas were approved, opening massive swathes of Goa's formerly protected land to development.

Conclusion

The introduction of the GLD Act and the GLDBCR "reforms" hijacked planning in Goa. This is not the first attempt by the state to use its credibility to push vested interests and commodify land. Neilsen et al documented similar activities by similar actors during the preparation

[42] Noronha, Tahir. "Goa's Zoning Code Amendments." Activism (blog), September 24, 2022. https://tahir.pl/2022/09/24/goas-zoning-code-amendments/.

[43] Ribeiro "Architects Need Freedom" 2018.

[44] Souza, Gerard de. "Facing Flak, Goa Minister Vishwajit Rane Scraps Controversial Zoning Amendments." Hindustan Times. September 26, 2022. https://www.hindustantimes.com/india-news/facing-flak-goa-minister-vishwajit-rane-scraps-controversial-zoning-amendments-101664212279675.html.

[45] Miranda, Karsten. 'State-Wide People's Action against TCP Amendments, Throwback on RP Agitation.' *O Heraldo.* Sep 26, 2022. https://www.heraldgoa.in/Goa/Statewide-people's-action-against-TCP-amendments-throwback-on-RP-agitation/194449.

of RPG-21.[46] By mixing planning regulations and building byelaws, administrators were able to approach development controls as a technical subject and tweak them outside of the participatory frameworks required for updating a statutory plan.

Forester, making a justice argument cautions against the political nature of planning and advocates a form of planning that is conscious of misinformation and jargon, labelled as "progressive planning." In this case, the GLD Act and GLDBCR amendments did not align with Forester's vision of progressive planning.[47] The presentation of planning changes as building byelaws, the absence of presentations to the public, and the failure to provide correspondences of the expert subcommittee for scrutiny, highlight a departure from the principles of progressive planning. The unscientific and sweeping changes proposed by the amendments, from regularizing illegal constructions to allowing diverse development activities in fragile agricultural lands, reflect a disregard for the participatory frameworks that were a part of the existing plans in Goa.

The public's active resistance, manifested in over six thousand objection letters and widespread protests, played a pivotal role in highlighting some of the extreme provisions in the amendments. However, the minimal changes accepted during the scrutiny process paint public consultation as tokenistic,[48] underscoring the challenges of resisting such powerful institutional manoeuvres.

The GLD Act and GLDBCR "reforms" showcase the vulnerabilities of planning in the face of power.[49] The mixing of planning regulations and building byelaws now allow administrators to treat development controls as a technical subject, sidestepping the participatory frameworks essential for genuine planning updates. This departure raises concerns about the scientific soundness of centralizing functions that demand distinct and often incompatible expertise.

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[46] Nielsen et al (2020).

[47] Forester (1988).

[48] Arnstein, 1969.

[49] 49 Forester, 1988.

Moreover, the centralization of these functions within state government agencies contradicts the constitutional mandate for local governments to handle planning activities. By applying these regulations uniformly across the entire state, the government undermines representative and participatory governance. Plans developed through participative processes are at risk of being overruled by non-participative instruments like the GLDBCR, leading to a potential erosion of community-driven planning initiatives.

The 2022 GLDBCR amendments serve as a stark reminder of the fragility of a single-window system and the profound impact minor regulatory changes can have on planning policy. This episode not only challenges the perception of government overregulation but also serves as a cautionary tale about the disproportionate influence a select group can have on agenda setting,[50] overshadowing planning processes and trivializing public participation. If we adhere to Forester's ideas of progressive planning,[51] this incident exemplifies a significant departure from the envisioned principles of just, inclusive, and transparent design and development.

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[50] Barach and Baratz (1962).

[51] Arnstein (1969).

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DESIGNING FOR PUBLIC GOOD: RE-THINKING APPROACHES TO AUTOMATION IN COURTS

BY DONA MATHEW & URVASHI ANEJA

- The essay discusses the potential of AI and digital technologies to transform the Indian judiciary arguing that AI could automate tasks, improve efficiency, and reduce case backlogs.

- It reflects on the ethical considerations and the intersection between design and justice when using AI in the justice system.

- It also examines AI's potential risks and benefits in the justice system.

IS AI IN EARLY STAGE OF IMPLEMENTATION IN INDIAN COURTS?

Yes. Furthermore, AI seeks to support human decision-making and automate repetitive tasks.

POTENTIAL PROBLEMS AND RISKS

- Misuse of technology
- Data protection & Privacy
- Lack of Accountability
- Concerns over fairness with respect to mechanisms for procurement

EXISTING AI APPLICATIONS

- Translation tools
- Research assistance tools, and
- AI-enabled Lok Adalats

RECOMMENDATIONS FOR RESPONSIBLE AI ADOPTION

- Participatory design via community-led design
- Skill development through capacity building
- Transparency of data through purposeful data openness

JUSTICE adda   KOKUM

3. Designing for Public Good: Re-thinking Approaches to AI in Courts

Urvashi Aneja and Dona Mathew

Introduction

ARTIFICIAL INTELLIGENCE (AI) in Indian courts is at a nascent stage, with a distinct likelihood of further and more expansive adoption. Many tools are already available and in use by courts and lawyers in other parts of the world,[1] and the clear centrality of digital technologies to India's policy vision[2] [3] suggests that the support and usage of such tools will increase. While emerging technology is poised to improve court experience and justice delivery, the incremental approach to AI, has by default prioritised the needs of certain actors like judges and lawyers. There is scope for expanding the use of AI to other stakeholders in the justice system, but this must take place in an environment of careful innovation and due regard to institutional structures and actors.

This essay adopts a design justice framework[4] to discuss the landscape of automation in the Indian judiciary, from a problem-framing and development stage perspective. Very few people participate in design

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[1]   Arghya Sengupta et al., "Responsible AI for the Indian Justice System – A Strategy Paper," *Vidhi Centre for Legal Policy* (blog), April 15, 2021, https://vidhilegalpolicy.in/research/responsible-ai-for-the-indian-justice-system-a-strategy-paper/

[2]   NITI Aayog, "Responsible AI #AI for All: Approach Document for India Part 1," Policy Paper (Delhi: NITI Aayog, 2021).

[3]   PIB, "India Takes over as Council Chair of Global Partnership on AI (GPAI)," November 21, 2022, https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1877739

[4]   Sasha Costanza-Chock, D*esign Justice: Community-Led Practices to Build the Worlds We Need.* (The MIT Press, 2020), https://doi.org/10.7551/mitpress/12255.001.0001

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processes, and people who are most adversely affected by design decisions tend to have the least say in them.[5] We argue that the current design scenario is one of organised irresponsibility,[6] and that AI-innovation in the judicial system should centre on 'ethics of care',[7] particularly community-led design, capacity strengthening and purposeful openness.[8]

Artificial intelligence in Indian courts

Although the use of AI in courts is at a nascent stage, the trajectory of research and development in this space indicates that the stage is being set for greater adoption. There are three well-known, but hardly documented post-deployment use cases of AI in Indian courts, the translation tool Supreme Court Vidhik Anuvaad Software,[9] the Supreme Court Portal for Assistance in Court's Efficiency[10] and AI-enabled Lok Adalats in Rajasthan and Maharashtra.[11] The level of sophistication of these systems is unknown. Additionally, initiatives to build tools for improving access to justice[12] are under development. For example, eLegPredict is a prototype for a case prediction tool.[13]

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[5] "Design Justice Network Principles," Design Justice Network, accessed December 29, 2022, https://designjustice.org/read-the-principles

[6] Ulrich Beck, *Risk Society: Towards a New Modernity*, trans. Mark Ritter, 1st ed. (London: SAGE Publications, 1992).

[7] Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass.: Harvard Univ. Press, 1982).

[8] Urvashi Aneja and Dona Mathew, "Smart Automation and Artificial Intelligence in India's Judicial System: A Case of Organised Irresponsibility?" (Goa: Digital Futures Lab, n.d.).

[9] Supreme Court of India, "Press Release," November 25, 2019, https://main.sci.gov.in/pdf/Press/pressreleaseforlawdaycelebratoin.pdf. Accessed 28 December 2022.

[10] "CJI Launches Top Court's AI-Driven Research Portal," The Indian Express, April 7, 2021, https://indianexpress.com/article/india/cji-launches-top-courts-ai-driven-research-portal-7261821/

[11] ANI, "India's First Digital Lok Adalat Registers over 69 Lakh Cases across Rajasthan, Maharashtra," ANI News, August 13, 2022, sec. National, https://www.aninews.in/news/national/general-news/indias-first-digital-lok-adalat-registers-over-69-lakh-cases-across-rajasthan-maharashtra20220813205443/

[12] "OpenNyAI: Collaborative Open AI for Justice - Open AI for Justice," accessed August 28, 2024, https://opennyai.org/.

[13] Sugam K Sharma, Ritu Shandilya, and Swadesh Sharma, "Predicting Indian Supreme Court Judgments, Decisions, or Appeals," *Statute Law Review* 44, no. 1 (April 1, 2023): hmac006, https://doi.org/10.1093/slr/hmac006.

The introduction of AI in Indian courts can be traced to the eCourts project in the early 2000s. Set up in three phases, eCourts laid the building blocks for the creation of hardware infrastructure, the digitization of records and introduction of case management systems. Furthermore, the Standard Operating Procedure for digitization released by the Supreme Court will standardize data entry and significantly ease the cleaning of raw judicial data.[14] Since Indian legal English is quite distinct, it requires the creation of new benchmarks for natural language processing. E.g. judicial data is being used for legal language benchmarking[15] and document corpus for regional legal languages.[16] These developments indicate the stage is set for the adoption of AI. The eCourts project phase three also envisions an ecosystem approach to judicial innovation,[17] where public agencies create the first layer of data registries, which opens up the market to different players who can innovate upon these open-source databases. This 'Justice Stack'[18] model aims to foster innovation in the judicial sector. Phase three refers to data analytics in judicial processes, citing examples such as machine-readable documents and 'intelligent scheduling' for effectiveness and time optimisation.[19]

This momentum in adoption of advanced technologies in courts must be read in the context of public functionaries advocating for the benefits of AI, albeit with a cautious approach. Executive and judicial representatives have spoken of the merits of AI in the justice system and have reassured the public that AI will not replace human

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[14] SC eCommittee, "Standard Operating Procedure for Digital Preservation" (eCourts, September 24, 2022), https://ecommitteesci.gov.in/document/digital-preservation/.

[15] Prathamesh Kalamkar, Janani Venugopalan Ph. D., and Vivek Raghavan Ph.D, "Indian Legal NLP Benchmarks : A Survey" (arXiv, 2021), https://doi.org/10.48550/ARXIV.2107.06056.

[16] Arnav Kapoor et al., "HLDC: Hindi Legal Documents Corpus" (arXiv, 2022), https://doi.org/10.48550/ARXIV.2204.00806.

[17] SC eCommittee, "Standard Operating Procedure for Digital Preservation."

[18] Amitabh Kant, Preeti Syal, and Desh Gaurav Sekhri, "Time for a Justice Stack," *Financial Express* (blog), July 14, 2021, https://www.financialexpress.com/opinion/time-for-a-justice-stack/2289629/

[19] eCommittee, Supreme Court of India, "Digital Courts Vision and Roadmap: Phase III of the eCourts Project," Vision Document (Delhi: Supreme Court of India, 2022), 37.

decision-making.[20][21][22] Overall, the trajectory of building interoperable databases and official acknowledgement of the merits of AI points to a willingness to incrementally adopt AI for courts in India.

The Design Process

In this context of official acceptance of AI as a solution for problems of the justice system, we explore the design of AI solutions at two stages — problem-framing and product development. We ask a few key questions around how the story is unfolding in India — who is framing problems, what are these problems, who is designing and developing solutions?

Problem-framing

Problem framing for technological solutions is undertaken by many individuals and institutions who have a stake in the justice system. For instance, the executive funds and monitors the eCourts project, while the eCommittee of the Supreme Court, composed of members of the judiciary and representatives from the Bar and government, manages implementation. In 2021, an AI Committee was formed under the eCommittee to formulate the AI policy for courts. IT and AI Committees of High Courts and Central Programme Coordinators from district courts coordinate with the SC eCommittee to operationalise the eCourts project across all levels of courts in the country. Some policy and civic-tech organisations have acted in an advisory capacity in framing the Phase 3 vision of the eCourts project,[23] and civil society organisations and industry representatives are also part of sub-

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[20] IANS, "PM Pitches World-Class Judicial System Powered by AI — ET Government," ETGovernment.Com, accessed December 28, 2022, https://government.economictimes.indiatimes.com/news/digital-india/pm-pitches-world-class-judicial-system-powered-by-ai/80743006

[21] "CJI Bobde Calls for Use of Artificial Intelligence in Justice System," *Hindustan Times,* November 22, 2019, https://www.hindustantimes.com/india-news/bobde-calls-for-ai-use-in-justice-system/story-z9kezUTrcgs6GDZRARlQML.html

[22] "AI Can Help Reduce Backlog Of Pending Cases: Law Minister Rijiju," *Outlook*, November 27, 2021, https://www.outlookindia.com/miscellaneous/ai-can-help-reduce-backlog-of-pending-cases-law-minister-rijiju-news-402853

[23] eCommittee, Supreme Court of India, "Digital Courts Vision and Roadmap: Phase III of the eCourts Project."

committees of the eCommittee. Therefore, the executive, judiciary, the Bar, policy organisations, civic-tech organisations and technologists are setting the agenda and identifying problem areas for technological interventions. Of course, this is not an exhaustive list and there may be closed-door consultations on digitisation of courts with civil society, law firms and intergovernmental organisations. But as far as AI for courts is concerned, the actors listed earlier are those most prominent in the public domain.

The absence of certain stakeholders, such as court administration staff, academicians, and litigants from marginalised communities, is a concern in these processes. Although the phase 3 document was put up for public consultations, the output from these deliberations is unknown. This 'exclusion by design' prioritises problems of vocal actors, particularly judges and lawyers, while others are spoken for, instead of being part of the dialogue.[24]

Problem-framing is primarily around the issue of pendency (all cases instituted but not disposed) and delays (an instituted case that has taken longer than it should, to be disposed of) in the justice system. These are usually addressed by filling up judicial vacancies, engaging more court staff, setting up tribunals and special courts and redirecting specific types of cases to alternate dispute resolution platforms. 'Docket explosion,' that is, the demand for justice surpasses supply of judges and courts, is often cited as one of the reasons for pendency and therefore, solutions such as dispute mitigation and avoidance are suggested.[25]

The framing of the pendency problem as a demand and supply issue lends itself to technology solutions, wherein innovations can save judicial time and hence make the system more efficient. But pendency and delays are determined by many other factors such as court culture which normalises recurrent adjournments, the vested interests of

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[24] Linda Alcoff, "The Problem of Speaking for Others," *Cultural Critique*, no. 20 (1991): 5, https://doi.org/10.2307/1354221

[25] R Krishnamoorthy, "Welcome by the Advocate General," *The Law Weekly*, 1986.

powerful litigants in dragging out cases and socio-economic factors that determine litigants' ability to put up appearances. Scholars have argued that the Supreme Court is currently going through 'docket exclusion' and not 'docket explosion,' as marginalised communities do not have access to courts.[26] And as recently pointed out by judges, increasing the number of judges does not address pendency problems.[27] This broad-brush approach to pendency as a problem and siloed solutions such as automating listing or using templates for judgements leads to a 'managerialization of justice'.[28] Justice delivery is viewed as an assembly line,[29] permitting a technology-first approach, where improving efficiencies of individual actors is presumed to have a net positive effect on the entire system. There is also a tendency to look at 'justice in numbers' --- by the number of cases disposed of and accused convicted. The focus on pendency reduces the conversation to clearance rates, incentivising supply-side solutions such as increasing judicial strength and directing to alternative dispute resolution systems, with little improvement in how the justice system functions.[30]

Narratives

Consequent to the identification of pendency as the root cause of many problems in the judicial system, a narrative has developed over the years which places a premium on efficiency, speedy justice (timesaving) and risk avoidance. These values are reflected in policy documents as well as public platforms where officials address judicial

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[26]   Prof. G. Mohan Gopal, "Supreme Court and the Aam Aadmi," *Frontline*, April 16, 2013, sec. Lead Story, https://frontline.thehindu.com/cover-story/supreme-court-and-the-aam-aadmi/article4619585.ece

[27]   Ashish Tripathi, "Doubling Number of Judges No Solution to Pendency of Cases, Says Supreme Court," *Deccan Herald*, November 29, 2022,https://www.deccanherald.com/india/doubling-number-of-judges-no-solution-to-pendency-of-cases-says-supreme-court-1166786.html

[28]   Renze Salet and Jan Terpstra, "Criminal Justice as a Production Line: ASAP and the Managerialization of Criminal Justice in the Netherlands," *European Journal of Criminology* 17, no. 6 (November 2020): 826–44, https://doi.org/10.1177/1477370819828332

[29]   Argersinger v. Hamlin (United States Supreme Court 1972).

[30]   Sudhir Krishnaswamy, Sindhu K Sivakumar, and Shishir Bail, "Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches," *Journal of National Law University Delhi* 2, no. 1 (August 2014): 1–25, https://doi.org/10.1177/2277401720140101

reforms. They tend to frame the use of emerging technologies as necessary and transformational for justice delivery.[31] There is a strong emphasis on the role technology can play in improving the efficiency of courts.[32]

The eCourts project document also talks about these values.[33] Concepts of time and cost optimisation have, over the course of many years, been integrated with the language of justice. Alien to legal principles and theories, they reflect the involvement of stakeholders from diverse disciplines such as business administration in judicial reform processes.

Product design and development

While problem-framers are also contributing to designing solutions, actual innovation and design is done by legal-tech startups and government technical organisations like the National Informatics Centre. These technology experts often work in consultation with other stakeholders like judges and lawyers. For example, ManCorp Innovations Lab which designed the SUPACE research tool conducted a conference with 6000 judges from across India to understand problems that judges face in courts and develop technology solutions.[34]

Civic-tech organisations and technology companies are also active in creating the building blocks for AI tools, including language corpus and benchmarks. Academic institutions are developing tools for summarising and analysing judgements and predicting the outcome of judgements. Many of these initiatives by non-State actors are funded

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[31] Amitabh Kant and Desh Gaurav Sekhri, "The Judiciary's Use of AI Will Be Transformative," Financialexpress, June 17, 2021, https://www.financialexpress.com/opinion/the-judiciarys-use-of-ai-will-be-transformative/2272714/

[32] eCommittee, Supreme Court of India, "Digital Courts Vision and Roadmap: Phase III of the eCourts Project," 31.

[33] eCommittee, Supreme Court of India, 26 & 37.

[34] Jelsyna Chacko, "The Integration of Artificial Intelligence in the Indian Judiciary: In Conversation with CEO of MCIL, Manthan Trivedi," *Bar and Bench — Indian Legal News*, July 3, 2021, https://www.barandbench.com/interviews/integration-artificial-intelligence-indian-judiciary-mcil-ceo-manthan-trivedi-interview

by philanthropic foundations and investment firms with the vision of enabling access to justice. Although, diverse actors and narratives are driving the adoption of AI in Indian courts, many stakeholders are excluded from these processes. Moreover, in the absence of any guard rails, and in the event of harms arising out of the use of AI, holding individual decision-makers accountable becomes difficult.

Organised irresponsibility and the missing ethics of care

In the late eighties, Ulrich Beck theorised that the contribution of diverse actors to a system increases the possibility of risk, as harms caused by individual actions have a magnified cumulative effect.[35] He termed this 'organised irresponsibility.' Because there are many agents involved, it is difficult to attribute individual liability as isolated harmless factors may cause harm when they come together in certain circumstances. Having gained prominence in the context of environmental harms,[36] this theory can also be transplanted to technological progress. The adoption of technology in any system is the result of decisions by multiple actors, including but not limited to policy makers, data scientists, developers and designers, and subject matter experts. Compounded by a 'not my job' approach, where a subject-matter expert does not and cannot anticipate the implications of the actions of a technologist, users harmed by technology are left with inadequate grievance redressal forums, as there is no clear path as to who will address or explain a harm.

In the context of India, the potential for risk is also aggravated by the absence of accountability mechanisms when it comes to data protection and deployment of AI in courts. There are no laws guiding legitimate use of judicial data nor guidelines for procuring AI in judicial systems. This means that the use of judicial data is fair game for any actor and can also be misused for private gain. There are no procure-

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[35] Beck, *Risk Society*.

[36] Ulrich Beck, *Ecological Politics in an Age of Risk*, trans. Amos Weisz (Cambridge, UK: Polity Press, 1995).

ment directions for courts — in Jharkhand, the decision to deploy an AI-enabled research tool in the High Court was retrospectively ratified by the Cabinet.[37]

In such situations, even the incremental, if not clandestine, adoption of AI has the potential to cause harm. These can be individual harms such as violation of the right to privacy, for example, through data extraction tools used on legal documents for identifying complainants in 498A IPC cases. They can be collective harms caused because of group affiliations like gender or caste. In the US, risk assessment tools were found to have wrongly allocated a higher risk of recidivism (tendency to reoffend) to Black defendants, as opposed to White defendants.[38] Errors in algorithms can also cause financial loss. For example, in 2015, an error in an alimony calculating software (an electronic form) led to incorrect calculations of assets in divorce cases in the UK.[39] Surprisingly, over the course of a year, no one detected the error, even as it was used for training and viewed by judges, lawyers, litigants, paralegals and scholars. When it was pointed out by a lay expert assisting litigants, the Ministry of Justice rectified the software without any public announcement admitting the error.

This example shows the problem with parachuting technological solutions on users who are unfamiliar with the intricacies of technology. This information asymmetry often leads to a diminishing of agency where users are not equipped to question the technology they use. The inability to understand outcomes causes distrust, eroding public legitimacy in an institution which is already reeling under a legitimacy crisis.[40]

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[37] "Cabinet Decisions: DA for Government Employees Increased by 3 Percent -," *Reporter Post*, accessed December 28, 2022, https://reporterpost.in/article/jharkhand/4949/cabinet-decisions-da-for-government-employees-increased-by-3-percent/

[38] Julia Angwin et al., "Machine Bias," *ProPublica*, May 23, 2016, https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing

[39] Owen Bowcott, "Revealed: Divorce Software Error Hits Thousands of Settlements," *The Guardian*, December 17, 2015, sec. Law, https://www.theguardian.com/law/2015/dec/17/revealed-divorce-software-error-to-hit-thousands-of-settlements

[40] Anuj Bhuwania, "The Crisis of Legitimacy Plaguing the Supreme Court in Modi Era Is Now Hid-

In an institution as public-facing as justice delivery, where intimate details of people's lives play out in courts daily, technology solutions designed around the 'ethics of care'[41] are crucial to ensure that multiple competing voices are meaningfully considered in decision-making. This would also be conducive to creating an environment where decision-making is more transparent and communities that can be harmed by algorithms are part of the design process. Joan Tronto identifies 'attentiveness' as the first virtue of care.[42] Since attentiveness requires caring about the needs of others to respond to them, we build on this to propose a three-fold framework for operationalising design justice in the context of AI solutions for courts, which can also be extended to technology solutions.

Community-led design

While inclusive and participatory processes are mainstream on paper, meaningful participation from all corners is tough to achieve. There is always a possibility of excluding a perspective, making wide-based deliberations inadequate. Additionally, the introduction of technical solutions also excludes participation of those who are unfamiliar with the nuances of technology. This parachuting of ideas often overlooks solutions that communities intuitively build around local problems,[43] diminishing indigenous knowledge and forcing a top-down approach.

Community-led design and problem framing is key to ensuring that competing voices find a place at the table and can vocalise their needs, instead of policymakers and designers coming in as experts to solve problems. The point is to afford importance to people's lived experiences in key decision-making processes. There are multiple ways

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den in Plain Sight," Scroll.In, December 1, 2020, https://scroll.in/article/979818/the-crisis-of-legitimacy-plaguing-the-supreme-court-in-modi-era-is-now-hidden-in-plain-sight

41   Gilligan, *In a Different Voice*.

42   Joan C. Tronto, "Care as a Basis for Radical Political Judgments," *Hypatia* 10, no. 2 (1995): 144, https://doi.org/10.1111/j.1527-2001.1995.tb01376.x

43   John Tharakan, "Indigenous Knowledge Systems for Appropriate Technology Development," in *Indigenous People,* ed. Purushothaman Venkatesan (InTech, 2017), https://doi.org/10.5772/intechopen.69889

to operationalise community-led design. For example, user-centric research can be one way of ensuring that technology solutions cater to the needs of end-users. The human-centered design approach for access to justice demonstrates how engagement with all stakeholders can help identify key intervention points, to make courts more user-friendly for self-represented litigants. For example, in their interactions with co-users of court systems — litigants, their family members and lawyers, and researchers discovered user preferences and dislikes. Themes that emerged included trade-offs between technology and high-touch human services and wanting to know lots of information versus avoiding too much detail.[44] Based on the research, concrete recommendations emerged to make courts more user-friendly, including redesigning paper-work to be visually clear and creation of online preparatory tools for people to prepare for their court visits and complete their tasks correctly.[45]

Capacity-strengthening

The legal community is often accused of being composed of 'tech dinosaurs'[46] — judges and litigation lawyers who do not understand technology and prefer working in established ways. This is not to discount the tech-evangelists in the community who are perhaps too enthusiastic about the functional merits of technology in courts. With the digital divide impeding access[47] and a critique of virtual courts, it is the former group which is more vocal. In 2020, post the national lockdown in view of Covid-19, Bar associations in India protested continuance of virtual hearings, highlighting inequitable

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[44] Margaret Hagan, "A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly," *Indiana Journal of Law and Social Equality* 6, no. 2 (May 22, 2018), https://www.repository.law.indiana.edu/ijlse/vol6/iss2/2

[45] Hagan.

[46] Finextra, "Tech-Dinosaurs Can Still Bite," Finextra Research, April 24, 2018, https://www.finextra.com/blogposting/15285/tech-dinosaurs-can-still-bite

[47] Parliamentary Standing Committee, "103rd Report (Interim) on Functioning of Virtual Courts/Court Proceedings through Video Conferencing," Parliament Committee Report (Rajya Sabha: Parliament of India, 2020).

access to digital devices and connectivity, and a poor understanding of technology among a majority of lawyers and judges.[48]

However, the recourse is not to be dismissive of this distrust in technology but to understand where it stems from. The issue of explainability of AI systems[49], frequent cases of harm and lack of technical knowledge in the legal community makes the adoption of AI-based tools challenging. For example, in 2020, lawyers at the SC had protested the use of automated case listing software which was randomly changing cause lists leading to confusion.[50] There was no explanation for why the software was malfunctioning, creating an information asymmetry where end-users did not understand the technology they used or were subjected to.

This information asymmetry can also lead to an over-reliance on the usefulness of technology or lead to statements that rationalise use of AI-enabled research tools as being harmless and automated decision-making as being harmful. Such an assessment can also be untrue. Legal research tools can be non-uniform in their output, significantly impacting the quality of research. In the US, a study found that two people using the same keyword search on a legal research platform received different results.[51] Similarly, seemingly innocuous translation software can affect litigants' rights if pleadings from a subordinate court are translated incorrectly in an appeal case.

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[48] Akshita Saxena, "'90% Advocates And Lawyers Unaware Of Technology': BCI Chairman Writes To CJI Advising Against Continuation Of Virtual Hearings Post Lockdown [Read Letter]," *Live Law*, April 28, 2020, https://www.livelaw.in/top-stories/90-advocates-and-lawyers-unaware-of-technology-bci-chairman-writes-to-cji-advising-against-continuation-of-virtual-hearings-post-lockdown-read-letter-155917

[49] John A. McDermid et al., "Artificial Intelligence Explainability: The Technical and Ethical Dimensions," *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 379, no. 2207 (October 4, 2021): 20200363, https://doi.org/10.1098/rsta.2020.0363

[50] Prachi Shrivastava, "'Paperless' SC Initiative Still Distant Dream as ICMIS amidst Teething Problems • AORs Insist on Parallel Manual Filing System," *Legally India*, July 11, 2017, https://www.legallyindia.com/home/paperless-sc-initiative-still-a-distant-dream-as-icmis-full-of-teething-problems-aors-insist-on-parallel-manual-filing-system-20170711-8649

[51] Stephanie J Farne, "How Can We Help To Free Legal Research From Algorithmic Bias?," *LLRX* (blog), September 30, 2021, https://www.llrx.com/2021/09/how-can-we-help-to-free-legal-research-from-algorithmic-bias/

To dispel myths around the efficacy of AI and to foreground agency in the technology solutions they use, it is important to strengthen the capacity of all stakeholders in the system. This is closely linked to community-led design, where stakeholders should be facilitated to articulate their needs and choose technology if it is the most appropriate solution for their problem. Initiatives like Agami can collaborate with judicial institutions and civil society organisations to discuss the merits and limitations of AI with stakeholders in the justice system.

Purposeful openness

This point relates to a core building block for AI-enabled court tools — judicial data. Judgements, orders, and decrees are public documents and as per the Digital Personal Data Protection Act, 2023, data processed by the judiciary is exempted from the provisions of the law, except to protect from security breaches. Therefore, there are no restrictions or legitimate use guidelines on how judicial data is used. This leaves publicly available judicial data free for use by anyone for any purpose. While this open data policy is useful for researchers and policymakers, it also allows actors to profit from information in this data. Such use-cases may be detrimental to people's privacy interests including anonymity and autonomy. While the Case Information Management system provides for protection of personal information in sensitive cases, including those related to sexual offences and juveniles, details of other types of cases remain publicly accessible.

Therefore, an open data policy is not universally value-neutral. Some individuals and communities may value secrecy over sharing of data. It is necessary for policymakers to engage with originators of data regarding control over their data, instead of assuming that people are comfortable with sharing their data. In the UK, a public perception survey was conducted to understand people's attitudes towards data use and sharing. While trust in the national health system and in academic researchers using data remained high, there was a marked drop in the public's trust in government and utility companies and their

data practices (Centre for Data Ethics and Innovation 2022).[52] There-
fore, instead of assuming public attitudes around data, policymak-
ers must engage with stakeholders to develop use-based frameworks
around open data.

Conclusion

Courts are interesting places --- they are the seats of adjudication from
where multiple ideas of justice flow. Sometimes justice takes the form
of a settlement, and at other times it is a penalty. But in addition to
final adjudicatory processes, the court complex itself is witness to jus-
tice playing out chapter-by-chapter. Every procedure and activity re-
lated to courts generates large tracts of data and spurs innovative ideas
for automation of court processes. But all co-creators of the formal
justice system should work together to build solutions for their own
vexations and bewilderment with court culture and procedure. Rec-
ommendations for technology solutions that focus on reducing pen-
dency and improving court experience are potentially beneficial, but
a haphazard problem-framing, and solution-design process increases
the chance of harm to individuals and the judicial system.

Instead of plunging headfirst into how AI can solve the judiciary's
problems, it is crucial to adopt an approach supported by the 'ethics
of care' for all stakeholders, underlined by meaningful participation,
capacity strengthening and purpose-driven openness of data. For
a system tasked with the preservation of rights, the adoption of ad-
vanced technologies should be preceded by thoughtful consideration
of problems and a duty to not cause more harm.

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[52] Centre for Data Ethics and Innovation and Department for Science, Innovation and Tech-
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WHAT DOES AZAD MAIDAN TEACH US ABOUT JUSTICE MAKING?

BY SHARADA KERKAR & SIDDHARTH PETER DE SOUZA

- The essay discusses Azad Maidan's transformation from a colonial monument site to a symbol of freedom and resistance, commemorating anti-colonial activists and freedom fighters.

- It highlights Azad Maidan's role in promoting justice through democratic participation, social activism, and public engagement, making it an important space for social movements and grassroots activism.

CRITICAL ROLE OF AZAD MAIDAN:

- **Inclusive Platform:** Azad Maidan facilitates discussions among diverse groups, encouraging inclusive use and easy access

- **Support for Movements:** The space publicizes issues, fosters grassroots solidarity, and is essential for spontaneous gatherings, ensuring the freedom to assemble

- **Community-Centered Justice:** It reflects and supports local interests, builds resilience, and cultivates inter-generational solidarity and new forms of justice expression
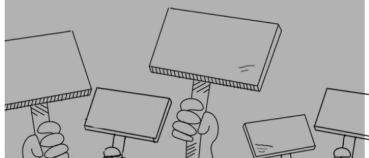
KEY ASPECTS OF JUSTICE MAKING

- **Access:** Proximity, convenience, and comfort of the space for public use
- **Visibility:** Prominence of the space in the city, attracting attention and participation
- **Inclusiveness:** Safe, accessible design accommodating diverse backgrounds and intersectional identities

TRANSFORMING PUBLIC SPACES

- **Grassroots Memorialization:** Art, graffiti, and campaigns like #RostoGoa highlight local issues and serve as visible forms of protest and expression
- **Design and Public Spaces:** Ensuring spatial justice and fostering community ownership through collective reimagining

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4. What does Azad Maidan Teach us about Justice Making?

Sharada Kerkar and Siddharth Peter de Souza

Introduction

AZAD Maidan is one of the most popular protest spaces in the state of Goa. Formerly a square that adorned the statue of the Portuguese general Alfonso de Albuquerque, it acquired significance post the liberation of Goa in 1961, when the statue was replaced by a brass monument containing the mortal remains of the anti-colonial activist Tristão de Bragança Cunha.

Today, Azad Maidan also houses a martyr's memorial that was built in commemoration of the freedom fighters who sacrificed their lives in the Goa Liberation movement and is a symbol of activism, dissent, and freedom.

In this essay we explore the role that Azad Maidan played in shaping justice in Goa. Public spaces play a critical role in a society. They allow for democratic participation, encourage local identities to emerge, foster connections between people across ideologies, and enable livelier spaces and communities, which in turn, make it safer and more livable.[1] As spaces that provide platforms for debate and expression of ideas across economic, political, and social lines, they are significant arenas for social movements to bring forward their demands, as well as hold governments in power to account. With this power of shaping discourses around governance, and law, public spaces are also witness to state repression, and violence, particularly due to their capacity to bring people together.

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[1] Priscila Pacheco, "Public Spaces: 10 Principles for Connecting People and the Streets," *TheCityFix* (blog), June 9, 2017, https://thecityfix.com/blog/public-spaces-10-principles-for-connecting-people-and-the-streets-priscila-pacheco/

We will discuss the concept of 'justice making' by contextualizing Azad Maidan. In the second section, we describe Azad Maidan as a hub of resistance as well as discuss attempts to curtail how it functions. The third section will discuss what we understand 'justice making' to be, and how critical spaces like Azad Maidan are to making justice a conversation, not in the abstract but in the everyday ways in which we live and interact.

Hub of resistance(s) morphing over the ages to a space for control and surveillance

The historic grounds of Azad Maidan have witnessed hundreds of agitations and public meetings, right from the Opinion Poll in 1967, Konkani agitation in 1988,[2] to the more recent Goa Bachao Abhiyan in 2006, the anti-Constitutional Amendment Act (CAA) protest, and the Save Mollem campaign during the offset of the pandemic. While the agitations have been largely led by civil society organisations and citizen groups, political parties like the Congress, BJP, and AAP have also used the space to organise large public gatherings.

More recently, the anti-CAA-NPR-NRC protest, brought together several thousand people at the maidan, making it the largest anti-CAA protest in the state. The demonstration was supported by local not-for-profit organisations, the Church, Dalit activists, opposition leaders, students, citizens, and lawyers from Goa, Delhi, and Assam.[3] Initiating the meeting by reading the Preamble, the protesters stated that the CAA, NPR, NRC were 'against the principles of justice, equality, secularism, socialism, and democracy' and termed them as 'tools to persecute minorities.' The meeting was held amid a substantial police

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[2] J Rodrigues, "Memorial for Freedom Fighters Is Resting Place for Beggars and Stray Dogs," *Herald* Goa, June 15, 2015, https://www.heraldgoa.in/goa/na/memorial-for-freedom-fighters-is-resting-place-for-beggars-and-stray-dogs/89809

[3] Lisa Monteiro, "Thousands Turn up at Panaji's Azad Maidan, Vow Not to Provide Information for NPR, Census 2021," *The Times of India*, February 22, 2020, https://timesofindia.indiatimes.com/city/goa/thousands-turn-up-at-azad-maidan-vow-not-to-provide-information-for-npr-census-2021/articleshow/74250357.cms

presence, and plain clothed officers mixed among the attendees. No unpleasant incident arose, all the planned activities were successfully executed, and the crowd dispersed peacefully.[4]

While Azad Maidan has seen numerous lawful protests, and has been a key space for expression, in the recent past, the state has tried to impose restrictions to prevent protests and mass gathering.

Instances of the state's attempt to exercise control and restrict the functioning of Azad Maidan were seen during the Save Mollem campaign, where peaceful protesters including minors were detained during the protests in December 2020. Several citizens were carried around in police jeeps and eventually taken to a police station in North Goa. The police said this was a preventative arrest, and iron-ically, all of this took place on Goa's liberation day, while the then President of India, Kovind was visiting the state.[5]

The Save Mollem campaign is a youth-led initiative to halt three infras-tructure projects — double-tracking of an existing railway line, broad-ening of National Highway (NH) 4A, and a 400-kilovolt (kV) power transmission corridor that passed through the biodiversity hotspots of Bhagwan Mahaveer Wildlife Sanctuary and the Mollem National Park.[6] Save Mollem campaign activists criticized the Goa Police say-ing that for unlawfully detaining the protestors.[7] Environmental ac-tivist of Fridays for Future India, Tanmay Shinde also condemned the FIRs and notices being issued to peaceful campaigners and remarked that, "the State uses brutal force to silence and instill fear."[8]

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[4]   TNN, "Goa: People Throng Azad Maidan, Demand Withdrawal of Citizenship (Amendment) Act," *The Times of India*, December 19, 2019, https://timesofindia.indiatimes.com/city/goa/people-throng-azad-maidan-demand-withdrawal-of-caa/articleshow/72877136.cms

[5]   Herald Team, "Cops Detail Save Mollem Youth," *Herald Goa*, December 20, 2020, https://www.heraldgoa.in/goa/cops-detain-save-mollem-youth/168878

[6]   Sumedha Pal, "Save Mollem Protests: Detention of Youths and Minors on Goa Liberation Day Sparks Outrage," NewsClick, December 21, 2020, https://www.newsclick.in/Save-Mollem-Protests-Detention-Youths-Minors-Goa-Liberation-Day-Sparks-Outrage

[7]   Herald Team, "Amche Mollem Group, Others Criticise Govt for Issuing Summons to GKN Members," *Herald* Goa, April 12, 2022, https://www.heraldgoa.in/goa/amche-mollem-group-others-criticise-govt-for-issuing-summons-to-gkn-members-/188737

[8]   Team.

In a controversial statement made in 2020, the ex-mayor of Panjim, Uday Madkaikar announced that the Azad Maidan grounds should not be allowed for protests and demonstrations, as the protesters litter and damage public property. According to Madkaikar, the chief minister initiated the notion to stop recognizing Azad Maidan as a venue for legal protests.[9] Interviews with local activists in Goa also confirm that seeking permission to protest at the grounds has been made more difficult and cumbersome for the citizens. Further, there have also been instances where protestors have been charged to use the premises, despite subsequent denials from the Corporations of the City of Panjim, leading to discussions that public space is being treated as a private property.[10]

This move by the government is a way to delegitimize people's rights to assembly, participation, and thereby a move to portray protests as a nuisance. However, the primary goal of protest is to disrupt the so-called "prescribed/normal" sociocultural-political order and alter it. It is intrinsically meant to challenge structures of inequality and discrimination. Imposing restrictions on protest sites undermines this aspect of protest and reflects the government's underlying undemocratic nature.[11]

While citizens hold the responsibility to conduct peaceful protests and maintain law and order, it is the duty of the government to uphold Article 19 of the Constitution of India, 1950, that allows every citizen the freedom of speech and expression and the right to assemble in a public place.[12]

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[9] TNN, "'May Have Norms for Protests at Azad Maidan,'" *The Times of India*, December 24, 2020, http://alturl.com/egx35

[10] https://www.heraldgoa.in/Goa/Charges-only-for-events-at-Azad-Maidan-not-for-rallies-protests-CCP-/189043 Thanks to Asawari Nayak for discussions on this point.

[11] Mamta Mantri and Anoop Kumar, "How the State Pushes People's Protests into Designated Spaces to Prevent Them from Being Effective," Scroll.In, January 26, 2022, https://scroll.in/article/1015883/how-the-state-pushes-peoples-protests-into-designated-spaces-to-prevent-them-from-being-effective

[12] S Kumar, "Guide to Lawful Protesting," Nyaaya, 2020, https://nyaaya.org/resource/guide-to-lawful-protesting/

Increasingly, it is not just through law and order that the government has sought to undermine the character of Azad Maidan, it is also by changing the nature of its design. The government engaged in unplanned infrastructural development at the Maidan by building a large ill-conceived lavatory and replacing age-old metal railings with concrete walls. These developments, like most other urban projects in Goa, have been created without proper planning, high-cost overruns, and zero public participation.[13]

Union leader Ajeet Singh Rane, who has led several protests at the maidan has also accused the government of deliberately neglecting the maintenance of the place and creating an unhealthy environment to avoid people's gatherings[14]. While the location of Azad Maidan is central to the city, protesters and shopkeepers situated around the maidan have complained about the busy traffic, pedestrian crowds, lack of proper entry gates, inadequate lighting, lack of security personnel and maintenance staff, and the lack of parking facilities that make it difficult to hold events at the maidan.

Design and landscaping can be used to exacerbate feelings of agoraphobia, or the fear of public spaces and thus silence these spaces of expression.[15]

In doing so, they can create a spatial justice problem where the relations that are at play create possibilities for inclusion or exclusion.[16]

Azad Maidan as a space for Justice making

These ongoing attempts to curtail freedoms at Azad Maidan are deliberate and are designed to make the space unusable, particularly as

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[13] TNN, "The Wanton Destruction of Panaji's Iconic Azad Maidan," *Times of India*, 2017, sec. Goa News, https://timesofindia.indiatimes.com/city/goa/the-wanton-destruction-of-panajis-iconic-azad-maidan/articleshow/56547599.cms

[14] J. Rodrigues, "Memorial for Freedom Fighters Is Resting Place for Beggars and Stray Dogs."

[15] Majdi Faleh, "How City Squares Can Be Public Places of Protest or Centres of State Control," *The Independent*, October 6, 2018, sec. News, https://www.independent.co.uk/news/city-squares-public-places-protest-state-control-tunisia-arab-spring-a8570206.html

[16] Mustafa Dikeç, "Space, Politics and (in)Justice," in *Ségrégation et justice spatiale*, ed. Sylvie Fol, Sonia Lehman-Frisch, and Marianne Morange (Presses universitaires de Paris Nanterre, 2013), 244–64, https://doi.org/10.4000/books.pupo.2153

the spatial qualities and settings of public squares can encourage or discourage protests.

Soja advances that 'spatial justice' can be understood as 'an intentional and focused emphasis on the spatial or geographical aspects of justice and injustice. As a starting point, this involves the 'fair and equitable distribution in space of socially valued resources and the opportunities to use them'.[17]

In this approach, there is a recognition that we are all spatial beings, that space is socially produced, and that there is an interaction over how spaces shape the social and the social shapes the spatial.[18]

Infrastructure plays an important role in facilitating interactions which enable procedural justice, for instance in decision making about a space; distributive justice in ensuring people are treated fairly, and their needs are accounted for; interactional justice in terms of how people relate to each other; recognition of the way in which diversity of views is represented and made visible and, finally, care, to ensure that spaces are resilient as well as attentive to those who are marginalized by the space.[19]

Focusing on infrastructure as not just a spatial category but as a socio-political one is key because it enables us to examine the choices that are made in terms of its location, its access, its maintenance, and the ways in which it shapes and influences the life around it.[20]

To develop the publicness of a place, it becomes necessary to understand that those who use it may have differential capabilities. This is because individuals and communities who use these space hail from diverse social and political backgrounds, and therefore need to be ac-

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[17] Edward Soja, "The City and Spatial Justice," JSSJ, 2009, https://www.jssj.org/wp-content/uploads/2012/12/JSSJ1-1en4.pdf

[18] Edward Soja.

[19] Setha Low, "Social Justice as a Framework for Evaluating Public Space," in Companion to Public Space, ed. Vikas Mehta and Danilo Palazzo (London ; New York: Routledge Taylor & Francis Group, 2020).

[20] Susan Leigh Star, "The Ethnography of Infrastructure," *American Behavioral Scientist* 43, no. 3 (November 1999): 377–91, https://doi.org/10.1177/00027649921955326

counted for to ensure equity in terms of how democratic engagements are designed.[21]

Harvey argues that the right to the city cannot be seen as separate from the nature, lifestyles, values and desires that underpin how people engage, use and wish to remake it.[22] This process is underpinned by contests of interest, ideology as well as resources. Lefebvre argues that the right to a city engages with the struggles that people have in living in a city, and how this manifests through social, political and economic divisions but also through how communities are formed through events, and interests. In this way, thinking from a paradigm of rights requires looking beyond the individual to also the community centered rights.[23] Therefore, to meaningfully engage with spaces, it is imperative to explore the possibility of allowing people to collectively reimagine places such that they not only influence their development but also facilitate how it can enhance shared outcomes and visions.[24] This idea of 'placemaking' is the process of creating a sense of ownership of the place, and to build a connection between individuals and communities to it.[25]

Public spaces like Azad Maidan play an important role in shaping the democratic fabric of a city like Panjim and a state like Goa. It provides an opportunity to facilitate discussions between heterogeneous groups of people.

As a space it allows for people to gather and by design they encourage non-rivalrous consumption of the infrastructure. By virtue of its loca-

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[21] Susan S. Fainstein, *The Just City* (Ithaca: Cornell University Press, 2010).

[22] David Harvey, "The Right to the City," *International Journal of Urban and Regional Research* 27, no. 4 (December 2003): 939–41, https://doi.org/10.1111/j.0309-1317.2003.00492.x

[23] Thanks to Asawari Nayak for discussions on this point, John Michael Roberts, "The Right to the City, Public Space, and Free Speech" (Brunel University, 2022), https://bura.brunel.ac.uk/bitstream/2438/25614/3/FullText.pdf; Henri Lefebvre, Eleonore Kofman, and Elizabeth Lebas, *Writings on Cities* (Cambridge, Mass, USA: Blackwell Publishers, 1996).

[24] "What Is Placemaking?," accessed September 11, 2024, https://www.pps.org/article/what-is-placemaking

[25] P. J. Ellery, J. Ellery, and M. Borkowsky, "Toward a Theoretical Understanding of Placemaking," *International Journal of Community Well-Being* 4, no. 1 (March 2021): 55–76, https://doi.org/10.1007/s42413-020-00078-3

tion, Azad Maidan can involve people who are already engaged in a particular issue, but also has the potential to create opportunities for new members to join. This is because such spaces have visibility and if designed in a manner that accounts for their intended public nature, they will also offer easy visitability.

In terms of support for existing movements, Azad Maidan plays an important role as its location inherently publicizes issues and causes. This can highlight as well as draw attention to power brokers but also create a possibility for grassroots solidarity around issues that communities take ownership for.

Azad Maidan as a space provides the basis to think of how contests of ideas, values, and ideologies are negotiated within the built environment. It allows us to explore the contours of how justice is made in public spaces, and the critical factors that guarantee its success.

This idea of 'justice making' can be understood as the process by which people (individuals and groups) are equipped with the knowledge, resources, and capacity to find outcomes that are in their interest and are just and fair. This process draws from perspectives of access to justice wherein it is critical to have means, networks and agency to be able to achieve justice-oriented outcomes.[26]

In this approach, it means, as a starting point, responding to instances of injustice.[27] These injustices can emerge for structural reasons such as on matters related to gender, caste, or religion, or they can be a consequence of procedural difficulties that people face to realize their rights and entitlements.[28] In thinking about justice making, justice is not just an end, but also an outcome of a process which comes with its own barriers, and difficulties --- informational, financial, knowledge

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[26] Siddharth Peter De Souza, Designing Indicators for a Plural Legal World, 1st ed. (Cambridge University Press, 2022), https://doi.org/10.1017/9781009091275

[27] Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Cambridge, UK: OpenBook Publishers, 2017).

[28] Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (New Delhi: SAGE Publications, 1996).

based.[29] Justice making can be understood in terms of both supply as well as demand-based factors. The former includes factors like institutions, laws and procedures that enable or disempower people to be able to participate freely, whereas the latter is where people need to have the wherewithal to be able to claim their rights and have the capacity to do so.[30]

As a space for protest and democratic deliberation, Azad Maidan offers insights into realizing the processes of making justice. This includes:

Access: where we examine who and through what means can people make justice.

Visibility: where we examine whose concerns are heard, and in what arenas are they heard to make justice.

Inclusiveness: where we examine what differential interests and expertise are considered in making justice.

The term 'access' can be understood in different ways. From the proximity that a place provides for people to visit, and take part, the convenience that it has in terms of connectivity and the familiarity that it has in terms of how it is designed and the ways in which it affords a degree of comfort. Access assumes importance because it signifies whether people can make choices that allow them to negotiate and understand spaces.

Visibility, in our view, is the relation that the space has to the city. By this, we argue that such a space should be designed in a manner that is prominent enough to garner attention from the powers that govern a city, but also from its people, who wish to know more about the space, and the events that it curates and organizes.

Inclusiveness entails design choices that offer a safe setting within which people from different backgrounds can participate without

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[29] Amartya Sen, "Human Rights and Capabilities," *Journal of Human Development* 6, no. 2 (July 2005): 151– 66, https://doi.org/10.1080/14649880500120491; Sen, *The Idea of Justice.*

[30] Yash P. Ghai and Jill Cottrell, "The Rule of Law and Access to Justice," in *Marginalized Communities and Access to Justice,* ed. Yash P. Ghai and Jill Cottrell, Law, Development and Globalisation (London: Routledge, 2010).

concerns around gender, caste, class, or religion, but also when there are instances of intersectional identities at play. For instance, the choice of lighting in a space will determine whether people feel secure in it, or the capacity to reach the space by public transport will determine who participates in such public spaces.

Making Azad Maidan a space for grassroots memorialization

While the different ideas for 'justice making' by engaging with Azad Maidan offer possibilities to build a more inclusive democratic society, protests are increasingly subject to bureaucratic control, often under the garb of being matters of public order, security, and convenience.

It is critical to have designated public spaces which offer a possibility for people to gather spontaneously, in order to ensure that the freedom to assemble is not subject to unreasonable restrictions. Having these spaces will ensure ownership of justice that is community centered, and is driven, as well as reflected by the interests that emerge on the ground. Such an approach can not only ensure local resilience but also cultivate intergenerational solidarity, as well as introduce new forms and expressions on how to claim justice.

Spaces can shape the way protests are executed; protests can also transform public spaces. Appropriation of public spaces has manifested through various means such as murals, artwork, graffiti, vandalism, and signages, serving as visible forms of protest and expression.

These acts leave a lasting impact on the physical environment, shaping the space indefinitely. Rallies and marches temporarily transform spaces; the presence of art, graffiti, and vandalism continue to influence the atmosphere and convey messages over an extended period.[31]

Across Goa, there are interesting movements which can provide insights into how to remake Azad Maidan. Cecile Rodrigues, also known

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[31] "A Field Guide to Public Spaces," A Field Guide to Public spaces, accessed September 11, 2024, https://publicspaces.guide/

as the 'Rosto Queen', undertook a unique initiative in Goa by painting speed breakers with the hashtag #RostoGoa. Her aim was to draw attention to the prevalent potholes on the streets of Goa and raise awareness about road safety issues.[32] Through the efforts of several volunteers and like-minded individuals, the campaign successfully led to the virtual mapping of 38 potholes, 18 unpainted speed breakers, 24 broken or missing signboards, 13 broken street lamps, and over 4 stretches of uneven roads in Taleigao village. These findings highlighted the need for corrective action and emphasized the importance of addressing these road safety issues in the community.[33]

Solomon Souza, 26-year-old artist and grandson of the famous artist FN Souza, travelled across villages and towns in Goa, painting striking and larger-than-life murals of the region's often overlooked heroes. His subjects included Sita Valles, a Marxist revolutionary of Goan origin who fiercely fought Portuguese colonialism in Angola, poet Eunice de Souza, whose verses boldly struck at the heart of patriarchy in the Goan Catholic community, and Vishnu Wagh, a writer, dramatist, and poet whose work Sudhir Sukta sparked controversy in 2017 by confronting the deeply embedded casteism in the state. Through his artistic creations, Souza brought these unsung heroes to the forefront, honoured their contributions, and sparked meaningful conversations about their invaluable impact on Goan society.[34]

This form of transforming public spaces is often called "grassroots memorialization" and shows who and what people want to recognize and memorialize, without any say from governments or larger corporate entities. Unlike government-installed, official memorials like statues and monuments that are more permanent, grassroot

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[32] G.T. Digital, "#RostoGoa: A Campaign That's Saving Precious Lives," Goa News on *Gomantak Times,* accessed September 11, 2024, https://www.gomantaktimes.com/ampstories/web-stories/rostogoa-a-campaign-thats-saving-precious-lives.

[33] Goan Observer Team, "The Rosto Campaign is Unique!," *Goan Observer* (blog), January 1, 2021, https://www.goanobserver.in/2021/01/01/the-rosto-campaign-is-unique/.

[34] Malavika Neurekar, "Artist FN Souza's Grandson Is Putting His Art and Soul on Goa's Streets," Scroll.in, December 21, 2019, https://scroll.in/article/947121/artist-fn-souzas-grandson-is-putting-his-art-and-soul-on-goas-streets.

memorials are more visible and democratic because they are created by the people and for the people.[35]

In order to make Azad Maidan, a space which can be truly community owned, it is important to reconsider the spatial characteristics of public spaces to give citizens suitable spaces for expressing their political beliefs and exercising their right to free cultural expression.[36] Designing spaces that enable citizens to organize effectively, engage actively, and express themselves fearlessly is essential for reclaiming public spaces and making them active spaces for justice making.

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35   "A Field Guide to Public Spaces."

36   Majdi Faleh, "How City Squares Can Be Public Places of Protest or Centres of State Control."

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DESIGNED FOR CONFLICT: THE NON-IMPLEMENTATION OF FOREST RIGHTS IN GOA

BY VASUDHA SAWAIKER VIDYA MARY GEORGE & SHRICHARAN DESAI

- This essay investigates the challenges surrounding the Wildlife Protection Act, concentrating on relationships between people, forest officials, and wildlife.

- It emphasizes the conflicts and challenges that indigenous communities encounter when co-existing with wildlife.

- It emphasizes the importance of recognizing community forest rights and developing economically viable alternatives to protect communities and their land within protected spaces.

CHAIN OF EVENTS

Development projects

Loss of habitat

Human-wildlife conflict

Mhadei Sanctuary, Goa for example

WHY COMMUNITY FOREST RIGHTS ARE IMPORTANT

- Effective dispute resolution
- Protecting communities
- Preventing injustices

PROBLEMS FACED BY FOREST-DWELLING TRIBES

- De-territorialization
- Lack of a home
- Pressure to relocate
- Difficulty in procuring compensation
- Regulations on daily lives
- Unfamiliar bureaucratic processes
- Weak implementation of laws (e.g., Forest Rights Act)

JUSTICE adda   KOKUM

5. Designed for Conflict: The Non-Implementation of Forest Rights in Goa

Vasudha Sawaiker[1], Vidya Mary George[2] and Shricharan Desai[3]

Introduction

Goa has one National Park and five Wildlife Sanctuaries, and nearly 60.44% of the State's geographical area is under forest cover.[4]

Protected Areas under the law are divided into three major categorisations: Wildlife Sanctuaries, National Parks, and Tiger Reserves. The National Tiger Conservation Authority (NTCA) has the power to recommend that a particular area be declared a Tiger Reserve, and the State Government has the power to declare a particular area as a Tiger Reserve.

Living inside these Protected Areas in Goa are people mostly belonging to tribal communities or the forest-dwelling *Dhangar* (shepherd) community. Goa's overall population is 14.59 lakhs, and an estimated 10.2% of the population belongs to the Scheduled Tribe (ST) community.[5]

There are a total of eight communities recognised as STs in Goa. The majority of the ST population belongs to three communities: *Gawda,*

Kunbi, and *Velip.* The recognition of these communities as STs took place in January 2003 after a long struggle and agitation led by the United Tribal Associations Alliance (UTAA). The *Dhangar* community, too, claimed to be a tribal community and was part of the struggle, but was not granted ST status and continues to be categorised as Other Backward Classes (OBC).
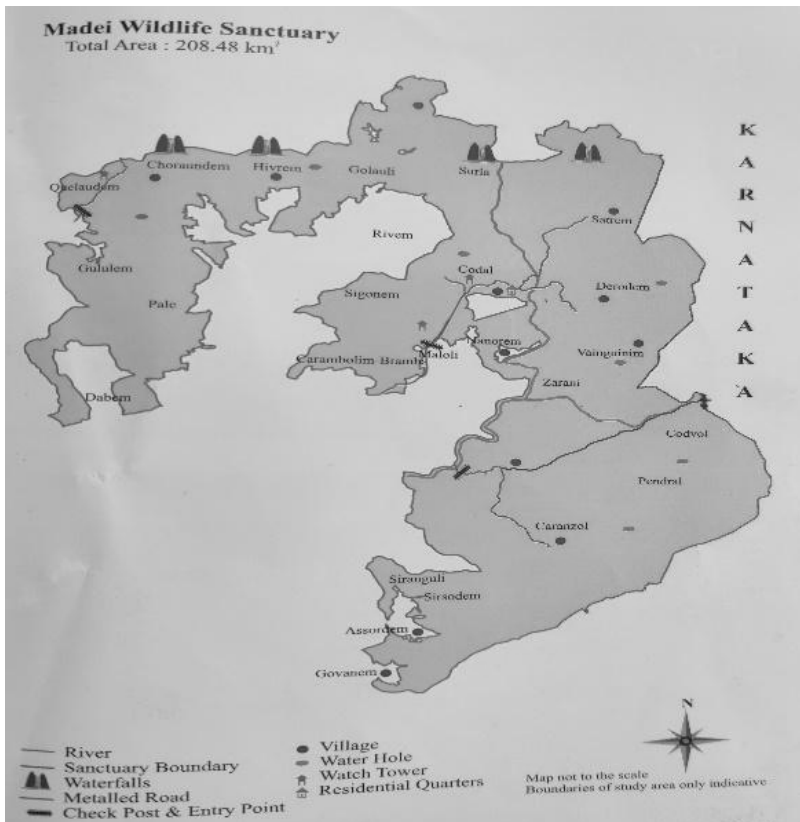
Map of Mhadei Wildlife Sanctuary (Source: Porob, Kulkarni and Giri 2014, 17).

One of the sanctuaries that has been in the news recently for documenting the presence of tigers is the Mhadei Wildlife Sanctuary in Sattari Taluka of North Goa. This Sanctuary is a 'contiguous tiger land-

scape' to Kali Tiger Reserve in Karnataka, which comprises the Belgaum Forest Division and Bhimgad Wildlife Sanctuary. A total of nine unique individual tigers have been estimated to exist in the area in Karnataka contiguous to Mhadei Wildlife Sanctuary.[6] The recommendation to declare Mhadei Wildlife Sanctuary as a Tiger Reserve has been extensively debated amongst various stakeholders—politicians, the State, the civil society, and the people living inside the Sanctuary.

Four Tigers Dead

The Forest Department in Goa has repeatedly documented the presence of tigers inside the Mhadei Wildlife Sanctuary and asked the State Government to seriously consider declaring the Sanctuary a tiger reserve. Politicians have claimed that the tigers belong to Karnataka and are only visiting the area.[7] People living inside the Sanctuary have had to endure and resist the consequences of deprivation and conflict with wildlife and the Forest Department.

On 6 January 2020, Forest Department officials were alerted about the presence of a tiger's carcass in Golauli Village in Mhadei Wildlife Sanctuary. The tiger bore no injury marks and was suspected to have died from poisoning. Two days later, the officials found three more dead tigers — a tigress and her two cubs. Police arrested four villagers belonging to the *Dhangar* community living inside Mhadei Wildlife Sanctuary. They were released on bail on 17 January 2020. The tigress had allegedly hunted a buffalo and a cow in the village weeks before the villagers allegedly poisoned the tigers. The post-mortem of the tigers proved non-conclusive, and samples of the buffalo kill were sent for further forensic testing.[8]

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[6] Y.V. Jhala, Q. Qureshi, and A.K. Nayak (eds.). 2019, "Status of Tigers, Co-predators and Prey in India 2018." Summary Report. National Tiger Conservation Authority, Government of India, New Delhi and Wildlife Institute of India, Dehradun.

[7] "Tigers spotted in Goa are from Karnataka: Goa Minister." The *Deccan Herald,* Updated April 15, 2022, accessed March 14, 2023 https://www.deccanherald.com/national/west/tigers-spotted-in-goa-are-from-karnataka-goa-minister-1101093.html

[8] Pamela D'Mello, "Goa's tiger deaths must be understood through its local politics and

Following the tiger deaths, the NTCA prepared a report which said, "Without upgrading the legal status of Goa's Protected Areas to that of tiger reserve and putting in place a strong protection regime, *the state may become death trap for tigers* dispersing in this landscape".[9] Based on the findings of the report, the Goa Foundation, a civil society organisation, approached the Bombay High Court in Goa to implement the recommendation and declare Mhadei Wildlife Sanctuary a Tiger Reserve.[10] On July 24, 2023, the Bombay High Court (Goa Bench) directed the Goa government to notify the Mhadei Wildlife Sanctuary and other contiguous areas as Tiger Reserve within three months.[11]

The case related to the death of the tigers has taken a toll on three *Dhangar* households belonging to the persons accused of killing the tigers. The legal fees to defend those accused of killing the tigers, the lack of employment prospects because of poor education and the pending criminal cases have caused significant financial, social, and emotional stress for the households. One of the accused in the case, says, "We did not kill the tiger, they have falsely framed us in the case. We have engaged a lawyer from Bicholim Town to defend us, every month there is a date at the Court, and we have to pay fees to the lawyer. It is difficult to manage the legal fees of five people when our income is uncertain. My son, who is also accused, is unemployed. We want to move out from the Sanctuary, but forest officials are not saying anything clearly."

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9   "Western Ghats in Karnataka, Goa need to be upgraded as Tiger Reserve area." *Deccan Herald,* February 11, 2020. https://www.deccanherald.com/national/south/western-ghats-in-karnataka-goa-need-to-be-upgraded-as-tiger-reserve-area-803765.html

10 Rajendra P. Kerkar, "Tigers increasingly on the prowl in Mhadei Wildlife Sanctuary." *The Times of India* (Goa Edition), Updated September 21, 2021, accessed December 23, 2022, https://timesofindia.indiatimes.com/city/goa/tigers-increasingly-on-the-prowl-in-mhadei-wildlife-sanctuary/articleshow/86380847.cms

11 Goa Foundation v. State of Goa and others. Bombay High Court (Goa Bench) 24 July 2023 https://goanews.com/wp-content/uploads/2023/07/Tiger-Reserve-HC.pdf

Pressures of Living amidst Wildlife

"They had destroyed my crops repeatedly. I had no option. I have cases pending against me for harming wildlife."

Community member living in a Protected Area in Goa

Human-wildlife conflict (HWC) refers to "struggles that arise when the presence or behaviour of wildlife poses actual or perceived direct, recurring threats to human interests or needs, often leading to disagreements between groups of people and negative impacts on people and/or wildlife." Human-wildlife interaction is a "neutral term referring to any encounter between people and wildlife".[12] Whether the term 'human-wildlife conflict' is to be replaced by 'human-wildlife interaction' in discourse is a matter of debate in natural and human sciences. Several scholars have argued that the extensive usage of the term 'conflict' to refer to a variety of situations involving wildlife (for instance, both crop-raiding and human-state dispute over protection) masks underlying complexities, intensifies biases, harms conservation efforts, and hampers development of better solutions for the issues.[13] However, several others have preferred the retention of the term 'human-wildlife conflict' in the conservation vocabulary as "it emphasises the severity and escalation of a global problem that affected stakeholders must address now and into the future".[14] Considering this ongoing important debate, this paper has minimised the usage of the term 'conflict,' replacing it with 'human-wildlife negative interaction' wherever possible and employing more precise terms (such as crop damage, crop raiding, livestock predation, and property damage) to draw attention to the complexities of the issue at hand.

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[12]   E. Gross et al., *A Future for All: The Need for Human-Wildlife Co-existence* (Gland, Switzerland: WWF 2021). https://wwfint.awsassets.panda.org/downloads/a_future_for_all___the_need_for_human_willdife_coexistence.pdf

[13]   P. Davidar, "The term human-wildlife conflict creates more problems than it resolves: Better labels should be considered," *Journal of Threatened Taxa* 10, no. 8 (July 2018), http://doi.org/10.11609/jott.4319.10.8.12082-12085.

[14]   Gross, *A Future for All,* note 11.

With the increased loss of habitat, human-wildlife conflict has become a developmental and humanitarian concern besides being a pressing issue for conservationists in India. Figures presented in the Lok Sabha are indicative of this trend. From 2018–19 and 2020–21, 222 elephants were killed by electrocution across the country, 45 by trains, 29 by poachers, and 11 by poisoning. Among tigers, too, 29 were killed by poaching between 2019 and 2021, while 197 tiger deaths are under scrutiny. Among human casualties of conflict with animals, elephants killed 1579 humans in three years: 585 in 2019–20, 461 in 2020–21, and 533 in 2021–22. Tigers killed 125 humans in reserves between 2019 and 2021, with Maharashtra accounting for nearly half of these deaths, at 61.[15]

People living inside Protected Areas face crop loss and loss of livestock at regular intervals, hampering their lives and livelihoods. In a study conducted in Central Kerala, it was estimated that 36% of farmer's annual income was lost due to crop foraging by wild animals. Leopards (69.76%), Indian rock pythons (13.95%), dhole (9.3%), and stray dogs (6.97%) were responsible for the attacks on livestock.[16] While the loss of agricultural crops and livestock inside Protected Areas is to be expected, the response of the officials of the Forest Department and Agriculture Department to the stress encountered by communities has been far from ideal. As a long-term, sustainable solution to human-wildlife conflict, conservationists are recognising the need for human-wildlife coexistence. Human-wildlife coexistence is a dynamic state in which people and wildlife "exist in proximity to each other, whether in contentious, neutral, or beneficial coexistence... and the interests and needs of both humans and wildlife are generally met".[17]

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[15] "Telling Numbers: Toll of human-animal conflict on tigers, elephants and people," *The Indian Express*, Updated July 26, 2022, accessed December 23, 2022 https://indianexpress.com/article/explained/telling-numbers-toll-human-animal-conflict-tigers-elephants-8051231/

[16] S. Govind and E.A. Jayson, "Human-wildlife interactions and people's attitude towards conservation: A case study from Central Kerala, India." *Animal Biodiversity and Conservation* 44, no. 2 (May 2021), https://doi.org/10.32800/abc.2021.44.0139

[17] Gross, *A Future for All*, note 11.

A villager in Golauli whose family members have been accused of killing a tiger narrated:

"We always told the forest officials when we lost our cattle because of wild animals, but they never took any action. We have lived here for so many years and we have never done anything wrong. Even in this case, we informed the forest officials when the tiger attacked our cow. The cow was purchased for Rs. 80,000 under the dairy scheme on a loan. After the attack, it suffered for three days and died after that, the forest officials were informed of it as well. We received compensation of only Rs. 30,000. The forest officials are now falsely blaming us for poisoning the tiger, we did not do anything. They have deceived everyone and put the blame on us for killing the tiger. The forest officials have asked us if we want to move out, and we have asked for all possible options and to be compensated properly; they only make offers orally but do not give anything in writing and are not committing to anything."

Repeated livestock losses as a result of wildlife predation can severely affect people's livelihoods. A goat rearer from of Mashem Village located adjacent to Cotigao Wildlife Sanctuary narrates: "Almost every night, a leopard would come to our goat shelter, and within the last six months, 19 goats have been killed." A minimal compensation of 80 per goat was paid to him. The request of the forest officials to produce the carcass is often the cause for denial of compensation. In Golauli itself, months after the alleged poisoning of the tigers, a tiger killed another calf belonging to a villager. He says, "The forest officials gave me no compensation. They asked me for the carcass of a newborn calf and nothing except two bones were left, which is why I did not apply for compensation. Also, the mother buffalo ran after the tiger because he took her calf, and her leg was injured near the rivulet, and she too had to undergo a lot of treatment. The forest officials gave me no compensation and whenever we ask anything, they speak to us rudely and ask us to move out of the Sanctuary. We are ready to move out but they are not clearly telling us."

The process of compensation for the loss of livestock is long-drawn,

bureaucratic, and cumbersome. In case of loss of livestock, communities usually respond to wildlife attacks by reinforcing the structure built to protect the livestock. The Forest Department responds by providing compensation for the loss of livestock to the affected family. The communities are put through a maze of bureaucratic procedures requiring them to show proofs such as carcasses of the livestock. The maximum compensation payable for the loss of livestock is Rs. 16,000, and the process requires a veterinary officer, the Range Forest Officer (RFO), a District Level Committee, and Taluka Level Officer to certify[18] the same. Following the death of tigers in Golauli, the maximum compensation payable was increased to one lakh rupees by the Chief Minister.

For loss of agricultural produce, the Agriculture Department is in charge of the process of estimating the crop loss and deciding the compensation. Hence, the compensation paid is never as per market value and is often delayed. A villager inside a Protected Area narrated in confidence: "The bison had destroyed my crops repeatedly. I had no option. I have cases pending against me for harming wildlife."

In another village inside Bhagwan Mahavir National Park, villagers have suffered enormous crop damage because of wildlife. The damage has been certified by the Mamlatdar to be a meagre amount of around seven lakhs over a period of 10 years. The Forest Department denied crop loss compensation on the grounds that the village is inside the National Park. The Department also did not let the villagers provide a tourist and taxi service inside the national park. At the same time, they allowed people from outside the Sanctuary to run the business — close to 432 tourist/taxi permits have been granted to visit the Dudhsagar Waterfalls. The villagers were granted the permit only after a struggle of almost 15 years.

Besides livelihoods, living inside the Sanctuary also affects communities' access to health and education. An elderly villager narrates, "When we go out in the morning, there are bears and bison. After 5

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18   D'Mello, "Goa's tiger death.", note 8.

PM, we do not go out unless it is necessary. When our children walk to school, they see bears. A child from our community saw a bear in the morning while going to school, he was in Class X. He somehow managed to complete Class X, but for one year he refused to continue his education. He lost one year because he was scared to walk and go out of the village."

A young woman from the *Dhangar* community, who could pursue her education only till Class XI, says, "I cannot tell you in words how difficult it is living here. In the morning, there is always a fear of seeing a bison if we go anywhere. They come close to our house too. It is difficult to pursue education during monsoons as there is flooding of both the rivulets and we have to walk through the water to reach school. I could pursue my education only till Class XI. I felt I should not pressurise my parents into spending money to educate me."

Mhalo Pavane strongly believes that their lives will improve if they are rehabilitated outside the Sanctuary on equitable terms. He says, "I understand that if we leave this place and go elsewhere, it is going to cause a lot of hardship to us. To grow trees there for our livelihood and to build a home will take a lot of time and energy. But our entire lives have gone by struggling here and living like this. For how long should our children suffer? Let at least our children access education and our future generations receive the benefits of progress."

Pressures of Living under Forest Department Surveillance

There is an overt sense of conflict between the community and the Forest Department which became apparent during the interviews with villagers conducted in 2017 in two of Goa's Protected Areas. The Forest Department would inevitably become part of any discussion and deliberation over forest resources with the villagers.

As one villager in Cotigao Wildlife Sanctuary said, "In the 1980s, the Government tried very hard to push us out of the village, but we just refused. They tried to bribe us with money and with alternative land but we have been living here and we decided not to leave this place.

The villagers have always been pressurized to move out of the sanctuary. Initially, they offered us Rs. 5 per square meter, that time I asked for Rs. 12. Also, I insisted that land for our temple should be within the Cotigao Village, the Government was not able to find us the land and they refused to pay the increased compensation, so the villagers have lived here under the restrictions of the Forest Department."

The village is connected to other habitations and the main road by a kaccha mud road. It did not have electricity supply until 2017. There is a forest gate before entering the village and this is generally manned by two forest guards. Following an initial visit to the village by the first author, bamboo sticks were put on the gate, which was otherwise open access for bikes to come and go to the village. Village youth, while going to watch a play in a neighbouring village, were rudely stopped and questioned about their whereabouts by the forest guards. The youth were visibly upset and it became a topic of discussion in the village.

When a visit by a Forest Officer was declared, the villagers hid some of the forest produce that they routinely use in their everyday lives. One villager said, "*Madam, amka hanga foresta kade vaitpan davruk upkarna* [We cannot afford to have a bad relationship with the Forest Department]." But other villagers said, "*Forestwale amchea nantar ailya, amhi adivasi, manje amhi tyancha painicha hanga asa* [Forest Department has come later, we are adivasis and we have been here much before them]." The villagers extract and use a Bamboo named Bet from the forests which is essential for tribal life, especially for agriculture, housing, and cooking utensils. When asked if the forest officials trouble them when they collect it, a villager said, "*Amka chorun hadche podta* [*We steal it because there is no option*]."

In another Protected Area, a community leader narrated:

"In 1978, the Forest Department offered a price of Rs. 2.40 per square meter, now they are offering Rs. 4 per square meter. I have Ladies Finger plants on my land which give me almost Rs. 100 per square meter for one crop, the rate offered by the Forest Department is hardly enough to sustain me or my family. We do not want to leave our village.

We have lived here all our lives and it is what we know best. The Forest Department has to realise that we can best protect and manage the forest. How many forest guards will cover such a huge area? The Forest Department has to see us as a partner to conserve wildlife."

The conversations reflect the nature and extent of the conflict between the Forest Department and the indigenous communities. While many villagers are employed with the Forest Department, the presence of state regulation in everyday life is very apparent for those who live in the village. When the everyday life of a community becomes regulated by the state, its members are often forcefully uprooted from everything they know as a community—their habits, way of life, and relationships with their support systems that had sustained them for generations. This experience of 'deterritorialization,' i.e., the severance of a community from the socio-cultural practices and processes that sustain them and give their lives meaning,[19] can negatively impact the community's identity and sense of belonging, leading to a feeling of being out of place in one's own home.

Solutions from a Transformative Justice Framework

The Forest Department's insistence on relocation has not resolved the conflict. In a few sanctuaries in India, people have returned to the villages after relocation. The conflict relating to wildlife and the Forest Department largely affects the economic livelihoods of the people. The relocation compensation for those living inside Tiger Reserves has recently been increased to Rs. 10–15 lakhs per family. There are reservations about displacement largely due to the mistrust between communities and the State. Displacement has huge social, economic, and cultural impacts besides the less documented psychological effects.

A Transformative Justice framework that was created by and for communities experiencing marginalisation may provide a few solutions.

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[19] Tim Oslovich, "A Philosophical Concept: Deterritorialization," February 7, 2018. Educational Video, 3:50. https://www.youtube.com/watch?v=1Fc88TQUqpk&list=RDLV1Fc88TQUqpk&index=2

The term transformative justice has its roots in '*transforming power*',[20] a term coined by the Alternative to Violence Project (AVP), a Quaker-based organization that started its programme in Green Haven Prison, New York. AVP works in providing specialised non-violent group-building, community-building, and conflict transformation workshops oriented towards violent communities in adult male and female prisons. As an illustration, in case of a burglary by a 14-year-old boy who is queer and from a poor neighbourhood, transformative justice will try to understand what made the boy commit the crime. It will ask questions such as 'Was the boy kicked out of his home by a father who was homophobic? Did the boy need money for food, clothes, and shelter?' Transformative justice strives to use conflict as an opportunity to address larger socio-political injustices.[21]

Transformative Justice does not rely on traditional forms of power. It strives to meet the underlying needs and interests of all people involved by creating new processes that replace unjust systems. It believes in responding to violence without creating more violence by seeking long-term growth, based on healing. Those working within this framework seek conflict transformation by trying to change the underlying causes of the conflict.[22] Mingus (2019)[23] writes, "Transformative justice can be thought of as a way of 'making things right,' getting in 'right relation,' or creating justice together It actively cultivates the things we know prevent violence such as healing, accountability, resilience, and safety for all involved."

Documentary evidence reveals the "historical dispossession of liveli-

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[20]   Transforming Power, according to AVP, is an inner force that helps us realise our own shining core. It is a power that stems from the universe and burns away layers of fear and prejudice and emphasises the need for human connection (Nocella II 2011, note 20).

[21]   Anthony J. Nocella II, "An Overview of the History and Theory of Transformative Justice." *Peace and Conflict Review* 6, no. 2 (2011): 1–10.

[22]   Ken Cloke and Duncan Autrey, "Social Justice & Conflict Transformation: An Interest-Based Approach." *Mediators Beyond Borders International*, accessed March 10, 2023, https://mediatorsbeyondborders.org/what-we-do/conflict-literacy-framework/social-justice

[23]   Mia Mingus, "Transformative Justice: A Brief Description." *TransformHarm*, January 11, 2019, accessed November 2022 https://transformharm.org/tj_resource/transformative-justice-a-brief-description/.

hoods of indigenous communities, the most catastrophic being initiated during the colonial era".[24] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short, The Forest Rights Act (FRA), 2006) comes from a frame that attempts to 'make things right' by recognising the rights of indigenous and forest-dwelling communities over land and resources. The Preamble of FRA, 2006 acknowledges that 'the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem'.[25]

Villages that have claimed Community Rights have been able to reduce migration and increase their income by collecting and managing forest resources such as tendu patta, bamboo, and honey. In two tiger reserves in Chhattisgarh, 10 villages located in the core and buffer of a tiger reserve were distributed title deeds, and five in Sitanadi-Udanti Tiger Reserve, respectively. Zumbish (2022)[26] documents villages in Chhattisgarh and Orissa and writes about the economic freedom that villagers experience in claiming community rights:

"Pipri village, which got the title in 2010, started tendu leaf auction this year and earned Rs. 8 lakh in just 25 days. This is four to five times what the government centres pay. Each family gets Rs. 1200 per day if they make 200 bundles. They even get the payment the same day, unlike earlier when they used to receive it after two months," says Karuna, a resident of Pipri.

The forest rights of indigenous communities have remained unre-

[24] Manshi Asher, "Evolution of the Forest Rights Act: A Historical Perspective." *The Indian Journal of Social Work* 80, no. 4 (2019): 405–422. http://doi.org/10.32444/IJSW.2019.80.4.405-422.

[25] Ministry of Tribal Affairs, Forest Rights Act, 2006: Act, Rules and Guidelines, accessed March 10, 2023, https://tribal.nic.in/downloads/FRA/FRAActnRulesBook.pdf.

[26] Shuchita Jha Zumbish. "Taking Ownership: How Forest-dwellers in Chhattisgarh, Odisha Claimed Rights over Traditional Boundary." *Down To Earth*, August 29, 2022. https://www.downtoearth.org.in/news/forests/taking-ownership-how-forest-dwellers-in-chhattisgarh-odisha-claimed-rights-over-traditional-boundary-84596

solved in Goa despite the Parliament passing the FRA, 2006. Perhaps one of the first steps for the healing process could be the recognition of rights under the FRA, 2006 in Goa. Only 1.45% of claims filed under the Act have received title deeds as of February 2022 (10136 claims filed and 147 title deeds distributed). This rate of implementation is well below that in the states of Andhra Pradesh (76%), Odisha (71%), Chhattisgarh (53%), and Jharkhand (55%).[27]

Recognising the Community Forest Rights (CFR) and Community Forest Rights over Resources (CFRR) under Section 3(1) (i) of the FRA, 2006 can play a significant role in pre-empting conflict situations. CFRR can be availed over customary common forest land within the traditional boundaries of the village to which the community had traditional access. It also includes seasonal use of landscape in the case of pastoral communities and information regarding sharing of resources and responsibilities with any other villages. CFR as per rules under the FRA, 2006 denotes the rights listed in clauses (b) to (l) of sub-section (1) of section 3. It includes rights such as *nistar*, collection and use of minor forest produce, access to fishing, grazing, and other traditional seasonal access, right to manage forest resources, habitat and habitation rights, access to biodiversity, intellectual property and traditional knowledge, and other traditional rights other than hunting. CFR claims are made under Form B, whereas CFRR claims are made under Form C of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.[28]

A robust indigenous civil society as part of the justice design to oversee the implementation of any social legislation involving indigenous communities could create an impact on the implementation of the FRA, 2006. There has been no facilitator or champion for the cause of community forest rights at the grass-root level or a push for awareness and implementation of CFRR by civil society organisations in Goa, ex-

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27 Ministry of Tribal Affairs, Status Report, 2022, February 20, 2022. http://alturl.com/hnog3.

28 Ministry of Tribal Affairs, *Forest Rights Act, 2006: Act, Rules and Guidelines.* accessed March 10, 2023. https://tribal.nic.in/downloads/FRA/FRAActnRulesBook.pdf.

cept in Caurem Village in South Goa.

In Caurem Village, the presence of Ravindra Velip, an activist belonging to the tribal community, acted as a catalyst to implement the FRA, 2006 and made Caurem the only village to have filed CFRR. He was working as a Panch of the Caurem Village. He has been arguing in favour of the idea of village cooperatives being used exclusively for some of the activities relating to mining, from excavation to transport. Ravindra documented the process by which Caurem villagers claimed their community forest rights in a project titled "Return to the Forests: A Report on Forest Rights of Caurem Village." He activated the Forest Rights Committee in the village, and, with the help of village elders and the use of GPS, the villagers mapped the ancient village boundaries.[29]

The role of private players, civil society, and NGOs has been significant in ensuring the implementation of legislations that seek to undo historical injustice. For example, the popularity of the legislations such as The Right to Information Act, 2005, the FRA, 2006, and the Prevention of Sexual Harassment Act, 2013 has been on account of workshops, posters, campaigns, and other sustained engagements with people by civil society organisations. Recognising community forest rights would go a long way in facilitating pre-emptive conflict resolution and protecting communities, the land, and the wildlife, and perhaps achieving human-wildlife co-existence.

Acknowledgements

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[29] Vasudha Sawaiker, "Struggle of Caurem Village in Goa and State Repression." Countercurrents.org, March 30, 2016, accessed March 8, 2023, https://countercurrents.org/sawaiker300316.htm

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DEVELOPMENT PROJECTS AND NEGLECTED JUSTICE SPACE: A CASE STUDY OF MOPA AIRPORT

BY ALAKNANDA SHRINGARE
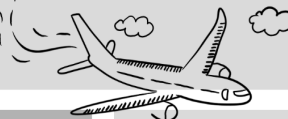
- The essay highlights how to locate land acquisition within the context of development initiatives, as well as the paradoxes that arise when discussing redistributive justice.

- It contends that the transition to neo-liberalism has resulted in the commodification of land, community dislocation, and environmental deterioration, using Mopa Airport as an example of such land acquisition.
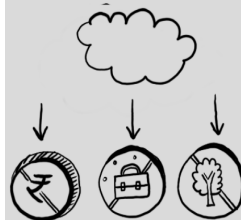
PROBLEMS DUE TO DEVELOPMENT INITIATIVES

- Displacement affecting livelihood
- Insufficient compensation
- Land dependents are excluded from planning process
- Concerns regarding distributive justice

HOW DOES MOPA AIRPORT COME INTO PICTURE?

- Inadequate remuneration relative to generated income
- Destabilizing people by diminishing their existential values
- Exclusion of land-dependent individuals from planning
- Uprooted from the land that has socio-cultural significance

HOW TO LOCATE ACCOUNTABILITY?

- Centre vs. State ambiguity in terms of accountability
- Lack of grievance redressal due to shifting of accountability
- Obstruction to fair dispute resolution

WHAT ABOUT FAIRNESS TO INDIVIDUALS?

- Destabilized many families
- Loss of income and livelihood
- Disparity in expectations and reality

JUSTICE adda　KOKUM

6. Development Projects and Neglected Justice Space: A Case Study of Mopa Airport

Alaknanda Shringare[1]

The development paradigm in the neoliberal world along with growth brought new concerns. '.the state in India has shifted from a reluctant pro-capitalist state with a socialist ideology to an enthusiastic pro-capitalist state with a neo-liberal ideology'.[2] The new paradigm of development emphasised upon the private sector and with this began the 'golden age of Indian capitalism' in India.[3]

In Goa, economic activities have seen a surge in the post-liberation period and land has become increasingly marketized and commodified.[4] In the name of development, land has been acquired for major projects displacing people from their settled habitats. Due to land acquisition many agricultural farmers were deprived of their livelihood options. Prior to 2007, in the absence of a rehabilitation and resettlement policy many people were deprived of fair compensation and rehabilitation. The government spoke about inclusive development, but the voices of the people who lost their land and livelihood were never part of development planning. This paper raises the question of how to locate land acquisition conducted in the name of development, in the justice space. While doing this the paper restricts itself to

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an understanding of the implications of the land acquisition process for the construction of Mopa airport in North Goa, on the people from a qualitative perspective.

Goa is often seen as a late comer to development planning in India. The state was under Portuguese rule for over 450 years until it joined the Indian Union in 1961. It was not part of the first two Five Year Plans. Development of the state was a priority of the planning process soon after liberation. Goa also had to decide whether to merge with Maharashtra or remain as a separate state. The state had begun its journey as a Union Territory with financial support from the central government. It attained statehood in the year 1987. At the time of its liberation in 1961, Goa had low agricultural productivity, there were no major industries, mining activities were not properly planned and regulated, and imports were higher than exports. Economic development demanded immediate attention of the government. In the absence of major industries in the state, mining and tourism industries were promoted and developed by the government over a period of time. Both these industries majorly supported Goa's economy. Most of the projects and policies of the government were directed towards developing these two industries. With the intention of achieving planned development, the Town and Country Planning department was set up in 1964 to prepare the Regional Plan of Goa.[5] The Goa, Daman and Diu Town and Country Planning ('TCP') Act passed in the year 1974. The TCP Act, 'did not permit any changes to be made in the Regional Plan for ten-year period'.[6] Despite these stricture rules there were incidents of the Regional Plan being modified several times by introducing amendments to the TCP Act to accommodate varied private interests. The post-liberalization period 'created new opportunities for economic control over the resources of the state'.[7] The state witnessed

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[5]   K.D. Sadhale, "History of Planning in Goa," in *Fish, Curry and Rice: A Source Book on Goa, Its Ecology, and Life Style,* ed. Claude Alphonso Alvares, Vidyadhar Gadgil, and Goa Foundation, 4th rev. ed (Mapusa: Goa Foundation, 2002), 271.

[6]   K.D. Sadhale, "History of Planning in Goa."

[7]   Parobo, *India's First Democratic Revolution,* 170.

major changes in the economic activities with land gaining central attention due to the boom in real estate and tourism sectors.[8]

Goa, located on the Western Ghats of India, has an ecologically fragile landscape. It is rich with flora and fauna. The development projects of the government of Goa carried out in recent years are damaging the existing ecosystem and cultural ties of the people associated with this.[9] [10] [11] [12] As a result, Goa has witnessed many protest movements by civil society organizations, demanding protection of the environment and livelihood options of the people. During the first decade of the 21st century there were several such incidents and protests carried out against major development policies and projects initiated by the government. Some of the significant protest movements witnessed in the state were the opposition to the Regional Plan 2011, Special Economic Zone ('SEZ'), Mopa International Airport and mega housing projects. In most of these protests, the common concern was protection of the land, livelihood, environment, and the cultural identity of the Goan people. The Regional Plan 2011, demarcated more than 50 percent land in Goa as settlement and commercial area. This was predicted to destroy hills, orchard land, agricultural land and part of forest land as well. There were huge protests organised by civil society organisations resulting in the scrapping of the Plan. Similarly, due to the active intervention of the civil society groups, all the 17 SEZs (out of which three were notified) sanctioned in Goa were scrapped.

Not all protest movements resulted in success stories. Protest movements against the construction of mega housing projects were of partial success. There were reports of incidents where builders whose

8   Parobo, *India's First Democratic Revolution.*

9   Prerna Singh Bindra, "Mopa Airport Risks Wildlife and Livelihoods in Goa," *Conservation India*, September 5, 2016, https://www.conservationindia.org/articles/mopa-airport-risks-wildlife-and-livelihoods-in-goa

10   Nupur Jain and Aparna Watve, "Contestation of Environmental Impact Assessment for Greenfield Airport, Mopa, India through the Lens of Livelihood Vulnerability," 2019

11   Sandesh Prabhudesai, *Ajeeb Goa's Gajab Politics,* 2022.

12   Kenneth Bo Nielsen, Heather Plumridge Bedi, and Solano da Silva, *The Great Goa Land Grab* (Saligao, Goa, India: Goa,1556, 2022).

projects could not materialise due to the scrapping of Regional Plan 2011, were later approved by the Goa Industrial Development Corporation ('GIDC').[13] The protests to halt the construction of Mopa International airport also did not succeed to stop the project. Mopa is a functional airport at present, while many of those who lost land for Mopa have not been fairly compensated even today. The present paper is an attempt to understand the implications of constructing the Mopa airport on the people in the Mopa area.

Case study of Mopa International Airport

In the year 2000, the central government proposed a plan to construct the Mopa airport in North Goa. In August 2005, after returning from a meeting with the Planning Commission in Delhi, the then Chief Minister Pratap Singh Rane disclosed that 'Mopa airport was one of the many projects to be taken up under Rs. 1025 crore outlay approved by Planning Commission'.[14] It was proposed to acquire one crore square meters of land in three phases. The government issued a notification on January 5, 2005 under Section 4 of the Land Acquisition Act 1894 for acquiring land in the first phase of the project.

By mid-2005, the issue met with stiff opposition not only from the people whose land was going to be acquired but also by the taxi operators and owners of the hotels of South Goa who feared that if Mopa airport became a reality it would lead to the closing down of the Dabolim airport located in South Goa. This could result in loss of business for them. It also created a divide within the Indian National Congress ('INC'), with Shantaram Naik, MP, North Goa supporting the Mopa project and Churchill Alemao, MP South Goa opposing the project. While the INC leaders were divided, the Bharatiya Janata Party ('BJP') leaders were in full support of the Mopa project. In the context of the growing agitation, the Rane (Congress) government decided to put the work on hold. The process of land acquisition was halted between

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13 Rajan Narayan, "Back Door Conversion," *Goan Observer*, March 15, 2008.
14 "Tendering of Works of Mopa Airport by Dec: CM," *Herald*, August 5, 2005.

2006 and 2008. In 2008, the Goa government decided to restart the process of land acquisition for Mopa airport. In 2010, the central government resolved the question of having two airports in Goa, by approving the setting up of an international airport at Mopa and the continued functioning of the Dabolim airport.

Public in public purpose

The land for the Mopa project was acquired under Section 4 of the Land Acquisition Act 1984.[15] Section 4 states:

Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette.

The doctrine of eminent domain in the Land Acquisition Act allows the government to acquire land for a public purpose. The Act does not clearly define what public purpose is. Every attempt was made by the state government to expand the meaning of public purpose. However, it did not accommodate the interests of thousands of people who lost their land, and 'livelihood, security, support structures when land was acquired and the whole community was uprooted'.[16] In the year 2013 the UPA government passed the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act to repeal the Land Acquisition Act of 1984.[17] The doctrine of eminent domain retained in the 2013 Act is egalitarian in connotation but not in substance. The 2013 Act continues the unresolved tussle between collective prosperity and individual justice.[18] With a utilitar-

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[15] "Section 4 in the Land Acquisition Act, 1894," Indian Kanoon, accessed January 4, 2023, https://indiankanoon.org/doc/43654/.

[16] Usha Ramanathan, "Land Acquisition, Eminent Domain and the 2011 Bill," *Economic and Political Weekly*, November 5, 2011.

[17] Vinod Madhavan, "Controversy Over Land Acquisition Bill: All You Need to Know," *The New Indian Express*, March 7, 2015, https://www.newindianexpress.com/nation/2015/Mar/07/controversy-over-land-acquisition-bill-all-you-need-to-know-725439.html

[18] Maitreesh Ghatak and Parikshit Ghosh, "Yes, a Land Acquisition Act Can Address Both Justice and Prosperity," *The Wire*, accessed August 30, 2024, https://thewire.in/economy/yes-a-land-acquisition-act-can-address-both-justice-and-prosperity

ian push, the 2013 Act does not provide substantive space for everyone to be partners in development. People were made to sacrifice for the larger cause of public purpose. In the words of Rawls[19] 'justice denies that the loss of freedom for some is made right by a greater good shared by others'. He further writes that, 'laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Being first virtues of human activities, truth and justice are uncompromising'.[20] Sandel[21] remarks that 'To sacrifice justice for the sake of the general good is to violate the inviolable, to fail to respect the distinction between persons'.

Development plans prepared by the state and central governments are often carried out despite the resistance to the same by the people. Amendments to the acts and policies relating to development are used as a tool to suppress the voice of people and ease the process of development. One such amendment in Goa was the amendment to Sections 16 and 16A of TCP Act. Sections 16 and 16A of the TCP Act exempt public projects/schemes/development works of the government and public private partnership projects from the purview of the state's Regional Plan.

Section 16[22] of the TCP Act states:

> On and from the date of publication of the regional plan under section 15 for an area, all development programmes undertaken within that area by any private institution or by any other person shall conform to the provisions of such regional plan. However, public projects/schemes/development works undertaken by the Central Government or the Government shall be in conformity with the rules framed and procedures laid down

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[19] John Rawls, *A Theory of Justice* (Massachusetts: Harvard University Press, 1999), 3

[20] John Rawls, 3–4.

[21] Michael J. Sandel, *Liberalism and the Limits of Justice,* 2nd ed. (Cambridge University Press, 1998), 16, https://doi.org/10.1017/CBO9780511810152

[22] Substituted by Amendment Act 10 of 2008, by Goa Government.

by the Government for such projects/schemes/ development works. [Provided that, nothing in this section shall apply to the activity undertaken in pursuance of the permission/licence granted under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957) and rules made thereunder.] (Government of Goa, 1975)

And the Section 16A (1)[23] of the TCP Act states:

No person shall undertake any work of development in contravention of any provision of the regional plan as in force, except the project/schemes/development works undertaken by the Central Government or the Government, either by himself or through his servant or agent or any other person and all such development work shall be in conformity with the provisions of the regional plan} (Government of Goa, 1975)

Civil society activists demanded a repeal of the amended Sections 16 and 16A of TCP Act as they were not in the letter and spirit of the 73rd and 74th Amendments to the Indian Constitution[24] which provides for the direct participation of people in the planning process for the development of their respective village.

Impact on people

The restarting of the process of land acquisition in the year 2008, affected many villages of Parenem taluka in North Goa. During the course of my visits in January 2011 as part of the research project funded by ICSSR, New Delhi, it was learnt that hundreds of people from Nanechepani, Shemechiadvan, Dhangarwada, Casarvarnem,

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[23] Substituted by Amendment Act 10 of 2008, by Goa Government.

[24] TNN, "GBA Seeks Repeal of Sec 16/16A of TCP Act," *Times of India*, November 25, 2011, sec. Goa News.

Tilaskarwadi and many other places had been affected by the proposed international airport. Most of the people were unaware of the impact of the airport project coming up in their vicinity. The notices to acquire land were in English and for the people who could read only Konkani/Marathi these notices hardly meant anything. According to the earlier notices which they had received, the amount of compensation was Rs. 6 per square metre. The landowners of the area formed a committee and met their local MLA demanding more compensation. But what they could understand from the MLA is that the compensation could not be more than Rs. 60 per Sq. mtr. which is the government compensation for any land acquisition in Goa.[25] Knowing that compensation could not be increased, some of the landowners withdrew from the protest against the land acquisition while others decided to continue. This weakened the protest of those farmers who are trying to protect their land and opposing land acquisition. Frequent land acquisition notices sent to the people also created confusion among them.

According to the Special Land Acquisition Officer ('SLAO'), Kundaikar, a total of 81,38,145 square meters of land was acquired for the project from the five revenue villages of Mopa, Chandel, Ugvem, Casarvarnem and Varkhand by 2022.[26] The locals felt that it was wrong on the part of the government to acquire the land on which many peoples' livelihood are directly or indirectly associated. They believed that the government cannot compensate for all that has been lost in the process. They have roots in the land which is connected with their culture.

The compensation was assured only for those people who owned land, and many landless agricultural farmers, Dhangars who were dependent on the land indirectly for various purposes were not certain of getting compensated. Among the landowners, there were issues of no

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[25] Alaknanda Shringare, "Land, Development and Resistance: An Issue of Mopa International Airport.," *mySociety* 10, no. 1–2 (2016): 11–27.

[26] Herald Team, "Rs. 15.78 Cr Paid to 1,533 Families, Rs. 28.18 Cr Deposited in Fast Track Court," *Herald* Goa, November 17, 2022, https://www.heraldgoa.in/goa/rs-1578-cr-paid-to-1533-families-rs-2818-cr-deposited-in-fast-track-court/196852

proper land documents available with them for cultivating the land, despite the fact that they were cultivating the same land for generations. For the landowners, the compensation amount varied from village to village, ranging between Rs. 40 to Rs. 60 per sq. mts. of land.

In the village of Varkhand, for many the issue was that they never wanted to part with their ancestral land. They strongly believed that the compensation could not compensate for the loss of their livelihood options. The big question for them was rehabilitation. According to one farmer, who refused to sign notification nor accepted any compensation, nothing could compensate for what the land gives by way of paddy, millet, pulses, turmeric, sweet peas, okra, pepper, potatoes, jackfruit, cashew, papaya, tamarind and much more[27] and provide employment to almost all members of the house and other agricultural workers. As per the International Civil Aviation Organisation (ICAO) report of 2007, the proposed international airport required relocation of virtually nil population as there were no permanent houses in the area.[28] However, as per the information received by the SLAO, there were about 1,533 people who lost their land for Mopa international airport and were provided compensation of Rs. 60 sq. mts. for untenanted land at Varkhand and Rs. 80 per sq. mts. at Casarvarnem.[29] The land acquisitions for Mopa airport started much prior to passing of the National Rehabilitation and Resettlement Policy 2007. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, was passed in the year 2013. In the absence of the relevant policy and the Act, the land was acquired at an extremely low rate, offering inadequate compensation to the people at Mopa.

There are about 61 individuals who have not yet claimed their compensation in protest,[30] as they felt that the government cannot compensate for what they have lost. One of the farmers who owns 4000

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[27] Prerna Singh Bindra, "Mopa Airport Risks Wildlife and Livelihoods in Goa."

[28] "Mopa Project Will Not Displace People," *The Navhind Times*, August 2, 2008.

[29] Team, "Rs. 15.78 Cr Paid to 1,533 Families, Rs. 28.18 Cr Deposited in Fast Track Court."

[30] Ibid.

square meters of land, the meagre compensation decided by the government could not compensate for the loss of livelihood options for the family members who were all involved in cultivation. At a time when real estate is booming in Goa and land prices are sky high,[31] the compensation received by the people do not fit into any parameters of fair compensation and justice to the people. People are of the opinion that the compensation by way of job creation could provide employment to only one person from the family. Given the educational qualifications of the family members, most would end up getting a daily wage job. One of the residents of Varkhand village mentioned that their land provided jobs not only to all the members of their family, but they also hired workers to work on their land. The land acquisition resulted in the loss of jobs for many. They felt that if people did not wish to part with their land there should have been an option for them to retain it. Involuntary acquisition of land questions the legitimacy of the whole process. Most of the written submissions made by the farmers mentioned that they are happy with their current life and their survival on agricultural activities and requested the authorities to stop the destruction of the (Barazan) plateau (the Mopa plateau) which holds socio-cultural significance to them and to allow them to live connected with the environment.[32]

During the visit to the Mopa airport site as part of an ICSSR funded project, it was found that there were also other groups of people dependent on the land. There were landless agricultural workers working on the land of agricultural landlords and a few Dhangar families using part of the plateau land for grazing their cattle. The Dhangars mentioned that they supply milk to Goa Dairy, which is their source of income or additional income for them. These groups were the most vulnerable in the whole process of land acquisition. They not only lost their livelihood option but were left with no proper compensation.

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[31] Ranjeni A Singh and Smitha Venkateshwaran, "Goa's Land Prices Soaring," *The Economic Times*, January 13, 2008, https://economictimes.indiatimes.com/property/goas-land-prices-soaring/articleshow/2695707.cms?from=mdr

[32] Nielsen, Bedi, and Silva, *The Great Goa Land Grab*.

With the land being acquired for the airport project, the Dhangars feared loss of grazing land which impacts their source of income.

What also could not be compensated for was the environmental damage. The Barazan plateau now popular as Mopa plateau is a biologically diverse space and has more than 46 perennial springs.[33] These springs are the source of water for most of the plantation in this area. The trees being cut for the airport project 'hold religious and cultural values and are centres of community gathering and religious ceremonies'.[34] Nielsen, Bedi and Da Silva[35] elaborated in their work on how the statutory requirement of an Environmental Impact Assessment carried out in case of the Mopa airport project articulated a discourse of greenfield development in the area, supported by elite business groups and politicians. Palshikar[36] warns that the environmental damage caused due to the kind of development taking place is often not a 'retrievable mistakes'. What about the claims of future generations over these resources?

The relationship between development and justice is complex and open to interpretation. As argued by Dreze and Sen,[37] the success of development should be judged on the basis of the impact it creates in enhancing the capabilities of the individuals and improvement in their lives. However, in Goa, the state in partnership with the private sector, has acquired the land required for the Mopa airport project by destabilizing people and communities, and diminishing their existence. Examining 'development' as a discourse that serves to further the neo-liberal project, Jairath[38] argues for a counter discourse, 'that demands that people's needs are met through a system of production

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[33] Jain and Watve, "Contestation of Environmental Impact Assessment for Greenfield Airport, Mopa, India through the Lens of Livelihood Vulnerability."

[34] Jain and Watve.

[35] Nielsen, Bedi, and Silva, *The Great Goa Land Grab*, 112.

[36] Suhas Palshikar, "Democracy and Constitutionalism," in *Politics and Ethics of the Indian Constitution*, ed. Rajeev Bhargava, Oxford India Paperbacks (Oxford: Oxford University Press, 2009), 225.

[37] Jean Drèze and Amartya Sen, *India: Development and Participation*, 2nd ed (Oxford: Oxford University Press, 2002).

[38] Vasundhara Jairath, "Development and the Neo-Liberal Agenda," *Economic and Political*

that places their needs at the centre and not that of capital and that produces wealth through relations of equality, collaboration and democracy and protects the autonomy and self-determination of people to articulate, design and enact the work of development'.

The issue of the Mopa international airport once again raised the question of what we mean by development and development for whom? What about those who do not want to part with their land? Dreze and Sen[39] (2002) looks at development as expansion of real freedom that enables expansion of human capability to pursue the objective which they have a reason to value. How do we justify the forcible acquisition of land for projects that may not benefit the very people from whom the land has been acquired. They have not only lost their land but also livelihood options attached with it. Does such action fit into the concept of justice? If justice is the principle which holds that people should receive what they deserve, then has justice been done to the people in Mopa or for that matter to many of those who lost their land and livelihood in the name of development? There are many families who have not yet received the compensation in protest against the land acquisition in Mopa and also lost their valuable belongings attached with the land. How does our justice system view these cases? There appears to be no easy answers to these questions. Inclusive development making people part of the development process in a real sense is necessary. The Acts and policies formulated to give effect to inclusive development need to be enforced in letter and spirit and should not be twisted and turned to make way for private interests.

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Weekly, February 6, 2021, 12, https://www.epw.in/journal/2021/6/alternative-standpoint/development-and-neo-liberal-agenda.html

[39] Drèze and Sen, *India*.

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"IF MY LAWYER HERSELF IS NOT CONFIDENT, IS IT REALLY WORTH IT?" CRITICAL REFLECTION OF SUPPORTING AN ACQUAINTANCE AT A GOAN POLICE STATION

BY ASAWARI NAYAK

- This essay investigates how legal spaces uphold patriarchal views of justice and reinforce social norms related to gender, caste, and class. It examines the discrepancies between the professional and social roles of authorities in these contexts. Drawing on personal experiences from assisting an acquaintance in a sexual harassment and stalking case, the author illustrates how a researcher's emotions can reveal the impact of their social standing on their work, making the findings more transparent to readers. These experiences also provide important insights into the politics and cultures of legal environments.

WHAT ARE THINGS FACED FROM VICTIM'S PERSPECTIVE

- Bias, stigma, victim-blaming, victim-shaming
- Culture of silence and non reporting sexual violence
- Intersections of 'influence', caste, class of victim
- Traumatic and emotionally draining processes

RESEARCHER'S PERSPECTIVE

- Critical reflection/autoethnography - Tools for going beyond traditional boundaries of researcher-observer to reflecting on how personal experiences and emotions reveal truths about the research field.
- Shame of selecting specific research topics
- Positionality (gender, caste, class, and personal history) influences research choices.

JUSTICE adda

KOKUM

7. "If My Lawyer Herself is Not Confident, Is it Really Worth It?"

Critical reflection of supporting an acquaintance at a Goan police station

Asawari Nayak[1]

L AST year, when a senior academician heard that I was research-
ing sexual violence for my doctoral studies, they remarked, "Don't
you want to be happy? Aren't you hoping to be married someday?"

"Yes.," I replied awkwardly, unsure of where this conversation was
heading.

"Will you be able to look at your future husband the same way once
you know what men are capable of?" They also added, "Why are you
focusing on women alone? Don't men get raped too? I know a guy
who had this happen to him. Although, he had his fun with it." The
mockery in their voice was only too evident.

This conversation happened in a public space, and in the presence of
several other colleagues who overheard the discussion. By the end of
it, some of them even started chuckling at the "joke."

What started off as cautionary advice to "protect" me, and ensure
happiness in my future married life, turned into an affront against
male victims of rape and shaming me for choosing this research topic.
While I chose to ignore this seemingly innocuous instance at the
time, on further reflection, I thought that it exemplified our society's
common-sense knowledge on sexual violence — of who can and
cannot be sexually violated; that rape is sex; that rape stems from

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uncontrollable male urges;[1] and a general reluctance to see rape as a socio-political act of violence. It also revealed a social anxiety of discussing certain stigmatized topics, and that well-kept public secrets of law[2] would get uncovered, with the potentiality of tarnishing lives of those who uncover too much.

Good research is often portrayed as neutral and objective,[3] requiring that the researcher maintain a certain distance from the participants, and not be overly involved with or emotional about the topic.[4] In such conceptualizations, the identity of researchers, their social locations, past experiences, and sexuality is deemed to be irrelevant, or better off, hidden.[5] Such a focus (or lack thereof) has led to researchers presenting data without discussing how the different dimensions of identity inform one's interest in a particular topic, choices in the research process, access to the field, and how these aspects present unique challenges to the researcher.[6]

While feminist research has been more accepting of researchers who depart from the traditional field–researcher dichotomies and share personal testimonies,[7] a review of past research shows that women

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[1] Rochelle Semmel Albin, "Psychological Studies of Rape," *Signs: Journal of Women in Culture and Society* 3, no. 2 (December 1977): 423–35, https://doi.org/10.1086/493474; Irina Anderson and Kathy Doherty, *Accounting for Rape: Psychology, Feminism and Discourse Analysis in the Study of Sexual Violence,* Women and Psychology (London: Routledge, 2008); Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press, 2013), https://doi.org/10.1093/acprof:oso/9780198089568.001.0001

[2] Baxi, *Public Secrets of Law.*

[3] Anne Bitsch, "The Micro-Politics of Emotions in Legal Space: An Autoethnography about Sexual Violence and Displacement in Norway," *Gender, Place & Culture* 25, no. 10 (October 3, 2018): 1514–32, https://doi.org/10.1080/0966369X.2018.1442817; Dina Perrone, "Gender and Sexuality in the Field: A Female Ethnographer's Experience Researching Drug Use in Dance Clubs," *Substance Use & Misuse* 45, no. 5 (March 2010): 717–35, https://doi.org/10.3109/10826081003595127.

[4] Bitsch, "The Micro-Politics of Emotions in Legal Space."

[5] Perrone, "Gender and Sexuality in the Field."

[6] Bitsch, "The Micro-Politics of Emotions in Legal Space"; Perrone, "Gender and Sexuality in the Field"; Fae Chubin, "You May Smother My Voice, but You Will Hear My Silence: An Autoethnography on Street Sexual Harassment, the Discourse of Shame and Women's Resistance in Iran," *Sexualities* 17, no. 1–2 (January 2014): 176–93, https://doi.org/10.1177/1363460713511097.

[7] Bitsch, "The Micro-Politics of Emotions in Legal Space." Perrone, "Gender and Sexuality

are more likely to express their personal experiences for research pur-poses than their male counterparts.[8] This could perhaps be because female researchers possess a unique epistemic position in research. In choosing to write about their own positionality, researchers have the opportunity to clarify their motivations, make sense of their existence within a particular socio-cultural, political, and historical context, and break the silence surrounding certain topics.[9]

I began my exploration of this topic a year and half ago, and the pro-cess of researching sexual violence has been very emotional for me. My interest in researching this area stems from having closely wit-nessed the secondary victimization[10] of individuals who report sex-ual harassment in the legal process. Similarly, witnessing several un-warranted comments from the field (such as those encountered in the anecdote narrated at the beginning of this essay) also made me realize that my emotions and experiences can serve as important sources of information regarding the power dimensions of the field[11]. Through this essay, I look to present one of the experiences that inspired me to pursue this topic. We can observe how legal spaces reaffirm and as-sert patriarchal notions of justice,[12] and assert social norms related to gender, caste, and class, revealing contradictions between their pro-

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in the Field"; Pratiksha Baxi, "Impractical Topics, Practical Fields," *Economic and Political Weekly*, April 26, 2016, https://www.epw.in/journal/2016/18/impractical-topics-practical-fields.html; Rebecca Campbell, *Emotionally Involved: The Impact of Researching Rape* (New York: Routledge, 2002).

[8] Nicole Westmarland and Hannah Bows, *Researching Gender, Violence and Abuse: Theory, Methods, Action*, 1st ed. (Abingdon, Oxon; New York, NY: Routledge, 2019.: Routledge, 2018), https://doi.org/10.4324/9781315630618; Perrone, "Gender and Sexuality in the Field."

[9] Westmarland and Bows, *Researching Gender, Violence and Abuse*; Pratiksha Baxi, "Impractical Topics, Practical Fields."

[10] Rebecca Campbell et al., "Preventing the 'Second Rape': Rape Survivors' Experiences With Community Service Providers," *Journal of Interpersonal Violence* 16, no. 12 (December 2001): 1239–59, https://doi.org/10.1177/088626001016012002; Rachel M. Venema, "Police Of-ficer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports," *Journal of Interpersonal Violence* 31, no. 5 (March 2016): 872–99, https://doi.org/10.1177/0886260514556765

[11] Bitsch, "The Micro-Politics of Emotions in Legal Space."

[12] Baxi, *Public Secrets of Law*; Neetika Vishwanath, "Ethnographic Study of Rape Adjudication in Lucknow's Trial Court," *Socio-Legal Review* 16 (2020): 55.

fessional and social duties.[13]

My first time at a police station: Supporting an acquaintance

My first visit to a police station was in Goa when I accompanied Priya (pseudonym)[14] — a close acquaintance — to help report the stalking and sexual harassment that she was facing. After recounting her experiences to the police personnel, we were told that action could only be taken if the complaint was given in writing. We obliged and penned down the details of the several instances, including dates, locations, names, and information about witnesses, among other details in the form of a letter addressed to the police inspector. Since sexual harassment had also occurred telephonically and online (apart from in-person incidents), we had carried with us thorough documentation of harassment, including call-log printouts and screenshots of explicit messages and photographs sent by the accused to Priya (which clearly showed his face, phone number, or user name). We showed all the evidence to the police officer who was addressing us, and attached copies to the complaint letter as well. He accepted it and assured us that we could leave without worrying any further.

As a follow-up, before leaving, we enquired whether an FIR (First Information Report) had been prepared. At that time, neither Priya nor I had any professional familiarity with the law or knowledge of the functioning of police stations. Our limited knowledge (such as demanding that an FIR be filed) was from films, TV shows, crime novels, or the news. I had accompanied Priya to provide emotional support as well as to help draft the complaint. We felt confident, as articulate, educated women, in our abilities to complete the task of filing an official

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[13] Prem Chowdhry, "Private Lives, State Intervention: Cases of Runaway Marriage in Rural North India," *Modern Asian Studies* 38, no. 1 (February 2004): 55–84, https://doi.org/10.1017/S0026749X04001027

[14] Ethics of informed consent, voluntary participation, and confidentiality/protection of identity were followed in the reporting of this case. Consent was obtained from the respondent not only when I decided to write this essay, but also on its completion. Furthermore, the completed essay was also shared with the respondent to ensure that it aligned with their representation of the event.

complaint without any legal professional to aid us. The police personnel informed us that an FIR was registered, and that we would be informed about the progress made on the case. We were also assured that strict action would be taken against the accused. Feeling confident, relieved, and proud that we had successfully visited a police station and filed a complaint and FIR, we headed back.

Only later did we find out that the police officer had never filed an FIR, nor had he recorded the official statement. Although crimes such as sexual harassment and stalking are cognizable offences, and police authorities are required to file FIRs, even for orally reported cases, studies indicate that the required procedures such as registering the FIR at the time of receipt of complaint and providing guidance to survivors on their rights are not followed.[15] FIRs are registered based on social norms (such as those related to preserving respectability), influence of the political party in power, caste, class, linguistic affiliation, or to present low figures of registered crimes in the areas;[16] often, citizens find it hard to demand accountability without exerting influence.[17] Complainants might also experience victim blaming, or be asked to accept compromise settlements before FIRs are registered.[18] An FIR is the first step to start an investigation, and the non-registration of an FIR denies the survivor any chance of securing justice.

Some elders who knew both Priya and me, having learnt about our trip to the station, felt that it was unwise of us to have gone "alone" and "unaccompanied." Both Priya and I had family members with political

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[15] Partners For Law in Development (PLD), "A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi (2014-15)," *SSRN Electronic Journal*, 2017, https://doi.org/10.2139/ssrn.3021587; Hanif Qureshi, "Whether India Is Ready for Online FIRs," *Indian Police Journal.* 65, no. 4 (2018), https://papers.ssrn.com/abstract=3651230; Saurabh Raperia, "Ingredients and Law of Registration of FIR in India under the Criminal Procedure Code," SSRN Scholarly Paper (Rochester, NY, May 25, 2022), https://doi.org/10.2139/ssrn.4120080.

[16] Qureshi, "Whether India Is Ready for Online FIRs"; Raperia, "Ingredients and Law of Registration of FIR in India under the Criminal Procedure Code."

[17] Seva Singh Dahiya, "Police and Human Rights Violation in India," *The Indian Police Journal* 63, no. 2–3 (2016): 49–65.

[18] Partners For Law in Development (PLD), "A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi (2014-15)."

connections, which we believed could be used to influence the higher-ups at the station to take the case seriously. The elders asked us why we had behaved imprudently and had not called in favours.

At that instance, both of us perceived the experience of visiting the station quite differently, and realized that we were not as victorious in our first attempt as we had imagined. We felt that being gullible and having "trust in the system" had led to us being fooled. It was hence decided that we should visit the station a second time, but this time with Priya's father and after "using influence" — wherein the said higher-ups at the station would be instructed to give personal attention to Priya's case.

A lawyer and Priya's family friend also warned that her phone may be collected by the police as evidence, and that the investigators may scrutinize not only data pertaining to the case but also other personal data on the phone to provide evidence for her "character." So, she was more guarded and felt that she had to protect herself from the police at the station.

As investigators often begin investigations by doubting the credibility of the complainant,[19] personal data obtained from personal devices and social media accounts of victims, which is often irrelevant to the sexual violence case itself, is used as "evidence" against the victims to discredit their experiences and cast doubts on the intention behind filing the complaint.[20] The gruelling and humiliating experiences endured by victims after approaching the authorities, wherein their personal messages, photographs, social media posts of victims are scrutinized and made public, has been described by victims and activists as

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[19] Bradley A. Campbell, Tasha A. Menaker, and William R. King, "The Determination of Victim Credibility by Adult and Juvenile Sexual Assault Investigators," *Journal of Criminal Justice* 43, no. 1 (January 2015): 29–39, https://doi.org/10.1016/j.jcrimjus.2014.12.001.

[20] Katrin Hohl and Elizabeth A. Stanko, "Five Pillars: A Framework for Transforming the Police Response to Rape and Sexual Assault," *International Criminology* 2, no. 3 (September 2022): 222–29, https://doi.org/10.1007/s43576-022-00057-y; Rosemary Ricciardelli, Dale C. Spencer, and Alexa Dodge, "'Society Wants to See a True Victim': Police Interpretations of Victims of Sexual Violence," *Feminist Criminology* 16, no. 2 (April 2021): 216–35, https://doi.org/10.1177/1557085120970270.

"digital strip searches".[21]

The second visit when Priya's father accompanied us was quite different. This time, the officials appeared to be taking her case a little more seriously. The police inspector came forward to meet us, shook hands with Priya's father, and recorded a detailed statement and an FIR. The accused had been brought into the station and was placed in a holding cell next to where we were seated. Priya was visibly uncomfortable and anxious in his presence, but was also glad that some action seemed to have been taken. Her father waited outside the station to give her some privacy so she could record her statement freely. As the statement was being recorded, a female police sub-inspector who was also present kept interrupting and questioning Priya.

"Are you sure you were not in a relationship with him?" the sub-inspector asked. "We get several cases where girls file cases on their ex-boyfriends for revenge."

"No, I don't even know him," Priya clarified.

"But you both frequented the same gym. Were you not friends there?" she asked again.

"No, I never spoke to him," answered Priya.

"But he said you would smile at him in the gym. Did you ever smile at him?"

"I don't know. I don't think so. But don't we smile at people generally?"

"So, you used to smile at him. You knew him. He told us that both of you were in a relationship."

"No. You can talk to others at the gym. Look at the messages I submitted. I have never responded to him."

"Did you clearly tell him that you were not interested? Or did you lead him on in some way?"

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[21] Deborah Linton, "I Was Subject to a 'Digital Strip Search' by the Police after Reporting My Rape," *Glamour UK*, May 31, 2022, https://www.glamourmagazine.co.uk/article/rape-victims-digital-strip-search; Hohl and Stanko, "Five Pillars."

This was just one of the many frustrating questioning sequences that we encountered, wherein the police questioned not just the validity of what had happened, but also Priya's worldview and her intentions behind filing the complaint. Research shows how the behaviour of service providers in legal spaces is guided by biased, victim-blaming, or victim-dismissing conceptualizations which may contribute to the secondary traumatization and stigmatization of victims.[22] Furthermore, the performance of law in courts, police stations, and other medico-legal spaces reproduces societal patriarchal norms working to disqualify women's worldviews and sexualities.[23]

The female police sub-inspector also asked Priya why she had not changed her phone number to avoid cyber harassment. Telephonic or cyber sexual harassment is often considered to be less serious than physical sexual harassment and as a normalised act of teasing by men which can be ignored by victims; it is only considered as harassment when it surpasses the tolerance thresholds of women.[24] Hence, it can be noted that law enforcement institutions function within the ambit of a patriarchal society, wherein social and cultural ideas and myths related to sexual violence spill over into the practice of law.[25]

Subsequently, on the same day, we had to revisit the incident sites to record a *panchnama*.[26] During these visits also, similar questions

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[22] Rebecca Campbell et al., "Preventing the 'Second Rape': Rape Survivors' Experiences With Community Service Providers," *Journal of Interpersonal Violence* 16, no. 12 (December 2001): 1239–59, https://doi.org/10.1177/088626001016012002; Venema, "Police Officer Schema of Sexual Assault Reports"; Manish Kaithwas and Neena Pandey, "Incompetency and Challenges of Police in Rape Cases," *Social Work Chronicle* 7, no. 1 (2017): 52–71.

[23] Carol Smart, *Feminism and the Power of Law,* Sociology of Law and Crime (London ; New York: Routledge, 1989); Baxi, *Public Secrets of Law*; Vishwanath, "Ethnographic Study of Rape Adjudication in Lucknow's Trial Court."

[24] Debarati Halder and K. Jaishankar, "Cyber Gender Harassment and Secondary Victimization: A Comparative Analysis of the United States, the UK, and India," *Victims & Offenders* 6, no. 4 (October 1, 2011): 386–98, https://doi.org/10.1080/15564886.2011.607402

[25] Sharanya Basu Roy and Sayantan Ghosh Dastidar, "Why Do Men Rape? Understanding the Determinants of Rapes in India," *Third World Quarterly* 39, no. 8 (August 3, 2018): 1435–57, https://doi.org/10.1080/01436597.2018.1460200

[26] A *panchnama* refers to the formal recording of evidence and observations at the scene of the offence by the investigating officer, in the presence of witnesses who attest to the transparency and accuracy of investigation.

casting doubts on Priya's account followed. Her inability to remember even the slightest detail, such as the exact date or time of any of the incidents that happened over the years, was scrutinized; even the delay in registering a complaint was looked at with suspicion. We were told that such cases were difficult, and the line of questioning was only a way to build an airtight case without any loose ends.

At the end of the day, Priya was exhausted. Although she had accomplished more with this visit in terms of being able to record the official statement and completing the *panchnama* and FIR, she felt traumatized in many ways. Being seated in close proximity to the man who had been harassing her for years (even though he was in the lockup), and the constant scrutiny of her reality was demotivating her from pursuing the case. "Will I be able to do this?" she asked me.

At the time of the complaint, Priya had been enduring sexual harassment and stalking for over two years. A reluctance or delay in reporting sexual violence to authorities among survivors is widespread in sexual violence cases.[27] Priya had tried informal methods such as asking one of her family members to warn the accused to stop, alerting his family members of the unwelcome behaviour, and complaining to the gym that she and the accused frequented about the harassment (she was told that there was no functional sexual harassment committee there), but none of the methods had worked, and the harassment had only escalated further. For example, the written complaint she submitted to the gym, which had Priya's phone number, was shown to the accused by the gym manager. The accused memorized her number and started harassing her telephonically as well. Thereafter, Priya had stopped going to the gym. After the mother of the accused was made aware of his behaviour, she also began calling and harassing Priya to talk to her son. He followed Priya everywhere: to her workplace, her house, and also to the houses of several of her relatives.

A few months had passed but Priya did not hear back from the po-

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[27] Baxi, *Public Secrets of Law*; Manish Kaithwas and Neena Pandey, "Incompetency and Challenges of Police in Rape Cases."

lice station. Meanwhile, the harassment had only intensified, as the accused had also started harassing Priya's friends online. Priya made a second complaint to the police inspector regarding this. In it, she mentioned how the family of the accused was repeatedly calling her father to persuade him to compromise, forgive the accused, withdraw the complaint, and not ruin their son's future; she also mentioned that this had happened because someone at the police station had given the family of the accused the contact details of her father.

In India, although several crimes against women such as stalking, sexual harassment, and rape are "non-compoundable", which means the court does not allow out-of-court settlement or compromise in such matters, this appears to be quite a routine practice.[28] It has also been noted that at times, authorities such as the police devote more time to negotiating a reconciliation or compromise between the victim and the perpetrators rather than investigating the evidence of the case.[29] As Baxi, who has conducted several ethnographies of rape trials states:

> "compromise is often justified by evoking the social costs of judicial delay on a survivor of sexual violence such as the diminished marital prospects for the victim due to the stigma attached to rape... the complicity of the prosecutors, lawyers, police or even some judges in the production of the hostile witness remain a public secret" (p.298-299).

Around a year later, the prosecution lawyer assigned to Priya contacted her. "Are you still interested in pursuing the case? I think it will be very stressful and a lot of work for you," she said to Priya in their very first conversation.

"If my lawyer herself is not confident, is it really worth it?" Priya asked me.

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[28] Chirayu Jain, "Compoundability of Offences: Tracing the Shift in the Priorities of Criminal Justice," *Journal of Indian Law and Society* 7 (2016): 20; Pratiksha Baxi, "Justice Is a Secret: Compromise in Rape Trials," *Contributions to Indian Sociology* 44, no. 3 (October 2010): 207–33, https://doi.org/10.1177/006996671004400301

[29] Manish Kaithwas and Neena Pandey, "Incompetency and Challenges of Police in Rape Cases."

I was shocked that the legal personnel assigned to Priya was discouraging her from pursuing the case, which could potentially turn her into a hostile witness.[30] The lawyer even mentioned to Priya that she was giving sound personal advice and going beyond her professional role, as she was aware that Priya hailed from a "good" family. This shows us how at times legal actors may oscillate between their professional role of protecting the victim's rights, to playing the familial function of exercising control over and protecting women.[31] While Priya's privilege allowed her to "influence" legal authorities to take her case more seriously, some of the authorities also felt the need to protect her honour, by making sure that the case did not become public and remained a secret.

But what if the harassment continues? Or worsens? Won't they blame you for not taking action against him?, I had asked her, although I could fully empathize with the hopelessness she was feeling.

Ultimately, Priya decided to pursue the complaint. However, to protect her own mental health, she did not want to actively follow up with either the police or the prosecutorial authorities. The prosecution lawyer did not contact her again. Priya did not make further attempts to follow up on the case and has not seen any progress at the writing of this essay.

Although this was Priya's journey, I think I was also vicariously affected[32] by how it played out. At many points during the inquiry process, I felt guilty, responsible, and complicit in the secondary re-traumatization that she had to endure, especially because I was among the people who persuaded her to file a police complaint in the first place. It also deeply and negatively affected my belief about justice spaces. Although I was aware that the execution of law is not

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[30] Baxi, *Public Secrets of Law*.

[31] Chowdhry, "Private Lives, State Intervention"; Basu Roy and Ghosh Dastidar, "Why Do Men Rape?"

[32] Anita Padmanabhanunni and Nondumiso Gqomfa, "'The Ugliness of It Seeps into Me': Experiences of Vicarious Trauma among Female Psychologists Treating Survivors of Sexual Assault," *International Journal of Environmental Research and Public Health* 19, no. 7 (March 25, 2022): 3925, https://doi.org/10.3390/ijerph19073925; Campbell, Emotionally Involved.

always perfect, that incongruencies exist between written law and practice, and that many individuals from socially devalued communities fail to secure justice, this case helped me gain a more nuanced understanding of how vulnerabilities and privileges before the law may be facilitated by the intersections of myriad power structures. I was especially surprised by this case because Priya came from a very privileged family (much like mine), and possessed much more social power than the accused. Both of us had somehow considered ourselves, and people from our social strata, to be invulnerable and protected by the law. We both felt a sense of helplessness, felt less safe, and wondered that if even women with "influence" had to endure such experiences, how much worse would be the plight of women from socially devalued communities?

Through this and other such experiences, I developed an interest in understanding how social representations about social crimes and culture-centered vocalizations influence everyday legal processes, which consequently became the focus of my current PhD research. As I continue to reflect on my positionality and personal experiences in the field and my motivations behind venturing into this space, I hope to understand not only how my research is shaped by my social location and present the scope and limitation of my findings with transparency to potential readers, but also how such emotions, memories, and experiences reveal important information about the politics and cultures of legal spaces.[33]

Conducting "good research" in this field would hence require me to venture beyond the traditional positivist hierarchies that have shaped my training as a researcher and created a false dichotomy between researchers' emotions and methodology.[34] Accepting the interconnectedness of personal experiences and intellectual engagements would not only enrich my work theoretically, but also help me relate on a deeper level with my participants, leading to more nuanced and em-

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[33]   Bitsch, "The Micro-Politics of Emotions in Legal Space."

[34]   Campbell, Emotionally Involved; Bitsch, "The Micro-Politics of Emotions in Legal Space."

pathetic research outcomes.

Acknowledgements

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Part II
Justice Spaces

HUMANIZING THE JUSTICE EXPERIENCE: LEARNING FROM HUMAN-CENTRIC SERVICE DESIGN

BY ARVIND LODAYA

- The essay discusses the importance of user experience in making government services more user-friendly.

- It discusses the concept of journey mapping, its relation to citizen-centricity and how AI advancements in the justice system might serve to improve the user experience.

- It discusses how these insights can contribute to the discussions on enhancing public services.

WHAT IS JOURNEY MAPPING METHODOLOGY:

- Citizen-centric transformation
- Tracking user experiences

BENEFITS OF AI ADVANCEMENTS IN THE JUSTICE SYSTEM:

- Reduced backlog, saved time
- Balanced physical and digital focus

ON COMMUNITY INVOLVEMENT IN PUBLIC SERVICES:

- Need for public-centric approach
- Understanding user's perspective is key

JUSTICE adda

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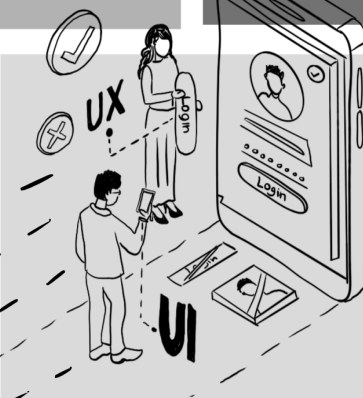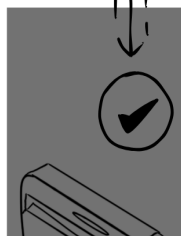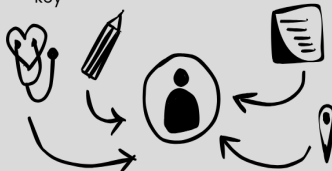
8. Humanizing the Justice Experience: Learning from Human-Centric Service Design

Arvind Lodaya[1]

A Dysfunctional Arm of Government?

"I hear these days that we will have to make new prisons because prisons are overcrowded. If we are moving towards progress as a society, why do we need new jails? We should be closing down existing ones." This was a public statement by no less than the President of India in the presence of the Prime Minister, Law Minister and senior-most judges of our judiciary, as reported by the Indian Express on its website in November 2022.

It would take a great deal of personal detachment and depth of perspective for anyone to regard the state of our justice system benevolently today. Regardless of their experience with or role in the system — including none in both — everyone has some misgivings about its efficacy and reliability. This is reflected in media reporting and entertainment media as well — in fact, the anti-hero who takes the law into his own hands and dispenses justice (usually, brutal and violent) to his oppressors has been an evergreen trope in our popular media since the 1970s.

So how can this grand and venerable institution, a pillar of democracy, with its incredibly complex and sophisticated ontology, epistemology and hermeneutics, learn from a practice that helps attract and seduce shoppers into a store or mall over and over again, only to relieve them of a load of their hard-earned money in exchange for some short-lived gratification? The answer in one word is "experience".

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Can Governance be measured like a Service?

For all time, it was thought that the business of government is governing, as that of business is making and selling, that of education is teaching, and so on. Each of these was seen as a unique and distinctive silo of practice, with little or nothing in common with each other. For a government agent to run a business unit, or for a business executive to run a school or even a class, was unthinkable — laughable, even. However, with widespread adoption and diffusion of design into the services sector/industry, this mindset has rapidly begun to change. And the key trigger-cum-unifier is the "satisfaction metric" — whether of the customer, the citizen, or the student, and the key catalyst is digitalization. For those not in the know, "customer satisfaction" is widely used in business to measure how a company's products or services — in other words, the sum total of their customer's experience in dealing with them — fall short of, meet or surpass the customer's expectations and/or the company's own stated goals. It is basically measured by a post-purchase or post-usage survey of customer opinion or perception using a Likert scale, and many variations and versions of this now exist.

The proliferation of the "satisfaction metric" in all walks of life has been triggered by digitalization in all corresponding spheres — and the services sector has embraced it the most aggressively. Now, with the increasing digitalization of government services or rather citizen services provided by the government, this indicator is finding its way into virtually every state department and agency — and courts and the justice system are no exception. While the primary motivation, and accomplishment, behind digitalization is integration and streamlining of processes (the "paperless office" being its holy grail), it is increasingly being used to enhance access and facilitate the interaction between the system and its various stakeholders, most prominently the underserved citizen. "There is an increasing discussion of how new technologies and interventions can be used to improve legal services, particularly for people without lawyers", writes Margaret Hagan,

Director of the Legal Design Lab at Stanford University.[1]

Public/Civic Service Design — An Emerging Field

The New York City Mayor's Office for Economic Opportunity has launched an initiative called Civic Service Design, with the assertion that "Governments are embracing design — not as a trend, but as a way to transform how we deliver services and information to the public." On the Civic Service Design website, they define it as "a discipline to develop solutions that are rooted in insights about the holistic experiences of those affected by public services. It considers people, processes, communications and technology as part of the solution." This fast-spreading practice has been adopted by several governments at various levels, across multiple countries and regions — in tandem with their digitalization initiatives.

We can now proceed to review what Civic or Public Service Design (or whatever its local variant is called) involves, and how it might be applied to improving citizen experience of courts and the justice system in general.

The Service Design "Playbook" published online by the Government of British Columbia (a state in Canada), lists their Service Design process as comprising six steps or stages, not necessarily in linear order: Alignment, Discovery-Opportunity-Prototyping and Testing, Roadmap and Implement. This is an adaptation of the earlier "Human-Centred Design" process which has five steps or stages: Empathise, Define, Ideate, Prototype and Test/Validate --- as well as the UK Design Council's "Double Diamond" four-stage process: Discover, Define, Develop and Deliver.

The New York City's Civic Service Design initiative (mentioned earlier) lists the following sets or areas of activity involved in the process: setting the stage, talking with people, seeing services in action, connect-

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[1]   Margaret D. Hagan, "A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly," *Indiana Journal of Law and Social Equality* 6, no. 2 (2018): Article 2.

ing the dots, trying things out, and focussing on impact. In addition, they even list out their overarching "Service Design Principles":

- Created with the people who use and deliver them
- Prototyped and tested for usability
- Accessible to all
- Equitably distributed
- Rigorously tested and evaluated for impact and effectiveness

This is important in order to assert and retain focus on the larger purpose and goal of this effort, in particular, to clarify and emphasize that it is not about productivity or process efficiency but accessibility and usability. And hence "(user) fulfilment/satisfaction" as its success metric — which we shall discuss in greater detail further in this article.

Fitting Public/Civic Service Design into "Justice-as-a-Service"

Now, let's take a closer look at the Service Design process, and elements or aspects from it that can be transferred to the Justice-as-a-Service (JaaS) model. Here is a possible list:

Empathetic User Study (with a particular focus on often-excluded categories): This could mean doing in-depth, empathetic studies of various 'justice service users' in the system.

Contextual User and Task Study: This would mean meticulously capturing and recording how users comprehend and navigate their way through the justice procedure and the various steps and actions involved.

User population classification into and as Personas: This is an extension of aspect no.1 listed above, involving 'bucketing' the diverse user population into characteristic types or personas, sharing common characteristics, motivations, behaviour patterns and capabilities.

Collaborative and Participatory Experience Journey Mapping: This involves tracking 'justice experience' for the users from start to finish, in-

cluding the task study in no.2 above, and also identifying issues, challenges, stress points, information gaps, etc. and their affective state at each point of this 'journey'. It should be noted that for many users in our justice system, this 'journey' takes decades and sometimes even lifetimes to complete.

Prioritization of Issues, Challenges and Pain Points: This step is a follow-on to the previous one, basically involving collating all the problem areas/spots documented and reviewing them in terms of intensity, criticality, impact on affective state/mental health, etc.

Collaborative and Participatory Innovation-Ideation around Pain-Points: This involves collaborative and participatory problem-solving and idea-generation sessions with actual service users, service representatives and domain veterans, and technical experts. As in any multi-stakeholder system, this step will highlight the varying and sometimes even contradictory agendas, values and perspectives involved.

Quick and Dirty/Low-Fidelity Prototyping of Shortlisted Ideas and Testing for Validation: The ideas generated in the previous step can now be rapidly converted into simulated interactions and/or simplified/low-fidelity (i.e. rough, approximate and low-cost) models or mock-ups of physical artefacts for users, service representatives and designers to obtain a 'feel' of the possible outcome and assess it for further investment and development (or not). In the case of digitalization being a central component, simple paper-based mockups of digital interactions and transactions work very well.

Detailed and High-Fidelity Prototyping of Shortlisted Ideas and Testing for Fine-Tuning: The more promising ideas shortlisted from the above step are now refined and manifested in greater detail and granularity (i.e. very close to the "production" version, hence involving more expense and effort), for more meticulous and rigorous testing and validation from service users, service representatives and other stakeholders. As above, a participatory, inclusive and multi-stakeholder approach along with consideration for inclusivity

and accessibility would be very helpful.

Roadmap to translate and implement successful ideas into practice and procedure: When a few of the detailed prototypes pilot-test successfully, a roadmap is drawn up to introduce and operational-ize/deploy them in the actual service context. Procedures are drawn up to ensure their peak operation and reliable availability through the projected lifecycle. This step requires the full attention and allyship of the administration and bureaucracy.

Implementation and Before-After "Satisfaction/Fulfilment" Tracking of individual interventions and overall process: Now, the innovations are rolled out in scale and across the entire system, and their impact on user satisfaction is tracked, for each innovation as well as for the overall process.

Journey Mapping: A quick illustration
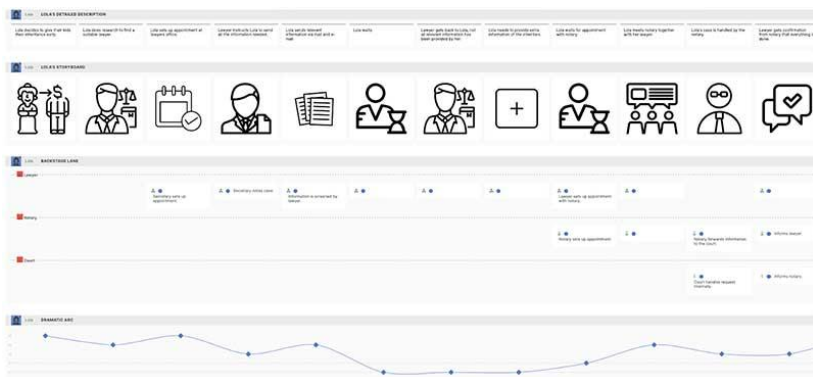
Legal Services Experience—sample journey map from Smaply.com. Source: https://www.smaply.com/blog/legal-service-design

An experience journey map is usually charted visually, so as to allow the entire journey and all its various stages and events to be visible at the same time. It also serves as an infographic that displays the high and low-stress points of the user's experience through the entire pro-cess. Here is an example from Smaply.com:

As is evident, this persona's experience starts out at a 'high' but degrades over time before ending yet again at a moderate level. The impact of compiling and exhibiting this in a participatory and collaborative way involving all key stakeholders is self-evident.

For the purpose of this paper, the author asked friends and colleagues who had been through some legal procedure to share their experiences, in a template that was a simplified version of the actual Experience Journey Map itself. This template involved four kinds of descriptions for each discrete step of their journey: Description of the Stage/Step, Details of the Procedure/Interaction involved, Affective State/Stress Level/Feeling and 'Voice in the Head' (i.e. reflection or response to one's situation in that stage). The journey steps were defined by the subject, and could start with searching for a lawyer or even before that, deliberating and concluding that the issue needs to be taken to court. It could end with the matter being settled either in or outside the court or remain unresolved as the matter was still sub-judice.

PERSONA: Ms. Q is a Professor of Social Science at a reputed university in a metro city. She is over 50 and is not dependent on anyone for her livelihood and sustenance. On the contrary, she is quite well-to-do and has raised her two children from teenage to postgraduation on her own. Her story is that of seeking a divorce and fair settlement of shared wealth and assets from her spouse. Four years down, her matter remains unresolved in court.

JOURNEY VIGNETTES: She found a lawyer via a personal referral, and was happy with their competency, prior experience and fee. However, while she feared a prolonged process, the lawyer was confident of closing the matter in two years. Every time she had to go for a case date/hearing, her stress levels were going through the roof and affecting her entire being. She could not 'switch off' that aspect and focus on others, that is, it affected her work and family relationships directly. She even says she wished her spouse passed away so that the case ended faster.

She found the court environment very intimidating and unfriendly ("no specific time allotted, so keep on waiting interminably till the judge calls you in", "washrooms are dirty", "people give you strange looks", "no privacy so people are discussing very personal things in the corridors"), she even felt the judge assigned to her case had become prejudiced against her and that she was not "adjusting" or "flexible" merely from her contemporary and 'smart' appearance.

At some point, the judge asks the petitioners to produce all the original versions of documents submitted, which necessitated two visits to the court to attest in person. At some point, the 'voice in her head' was saying, "maybe I should just withdraw the case" in exasperation.

Even for a small excerpt from one individual's experience of the court process, we can spot so many stress points and stressing factors in their journey, as well as their more obvious solutions—finding a competent lawyer, reducing the number of in-person visits for minor matters, being treated with the same respect and dignity regardless, a hygienic and calming interior environment, acceptance of digital documentation, etc. Extrapolate this across diverse 'user' types, their motivation and access to resources, their contexts and the level and class of court they pass through. How can this multitude of pain points and systemic flaws be converted into an actionable agenda?

Here is one such agenda for "better court experience" developed by the Stanford Legal Design Lab, shared on their website:

- Coordinated Pathways: Streamline help into distinct, navigable pathways.
- User-Centered Signage: Offer visual, coherent signage and way finders.
- Better Welcomes: Provide efficient and human welcomes to the system and physical space.
- Smart, Clear Paper: Revise paper forms, worksheets, and guides to be easier to understand and effective to use.
- Workstations that Work: Lay out spaces and tools to help people get their tasks done in the court buildings.

These were complemented by deep insights into "user experience breakdowns" — points of excessive stress and frustration through their journey of the justice system. These boiled down to overwhelming feelings of Lack of Control, Lack of Trust, and Fear and Stress, which the team mapped onto the "engagement challenge" of overcoming Ignorance, Intimidation, Logistical Inertia and Burn-out.

How such an agenda and insight into the user psyche translates into improving the experience "touchpoints" and user-system interactions becomes clearer and actionable: better websites, apps, kiosks, helplines, helpdesks, signboards, proformas, document retrieval, authentication and digitalization, space and seating, etc. Of course, in the Indian context, the compounding factors of diversity, backlog and resource constraints may well result in a very different set of priorities and agenda for improving court experience, and that is precisely the challenge in front of us.

Prototyping

A key problem area identified in the Stanford exercise was "wayfinding" — helping confused and stressed-out users quickly figure out what they need to do, how to do it, and where to get it done. They discovered that merely having signboards for each function or office was far from adequate, and besides, "most litigants would rather talk to a security guard (or someone who seems to be 'in the know')". Providing helpful guides in the form of booklets did not prove helpful if there was no person/official staffing the helpdesk. Security guards tended to give "very short answers and sometimes incorrect answers", as they did not want to "give directions" or "get engaged in discussion".

To try and solve these, the team recommended reorganizing the building layout along a physical litigant pathway. A consistent and user-friendly system of signs was their next recommendation, to be used across justice offices everywhere. Significantly, they advocated for signs oriented around problems rather than around departmental or office titles. Finally, they recommended the creation of a 'Self-

Help Center' that provides a combination of technology-enabled do-it-yourself service functionality, and also high-touch, face-to-face human service. Crucially, they insist that there must be open, public Wi-Fi to enable people to access information, documentation and communicate online.

Now, how would one prototype such ideas? Some can be built and tested in context and on-site, and others can be tested in the lab, using simulations to stand in for innovations that are complicated or expensive to build and deploy without validation.

In the case of a digital tool (such as a website or app), prototyping can be done on paper with simple sketches and workflows, as demonstrated in the Stanford Legal Design Lab's case study on evolving a self-help website for victims of eviction. Their section on prototyping to make courts more user-friendly illustrates other prototype approaches for signage and wayfinding, line waiting, handbook, texting/messaging, and pre-preparing users prior to their court appearance.

But. would it work in India?

The Service Design methodology is agnostic, and adapts to, any context or resources—it merely enables us to document and analyse a user's experience journey through a service engagement or transaction and look for ways to remedy or mitigate some of the stress points or problem areas it reveals. The actual innovations or improvements are, of course, subject to resources and degree of freedom latent in the system.

In India, we are so used to small, incremental changes in our public services that we sometimes fail to note the significant strides made over the medium and long term. This article's author was fortunate to pass through a court procedure in just over six months — which is the mandatory time frame — involving just a few initial briefings with the lawyer and the entire court appearance part done on live video. Of course, this was thanks to the COVID pandemic that had forced most

functions and operations to switch to online mode, but it was sufficient to demonstrate that a more streamlined and user-friendly alternative justice procedure was possible within the existing framework.

We also forget the physical process and user experience transformation that occurred when Indian Railways became computerized. Gone were the dingy, dark and smelly ticketing offices with touts crowding at the window — replaced by well-lit, glass-fronted agents on computers with orderly lines, seating and even the occasional air conditioning. Granted, both these cases emanated from a decision to switch the technology under the bonnet from analog to digital, the user experience benefit was virtually an accidental spinoff.

But the Aarogya Setu app was intended to be user-friendly from the outset, as its first principle. The data privacy concerns and controversy notwithstanding, the app did manage to provide information to millions along with updates about the pandemic, vaccination options and infections in the proximity.

The last example from the Indian context is the Mohalla Clinics, introduced by the Government of Delhi NCR in 2015. This is an interesting approach to improving access to and experience of a public service (in this case primary healthcare), by a combination of hardware innovation (choice of Portacabin structures), distribution (involving the community leadership in identifying and selecting sites for the clinics), and quality control (offering free service with quality monitored by the community).

Thus, there is ample evidence to give us hope and confidence that with the right intention, the right leadership and right execution and operation, even the most complex public services such as our Courts and Justice system can be radically revamped with the humble citizen-user at its centre, instead of the conventional — and colonial — top-down, authority-centric version that we still have.

In Conclusion

It is ironic that we are having to adapt principles of Service Design to improve the quality of user experience of our justice system — for that matter, any or all civic/public services — given our rich tradition of *seva*. It is formally codified not only in Sikh holy texts and rituals, but also has a prominent presence in other traditions and canons. In all these texts, it is associated with "selflessness" and directed at the "other", i.e. the underdog, victim, sufferer and unfortunate. It is instituted to remind us of the divinity within all living beings.

This should only remind and inspire us to infuse a sense of professionalism and quality in our practice of *seva* — in keeping with contemporary standards and expectations. True success would lie in the 'if and when' we are able to elevate accessibility and user-friendliness of our public services to even higher standards than those in commercial spaces — surely, compassion is a far greater moral force than a few pieces of money?

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DIGITALISATION OF INDIAN COURTS: ARCHIVING JUDICIAL DATA

BY VARSHA AITHALA
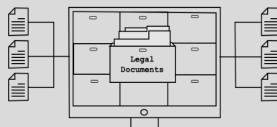
- This essay discusses the need for a judicial data archive in India, recognizing the impact of judicial digitalization on access to case information. It discusses current tools like the National Judicial Data Grid, their limitations, and the importance of a dedicated archive for ensuring long-term access, transparency, and accountability.

- The essay also addresses challenges in balancing public access with individual rights and proposes solutions for creating a comprehensive judicial data archive.

CHALLENGES:

- Professional, political, and privacy concerns
- Inconsistent data standards, lack of funding, inadequate infrastructure

TECHNOLOGICAL AND HUMAN RESOURCE NEEDS:

- **Infrastructure:** Investment in digital systems and cloud storage
- **Tools:** Developing software for data management and security
- **Standards:** Establishing metadata and data governance frameworks
- **Personnel:** Training staff for data archive management

PROPOSED MODEL FOR INDIA:

- Setting up dedicated digital repositories at all High Courts and the Supreme Court
- Standardizing metadata and enabling enhanced data security
- Fostering collaboration between the judiciary and government
- Referencing international benchmarks like the US National Open Court Data Standards and EU's e-Codex system to build a robust judicial data archive in India
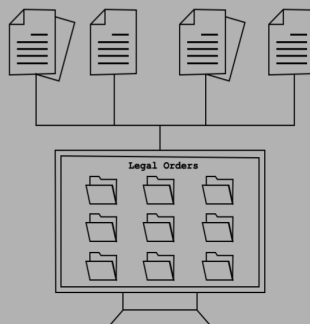
9. Digitalisation of Indian Courts: Archiving Judicial Data

Varsha Aithala[1]

Introduction: Need for a Judicial Data Archive for India

Since 2005, India has undergone substantial digitalisation of the judiciary under the ambitious e-Courts Mission Mode project, as part of the 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian judiciary'. This was promoted in three phases from 2007, the digitalisation of case records, use of case management applications, cloud computing architecture and litigant-friendly free and open-source software solutions for video conferencing, data storage and management and productivity enhancement. It created the e-Courts website which provides real time information about case status, cause lists and daily court orders and judgements from all tiers of courts to litigants, lawyers and government agencies.

The digitalisation of judicial data in India occurred gradually across over 20 years, as depicted in Figure A1,[2] with perspectives from both private platforms (Indian Kanoon) and public websites (of state high courts and the Supreme Court of India). The integration of information and communication technology in courts has enabled dashboards like the National Judicial Data Grid (NJDG) to serve as a useful data aggregation tool on pending and disposed cases at all levels of courts. The NJDG collates case records and provides summary case statistics from the High Courts and lower courts including details of filing, status, cause list, judgment and orders on a real-time basis.

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[1] Partner, Justice Adda.

[2] Sandeep Bhupatiraju et al., "Impact of Free Legal Search on Rule of Law: Evidence from Indian Kanoon" (National Bureau of Economic Research, 2023).

It promotes cross jurisdictional comparison of data, as well as of case reporting practices and improves the frequency of case related data collection. However, the NJDG is not designed to be a data archive. It serves as a monitoring tool to manage case pendency.
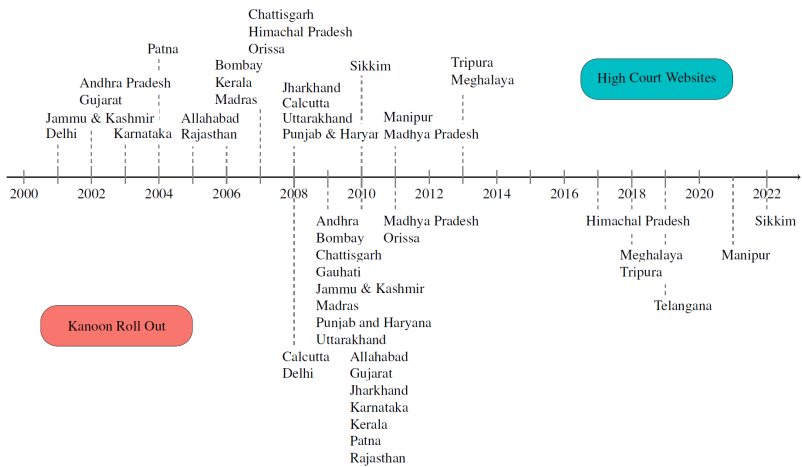
Figure A1: Rollout Years for High Court Websites (top) and Indian Kanoon (bottom)

Source: Bhupatiraju, Chen, Joshi and Neis, 2024

Judicial data mainly covers case records/registers, previous orders, proceedings pending before administrative authorities or other courts, sanctions imposed etc. Case registers contain data relating to case type, case number, filing and disposal dates, details of parties (name, date of birth, ethnicity, gender, address and postal code, entity type), judge or judicial officer and advocate, subject matter, connected matters, hearings, timeline (critical dates) and status of case (ongoing, pending, disposed) and orders. It also covers administrative data such as judicial statistics, special case information identifiers (confidential information, linked cases, whether a minor party is involved, case closure reasons etc.[3]), budget data (allocation and

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3   US National Open Court Data Standards https://www.ncsc.org/_data/assets/pdf_file/0014/

expenditure), procurement, contracting and financial records.[4] It may also contain details of orders made, amounts provided in judgements, costs orders etc. Judicial data covers documents digitally signed, and electronic evidence.

Filings track the order in which case documents are arranged and matters assigned to judges and details of the case type, date and time of filing and manner of submission (online or offline) etc. India's draft Judicial Statistics Bill, 2017[5] interprets judicial statistics to include details of the dispute, outcome, procedural stage, lawyer details, judge names, statute applied, time taken for hearings, the decision and delivery of judgments, adjournments. Commonly, this also includes the biography and work experience of judges, their workload as well as court names, timetable and numbers of pending, ongoing and disposed cases. Statistical data informs the public about the quality of work of judges and judicial officers.

It is commonly agreed that this definition of judicial data should exclude specific categories such as plaintiff identifiers. Borrowing from the restrictions set out in the broadcasting of court proceedings, the following need to be disallowed: private discussions between litigants and their counsel, judges' instructions to court staff or their messages to judges in the course of the proceeding, their notes on cases, advocate notes.[6] The United Kingdom similarly considers any actions which 'detract from the seriousness or integrity of the proceedings' like satire, political party broadcasts, advertising or promotion as exceptions to live streaming.[7] It also excludes sensitive personal infor-

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34025/NODS-User-Guide.pdf accessed on June 6, 2024.

[4] Marko Marković and Stevan Gostojić, "Open Judicial Data: A Comparative Analysis," *Social Science Computer Review* 38, no. 3 (June 2020): 295–314, https://doi.org/10.1177/0894439318770744

[5] "The Judicial Statistics Bill, 2017," Pub. L. No. XXXVIII of 2017 (2017), https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/judicial-E-151217.pdf?source=legislation

[6] E-Committee, "Model Rules for Live-Streaming and Recording of Court Proceedings" (Supreme Court of India, 2020), https://ecommitteesci.gov.in/document/model-rules-for-live-streaming-and-recording-of-court-proceedings/

[7] The Supreme Court of United Kingdom, "Practice Direction 8, Para 8.17.1," n.d., https://www.supremecourt.uk/procedures/practice-direction-08.html

mation, such as those emerging in matrimonial disputes, sexual assault, and matters involving children and juveniles.

Therefore, judicial data is permitted to be used for academic purposes and as information through news, current affairs, education and legal training. In a common law jurisdiction like India, owing to the precedent value of case law, access to case law, which forms part of judicial data, is a necessity. Online legal databases like Indian Kanoon provide only case law data, and cannot be used as an official source, as errors which may occur during the web scraping process are not corrected manually,[8] raising questions on its reliability.

Access to good quality judicial data, that is freely available, is complete and without paywall restrictions has not been possible so far. We need a judicial data archive to reduce information asymmetry costs, create open data and through data curation and preservation ensure that this data is accessible in the future too.

This paper starts by explaining the purpose of a judicial archive and discusses its merits. Then, it discusses how the construction of an archive can achieve the tricky balance of competing values of public access and protection of individual rights, issues that can result and suggested approaches to resolve these. In conclusion, the paper finds that an archive of judicial data promotes several values: open justice, transparency and accountability of the judicial system, and is therefore an urgent necessity for India.

What do judicial data archives do?

There is special value in archiving judicial data. Citizens have a constitutional right to access proceedings under Article 21, for realising access to justice.[9] For instance, Article 129 of the Indian Constitution establishes the status of the Supreme Court as a court of record, publication of court proceedings is recognised as a facet of this right. Poppe

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[8] Sandeep Bhupatiraju et al., "Impact of Free Legal Search on Rule of Law: Evidence from Indian Kanoon."

[9] Swapnil Tripathi v. UOI Writ Petition (Civil) 1232/2017 (n.d.).

notes that 'administrative data derived from court records helps inform the design of interventions designed to enhance equal access to justice'.[10] In practice however, this right is rarely exercised because a citizen is not able to access high quality, useful information from an authentic, centralised source, and much of the court process remains opaque to them. Court reports are public records, and under India's Public Records Act, 1993, it is mandatory for the government to provide for proper arrangement, maintenance and preservation of public records. A data archive certainly satisfies this purpose.

Judicial data archives are part of the court's information management systems and utilise its technology architecture, therefore constituting court infrastructure. Well-designed court infrastructure promotes better administration of justice.[11] A 2023 Pew research paper suggests that standardised data helps courts better serve users: court administration, researchers, court clerks, judges, legal tech vendors, court IT staff. It allows court leaders and administration to effectively compare performance and outcomes, understand how cases play out, and quickly answer questions from other courts, external stakeholders, and other branches of government.[12] Archives standardise data. This includes use of standard formats for documents and metadata, use of electronic signatures for authenticity.

Better data collection and analysis promotes accurate real-time forecasting by courts, and leads to efficient use of court resources. Court data and budgeting are linked,[13] and this can advance efforts to in-

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[10] Emily S Taylor Poppe, "Courts as Data Guardians for the Public Good," *University of Toronto Law Journal* 73, no. Supplement 1 (August 1, 2023): 13, https://doi.org/10.3138/utlj-2023-0005

[11] Heike Gramckow et al., "Good Practices for Courts Report: Helpful Elements for Good Court Performance and the World Bank's Quality of Judicial Process Indicators" (International Bank for Reconstruction and Development/The World Bank, September 12, 2016), https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/465991473859097902/Good-practices-for-courts-report-helpful-elements-for-good-court-performance-and-the-World-Bank-s-quality-of-judicial-process-indicators-Key-elements-lessons-learned-and-good-practice-examples

[12] The Pew Charitable Trusts, "Open Courts: How to Standardize Court Data for Greater Transparency and Ongoing Improvement," Fact Sheet, September 2023.

[13] Stephen C. Yeazell, "Courting Ignorance: Why We Know So Little About Our Most

crease funding for courts.[14] "Standardisation gives courts confidence in the data that they collect and report to leadership and other government institutions, and supports them in making informed funding requests that direct resources where they are needed to improve performance."[15]

Archives reduce search costs associated with legal information. A digital platform for Indian cases like Indian Kanoon enhances judicial efficiency by removing barriers to access without reducing information quality and results in significant positive economic effect. It was empirically observed that litigants with improved access to legal information 'felt empowered to present more coherent and compelling arguments during legal proceedings', which 'facilitated judges in reaching decisions more efficiently, thereby reducing the time required for case resolution'. It also influenced their decision to initiate a case, including in small claims, since their capacity to understand and interpret court proceedings improved, or to file an appeal. The study observed that staggered roll out of the platform also improved judicial efficiency and financial status of firms.[16]

As a first step towards archival of judicial data, we need to improve its reporting by the judiciary, beginning with standardising the definitions, fields, as well as documentation for existing data and requiring local jurisdictions to use those standards for reporting data. This makes data interoperable, which in turn enhances its use and promotes exchange as standard formats can easily integrate with information systems of different organisations, and can reduce associated

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Important Courts," *Daedalus* 143, no. 3 (2014): 129–39; Lisa Moore and Trevor C.W. Farrow, "Investing in Justice: A Literature Review in Support of the Case for Improved Access" (Toronto: Canadian Forum on Civil Justice, August 2019), https://cfcj-fcjc.org/wp-content/uploads/Investing-in-Justice-A-Literature-Review-in-Support-of-the-Case-for-Improved-Access-by-Lisa-Moore-and-Trevor-C-W-Farrow.pdf; Taylor Poppe, "Courts as Data Guardians for the Public Good."

[14] Taylor Poppe, "Courts as Data Guardians for the Public Good," 12.

[15] The Pew Charitable Trusts, "Open Courts: How to Standardize Court Data for Greater Transparency and Ongoing Improvement."

[16] Sandeep Bhupatiraju et al., "Impact of Free Legal Search on Rule of Law: Evidence from Indian Kanoon."

costs.

Archiving data improves traceability and availability of judicial data for the longer term, serving as a useful audit of the functions and outputs, not just of courts, but extending to its constituent elements such as judges and court administration, and to evaluate court productivity. This also forms a valuable check against corruption.

Data archives, when well catalogued, scientifically stored and published, search and preserve historical data for retrieval, protect legally sensitive digital records, provide relevant background and context and can promote long-term research use. It can also assist with periodic assessments through surveys, the results of which can be useful for granular examination of patterns from longitudinal time series data.

Digitalisation of courts helps develop a judicial data archive

As explained earlier, the objective of the e-Courts project of India has been to "facilitate faster disposal of cases by speeding up court processes and providing transparent online flow of information on case status, orders/judgments etc. to the judiciary as well as litigants, lawyers and other stakeholders"[17]

The following activities have been completed under the e-Courts project: subordinate courts have been computerised, records of pending and disposed cases are being scanned and digitised to enable paperless courts with Wacom display boards, virtual courts connected through video conferences, issuance of digitally certified documents and QR codes assigned to case bundles;[18] Case Information Software (CIS) has been deployed in court on Free and Open-Source Software (FOSS); specific open Application Programming Interfaces

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[17]   Ministry of Law and Justice, "Digitalization of the Supreme Court and High Court Records" (Government of India, August 10, 2023), https://pib.gov.in/PressReleasePage.aspx?PRID= 1947489.

[18]   E-Committee, Supreme Court of India 'Digitization of Case records' (May 20, 2024) http://alturl.com/nf2fi accessed on June 4, 2024.

(APIs) are made available under India's National Data Sharing and Accessibility Policy, 2012[19] to allow easy access to the NJDG data; various citizen centric services have been made available via SMS push and pull, e-mail, eCourts services portal, judicial service centers and information kiosks on court premises, the eCourts mobile app for litigants and lawyers and the JustIS app for judges; the e-Filing system is available with advanced features like e-*Vakalatnama*,[20] e-signing, video recording of oath etc. which has been integrated with e payments; the e-Courts website has a judgment search function for providing judgment copies free of cost.

Digitalisation of judicial data has made it easier to archive it. Digitisation has helped courts deal with increased workload and provides easy access to court judgements and orders. Markovic´& Gostojic recommend that judgements and orders should be published in machine readable XML formats[21], such as Akoma Ntoso,[22] LegalDocML[23] or CEN MetaLex.[24] Of particular interest to the Indian scenario is their suggestion of customising these formats to local languages with added features like automatic anonymisation and redaction of the judgements. But for each of these changes, technology should move in parallel to changes in legal procedures, with minimal timing differences.[25]

Procedures should 'be understandable and jargon-free, created through stakeholder consultation rather than lengthy formal proce-

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[19] Department of Science and Technology, "National Data Sharing and Accessibility Policy" (Government of India, September 2020), https://dst.gov.in/national-data-sharing-and-accessibility-policy-0

[20] This means a legal document that authorizes a lawyer to represent a client in a court proceeding.

[21] Marković and Gostojić, "Open Judicial Data."

[22] Monica Palmirani, "OASIS LegalDocumentML (LegalDocML) TC - OASIS," accessed September 16, 2024, https://groups.oasis-open.org/communities/tc-community-home2?CommunityKey=3425f20f-b704-4076-9fab-018dc7d3efbe

[23] Palmirani.

[24] Alexander Boer et al., "CEN MetaLex Workshop Agreement: Final," January 1, 2009.

[25] Giampiero Lupo and Jane Bailey, "Designing and Implementing E-Justice Systems: Some Lessons Learned from EU and Canadian Examples," *Laws* 3, no. 2 (June 24, 2014): 353–87, https://doi.org/10.3390/laws3020353

dures'.[26]   For instance, a legal search engine like Indian Kanoon has transformed access by making available court cases and legislations *freely* on its platform whereas other resources were subscription-based and 'expensive, difficult to access, and had only partial coverage of Indian law', 'access to these databases was negligible' and 'even in 2020, only half of Indian advocates at high courts had access to these databases'.[27]   It therefore 'brought a sudden, substantial and entirely exogenous reduction in the cost of searching for legal information in India'.[28]

We can uncover the hidden value of digitalisation using the example of live streaming cases and transcripts of audio/video recordings of court proceedings. Live streaming of Supreme Court proceedings started in 2022. Since then, it has expanded to cover seven regional high courts and the eCommittee of the Indian Supreme Court drafted the 'Model Rules for Live Streaming and Recording of Court Proceedings'.[29]   This has provided an important resource for archiving audio-visual data. The livestream rules require archiving of recorded broadcasts of proceedings to be preserved in the audio-visual unit of the court registry, and available on the court website. The archive is to be supplemented with hard copies of past proceedings to be made available for fair and accurate reporting of proceedings.

This is a clear instance where digitalisation promotes open justice. The Indian SC highlighted the following components of open justice in its seminal decision of *Swapnil Tripathi*: the entitlement of an interested person to attend court as a spectator; full, fair and accurate reporting of court proceedings; judges' duty to give reasoned decisions; and public access to judgments.[30] Open justice is an essential element

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[26]   Lupo and Bailey.

[27]   Vidhi Centre for Legal Policy, "A Survey of Advocates Practicing Before the High Courts," 2020, https://vidhilegalpolicy.in/research/a-survey-of-advocates-practicing-before-the-high-courts

[28]   Sandeep Bhupatiraju et al., "Impact of Free Legal Search on Rule of Law: Evidence from Indian Kanoon."

[29]   E-Committee, "Model Rules for Live-Streaming and Recording of Court Proceedings."

[30]   Emma Cunliffe, "Open Justice: Concepts and Judicial Approaches," *Federal Law Review* 40, no.

of the administration of justice. It promotes effective justice service delivery and closer-to-citizens institutions. Transparency of the judicial system improves public trust and accountability of the institution. Open data is essential to enable open justice.

The experience of Australia, Canada,[31] New Zealand, South Africa and the United Kingdom shows that courts exercise total control over the nature and extent of judicial data information.[32] Judicial data should always provide an accurate, impartial and balanced coverage of court proceedings and of the parties involved, without publishing anything out of context.

In India, courts maintain their own data, and have their own specific procedure for a citizen to access records. Courts conduct a valuable public service under the doctrine of *stare decisis*, as their decisions have a strong ripple effect beyond the parties to a dispute. Using their power to interpret the law and conduct judicial review, they are an important contributor to policy making. Through the enforcement of decisions, they 'also serve as an important downstream site of legislative activity'.[33] Courts hold intellectual property rights over their data, including audio-visual recorded materials. Therefore, they are best suited to design, manage and update the proposed judicial archive for India.

What's preventing a judicial data archive for India?

The Indian judiciary should be at the forefront of efforts for archiving data. However, as Michener & Ritter's 2017 study observes, the "three-Ps" summarise the official resistance to these efforts: 'professional, political, and personal privacy concerns'. They explain that professional resistance comes from the possibility of assessing the quality

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3 (September 2012): 385–411, https://doi.org/10.22145/flr.40.3.4

[31] Lupo and Bailey, "Designing and Implementing E-Justice Systems."

[32] The Supreme Court in *Swapnil Tripathi v. Union of India* Writ Petition (Civil) No. 1232/ 2017, discusses the important role that courts play as data guardians in the context of live streaming of cases.

[33] Poppe notes that the operation of the civil justice system has an impact on the development of the law, pp. 6-7

of work based on open data sets. Political resistance reflects lack of readiness to dedicate both human and financial resources to publish data.[34] Personal privacy reflects concerns about personal or sensitive information like identifying information, improper use, concerns over the use of specific kinds of materials like video footage, police sheets or malicious pleadings unsubstantiated by admissible evidence.[35]

Political resistance reflects the reluctance to impose requirements of judicial data archiving on the already overburdened and underfunded Indian courts. Court infrastructure is funded by tax revenues. A review of budgetary allocations for courts across Indian states between 2010-11 and 2023-24 reveals that states, which are primarily responsible for funding court infrastructure, allocate very low amounts in their budgets for court infrastructure (NCMS Baseline Report between 2006-07 to 2010-11). The Central Government supplements the state funding by releasing funds through Centrally Sponsored Schemes. However, Vidhi's evaluation of the use of CSS funds[36] reveals that these funds have been distributed among various states in an arbitrary manner.

Then, there are privacy concerns. In 2021, a petitioner sought the removal of a bail order on the basis of the 'right to be forgotten' in the Kerala High Court against Indian Kanoon, a popular site providing free access to court judgements and legislations. He drew support from the privacy right established in the landmark *Puttaswamy*[37] decision contending that since he was subsequently acquitted in the case, the bail order was outdated, irrelevant and excessive, and incorrect. The Court

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[34] Gregory Michener and Otavio Ritter, "Comparing Resistance to Open Data Performance Measurement: Public Education in Brazil and the UK," *SSRN Electronic Journal,* 2017, https://doi.org/10.2139/ssrn.3290604

[35] Katherine Biber, "Evidence from the Archive: Implementing the Court Information Act in NSW," SSRN Scholarly Paper (Rochester, NY, February 29, 2012), https://papers.ssrn.com/abstract=2013616

[36] Ritwika Sharma, Mayuri Gupta, and Kevin James, "Fiscal Federalism and Centrally Sponsored Schemes: Rethinking Article 282 of the Constitution" (Vidhi Centre for Legal Policy, June 30, 2021), https://vidhilegalpolicy.in/research/fiscal-federalism-and-centrally-sponsored-schemes-rethinking-article-282-of-the-constitution/

[37] Justice K.S. Puttaswamy & Anr. vs. Union of India & Ors, 2017 SC 4161 AIR (n.d.).

dismissed this argument on the basis of an earlier decision[38] which established that court orders were public records and so, the right to privacy could not be used to prevent publication. The only exceptions to this rule were if the court specifically passed such an order itself or if there was a statutory prohibition against publication of certain types of orders.[39]

This is compounded by a more basic problem of judicial data — the lack of standardisation: common judicial terms are defined differently in different states. Priority data fields are not standardised and machine readable. This requires an audit of all data fields that local jurisdictions use and assurance that those fields are defined consistently. Usage in terms of format and frequency vary.

Courts are a 'data guardian'.[40] In India, courts collect and process a lot of data already from the local levels to the centre. But this cannot be archived as it suffers from several issues: it is usually unclear whether the data has been collected by the government or a third party; if the data is current or if it is not available online without the need to register or request access; where access is not free; or it is difficult to find data with minimal human effort to use it; or bulk download is difficult; where it is not open access or standardised or in machine readable files. This makes data comparisons difficult and prevents the public understanding of, and engagement with the law.

Across the world, when comparing data on education, health care, labour markets and criminal justice, it is observed that a central data infrastructure for civil justice is underdeveloped.[41] Available data is 'organised around the interests and function of justice institutions such as courts or lawyers, rather than the people they

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[38] R Rajagopal v. State of Tamil Nadu, 264 AIR (1995).

[39] Section 228A of the Indian Penal Code, 1860 prevents disclosure of identity of victims of sexual violence.

[40] Taylor Poppe, "Courts as Data Guardians for the Public Good."

[41] Rebecca L. Sandefur, Matthew Burnett, and Julia Drummond, "People Centred Access to Justice Research: A Global Perspective" (International Development Research Centre, Canada, 2023), https://www.americanbarfoundation.org/wp-content/uploads/2023/11/People-Centered-Access-to-Justice-Research-A-Global-Perspective.pdf

serve'.[42]   In India, there is no single source of judicial data: publicly available data on the judicial system is scattered among various sources (https://ecourts.gov.in/ecourts_home/) for district courts and the websites and annual reports of respective high courts and the Supreme Court of India) and data availability is managed locally and with inconsistent practices.   A fragmented system leads to several issues. Sandefur & Burnett observe that in the context of developing a shared research agenda for access to justice initiatives, consistent implementation of a new program or model across a jurisdiction is more difficult in such systems, because it must be implemented anew in each of many 'micro-jurisdictions' that have their own norms and own formal rules. They observe that scaling of projects becomes more challenging in fragmented systems, as even basic information must be customized to local norms and rules.[43]

Substantive volumes of judicial data in India are currently archived mainly in physical files.[44] This can lead to dark archives which get created out of non-catalogued records packed in boxes and unscientifically managed digital data. Court administrations in India lack the capacity to build and manage data archives, and handle requests to support independent research and policy analysis.[45] So, researchers need to collect and compile data for empirical studies on their own initiative, by developing their own methods and metrics to assess impact. Sandefur point to the danger of research in this field being conducted by people who are 'seldom in conversation with each other about their

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[42]   Charlotte Alexander and Lauren Sudeall, "Creating a People-First Court Data Framework," *Harvard Civil Rights - Civil Liberties Law Review (CR-CL)*, Vanderbilt Law Research Paper, 58, no. No. 23-56 (2023): 731– 88.

[43]   Rebecca L. Sandefur and Matthew Burnett, "All Together Now: Building a Shared Access to Justice Research Framework for Theoretical Insight and Actionable Intelligence," *SSRN Electronic Journal,* 2022, https://doi.org/10.2139/ssrn.4250295

[44]   In two rounds of surveys conducted by the Supreme Court of India's e-Committee Working Group on Digital Preservation, by 2021, only 73,44,57,063 pages which constitutes 5.9% of the total number of pages of 'legacy records' i.e. cases disposed by High Courts were digitised and 12,42,93,90,000 pages required digital preservation.

[45]   Daksh, "Judicial Data Regulation: Daksh Insights," accessed September 16, 2024, https://www.dakshindia.org/judicial-data-regulation/

research questions and findings', which leads to 'enormous variation in method, disciplinary approach and specific research questions'.[46] Data quality is concerning.[47] Incomplete or error prone data accumulated over several years is a challenge. Available data in courts, particularly, subordinate courts, has been compiled in an aggregate fashion and presented mainly as summaries of case inflow and outflow, by geography and court levels, so they provide limited information. These are not linked to other administrative data. Better access to detailed, institutional data about services, costs, and outcomes from various sources: judicial systems, administrative agencies and service providers, and the ability to combine data sources is necessary.

In 2010, the Ministry of Electronics and Information Technology, Government of India, prepared a National Digital Preservation Program, which developed an Open Archival System for the audiovisual digital archive created for arts. Specifically for judicial data, with the exception of an ongoing exercise to catalogue historical case data in Odisha,[48] no real efforts have been made in India to systematically identify, collate, index, preserve and publish judicial data for access by various stakeholders, both internal (litigants, lawyers, judges, court administration) and external (researchers, scholars, legislators, officials, policy makers, the media and the public).

Suggested Model for a Judicial Data Archive for India

As explained previously, archives are valuable resources. India's existing legal framework[49] also emphasises the need for digital preservation and archiving judicial data. It mandates that digital information must be considered as records which should be preserved. Their evidentiary value should be recognised, and safe custody of digital records needs to be ensured. Access to these records should always

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[46] Sandefur and Burnett, "All Together Now"; Rebecca L. Sandefur, Matthew Burnett, and Julia Drummond, "People Centred Access to Justice Research: A Global Perspective."

[47] Daksh, "Judicial Data Regulation."

[48] (Centre For Judicial Archives, Odisha, n.d.), http://112.133.226.244/judicial_arc/

[49] A combined reading of the Indian Evidence Act, 1872, Public Records Act, 1993, Information Technology Act 2000 and Right to Information Act, 2005.

be free, with no barriers on reuse, they should be permanent i.e. at a stable internet location and in a stable format, interoperable and easy to adapt to other formats, trustable (digitally signed, or includes date/time stamp) and safe to open and use. The process needs to be well documented. The design needs to include public inputs.

The draft Judicial Statistics Bill, 2017 of India, provides for the setting up of a central body, the National Judicial Statistics Authority, for collection and publication of judicial statistics, to improve transparency. The Bill explains that the availability of such empirical data in the legal field is extremely helpful to legal researchers and law reform agencies like the Law Commission to assess the performance of judicial institutions, accurately diagnose issues, suggest remedies for judicial backlog, demystify the law and improve administration of justice.[50]

Several pre-conditions need to be satisfied to manage a judicial data archive: high levels of digitization, metadata creation and curation, efficient retrievability and sustenance, sufficient cloud storage infrastructure, tools and software, technical support, data protection strategy, disaster recovery, audit and certification to ensure accountability etc. The archiving process needs to balance access rights and the consequent values of open justice with the need for a fair trial, and personal privacy, confidentiality and sensitivity of litigants, witnesses and cases.[51]

Anonymisation or redaction of confidential information is necessary[52] to ensure that identifiable personal data is not published. Conroy & Scassa warn against the danger of 're-identification' which can, for instance, reveal an individual's identity even if anonymized data is used, due to its combination with other data.[53] This should be avoided. In

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[50] Extracted from the Statement of Objects and Reasons, Judicial Statistics Bill, 2017.

[51] As discussed by Justice A.M. Khanwilkar in *Swapnil Tripathi v. Union of India* Writ Petition (Civil) No. 1232/ 2017.

[52] Goran Sladic et al., "Computer Aided Anonymization and Redaction of Judicial Documents," *Computer Science and Information Systems* 13 (January 1, 2015), https://doi.org/10.2298/CSIS140808038S

[53] Teresa Scassa and Amy Conroy, "Strategies for Protecting Privacy in Open Data and Proactive Disclosure," *Canadian Journal of Law and Technology* 14, no. 2 (June 1, 2016), https:

New Zealand, for instance, the Court Information Act, 2010 classifies court information as either 'open' or 'restricted'. In certain circumstances, the court can provide access even to restricted information. It is aimed at facilitating access to information to members of the public primarily, however, media organisations, researchers, artists and the litigating parties themselves also find it useful.

Unintended modification and unauthorised access to data should be prevented to preserve data integrity through access controls and regular back-ups. Data loss needs to be avoided using an adequate data protection strategy. Strong encryption tools and blockchain technology should be used to promote data security and prevent breach of sensitive personal information.

We need to evaluate the quality of data collected already to identify outliers in the number of cases, unrepresented litigants, and other quantitative variables. Standardised metadata should be assigned to existing data, open licenses should be applied, and a central data portal is required to facilitate easy retrieval and searching of open data from this source.

Open data policies, defining which data sets are to be open, developing collaborative partnerships with data users, promoting open data use, and using open data to underpin accountability, need to be implemented, monitored and evaluated. These need to be coupled with more engagement from the judiciary to embrace the open data policy for judicial systems.

In 2022, an attempt was made to develop standard protocols for phased archiving and preservation of judicial data by the Indian Supreme Court e-Committee's Digital Data Preservation Sub-Committee, which set out the Digital Preservation Standard Operating Procedure (SOP). The SOP requires dedicated Judicial Digital Repositories (JDRs) to be set up at all High Courts and the Supreme Court of India. JDRs preserve (i.e. scan or digitize, preserve, store, search

and retrieve) digitised and computer-generated judicial data. This has evidentiary value and can also be used to build Artificial Intelligence/Machine Learning based applications. It suggests the following requirements for designing a trustworthy digital data repository:
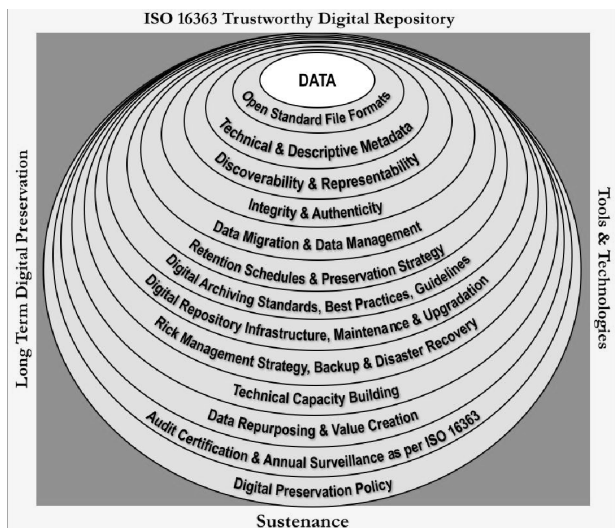
Source: Layers of ISO 16363 Certified Trustworthy Digital Repository; Digital Preservation --- Standard Operating Procedure, e-Committee, Supreme Court of India

(The layered representation of Trustworthy Digital Repository, Image Courtesy Proceedings of C-DAC/APA International Conference on Developing Trustworthy Digital Repositories for Digital Preservation, 2014)

These layers "guarantee the capacity of a digital repository to deal with the threats and risks within its systems, to monitor, plan and maintain the digital resources, as well as the ability to act and implement a strategy for digital preservation." of records.[54]

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[54] E-Committee, "Standard Operating Procedure" (Supreme Court of India, 2014), https://cdnbbsr.s3waas.gov.in/s3ec020afa92fc0f8a9cf051bf2961b06a/uploads/2023/04/2023040932.pdf

The JDRs would be audited and certified for their overall trustworthiness and reliability to ensure legal admissibility of digital records as evidence. The SOP proposes a specially designed judicial data preservation system and access portal which would be interoperable across various JDRs for 'boosting efficiency, consistency and exchange of records/data between judicial entities'. Each high court is required to manage its Data Disaster Recovery.

Most importantly, there is a need to create an enabling environment. As the SOP explains, the judiciary should 'promote cultural change within itself, supporting collaborative work between the judiciary and other branches of the government, creating communities of practice, promoting debate on open data legislation and regulation, and implementing open data training' etc.[55] An ecosystem like the e-Codex system of the European Union, which is designed to permit transfer of electronic communication of judicial data and documents between the EU member states should be fostered. Under this, actors with different backgrounds such as ICT, law, technology etc. participate and divide the work of building an e-justice system. Modular architecture with several individual sub systems where each module develops independently without disturbing the overall infrastructure is necessary.[56] Similarly in India, the SOP suggests that the ecosystem should consist of the following:[57]

- digital infrastructure — data centres, cloud infrastructure, storage, disaster recovery site, high speed network connectivity

- software tools and systems necessary for digital preservation, data processing, data migration, integrity and authenticity, search and retrieval, e-discovery and annotation

- best practices and guidelines for digital preservation and information security

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[55] E-Committee.

[56] Lupo and Bailey, "Designing and Implementing E-Justice Systems."

[57] Derived from the Standard Operating Protocols for Judicial Data Repositories, Supreme Court of India

- access control restrictions as per designated users
- open and standards-based data format specifications
- cataloguing, descriptive and technical metadata standards to enable proper representation and comprehension of digital records
- qualified and trained human resources for managing data archives

It recommends studying comparative models, including the US National Open Court Data Standards,[58] to understand technologies, standards and best practices. It contains detailed documentation such as a user guide, technical notes, logical data models, data elements spreadsheets and easy to understand FAQs for judicial data collection. A notable example is the Arizona local courts which have set up a detailed data governance framework.[59] This involves setting up a joint committee to identify priority data elements, using an online hub for checklists and required data elements, such as those related to the case (like current case status), participants (name, race, gender, ethnicity), advocate information, pleadings, motions, filings etc. Similarly, Michigan state proposed adopting a judicial data warehouse to capture details such as case type, limited v/s full legal representation, judgement amount, plaintiff identifiers etc.[60]

Conclusions

This paper argues that setting up a judicial archive for India is a valuable task, with benefits to all stakeholders of the judicial system. Data

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[58] National Centre for State Courts, "National Open Data Standards: User Guide," April 2020, https://www.ncsc.org/__data/assets/pdf_file/0014/34025/NODS-User-Guide.pdf.

[59] "Administrative Order No. 2020-53" (Supreme Court of the State of Arizona, n.d.), https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-53.pdf?ver=2020-03-25-124050-937

[60] The Pew Charitable Trusts, "Open Courts: How to Standardize Court Data for Greater Transparency and Ongoing Improvement."

archives reduce inequity in access to information. However, unmonitored use of archives can have unexpected ethical consequences.

There is risk of intrusion into personal data and exposure of sensitive information. As explained earlier, the Court Information Act of New Zealand (NSW Act) makes court materials accessible. But this law has the potential to put evidence into a fresh context, after the facts have been resolved in litigation. Biber warns that this process can result in legal proceedings being put to unexpected uses by unlikely parties such as artists, curators or scholars "giving rise to ethical challenges to how we think about evidence after the conclusion of legal proceedings".

She warns of the risks of harm, humiliation, and exposure of sensitive and secret material that can occur due to the "misuse of evidence without adopting an 'archival sensibility'". The NSW Act fails to regulate such unintended beneficiaries who can challenge the very premise of the law by using the archives as evidence, which when taken out of context, has the 'capacity to harm'.[61]

The significance of contexts and relationships among archival records should be acknowledged. Records are always to be read as part of a system. Records have corporeal qualities of possession and ownership and also an incorporeal quality to them, "records are a representation of an act". As the experience from New Zealand suggests, not all data needs to be 'open', it is necessary to consider categories of judicial data which need to be restricted or not published.

There is also the risk of private capture, since facilities and technical support are often provided by private agencies authorised by the courts or the Ministry of Information and Technology. Control by private sector partners could potentially blur the lines between the publicness of courts and private interests.

For instance, courts in England and Wales went through a major digital transformation from 2016. With the State's HM Courts and Tribunals

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[61] Biber, "Evidence from the Archive."

Service, stakeholders involved include Citizens Advice, Bar Council, the Law Society and the London School of Economics, and private contractors such as Atos, G4S and Mitie which offer technological support.[62]

The key issue raised has been the protection of public values connected with justice delivery. It is suggested that the public procurement process, which is central to such arrangements, should specify protection of public values by addressing how individuals interact with the technology, and should preserve the sovereignty of the judiciary over its data. Enhanced public participation in this process is needed before private-public partnerships are executed.[63]

So far, India presents an interesting contrast: the volume of digitisation is very low in India and the uptake of digital architecture across courts is also low in India, and sufficient facilities for digital preservation of records, and basic requirements like data centres with high-capacity servers to run multiple software applications are not uniformly available.

The public, for whom these archives are intended, have low capacity themselves to review archives and use them effectively. Such a complex system exaggerates the problem of the digital divide and people's lack of necessary competency to use this data effectively. Despite this, the Supreme Court's e-Committee has been pushing for adoption of processes such as e-filing and maintenance of electronic records of court proceedings without considering aspects like the country's linguistic diversity which has posed a major challenge for OCR, search, retrieval and translation functions.[64]

It is important to recognise that providing an open and accessible judicial data archive forms only one component of the mix, which also

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[62] HM Courts and Tribunals Service, "The HMCTS Reform Programme," February 23, 2024, https://www.gov.uk/guidance/the-hmcts-reform-programme.

[63] "Preserving Public Values in Privatised Digital Systems," 2023, https://www.hertie-school.org/en/digital-governance/research/digitalisation-of-government/digipublicvalues-preserving-public-values-in-privatised.

[64] E-Committee, "Standard Operating Procedure."

includes laws to protect whistleblowing and creating enabling conditions for people to exercise their right to information, promoting equal access to legal counsel for all, ensuring the freedom of press and freedom of assembly to achieve the objective of improving people's lives.

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IDEAS OF INCLUSIVE JUSTICE SPACES IN GOA: A CASE STUDY ACROSS THREE LOCATIONS

BY DESIGN FOR JUSTICE FELLOWSHIP TEAM

- Justice institutions in India, in this case those in Goa, often fail to meet the standards of accessibility, transparency, and usability. Despite their critical role, these institutions are frequently poorly designed and intimidating, especially for marginalized communities.

- Recognizing this issue, a multidisciplinary initiative was undertaken to explore strategies for enhancing their accessibility and effectiveness through user-centered design principles. The project aimed to address the challenges faced by users and identify opportunities for systemic change within these institutions.

CASE STUDY LOCATIONS

- **Collectorate Office (Panjim):** Key administrative hub, handles multiple services
- **Police Outpost (Sancoale):** Serves diverse community, faces infrastructure challenges
- **District Court (Altinho):** Struggles with accessibility and infrastructure issues

KEY OBJECTIVES

- Equal accessibility to justice institutions
- Distribute resources equitably among communities
- Incorporate community perspectives into design
- Implement restorative justice ideas
- Identify conflict resolution opportunities inside government agencies

JUSTICE adda

KOKUM
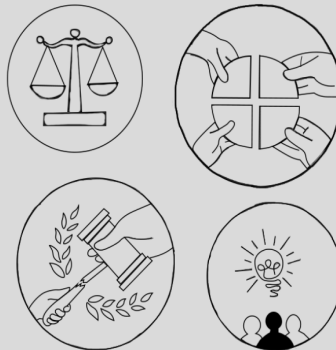
CHALLENGES IDENTIFIED

- Poor infrastructure, such as insufficient seats, restrooms, and signage
- Migrants endure discrimination as a result of bias towards locals
- Language barriers for marginalized communities
- Community depends on external help for legal matters and lacks legal awareness
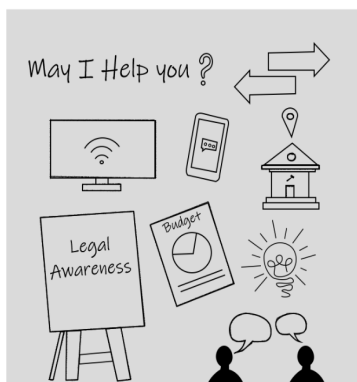
PROPOSED SOLUTIONS

- Help desks, mobile app for tracking cases
- Budget allocation for infrastructure
- Increased use of digital systems
- Wayfinding strategies and Translation services for legal access
- Legal empowerment programs, and continuous training for police
- Decentralization of justice systems
- Public consultation, community interaction spaces, and student programs.
- Citizen committees for social audits and setting up advisory bodies

10. Ideas of Inclusive Justice Spaces in Goa: A case study cross three locations

Alina Jolly, Aniket Prabhu, Anup Vaman Naik, Aparna Sharma, Apurva Naik, Athira Raj, Aurobindo Gomes Pereira, Gautami K, Harshavardhan Sumant, Karan Sharma, Meera S, Misbah Shaikh, Naomi T. Jose, Nishita Magalhaes, Rachit Sharma, Raj Chodankar, Sahil Lavande, Sakshi Volvaiker, Sharada Kerkar, Shriya Amonkar, Siddharth Peter deSouza, Varsha Aithala and Winti Faidol Rodrigues

Context

I n a rule-of-law society, justice institutions are intended to maintain equality and facilitate equal participation for all individuals in decision-making processes. However, in practice, these institutions frequently fail to meet the standards of accessibility, transparency, and usability. This is particularly evident in India. Goa, due to its unique civil code,[1] is a useful example of a state where justice institutions are frequently visited for various legal matters, yet are poorly designed and intimidating for many users, especially those from marginalised communities. Recognising the need to create justice institutions that are responsive to user requirements, a multidisciplinary initiative was taken up to formulate strategies to improve accessibility and effectiveness of these institutions.

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[1] Portuguese Civil Code 1867 (Goa, Daman and Diu), *India Code* (2024), https://www.indiacode. nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf.

Architecture, akin to law, is a profession characterised by high entry
barriers and heavy regulation, particularly in the design of public
buildings such as educational institutions and hospitals. How-
ever, regulatory inputs on the design of justice institutions remain
merely recommendatory, as seen in the limited guidance provided
in documents like the Model Prison Manual (2016) published by the
Government of India.[2] User-centred design principles can bridge
the access gap for individuals located outside the legal system and
improve their interactions with justice institutions. Our initiative
sought to bring together diverse professionals for application of
design thinking to address the challenges faced by users and identify
opportunities for systemic change.

Goa's unique legal system, blending civil law with Indian constitu-
tionalism, provides a unique framework for equitable succession
and property rights. However, challenges remain in translating laws
and commentaries into English, the predominant language, and in
addressing criticisms of land reforms and legislative trends. Despite
this, Goa's legal system serves as an example of a functional uniform
civil code for India. Goa also serves as an ideal case study due to
its unique social dynamics, the influx of non-local populations, and
existing efforts in social design, urban planning, sustainability, and
justice. By engaging with key questions and stakeholders in Goa, the
initiative aimed to drive systematic change in justice institutions.
This was done by advocating for user-centred design, community
engagement, and inclusivity. Lessons learned from this endeavour in
Goa can inform similar efforts nationwide, bridging gaps in access to
justice and fostering a more equitable, uniform civil code for India.

Key questions and goals of our initiative were:
- How can justice institutions be designed for equal accessibility?
- How can resources be equitably distributed among communi-
  ties?
- How can community perspectives inform the design process?

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2 Portuguese Civil Code 1867 (Goa, Daman and Diu), India Code (2024), https://www.indiacode.
   nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf

- Can restorative justice principles be integrated?
- Are there opportunities for pre-emptive conflict resolution within government agencies?

Methodology and reasons for this case study?

A multidisciplinary research initiative was undertaken to comprehend the dynamics of justice institutions in Goa and address associated access to justice challenges. This endeavour employed a mixed-methods approach, incorporating quantitative and qualitative methodologies, comprising: (i) a comprehensive literature review, (ii) a case study examining various justice institutions ('**Case Study**') and (iii) a justice needs survey across rural and urban districts. Researchers from diverse backgrounds spanning law, technology, architecture, and the social sciences collaborated to offer a multifaceted analysis in the literature review. The case study was developed using learnings from field research conducted by research fellows called the "Design for Justice Fellows" from four different institutions, across six months:

- Salgaocar College of Law
- Birla Institute of Technology and Sciences
- Goa College of Architecture
- Goa University

The fieldwork was supplemented by weekly workshops and expert engagements. These interactions enriched data collection methodologies and informed subsequent research outputs, particularly the Case Study.

The Case Study was pivotal for its in-depth exploration, and crucial for devising actionable solutions. Adopting a design approach, we prioritised user-centric perspectives, particularly with respect to access challenges. Examining three different justice institutions in Goa --- the police outpost in Sancoale, Zuarinagar, the North Goa collectorate office, and the North Goa district and sessions court --- we aimed to

capture the breadth of their contexts. This method allowed us to construct nuanced user profiles, essential for proposing effective, field-rooted solutions. By scrutinising internal infrastructures, surrounding demographics, and their relationship with state infrastructure, we gained insights vital for targeted reforms.

A justice needs survey conducted by the Goa University, provided a broad understanding of the Goan justice landscape and how people perceive it, complementing the insights gained from the Case Study.

To synthesise the survey's findings, practitioners, scholars, and activists came together for a concluding conference on reimagining justice institutions, which facilitated discussion and cooperation in building workable solutions. At the conference, which took place in January 2023, the Design for Justice Fellows presented the research findings, stimulated discussion among subject experts about changing Goa's justice system and proposed tangible reform and improvement initiatives. At the end of the conference, a design sprint combined insights, paving the way for new approaches in addressing access to justice issues.

Justice institutions, Space and their Design

The relationship between justice institutions, their physical spaces, and design principles is founded on the fundamental values of equality, fairness, impartiality, and accessibility. The design guides of international judicial institutions emphasise key architectural and design considerations that are critical for fostering these values.[3] [4] Unobstructed views, acoustical treatments, seating arrangements, and security measures are all factors that contribute to ensuring integrity and fairness in decision-making processes within justice institutions A holistic approach to courtroom design emphasises appropriateness,

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[3]   Judicial Conference of the United States, U.S. Courts Design Guide, Revised 2021 https://www.wbdg.org/FFC/GSA/courts.pdf

[4]   HM Courts & Tribunals Service, Court & Tribunal Design Guide, Revised 2024 https://assets.publishing.service.gov.uk/media/66292612b0ace32985a7e7be/Court_and_Tribunal_Design_Guide_v3.pdf

effectiveness, accessibility, flexibility, and sustainability. In keeping with the vision of creating a justice system that is affordable, understandable, and accessible to all, it is critical to design spaces that reflect the dignity and authority of the courts while accommodating the diverse needs of users. This strategy encompasses design, navigation, accessibility, and building systems. By focusing on these elements, court and tribunal buildings could be designed in a manner that not only meet functional requirements but also improve user experience and inclusivity. This ensures that everyone, regardless of physical abilities or technological requirements, can navigate these spaces with ease, comfort, and accessibility.

Discussions on design within the realm of access to justice reveal a multifaceted approach aimed at enhancing understanding, inclusivity, and efficacy within legal systems. A critical element of this approach is the use of plain language and accessible legal drafting to bridge the gap between legal jargon and everyday understanding.[56] By simplifying language and promoting clarity, individuals can confidently navigate legal processes. Plain language drafting and visual elements could enhance accessibility and transparency, making legal information more understandable and inclusive. The realm of legal language and visual representation highlights the significant contributions of plain language drafting and visual elements.[7] Visual representation in colonial courts and the symbolism in the architecture of the Supreme Court of India demonstrate the profound impact of visuals and aesthetics on perceptions of justice.[8] This underscores the

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[5]   Arghya Sengupta, Namrata Mukherjee, and Ritwika Sharma, "Manual on Plain Language Drafting," *Vidhi Centre for Legal Policy*, March 2017, https://vidhilegalpolicy.in/wp-content/uploads/2020/06/DraftingManual_Vidhi.pdf. (accessed July 22, 2024).

[6]   Aniruddh Nigam and others, "The SARAL Manual," *Vidhi Centre for Legal Policy,* March 1, 2023 https://vidhilegalpolicy.in/research/the-saral-manual/ (accessed July 22, 2024).

[7]   Rahela Khorakiwala, "The Law, the Visual and Access to Justice in the Colonial Courts of India," in *Invisible Institutionalisms: Collective Reflections on the Shadows of Legal Globalisation*, ed. Swethaa S. Ballakrishnen and Sara Dezalay (London: Bloomsbury Publishing, 2021).

[8]   Shailesh Kumar, "Interpreting the Scales of Justice: Architecture, Symbolism and Semiotics of the Supreme Court of India," *International Journal for the Semiotics of Law* 30, no. 4 (2017): 637.

importance of considering not only the formal legal processes but also the symbolic significance attributed to legal institutions in shaping access to justice.

Practical solutions are necessary to address deficiencies in court facilities. By evaluating infrastructure and redesigning spaces to be more user-friendly and supportive, the overall experience of litigants can be enhanced, thereby facilitating access to justice.[910] Additionally, technology plays a critical role in improving access to justice, contributing to a more accessible and user-friendly legal landscape in India.[11]

In the specific context of Goa, prevalent challenges such as discrimination, resource shortages, and inadequate training have eroded public trust and safety. Despite efforts to modernise and reform, challenges such as high vacancy rates, inadequate infrastructure, and uneven technology adoption persist. Comprehensive reforms are required to address systemic issues and ensure a more effective, accountable, and citizen-centred approach to policing, not only in Goa but throughout India.

Persistent challenges within India's administrative framework, particularly concerning the role and powers of the collectorate office in the post-colonial era, highlight the need for reform. Despite constitutional amendments aimed at empowering local bodies, such as Panchayati Raj Institutions, bureaucratic dominance and lack of accountability are rampant, hindering effective local governance. Addressing these issues requires focus on empowering local institutions and ensuring greater accountability and transparency within

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[9]   Sumathi Chandrashekaran, Diksha Sanyal, and Reshma Sekhar, "Building Better Courts: Surveying the Infrastructure of India's District Courts," *Vidhi Centre for Legal Policy*, August, 2019 https://vidhilegalpolicy.in/wp-content/uploads/2019/08/National-report_single_Aug-1.pdf (accessed July 22, 2024).

[10] Reshma Sekhar and others, "Re-Imagining Consumer Forums," *Vidhi Centre for Legal Policy*, February 25, 2021, https://vidhilegalpolicy.in/research/re-imagining-consumer-forums/ (accessed July 22, 2024).

[11] "Role of Legal Design in India for Virtual Courts in Improving Access to Justice," Asian Law College, September 25, 2020, https://alc.edu.in/blog/role-of-legal-design-in-india-for-virtual-courts-in-improving-access-to-justice/. (accessed July 22, 2024).

the administrative framework.[12]

The legal needs and justice spaces in Goa: Justice Needs Survey

A recent justice needs survey conducted among the general population of Goa has illuminated several systemic issues within the region's justice institutions. The survey, administered across three areas of Goa and encompassing both rural and urban populations, highlights pervasive issues such as bribery, corruption, lack of transparency, and barriers to participation. These findings underscore the urgent need for targeted solutions to address these challenges and improve the efficacy and accessibility of justice in Goa.

One of the most serious issues that emerged was inherent bias in the police force, particularly against migrants. Another issue was the language barrier, which has been a significant impediment to accessing justice. Discrimination based on caste, religion, gender, language, and age emerged as a recurring theme, highlighting the importance of strong monitoring mechanisms and extensive training programmes to maintain impartiality and combat corruption. In attempting to improve justice institutions, impartiality, fairness, and approachability are critical. These qualities are not only inherent, but also reflect Goa's distinct societal characteristics. Safety, security, and effective crime control emerge as top priorities, particularly for the police, who frequently interact with the public.

Addressing these critical issues necessitates a multifaceted approach involving infrastructure and technological advancements. Proposals for digitalization and development of mobile applications stand out as potential remedies to tackle corruption and enhance justice accessibility. Implementing helplines, SMS updates, and online service applications are specific measures that indicate a shift towards

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[12] Aakanksha Mehta et al., "From Rule by Law to the Rule of Law: 25 Reforms to Decolonise India's Legal System" *Vidhi Centre for Legal Policy*, December, 2022, https://vidhilegalpolicy. in/wp-content/uploads/2022/12/01-82-Cover-Book.pdf (accessed July 22, 2024).

user-friendly, technology-driven solutions. Focusing on these areas underscores the imperative of overcoming infrastructure obstacles and leveraging technology to bolster access to justice and improve overall system efficacy. By prioritizing these aspects, there is considerable potential to create a more transparent, fair, and accessible justice system in Goa, ultimately fostering greater public trust and confidence in legal institutions.

Deep dives: Collectorate Office, Police Station post and District Court: Field Work

The field research conducted across three distinct spaces in Goa — the Collectorate Office in Panjim, the Sancoale Police Outpost, and the District Court in Altinho — shed light on various challenges, alternative dispute resolution mechanisms, discrimination in justice delivery, language barriers, and the lack of legal and social awareness prevalent across these institutions.

Description of the Spaces

Collectorate Office, Panjim: The Collectorate Office in Panjim is a key administrative and judicial hub in Goa, housed in a historic building. It handles crucial functions like tax collection, land acquisition, disaster relief, and passport-related services. Additionally, it manages land records, district treasury duties, responds to information requests, and oversees staff matters ranging from appointments to retirements among many others.

Police Outpost, Sancoale: Sancoale, a census town in South Goa with a population of around 21,000, has a police outpost serving two wards in the Zuarinagar area. The outpost falls under the jurisdiction of the Verna police station, covering a diverse community, including interstate migrants primarily employed in labour or small businesses.

District Court, Altinho: Housed in a renovated complex constructed in 1925, the District Court struggles with poor physical infrastructure,

inadequate signage, and limited accessibility, posing challenges for litigants and advocates alike.

Challenges of the Spaces Identified in the Field Study

Poor Physical and Digital Infrastructure: The Collectorate Office and District Court suffer from a lack of designated seating areas, insufficient washrooms, and inadequate signage, leading to confusion and delays in resolving matters. The Sancoale Police Outpost faces similar challenges, with poorly built facilities and insufficient personnel.

Existence of Alternative Forms of Justice and Conflict Resolution: Community members in Sancoale resort to alternative dispute resolution mechanisms, such as negotiations led by community leaders or local "gundas," often bypassing formal legal procedures.

Discrimination in Justice Delivery: Interviews reveal a perceived bias in the police force towards local Goans, with migrants experiencing difficulties in having their grievances heard and in receiving fair treatment.

Language of the Law: Illiteracy and language barriers hinder access to justice for marginalised communities, who often rely on educated individuals or community leaders for assistance.

Lack of Legal and Social Awareness: The community in Sancoale lacks awareness of their rights and legal procedures, relying on external interventions for education and support.

Proposed Solutions

This section discusses solutions that emerged as an outcome of the field visits that the survey conducted with over 200 respondents, as well as the outcomes from a focused group discussion in Goa during January 2023.

Governance and Management

To complement the improvement efforts in the functioning of the courts and the North Goa Collectorate office, the implementation

of "May I help you" desks can enhance accessibility and facilitate smoother interactions for court users. Moreover, levelling of court floors to ensure fair fields can contribute to creating an equitable environment within the judicial system, promoting a sense of fairness and equality for all stakeholders.

Additionally, Survey findings and observations highlight key solutions for further enhancement. Recommendations include establishing an advisory body to oversee court operations and advocating increased budget allocation for infrastructure and technology development. Addressing transparency and accountability issues in fund utilisation under the Centrally Sponsored Scheme for Judiciary (CSS)[13] is imperative to mitigate challenges such as fund diversion and poor coordination among authorities. Implementation of monitoring committees at various levels and improving transparency in fund allocation are proposed to ensure effective utilisation of resources and enhance the performance of justice institutions.

Infrastructure

The Survey identifies crucial solutions to enhance access to justice and improve the functioning of court institutions. Recommendations for improving these institutions included integrating dedicated buses to justice institutions and aligning them with the Smart City proposal for Panjim on internal bus lanes.[14] Enhancements in pedestrian movement, multiple-level car parking, and infrastructure for the differently abled could also be essential to improving accessibility within the institution. General wayfinding strategies, including physical layout maps, QR codes, and provisions for differently abled persons, could prove to be crucial for enhancing navigation and inclusivity

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[13] Government of India, Ministry of Law and Justice, *Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for Judiciary Extended for Additional Five Years* (New Delhi: Press Information Bureau, 2024).

[14] The Goan Network, "Govt Plans to Nationalise Panaji Bus Routes by Jan 19," *The Goan,* December 29, 2023, https://www.thegoan.net/goa-news/govt-plans-to-nationalise-panaji-bus-routes-by-jan-19/107715.html. (accessed July 22, 2024).

within the court complex. Leveraging a mix of audio, visual, and braille signage could ensure accessibility for all court users.

Drawing from international frameworks and recommendations, such as the Court and Tribunal Design Guide from the UK[15] and the International Framework for Court Excellence,[16] the Case Study underscores the need for affordable, accessible court services. Additionally taking into consideration the committee recommendation from a report by Justice Rohini,[17] a National Framework for Court Excellence for India could be adopted, which sets measurable performance standards and establishes a system for self-assessment and improvement. The framework also outlines components for enhancing accessibility to courts, such as physical access for all, affordability of court proceedings, legal literacy, and technology utilisation. It emphasises the importance of providing quality legal aid and organising regular Lok Adalat to ensure justice access for all sections of society.

Training

The training recommendations in the Case Study emphasise the establishment of community networks to facilitate better interactions with justice institutions, including police, lawyers, and local representatives. Efforts to increase legal and social awareness among civilians through internship programs, community outreach, and complaint-filing assistance are proposed. Continuous training for judicial stakeholders, including judges and police is advocated to promote professionalism and address biases. Mandated workshops incorporating narratives of justice system failures can foster a culture

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[15] HM Courts & Tribunals Service, *Court and Tribunal Design Guide.*

[16] International Framework for Court Excellence, *The International Framework for Court Excellence*, 3rd Edition (2020), https://www.courtexcellence.com/_data/assets/pdf_file/0023/66605/The-International-Framework-3rd-Edition-Amended.pdf

[17] Fareeha Iftikhar, "Explained: What Is the Rohini Commission on OBCs?," *The Hindustan Times*, August 3, 2023, https://www.hindustantimes.com/india-news/explained-what-is-the-rohini-commission-on-obcs-101691058793660.html. (accessed July 22, 2024).

of fairness and sensitivity within these institutions by providing visibility to the human side of conflicts.

Culture

The Case Study underscores the necessity of addressing social dynamics alongside institutional reforms to foster meaningful change in the justice system. It highlights instances where citizens opt for informal dispute resolution methods or resort to bribery, indicating deep-rooted prejudices and systemic flaws. To counter this, community-level awareness campaigns are recommended, aimed at bridging social divides and promoting collective justice. These initiatives could instil a sense of justice within communities from an individual level and target specific groups perpetuating alternative conflict resolution methods for resolving issues.

Protocol

The proposed systemic changes suggested in our study include decentralisation of the justice system to alleviate case overload and ensure tailored resolutions aligned with local dynamics, thus promoting true justice and mitigating community divisions. Language barriers could be addressed through translation services and simplified legal documents, along with local legal advisors to enhance transparency and accessibility. Additionally, implementing a navigational system at collectorate offices would streamline processes and ease user burden by providing clear pathways and document checklists, enhancing efficiency and effectiveness.

Outreach

To foster mutual understanding and respect within society, initiatives promoting community interaction and cultural exchange are recommended, including the creation of public spaces such as community centres, parks, and libraries. These efforts aim to address

the alienation felt by certain groups such as migrants, by facilitating interaction among community members from diverse backgrounds. Additionally, community outreach programs, particularly for students, can enhance relationships with justice system stakeholders. Programs like the Student Police Cadet Project[18] offer comprehensive training to high school students, promoting civic responsibility and providing hands-on experience with police and judicial institutions. By improving understanding of the justice system from a young age, these initiatives could strengthen community-police relations and promote equitable access to justice.

Monitoring, Evaluation, Accountability

The Survey responses underscore the urgent need for a robust monitoring and evaluation system, to ensure accountability, curb political pressure and bribery in interactions with justice institutions. Beyond existing formal structures, the establishment of citizen committees for social audits of justice institutions is proposed, aimed at enhancing transparency and public confidence. Such audits, from a citizen's perspective, offer a holistic understanding of access to justice, considering social dynamics alongside infrastructural elements. Additionally, citizen involvement through a mobile app can enable tracking of complaints and cases, providing valuable quantitative data for resource allocation. Furthermore, annual workshops can address transparency issues through technology integration and improved intercommunication among justice system stakeholders.

Acknowledgements

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[18] Kerala Police, Student Police Cadet Project (Kollam Rural Police), 2012 http://www.kollamruralpolice.gov.in/PDF/Ref/Other/SPC.PDF

Shetkar for their work on conducting the survey, and Dr Alaknanada Shringare for her guidance.

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Part III
Justice Users

WHERE FACT MEETS CONTEXT: NEED FOR EQUITABLE APPROACH IN SOCIAL FACT JUDGING

BY ALBERTINA ALMEIDA

- This essay emphasizes the crucial role of social fact judging in family law cases, particularly in child custody disputes, highlighting the impact of patriarchal norms and biases. The author argues for an equitable lens guided by constitutional principles to denormalize oppressive perspectives.

- The study calls for scrutiny of how constitutional principles of equity are applied in trial courts and addresses the unique challenges in interpreting family laws in Goa.

DOMINANT SOCIAL FACTS:

- Courts must do balancing act
- Overlooking maternal contributions prioritizing traditional family norms.
- Gender stereotypes affect how social facts are perceived

EQUITABLE SOCIAL FACT JUDGING:

- Acknowledge unpaid care work by custodial parents in custody claims
- Link financial responsibility to custody entitlement of the father
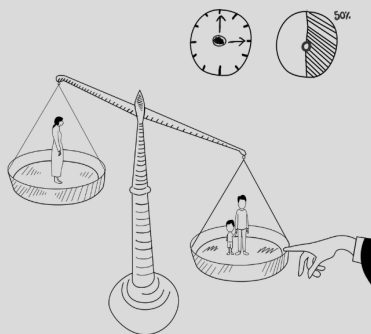- Investigate father's Involvement

KEY CHALLENGES:

- Address essentialism about family
- Need inbuilt mechanisms to address perjury
- Integrate multidisciplinary including psychology insights for the reaction of children in dysfunctional families

JUSTICE adda

KOKUM

11. Where Fact Meets Context: Need for Equitable Approach in Social Fact Judging

Albertina Almeida

Introduction

T HE social context of a case before a court may not be unravelled through the pleadings and evidence in the case. There is no possibility for the court to conduct a detailed inquiry into social contexts and practices during an individual case either. So, the judge is required to fall back on social facts, make certain presumptions to appreciate the pleadings and evidence in the case. But if this appreciation of social contexts is not guided by a conscious recognition of hierarchies in society and the need for weighing the facts with an equitable lens, there can be a failure of justice.

Approaching a case with an equitable lens also finds resonance in the Constitution of India, where Article 38(1) refers to 'a social order' in which 'justice, social, economic and political, shall inform all the institutions of the national life.' Courts in India are expected to be Courts of equity in giving full play to the rights guaranteed under the Constitution when adjudicating cases under various statutes including family laws. The Courts therefore have the possibility of unlocking the potential of applying the principle of equity in approaching a case before them under family law, just as in any other law. In so doing, the Courts can de-normalise patriarchal, exploitative, oppressive, commodified understandings of parenthood and entitlement for custody of children.

However, Courts perceive the family as a private space and hence often do not question violations of rights of members of the family, and

rather reinforce prejudices. Therefore, as people trudge on their journey to justice in courts with respect to family matters, many are deterred by the very process through which the journey must be undertaken. The presumptions that the judge in the court makes are reflected in comments during the court proceedings, in admission or appreciation of evidence. These presumptions — this kind of social fact judging does not have basis in any law, and yet, it is also necessary that the courts must take judicial notice of certain facts or contexts.

The focus of this paper is on social fact judging with respect to one contentious area of litigation in family law, that is, litigation instituted by one parent who lives apart from the other, due to strained relations, seeking custody of the child/children and related litigation. Child custody cases are also instituted in Courts in Goa, as a weapon to intimidate the spouse who seeks a divorce (and consequently separation of properties) and maintenance in the courts. Statements and comments are at times made in open court, or in interim judicial pronouncements that reflect a profound negative judicial bias against women and have the effect of deterring a woman from seeking/continuing to pursue/expecting justice from the Court.

This amounts to denial of access to justice. Marginalised sections of society, such as women and children, can barely hope to access justice if the very journey to justice in court is paved with patriarchal and inequitable norms.

Social fact judging therefore plays a key role in access to and delivery of justice particularly in matrimonial disputes, child custody cases, caste atrocities, but may not produce the desired results of ensuring equity and rights, if it is informed by 'normalised' gender bias,[1] child commodification, caste prejudice[2] and religious fundamentalism.[3] Judges

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[1]　Tannvi Tannvi and Sharmila Narayana, "The Challenge of Gender Stereotyping in Indian Courts," *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2116815, https://doi.org/10.1080/23311886.2022.2116815

[2]　Rakesh Shukla, "To Remove Caste Bias from the Judicial System, Judges Need to Self-Correct," *The Wire*, March 23, 2017, https://thewire.in/caste/caste-bias-judicial-system

[3]　Ratna Kapur, "The Fundamentalist Face of Secularism and Its Impact on Women's Rights in

integrate within their meaning and decision making, specific social facts, i.e., working understandings of the "real" world that then serve as starting points to engage in legal reasoning.[4] The social facts, constructed as they are from world views, "are often premised on racist, gendered and class-based assumptions. This is not to argue that legal principles are of less importance than social facts but to acknowledge that the interpretation and application of these principles is deeply affected by the court's constructions of reality. Indeed, it is in this way that particular social facts become part of law."[5]

While Judgements of the Supreme Court of India and the High Courts have been scrutinised from the lens of equity or substantive equality, little has been done to see how this constitutionally mandated principle is applied in the journey through the trial court, including comments made, in admission of evidence, and in how evidence is contextualised in appreciating the same for arriving at judgements in trial courts.

Another aspect is that the family laws of Goa have their origins in the civil law system of Portugal. Since there was no prescription in those laws about which parent shall have custody of a child and upto what age, as in the case of Indian laws like Hindu Marriage Act, 1955, Hindu Minority and Guardianship Act, 1956, and Guardians and Wards Act, 1890, it meant and still means that decisions are based on the facts and circumstances of each case. Yet as the laws are to be interpreted within a common law system now, certain issues arise from this transplantation. Courts are expected to interpret the law in the light of precedents laid by Supreme Court and High Courts of India.

It may beg answers as to why, when one is dwelling on child custody

India, Joseph C. Hostetler-Baker & Hostetler Lecture," Cleveland State Review 47, no. 3 (2019): 323.

4 Albertina Almeida, "Young Women's Engagement with the Mobile: Meaning in the Family Justice World," in *Mapping Gender Fault Lines: Digital Technologies and Society,* ed. L Lingam, and N Mkhwanazi (Routledge, 2024).

5 S.M. Behuniak, "How Race, Gender, and Class Assumptions Enter the Supreme Court," ed. Jean Ait Belkhir, *Race, Gender & Class,* Race, Gender and Class Intersectionality, 8, no. 3 (2001): 157–74.

cases, the question of women's rights or patriarchal norms should come into play. This provokes counter-questioning as to whether child custody can be determined in isolation at all, and without engaging the contexts of potential custodians, or claimants for custody.

Illustrations of Scenarios in Courts

Below are a few thumbnail sketches of scenarios of the presence of negative judicial bias or a bland equality approach in the journey of justice in trial courts, including admission and assessment of evidence in matrimonial and child custody litigation. These demonstrate the need for equitable approaches in contextual appreciation of facts and the need to understand diverse referents. The children may be diverse, the circumstances may be diverse, and the families may be diverse. The question would be whether the judiciary is equipped to handle the cases equitably. These examples are drawn from my own notes in child custody cases in Goa (and more specifically of fifteen diverse cases) and are borne from my experiences as a law practitioner and a human rights activist.

Scenario 1

The lawyer for the male spouse pillories the opponent female spouse present in court as an adulterous (and, by patriarchal implication, uncaring) woman, during arguments in open court, for interim maintenance and prohibitory orders under the Protection of Women from Domestic Violence Act, 2005. This is not restricted by the judge of the court, even though the issue of the female spouse being adulterous is not material to the issue of maintenance of the children, and further, there is merely an insinuation, to this effect, in the pleadings, or sometimes not even that.

Scenario 2

To an argument that the father is not demonstrating his care of the children by contributing towards their maintenance, the judge poses a leading question 'Even if he does not give money, as a father, does

he not have the right to visit the child?'. An argument advanced that the husband from whom maintenance is still not forthcoming, has a history of bringing toys and fast-food during visitation and spoiling the children. Such behaviour meets with a pat response from the judge that it is a demonstration of love. "Don't do drama, get the children," is another statement made presuming that the custodial parent, the mother, is tutoring the child.

Scenario 3

The woman files for maintenance, and her spouse fights back with an application for custody and visitation rights. In the meantime, the woman notices that simultaneous cases of others relating to dishonour of cheques, are over. The Court also prioritises the application for custody/visitation rights and grants it, stating that any parent must get at least visitation rights at once. The judge also pays no attention to the woman's application for the husband's signature on a visa application for going abroad to reclaim Portuguese citizenship. For that matter, her submission that the application for visitation rights should be determined in the light of these plans given by the woman that she and the child are not provided for. That can be addressed later, the judge says.

But a year later, when the interim order on the application for maintenance is on the verge of being passed, the respondent husband comes forth with an application for production of an additional document merely by way of an email to the management that he is tendering his resignation, and immediately, the application is promptly entertained, and not deferred, for purposes of decision on the ongoing application.

Scenario 4

A man files an application for custody after his wife has made a complaint under section 498A of the Indian Penal Code against him. Section 498A stipulates that extortion or cruelty to a woman by her husband or his family of the magnitude that is likely to pose danger to her life or limb, constitutes an offence. In this situation, the application for

custody of the child is used as a combative strategy to pressurise the woman to withdraw her complaint or get the offence compounded, because given the way things have tilted until then, she perceives that she may lose her children too, if she persists with action against her husband. But the presiding judge completely overlooks all these arguments advanced regarding the strategy of the father, and says he is putting himself in the shoes of the man, and how would he feel if he as a father could not get access to his children. The judge then passes an order giving the male spouse interim visitation rights.

Scenario 5

"He is the father after all", quips the judge. The children say they are not interested in seeing their father. They are eight and six years old and have no memory of him. The Dada they know is the female spouse's father. He has been showering affection on them, taking up their lessons, taking them for outings, for picnics, sometimes attending functions in the children's school if the mother has not been well. 'Who is this new person now saying he is our Dada and why is he coming now?', they ask. 'She has purposely made the children call him Dada', is the argument advanced by the lawyer of the male spouse. The advocate for the female spouse argues that she needed that her children should not feel that they do not have someone to call Dada. But the judge believes that the children have been turned against their father.

Scenario 6

There is an issue about the physical location of the mother while the father is visiting, given that the child is a special child. The father's lawyer argues that if the child is within viewing distance of the mother, he will not interact well with the father. Yet, the mother is required to be around to tend to the child if the child has an episode. The judge suggests that she sit in the balcony of a lawyer, overseeing the larger premises, which is the visitation location, but not the actual visitation

site, or that she sits in a ramshackle old house, without a thought as to how that could make the mother vulnerable.

Scenario 7

If there are two children to be brought for visitation, and one of them is ill, it is argued that the other child should have been brought anyway. The judge may fail to appreciate that one child cannot be brought while tending to the other child. There is also the aspect of the feeling of comfort between the children, when they have each other during visitation, which is the stable factor. The body language of the judge is that the arguments advanced on behalf of the mother are excuses.

Scenario 8

The judge agrees only after a lot of persuasion that the visit should happen in the presence of a counsellor. But there is no agreement on who could be the counsellor. If the mother or her lawyer suggest someone, the father is suspicious. The father is not willing to pay the counsellor's fee for her presence either. The judge permits each party to bring their own counsellor without any regard for the quality of the counsellor proposed, either in terms of experience or education. The State does not have any mechanism either, by way of a counselling cum mediation facility in that district.

Problematising dominant social facts that can be gleaned from these and similar scenarios

The above scenarios present evidence of how social facts are dominantly construed in child custody and related litigation in courts.

There is an overwhelming presumption that the custodial parent (usually the mother) must be influencing or emotionally blackmailing the child, and that may well be true, but not necessarily so. However, the presumptions are skewed. There is no presumption made that since the custodial parent is constantly around the child, the novelty of the father's expression of real or pretended love during visitation by pre-

senting some gifts, and attention for the child could make the child feel a gush of attraction for the father and could result in estrangement from the mother. Similarly, there is no presumption that recognises women's work to solely meet the emotional as well as economic needs of the child, and the emotionally battered condition in which she is engaging with the child.

Further, an allegation or insinuation of sexual relationship of the female spouse with another man appears to have an influence on the judge in terms of believing the allegation at the interim stage itself, and in terms of clouding the assessment of the ability of the mother to look after the child. There is a diversion of focus from any just assessment about whether the woman is a responsible person and capable of having the custody of the child or not.

There is also an unwritten presumption that a biological father is inherently entitled to visitation rights to his child even if he has not had any relationship with the children or shown any interest in interacting with his children until the motivated claim was made. A father is not seen as replaceable by a male father figure even, leave alone a person from another sex. A study by Biblarz and Stacey[6] conclude after a review of the studies conducted that, "At this point no research supports the widely-held conviction that the gender of parents matters for child's well-being" and "claims that children need both a mother and father presume that women and men parent differently in ways crucial to development" are not scientifically founded.

There is also a presumption that all men are the same --- as fathers, and undergo similar emotions as regards their children. From this follows the identification by some male judges with the male spouses, placing themselves in the male spouse's shoes, since he (the male judge) visualises a scenario where he would not be allowed to access his child, and the emotional upheaval he would have to endure

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[6]   Timothy J. Biblarz and Judith Stacey, "How Does the Gender of Parents Matter?," *Journal of Marriage and Family* 72, no. 1 (February 2010): 3–22, https://doi.org/10.1111/j.1741-3737. 2009.00678.x

because of that.

Another presumption is that even if the father earns and does not pay any maintenance, he cannot be denied custody. There is no correlation drawn between the father's deprivation of maintenance to the child and his care for the child. The non-payment of maintenance when he can well afford it, is not seen as a non-caring approach for the child. And yet, at other times, the Court has perceived that since the father can pay maintenance, he is able to look after the child and deserves to have custody.

Related to the above clutch of presumptions is the essentialising of what a family should always look like, one that has a male and female parent, who are married to each other. This then is a dominant social fact. Consequently, it is believed that the child should have a right to the love and care of both parents, and quarrels between parents should not become the means for denying children the right to access the non-custodial parent.

Following from this, is the dominant social fact that a judge is supposed to do the balancing act when adjudicating the case, bordering on the sameness approach. In a context where the parties are unequally placed, yet the parties are equally given an opportunity to suggest a counsellor and procure him/her. Family matters being perceived as 'personal' matters, it is presumed that the parties must organise for any services that the dysfunctional family may require, and consequently that it is not for the State to organise a service or facility.

A corollary to the essentialised imagination of family is one of overlooking the material base of the relationships --- a kind of divorcing between the spiritual and the mundane. If there is an application for maintenance, it is assumed the same can wait, but the application of the male spouse for custody is paramount. Ensuring that the father can express his stated love for his child, has priority over 'mundane' issues like the financial upkeep of the child. There is a standpoint that if cases are delayed, because of miscellaneous applications by the party opposing claims for maintenance, it is all right, but custody or the right

of the father to access his child cannot wait. This also implies that if custody/temporary custody/visiting rights are pressed for on the eve of Christmas or Diwali vacation, then it must be given there and then, even if there is a yawning gap from the time the father has actually seen or cared to see the child, and the time he makes an application out of the blue before a festive vacation.

Procedurally, in the matter of selecting a location for visiting the child, the consideration is more about selecting a physical space where the children can meet the non-custodial parent. However, the paradox is the precise attention with which the location of the mother is determined, when the father is visiting children, including a special child. Here the security or comfort of the mother in that location, or the needs of the special child (which the mother being the custodial parents is familiar with) brook no consideration. There is an unwritten presumption that a father's right to access the child can trump the best interests of the child and the safety issues in so far as the mother is concerned.

In the dominant social fact judging process, nuances and intersectionality are given a go by. There is a presumption that if the mother fails to get the child to the visitation site on a given date or set of dates, she is deliberately doing so and not complying with the court order. Not meriting attention is the exposure or understanding of certain basic psychological aspects, or intersectionality, such as, that a special child suffering from certain forms of illness may need stability, or that the support of each other (between the children) is what the children hold strongly.

In many cases, the Supreme Court of India's Judgement in *Yashita Sahu v. The State of Rajasthan,*[7] is cited with approval to advance the case for shared custody. But this judgement already essentialises that 'what is said by each of the spouses' is 'something to be very wary about'. Besides essentialising the family, while stating that a child,

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7   Criminal Appeal No. 127 of 2020 (@ Special Leave Petition (CRL) No. 7390 of 2019), (Supreme Court January 20, 2020).

especially a child of tender years requires the love, affection, company, protection of both parents, it also perceives the lack of access to the child as a denial of love, care and affection from a particular parent. The entire judgement holds aloft the norm that a family is a two-parent family including the biological mother and father for the purposes of child custody. It fails to look at the reconstitution of a family in view of the de facto or legal separation or divorce of the parents or in view of same sex unions.

As regards flippant gendered remarks made in the course of proceedings that have the effect of discouraging the female litigant, it is apposite to refer to a recent Judgement of the High Court of Jammu and Kashmir and Ladakh at Jammu, in *Sunny Gupta v. Union Territory of J and K and others*,[8] which noted that "The Judge's Bench is a seat of power and has absolute and unchallengeable control of the court domain, but they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. It is the general principle of highest importance to the proper administration of justice, that derogatory remarks are not to be made against persons unless absolutely necessary for decision of the case to animadvert on their conduct".

All in all, social facts are in the first place arrayed problematically in broad strokes, where there is neither time nor place for nuance.

What could equitable social fact judging look like?

Given that social fact judging is inevitable against the backdrop of the justice system, with its time and scope constraints of what can be evaluated and appreciated in an individual case, it becomes necessary for a judge to resort to social fact judging nevertheless, but in a manner that is equitable.

In this context, the Courts need to be cognizant of various social facts: the social reproduction work ordinarily done by the mother, the corre-

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8   CRM(M) No. 493/2021 CrlM No. 1606/2021 (High Court of Jammu & Kashmir and Ladakh at Jammu, July 4, 2022).

lation between the father not maintaining the child and being disentitled to custody of the child, the ordinary propensities of the custodial parent as against the non-custodial parent, the lesser communication propensities of the child with the non-custodial parent as against the custodial parent.

The parenting of the child, day in and day out and reproducing the child biologically, as well as the care work for his survival and growth, may not be monetised, but is work and demonstrates the survival and care work contribution, and, by implication, ability honed to look after the child, and therefore, whether or not the mother has the adequate income to look after the child. This presumption of care work should support the case of the mother for custody of the child, even in an application for urgent interim relief.

In the context of care being carried out by the mother, the father has the onerous responsibility to support the child financially irrespective of factors such as 'character' of the mother, and not financially supporting the child's needs to be construed as the father prioritising revenge towards the spouse over the best interests of the child, and consequent disentitlement to independent custody or visitation rights to the child.

There is a need for cognizance of the fact that those with custody are likely, though not necessarily to be authoritative and the non-custodial parent is likely though not necessarily to be permissive, which may disturb the parenting arrangement made by the other parent (usually the mother). The reactions of custodial parents may vary from covert encouragement of rebellion to pleading, persuasion, or threats of punishment to get the child to comply with ordered visitation.

That if there is an application for urgent interim relief, like interim custody of a child by the mother unless there is overwhelming evidence to the effect that the mother was not the carer of the child, it must be presumed that she was indeed the carer, and every step must be taken to restore the child to the mother at once, to reduce the trauma to both

mother and child. This would be an equitable way of handling the matter.

A case for perjury should be maintainable within the same case in which perjury occurs, so that at least there is no brazen lying on matters such as that of the factum of employment or the amount of earnings.

The actual involvement of the father in the upbringing and the motivations of the father in claiming custody or visiting rights need to be investigated.

There need not be an assumption that the woman does not want to bring the child for visitation and is therefore finding excuses, or remarks to the effect that she is lying or giving excuses.

In such a scenario where the scale is tilted, the balancing act must mean that the presiding judge needs to weigh in more on the side that is tilted against.

Judging is an interdisciplinary exercise. Looking at various equitable psychological studies of how children from dysfunctional families operate, observing attachments of children from such families to each other, and drawing social facts from those, are important. Furstenberg, Nord, Peterson and Zill[9] found that in joint custody arrangements there is more likely to be parallel parenting in which each parent operates as an independent unit, rather than shared or co-parenting.

It is also worth considering the suggestion that "If legal standards of divorce do affect caretaking during marriage, a maternal preference or deference standard (deferring to the mother's decisions on custody) might actually produce more change in the father's behaviour during marriage than the more politically correct gender-neutral standards (best interests and primary caretaker) have done to date."[10]

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[9]   Frank F. Furstenberg et al., "The Life Course of Children of Divorce: Marital Disruption and Parental Contact," *American Sociological Review* 48, no. 5 (October 1983): 656, https://doi.org/10.2307/2094925.

[10] Mary E. Becker, "Strength in Diversity: Feminist Theoretical Approaches to Child Custody and

The judge cannot embark on an expedition on how children are bonded to each other in the dysfunctional family beyond a point. Though if there is an aberration or an exception to the rule, in that case it can be keenly observed.

Conclusion

There is a certain essentialism about family, and the absence of application of the principle of substantive equality, in the way issues of custody of the child are being discussed. There is in fact a gendered framing of social facts, as can be gleaned from the various scenarios presented.

That the custodial parent can manipulate is an overrated factor in assessing the conduct and aspirations of the child. The guidance that comes from guidelines or ratios set by the Supreme Court of India or the High Courts of India are not necessarily informed by a reality check. In fact, the expression 'best interests of the child' is pilloried without understanding that the child's best interests cannot be served without addressing the issues between the parents, because the child does not live like an island insulated from their issues.

Answers to the question "what is in the child's best interest?" are complex and involve the interaction of factors affecting the child, the parents, relationships between the child and parents, and a variety of social and environmental concerns.[11] "The relationships between parents, other caregivers and children prior to the marital separation are of importance in determining children's post-divorce reactions to custodial arrangements and visitations".[12]

I have found two publications that may be useful to refer to. 'Gender Stereotyping and the Judiciary: A Workshop Guide' prepared by the

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Same-Sex Relationships," *Stetson Law Review* 23 (1994): 701.

[11] James H. Bray, "Psychosocial Factors Affecting Custodial and Visitation Arrangements," *Behavioral Sciences & the Law* 9 (1991): 419.

[12] Bray.

Office of the United Nations High Commissioner for Human Rights[13] and 'A protocol and its proposed methodology', by the Gender Equality Unit of the National Supreme Court of Mexico,[14] which enjoin judicial sensitisation and orientation to identify and evaluate the disparate impacts of laws and norms, look at how inequitable distributions of resources lead to unequal distributions of power, and consider the legitimacy of using differentiated treatment in laws and judicial decisions, after taking into account the complexity of the social, economic and cultural context.

Whether the legislation gives wide discretion to the judges or lays down extremely strict rules, the courts nevertheless remain the institutional mechanism for resolving disputes about the meaning of law.[15] Even after the Protection of Women from Domestic Violence Act, 2005, was enacted, judges are still found to be suggesting via their comments in Court or even in judgements that domestic violence or cruelty in a family only encompasses major 'incidents'. This itself is an indicator that some specificity in the law may be of help as a tool for the litigant/her lawyer to cling to and enlighten the judge, but it is equally important to train and sensitise judges to appreciate the contexts of the litigants and the larger social reality. This can perhaps be done through a set of principles for guidance as to how to resolve child custody issues, which embody the Constitutional rights granted to human beings, including the right to substantive equality, and which do not treat the family as an extra-terrestrial unit to whom the Constitution of India does not apply. There must also be a set of Supreme Court principles for guidance of the Courts that do not give

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[13] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Gender Stereotyping and The Judiciary," A Workshop Guide, Professional Training Series No. 22 (United Nations, 2020), https://www.ohchr.org/sites/default/files/Documents/Publications/GenderStereotyping_EN.pdf

[14] Suprema Corte de Justicia de la Nación, Mexico D.F., "Judicial Decision Making with a Gender Perspective: A Protocol —fs Making Equal Rights Real" (Mexico: Suprema Corte de Justicia de la Nación, 2014).

[15] Archana Parashar, "Paternalistic Law, Autonomous Child and the Responsible Judges," in *Redefining Family Law in India*, ed. A. Parashar and A. Dhanda, First South Asia Edition (Routledge, 2016).

the litigant a sense that the Court has prejudged, when disparaging non-evidence-based remarks are made, or appropriate steps are not taken to stop processes that are evidently protracting in nature and have no bearing on the case at hand. This could be accompanied with orientation-cum-sensitisation programmes. This is necessary, so that access to justice remains not just a dream or an aspiration but a reality that will not deter a woman from taking recourse to the law or defending herself, be it in child custody or other cases.

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A REFLECTION OF LIVING IN THE BAIRRO OF SÃO TOMÉ

BY AUROBINDO GOMES PEREIRA
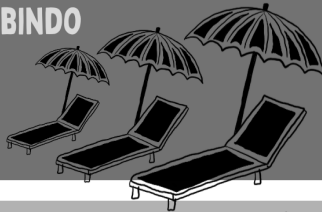
- This essay examines the impact of tourism, commercialism, and the COVID-19 pandemic on the Bairro of São Tomé. It reflects on the rise of touristification and its impact on local residents and their way of life.

- It proposes easy solutions from the standpoint of the residents, drawing analogies to the experiences and tourism strategies of sites such as Venice and Bhutan.

- The essay questions the notion that the pursuit of justice is limited to courtrooms and emphasizes the importance of regular persons in advocating for their rights and addressing the issues they confront.

WHY ST. TOME AS JUSTICE SPACE

Because of its ethnic diversity & Gentrification

WHAT IS THE GLOBAL ISSUE OF OVER-TOURISM

- Unsustainable tourism and its impact on the city
- Conflict between Citizens and Tourists

EFFECTS OF RAPID CHANGES AND COMMERCIALIZATION

- Transformation of a quaint neighborhood
- Intrusion into private spaces

12. A Reflection of Living in the Bairro of São Tomé

Aurobindo Gomes Pereira

Introduction

A common misconception of the 21st century is that the pursuit of justice is exclusively reserved to courtrooms and lawyers because it involves intricate interpretations of the law and complex legal arguments, which are beyond the capacity of an ordinary citizen. This cannot be further from the truth, since:

JUSTICE in the life and conduct of the State is possible

ONLY if

It first resides in the Hearts and Souls of the Citizens[1]

The truth is that laws are designed to sub serve society and not the other way around. Therefore, a law does not draw its legitimacy from the fact that it has been enacted and is enforced, but in fact, the law becomes legitimate only when it protects and promotes the welfare of the people. Anything less would be unjust, or at the very least, a cause for injustice. So, when faced with the question:

How can we build justice spaces

collaboratively with the community

by considering the perspectives of different user groups?

Rather than reflecting on the structure and working of the Judiciary, the Executive or the Legislature of the State, we ought to reflect upon the People instead, for all three are after all social institutions '*Of the People', By the People'*, and certainly created, '*For the People'*. Therefore, let us for a moment reflect upon the lives of the People of *São*

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[1]   Plato, *The Republic*, Second edition (London, England: Penguin Books, 2007).

Tomé. No, not the celebrated Catholic Saint but instead, the *Primeiro Bairro de Cidade de Pangim.* [23]

The *Bairro of São Tomé* is a residential neighbourhood that begins at the end of Patto Bridge in the North and culminates at the junction of *Corte de Oiteiro* in the South. The Ourem Canal is on the East and the hillock of *Nossa Senhora de Immaculada Conceição* is on the West. It covers an area of about 40,000 sq. mts. and is composed of a pluralistic, urbanized local population of approximately 1,500 persons.[4]

Most of the families have since left or leaving, the *Bairro of São Tomé* as space is a constraint and those few that remain are primarily senior citizens and descendants of the original residents of the City of Panjim. And yet, the *Bairro of São Tomé* continues to remains one of the most vibrant and vivacious parts of world famous *Fontainhas*[5] area of the City of Panjim — Goa, and so, *Fontainhas* naturally became a traveller's paradise.

First, with hippies in search of a motherland and then with the backpackers, who followed their *Rough Guides* and the latest edition of the *Lonely Planet*, which they carried like a holy text in the palm of their hands. That was at least until the film crews decided to shoot the streets as backdrops for the silver screen. And so, *Fontainhas* has featured in Hollywood, Bollywood, Tollywood, Kollywood, Mollywood and Sandalwood productions.

Each hit flick haplessly sending droves of domestic tourists down the streets, hopelessly trying to recreate their favourite movie scenes. This disorganised tourism is constantly causing chaos. Tourists willfully block and litter the streets with garbage, damage and deface private property, disturb the peace and shamelessly intrude into the privacy

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[2]   English translation of this is "The First Neighbourhood of the City of Panjim".

[3]   Based on a head count cross referenced with the Voter List/Electoral Roll of Polling Station Nos. 11 and 13 for the Panaji Assembly Constituency; accessed through the website of Chief Electoral Officer, Goa https://ceogoa.nic.in/appln/uil/ElectoralRoll.aspx

[4]   Official count of the Government of Goa as on 22nd March 2023, "COVID-19," Government Of Goa. Official Portal, accessed September 11, 2024, https://www.goa.gov.in/covid-19/

[5]   Fontainhas is the original three residential neighbourhoods of the City of Panjim comprising of the Bairros of São Tomé, São Sebastião and Mala.

of people's home, and therefore disorganised tourism has become a public nuisance in the *Bairro of São Tomé*.

However, the ugliest disruption has been the introduction of casinos and apparently the virtual decriminalization of gambling in Goa. Ironically, Goans are prohibited by law from entering casinos[6] and the Goa Police promise to crack down on *matka*[7] but, everyone else is free to come and gamble in Goa. And so, unfortunately thus began the *Bairro of São Tomé's* tragic tryst with disorganised tourism, casinos and touristification.

In fact, what pretends to be offshore is very much on shore and for sure a problem on both shores of the Mandovi River. However, with the tacit protection of politicians and the administration, the Casino Cartel has managed to capture and carelessly convert the coastline of the City of Panjim.[8] And so, you are now forced to believe that you are in the unofficial Casino Capital of India, an actual Den of Vice.

Public avenues and picturesque promenades have been carelessly commercialised and converted into grotesque front offices for money laundering and vice.[9] What was once undoubtedly *res extra commercium,* is now the principal commercial activity in the capital City of Panjim. This is not just dystopian, but is a cause for concern, because the casinos cast a sinister shadow on the future prospects of the City of Panjim and the People of Goa.[10]

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6   Writ Petition No. 72 of 2021 (October 14, 2021).

7   *Matka* gambling, or *satta,* is a form of betting and lottery which originally involved betting on the opening and closing rates of cotton transmitted from the New York Cotton Exchange to the Bombay Cotton Exchange, "Matka Gambling," in *Wikipedia*, February 17, 2024, https://en.wikipedia.org/w/index.php?title=Matka_gambling&oldid=1208333510

8   Writ Petition No. 92 of 2023 (April 6, 2023).

9   Vivek Menezes, "Money Laundering in Goa's Casinos," *Times of India*, sec. Goa News, accessed September 11, 2024, https://timesofindia.indiatimes.com/city/goa/money-laundering-in-goas-casinos/articleshow/48488762.cms; Murari Shetye, "Hawala Money in Goa Casinos: I-T Unearths Rs. 200 Crores," *The Times of India*, October 31, 2017, http://alturl.com/nfhov

10   Writ Petition No.92 of 2023; TNN, "Casino Relocation: Citizens' Group Gives Govt. One Month," *Times of India*, sec. Goa News, accessed September 11, 2024, https://timesofindia.indiatimes.com/city/goa/casino-relocation-citizens-group-gives-govt-1-month/articleshow/68869405.cms

The COVID-19 Pandemic has only compounded this crisis. Instead of using the pause to remedy the existing maladies in its tourism industry, the Government of Goa abandoned its social responsibilities,[11] and focused only on economics by recklessly embracing novel irrational notions of a '*New Normal*' and ill-conceived '*Work From Goa' "policy".*[12] This double standard exposed the duality of reality in the State of Goa.

While tourists were at liberty to pretend to rediscover Goa, most Goans in Goa were suddenly by an executive *fiat* forced into a brutally enforced house arrest and denied access to food and basic necessities.[13]

Social distancing and precautionary measures existed only for Goans. While, the tourism lobby was free to sell holiday packages to anyone who could afford. Ultimately, the people of Goa paid the ultimate price with 4013 innocent lives lost to the COVID–19 Virus.[14]

During the pandemic revenge tourism, social influencers and commercial photographers ravaged the *Bairro of São Tomé* with a false sense of impunity and entitlement by trespassing onto private property and into people's homes for fun and a shot at fame and fortune. This has provoked the otherwise pacifist elderly local residents into needless conflict with the incessant herds of tourists that flock into the neighbourhood at all hours of the day and night.

The Instagram handle: memorias_de_pangim is cataloguing the rampant transformation of the City of Panjim and in particular the *Bairro of São Tomé* through vivid visuals that show how this heritage residential neighbourhood is being touristified, despite being protected by conservation laws. The Government's promotion of tourism and the apathy on the part of the law enforcement agencies has resulted in a

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11   Roshan Mathias v State of Goa 2021 SCC Online Bom 708 (n.d.).

12   '#workfromgoa Instagram,' accessed September 11, 2024, http://alturl.com/hfv2e

13   Devika Sequeira, "In Tourist Haven Goa, Tourists and 'Outsiders' Are No Longer Welcome," The Wire, accessed September 11, 2024, https://thewire.in/government/goa-covid-19-lockdown-tourists-outsiders

14   Official count of the Government of Goa as on 22nd March 2023, "COVID-19," Government Of Goa | Official Portal, accessed September 11, 2024, https://www.goa.gov.in/covid-19/

crisis caused by 'overtourism'.

The residents are trying to protect their homes by putting up courtesy sign boards and requesting tourists to respect local sentiments. However, in the absence of a plan for sustainable tourism, all these informal initiatives are miserably failing. Tourism has brought chaos that is leading to a general sense of despair and disenfranchisement amongst the innately patriotic people of the *Bairro of São Tomé*.

In fact, in Sept 2023, there was a daring attempt to rape a local resident, two burglary attempts, and three suspicious persons apprehended in the area, besides incessant chaos caused by crowds of unruly tourists thronging the *Bairro of São Tomé*.[15]Therefore, clearly the lives and liberty of the local residents of the *Bairro of São Tomé* stands threatened in their own homes because of someone else's holiday.

The people have petitioned for a prohibition on the photography of their private homes in order to protect their privacy and to preserve the heritage structures, but most of all, to discourage less discerning tourists. With each passing day there is palpably a growing feeling for the need to employ private security to restore and maintain the peace and tranquility in this once very quaint residential neighbourhood.

Hence, there is an urgent need to find a middle ground. One that preserves and conserves this heritage residential neighbourhood, as well as, finds some space for sustainable tourism that generates local employment, a localised source of revenue and benefits for the local residents of the *Bairro of São Tomé*. To achieve this middle ground the tourism industry must unite with local communities, and actively promote respect for local residents and sentiments.

Hence, there is a need for Sustainable Tourism. Where, all public and private tourism actors lawfully share the economic benefits with the local communities. And the tourism industry minimises the socio-cultural impact of tourism by protecting and enhancing the natural environment through socially responsible activities. As opposed to the

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[15]   Based on a personal account of the author.

present *Laissez faire*, where hordes of tourists are transforming this once tranquil residential neighborhood into a pseudo hipster commercial part of '*Panaji City*'.

Perhaps the Tourism Industry sees the *Bairros of Fontainhas* as just another notch on the tourist belt. And therefore, it is most important that the People of Goa and their government learn from past experiences of other international tourism destinations like:

The City of Venice

Once known as *La Serenissma*[16], this 1100-year-old coastal city used to be frequented by writers, artists and intellectuals craving culture.[17] And so, the ancient City of Venice adapted by opportunistically monetizing its heritage and culture for profit. However, now an estimated 24 million tourists annually descend upon this city of scarcely 55,000 residents in the *centro storico*.[18]

This has led to a mass exodus of Venetians who can no longer afford or tolerate living in a city swamped by tourism. '*Overtourism*' has created an identity crisis that threatens the very viability of the City of Venice. Most tourists now only visit for a few hours without actually contributing to the local economy.[19] This imperils Venice's 'Outstanding Universal Value'.[20]

In 2017, the World Heritage Committee of UNESCO threatened and resolved to inscribe the City of Venice on the List of World Heritage in Danger.[21] The resolutions were recalled only after the Italian Government and the City Administration responded by formulating a 'Water

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16 Translating from Italian to mean: 'most serene'.

17 Joanna Simmons, "Overtourism in Venice," Responsible Travel (blog), 2018, https://www.responsibletravel.com/copy/overtourism-in-venice

18 United Nations, World Population Prospectus. Accessed through Macrotrends, "Venice Population," http://alturl.com/d2nxq

19 "Project of Territorial Governance of Tourism in Venice" (Città di Venezia [City of Venice], 2018), http://alturl.com/be4td

20 Venezia Autentica, "Good Or Bad? The Truth About The Cruise Ships In Venice," September 25, 2022, https://veneziaautentica.com/cruise-ships-in-venice-italy/

21 Resolution No. 38 COM 7B.27 and Resolution No. 40 COM 7B.52

Plan', 'Climate Action Plan', a 'Morphological Plan', and integrated it all into a novel Sustainable Tourism Strategy for Venice.[22]

Now, the City of Venice is enforcing an ambitious '*Detourism*'[23] campaign that promotes slow and sustainable tourism by encouraging *Tourists* to become *Travellers* through '12 Good Rules for the Responsible Traveller'[24] like tasting the local cuisine; supporting local artisans, not illegal vendors; booking tours only from qualified tourist guides; and respecting the environment of *La Serenissma --- Comune di Venezia.*

The *Comune di Venezia* plans to make tourism compatible with the daily lives of the residents through protectionist policies, a public information and surveillance system, restructuring the visitor/ tourist taxes,[25] and by imposing a novel 'day tripper fee'.[26]

The *Comune di Venezia* has also prohibited hawkers and will penalise what is identified as '*Forbidden Behaviour*'[27] with deterrent fines like:

Euro 350 for bathing, diving or swimming in canals;

Euro 350 for littering;

Euro 250 for walking bare–chested or in swimwear;

Euro 25 to Euro 500 for feeding the pigeons or seagulls;

Euro 200 for camping in a public area;

Euro 100 to Euro 200 for sitting on the ground or steps;

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[22] Ko Hon Chiu Vincent, "UNESCO Closely Monitoring Ongoing Threats to Venice World Heritage Site," UNESCO World Heritage Centre, 2019, https://whc.unesco.org/en/news/2043/

[23] "Detourism - Travel Like Local," Venezia Unica, 2022, https://www.veneziaunica.it/en/content/detourism-venezia

[24] "#EnjoyRespectVenezia," Text, Comune di Venezia., 2023, https://www.comune.venezia.it/en/content/enjoyrespectvenezia

[25] "Yearbook of Tourism Data 2019" (The Tourism Department of the City of Venice, 2020), http://alturl.com/ebqcj

[26] Approximately Euro 3-10 w.e.f. 16th January 2023, Sasha Brady, "Venice Introduces New Entry Fee for Visitors," *Lonely Planet* (blog), April 25, 2024, https://www.lonelyplanet.com/news/venice-introduces-new-booking-system-and-entry-fee-for-visitors

[27] Alexis Benveniste and Gabe Hiatt, "Venice Is so over Bad Tourists," *Washington Post,* August 25, 2022, https://www.washingtonpost.com/travel/2022/08/25/venice-fines-tourists/; Durant Imboden, "Tourist Fines for Bad Behavior," Venice for Visitors (blog), accessed September 11, 2024, https://europeforvisitors.com/venice/articles/tourist-fines.htm

Euro 100 for riding or pushing a bicycle, etc.

Alternatively

The Kingdom of Bhutan

Founded on Gross Happiness Values and based on the Principles of Sustainability, tourism in Bhutan must be environmentally and ecologically friendly, socially and culturally acceptable and economically beneficial for the local economy of Bhutan.[28]

Bhutan believes that tourism is not just an opportunity to travel but a chance to promote a deeper understanding amongst the people, and to foster friendships based on a deeper appreciation and respect for different cultures and lifestyles.[29]

So, Bhutan has adopted a cautious approach of developing a form of tourism that focuses on promoting Bhutan as a *high–end* tourism destination, preferring to attract '*high value --- low volume travellers*', rather than '*tourists*'.[30]

To quote, V. Namgyel, The Kingdom of Bhutan's Ambassador to the Union of India:

> Tourism is one of the most important industries and foreign exchange earner of my country. taking a cue from 'never letting a good crisis go to waste', we used the time to reflect on how to revitalize and improve the tourism industry.[31]

Therefore, the Kingdom of Bhutan's new '*high value–low volume*' Tourism Policy focuses on three key areas:

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[28] Reference: Bhutan's Tourism Policy — Department of Tourism; "Tourism Policy - Bhutan Travel," Bhutan Travel, accessed September 11, 2024, https://bhutan.travel

[29] "Tourism Policy – Bhutan Travel."

[30] "Tourism Policy – Bhutan Travel."

[31] Amogh Rohmetra, "You Can Holiday in Bhutan Again, but There's a Development Fee of Rs. 1,200/Day," The Print, September 24, 2022, https://theprint.in/world/you-can-holiday-in-bhutan-again-but-theres-a-development-fee-of-rs-1200-day/1140340/

- Enhancing its Sustainable Development Policies;

- Infrastructural upgrades; and,

- Elevation of the Guest Experience.

Bhutan, like the *Comune di Venezia* and 40 other countries across the world, has enacted a Tourism Levy Act, in 2020 that imposes a Sustainable Development Tax of $200 on all international tourists, and a sum of Rs. 1,200/- on Indians.[32] This revised Tourism Policy is meant to generate revenue to help improve the quality of tourism in Bhutan by training guides, enhancing the quality of hotels, restaurants and the food, while preserving the pristine environment for generations to come.[33]

According to Dr. Tandi Dorji, the Foreign Minister and Chairperson Tourism Council of Bhutan, "*in the long run, our goal is to create high value experiences for visitors, and well–paying and professional jobs for our citizens."*[34]

Perhaps that is why Bhutan, often referred to as 'the last *Shangri --- La'* for its abundance in natural beauty and rich cultural heritage, has long resisted the quick financial returns of mass tourism in favour of environment conservation.[35]

Similar insights can also be drawn from other tourism destinations like Barcelona, Amsterdam, Dubrovnik, Hawaii, Japan, Singapore, Thailand, Dubai and the Maldives. However, the inevitable challenge for a tourism destination is not just in trying to balance between the need for conservation of the natural ecology and sustainable development,

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[32] Phuntsho Wangdi and Nidup Gyeltshen, "Bhutan Reopens with $200 Tourist Tax in Test for Sustainable Travel," *Nikkei Asia*, sec. Travel & Leisure Section, accessed September 11, 2024, https://asia.nikkei.com/Business/Travel-Leisure/Bhutan-reopens-with-200-tourist-tax-in-test-for-sustainable-travel

[33] Ceylan Yeginsu, "Famous for Happiness, and Limits on Tourism, Bhutan Will Triple Fees to Visit," *The New York Times*, July 5, 2022, sec. Travel, https://www.nytimes.com/2022/07/05/travel/bhutan-tourism.html

[34] Yeginsu.

[35] Yeginsu.

but also in trying to reconcile between conservative traditionalism and liberal commercialism.

There are many lessons to be learnt from the shared experiences of other international tourism destinations. And all the evidence seems to suggest that disorganised mass tourism devolves into '*overtourism*' and rampant touristification displaces the local population. Money is used to purchase the silence and cooperation of the local administration. And, a mix of money and muscle is used to extinguish and obliterate any resistance from local residents.

Until every home becomes a Hotel/Guest House/ Restaurant/Café/Bar or Boutique. And, in the name of tourism entire neighbourhoods have been depopulated and touristified for profit. Ultimately when the locals and their culture disappear, the place loses its unique charm and exotic appeal. Because let's face it, most people do not want to do 'touristy things', and most people do not travel just for fun and leisure.

We travel because we a have deeper sense of discovery. We search for the unknown and seek out the thrill of a good adventure. Hoping that in the process we see something different and discover something new about ourselves. And yet, the official Tourism Policy still focuses only on touristifying our most beautiful locations into grotesque pleasure pads. Are we so blinded by greed that we cannot read the writing on the wall: '*Over-Tourism Kills*'.

The present non-policy will not work for the people of the *Bairro of São Tomé*. It will ultimately displace the local residents and thereby kill the golden goose.

Therefore, there is an urgent need for purposive administrative reforms and affirmative conflict resolution in the *Bairro of São Tomé*. Therefore, in *uberrimae fidei* and in consultation with residents of the *Bairro of São Tomé* and other stakeholders, here are some simple suggestions. Which if implemented in a timely and honest manner, could perhaps avert catastrophe and hopefully save this residential locality.

Firstly there is a need for collective action to conserve and preserve a

'Heritage Residential Neighbourhood' like the *Bairro of São Tomé* and to work towards achieving the UNESCO heritage status for *Fontainhas.* This can be achieved by:

- Regulating the quality and quantity of tourism and commercial activity permitted in *Fontainhas.* And, encourage art residencies, design studios, think tanks and gourmet culinary institutions to invest in the adjacent commercial space at *Patto*[36] .
- Reviewing the Heritage Conservation Laws applicable in the area and strictly enforce them by reconstituting the Heritage Conservation Committee to include experts and professionals, with practical experience in conservation and restoration work;
- It is expensive and very difficult for the residents to find skilled labour for recurring house repairs. Therefore, there is a need to establish an institution that enlists, trains and skills workers, as well as sets a standard for such restoration work.
- The homes in the area are adversely affected by high salinity and the rising tides. Therefore, the Corporation of the City of Panaji needs to repair the retaining walls and restore the mangroves along the Mandovi River and the Ourem Canal.
- The natural environment and surrounding mangroves need to be conserved and enhanced by establishing a mangrove clinic that scientifically conserves the ecology and acts as a catalyst for mangrove education and responsible eco-tourism;

Secondly, expel casinos from the City of Panjim. This kind of *res extra commercium* activity is not required in Goa. Instead, the State of Goa needs to focus on reforming and restoring its beach tourism, and reviving its academic and agrarian economy.

Thirdly, there has been a significant increase in the quantity of tourists along with a decrease in the quality of tourists coming to the *Bairro of São Tomé.* Hence there is a need to reassess and recalibrate the approach to and the impact of tourism.

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[36] The modern commercial area established by the Economic Development Corporation of the Govt. of Goa, just across the Ourem Canal.

- The present disorganised and unregulated form of tourism is a nuisance for the local residents. If tourism is to be permitted in the Bairro of São Tomé then it has to be organised, sustainable and must directly benefit the local residents.

- The Tourism Master Plan and Policy lacks a detailed study of the area. It reads more like a sales brochure rather than as a workable policy that can be easily implemented. Therefore, there is a need to constitute a Stakeholder Working Group [S.W.G.].

- The Stakeholder Working Group can consist of 05 eminent local residents from the Bairro of São Tomé, tasked with the responsibility of formulating a localised Sustainable Tourism Strategy, designed by the local residents of Bairro of São Tomé.

- The Sustainable Tourism Strategy should aim to cultivate 'Organised' and 'Sustainable Tourism', by permitting only guided tours in the Bairro of São Tomé. This will regulate the quality of tourism and improve the tourist experience.

- A guild ought to be established to empanel expert guides to train and qualify local youth to conduct guided tours in the area. And, to enhance the tourist experience, the tours should be well curated and conducted in collaboration with the residents.

- An insight into the local culture and heritage can elevate the tourist experience. And, the revenue will help generate employment for local Goan youth and will also help to conserve, preserve and enhance the beauty of the Bairro of São Tomé.

- A 'Sustainable Tourism Tax' ought to be levied on every tourist visiting the area. This tax will build a localised source of revenue that funds the Stakeholder Working Group as they study and regulate the impact of tourism on the Bairro of São Tomé.

- This tax will also help defray the cost of providing curated guided tours, maintaining public avenues, defraying the carbon footprint of tourists and regulating quality and quantity of tourism permitted in the Bairro of São Tomé.

- The Stakeholder Working Group should also formulate 'Good Rules for the Responsible Traveller in Bairro of São Tomé'. And these rules should be integrated into the Sustainable Tourism Strategy, and broadcasted across the media.
- To ease the tourists' experience, it would also be advisable to create an App that acts as a map and has all the vital information including the dos and don'ts, accessible public utilities, a brief history of the sights and the scene in the Bairro of São Tomé.
- In order to formulate a Sustainable Tourism Strategy, the Stakeholder Working Group will need credible data from the Bairro of São Tomé, and therefore, the choice of tourism indicators and data collection methodology applied are very important.
- Considering that most tourists describe Fontainhas as looking very European, it would be interesting to apply the European Tourism Indicator System [ETIS] 2016 Toolkit, to create a Sustainable Tourism Strategy that is of European standards;
- UNESCO, W.T.O. and the Global Sustainable Tourism Council also have verifiable indicators for sustainable tourism. These toolkits can be compendiously applied to create a Sustainable Tourism Strategy for the Bairro of São Tomé.
- The Stakeholder Working Group should organise sabhas, with the local residents and stakeholders, to discuss and debate on the Sustainable Tourism Strategy, by applying the Circlewallas method, to make the process participatory and collaborative.
- The Bairro of São Tomé is perfect to test the 'Stakeholder Working Group' model for sustainable tourism policy creation. However, for it to be effective the Stakeholder Working Group must be recognised and respected by the State Authorities.

Fourthly, the *Bairro of São Tomé* has been declared as a Non Motorised Zone [NoMoZo].[37] However, there is still a need to formulate an enforcement system, in tune with the local residents, to solve the persisting problems with parking and traffic.

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[37] "Fontainhas Road Notified as 'Non Motorised Zone,'" *Herald* Goa, July 17, 2022, https://www.heraldgoa.in/goa/fontainhas-road-notified-as-non-motorised-zone/191798

Most importantly, there is a need to prohibit the nuisance caused by the Film Crews, Commercial Photographers and Social Influencers in Heritage Residential Neighbourhoods or, at the very least, prohibitively taxed and strictly regulated.

- The present modus operandi of most film crews, commercial photographers and social influencers can best be described as parasitic commercialism, because they seek to convert peoples private homes into backdrops for profit.

- This kind of parasitic commercialism is exploitative, disruptive of the local lifestyle and is a destructive nuisance. It has also created a crisis of constant chaos that does not actually add any socio–economic benefit to the *Bairro of São Tomé*.

- Therefore, the residents of the *Bairro of São Tomé* are opposed to permitting film shoots and commercial photography in the area. They have petitioned for prohibition on photography because it is a nuisance and a gross invasion of privacy.

- The Goa (Regulation of Film Shooting) Act, 2021 does not adequately address the issues with '*film shooting*' at '*heritage sites*'.[38] And, does not ensure that the authority consults with the people of the affected local area before granting permissions.

- Therefore, it is necessary for the authorities to heed to the petitions for prohibitions on photography to stop the film crews, commercial photographers and social influencers from disrupting and destroying the *Bairro of São Tomé*.

In Conclusion

The petition for prohibitions on photography has been signed by representatives from each and every home in the Bairro of São Tomé.[39] This indicates that constitutional democracy is still clearly alive amongst the people of the Bairro of São Tomé. Hence, it is

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[38] Goa (Regulation of Film Shooting) Act, 2021, §2(d), §2(f), for definition of 'film shooting' and of 'heritage site' respectively.

[39] Letter to the Mayor of the Corporation of the City of Panaji, on 21/10/2022

important for the Corporation of the City of Panaji and the Department of Tourism to collaborate with the community and establish a Stakeholder Working Group in the *Bairro of São Tomé*.

This Stakeholder Working Group will not only help address emergent issues with tourism, but will also, help to democratically determine a *Sustainable Tourism Strategy* for *Fontainhas,* and, perhaps become a guiding standard for the State of Goa.

The Stakeholder Working Group must be empowered and enabled to regulate and audit tourism in the *Bairro of São Tomé*. Moreover, a localized Stakeholder Working Group will help to create and integrate the *Sustainable Tourism Strategy* not just from a marketing perspective but by considering the diverse socio — economic conditions, as well as, the cultural and environmental concerns of the Bairro of São Tomé.

Besides which the Stakeholder Working Group should also consider:

Organising symposiums and workshops to study the lifestyle, design and architecture of the *Bairro of São Tomé*. This will help to innovate and formulate workable solutions to improve the standard of living in the *Bairro of São Tomé*.

And, can also celebrate the culture of the People of Fontainhas by organising bespoke art, music and cultural festivals in Fontainhas to create awareness and generate revenue, which can be used to conserve and preserve Fontainhas.

Through such activities the Stakeholder Working Group can help create job opportunities for the local youth in tourism and thereby address the employment crisis in the State of Goa. In any case, it may be more fortunate to emulate Bhutan's sustainable tourism philosophy rather than Venice's punitive policy, by formulating a *Sustainable Tourism Strategy* that respects the lifestyle and aspirations of the local residents of the *Bairro of São Tomé*.

However, in the interregnum, it may be necessary for the State Authorities to heed to the petitions for prohibitions to stop tourists from de-

stroying the *Bairro of São Tomé* i.e., at least until a viable, eco-friendly and *Sustainable Tourism Strategy* is formulated and implemented in the *Bairro of São Tomé*. Particularly because, the *Bairro of São Tomé* refuses to resign to the neo --- colonial adage of abstraction i.e., that:

> *It is easier to imagine the end of the world*
> *Rather than imagine the end of commercialism.*[40]
> This axiom is not yet absolute --- Humanity can still Evolve!

~+*~+ ***Om Mani Padme Hum*** ~+*~+

Note:

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PS: If, this essay speaks to you then please write to thegoanphilosophicalsociety@gmail.com with suggestion.

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# JUSTICE IN PLANNING: INCLUSION AND EQUITABLE DISTRIBUTION

BY REBONI SAHA AND DEAN D' CRUZ

- The essay examines how colonial legacies have produced hyper-centralized planning regimes in India and Goa, focusing on the exploitation of natural resources for financial benefit.

- It recognises recent attempts towards more people-centric planning, such as the incorporation of village governance and constitutional reforms, but also highlights obstacles in making planning procedures accessible and transparent to the public.

COLONIAL LEGACY IN CENTRALIZED PLANNING

- Centralized planning systems inherited from colonial governance.
- Emphasis on top-down approaches in planning
- Focus on exploiting natural resources for monetary gain
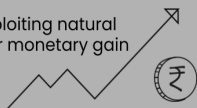
GOA`S PLANNING FRAMEWORK AND PUBLIC PARTICIPATION

- Post-liberation, Goa adopted its own planning act with multi-level processes
- Despite reforms like the Panchayati Raj Act, public participation and equitable planning remain ineffective

TOWARDS ECO-CENTRIC AND INCLUSIVE PLANNING

- Need for a new regional planning process
- Integration with constitutional provisions
- Need for recognition of ecosystems as stakeholders
- Community-driven, eco-centric planning for equitable development

CHALLENGES AND ISSUES IN CURRENT PLANNING PRACTICES

- **Fraudulent Practices:** Land use changes for personal gain go unnoticed
- **Parallel Authorities:** Unaccountable bodies bypass public input
- **Public Protests:** Movements like Goa Bachao Abhiyan call for transparency
- **Legal Challenges:** Frequent court cases against flawed planning decisions

Transparency?

JUSTICE adda

KOKUM

13. Justice in Planning: Inclusion and Equitable Distribution

Reboni Saha and Dean D'Cruz

Introduction

A NTHROPOCENTRIC natural resource management models in the Global South owe their existence to colonial constructs where the primacy was to monetize natural resources via hyper-centralized systems of planning and governance. This is the base on which most erstwhile colonies continued to build upon long after independence. The resultant desensitized system continues to be steeped in a 19th century mindset. Common to all colonies is the perception of abundance and infinite supply of natural resources which was exploited for enrichment of the colonizer; rich biodiversity and fertile soils formed the base from which all colonial trade profited, whether it was timber, cotton, opium or rubber. The Indian Forest Act of 1927 is a case in example, a remnant of the colonial approach towards natural resources, whereby resources were protected for the sole purpose of their monetary value. India adopted this legacy of top-down planning into its Town & Country Planning Act (TCP) 1947. It is only recently that it adopted its own home-grown people centric acts with decentralisation and devolution becoming popular post the 1990's. Most notable is the inclusion of village governance in planning through the Panchayati Raj Act 1992 and the 73rd and 74th amendments to the Constitution.

Post liberation from its Portuguese colonisers in 1961, Goa adopted its own Town and Country Planning Act of 1974 (Goa TCP Act, 1974). As a process, this included the preparation of a 10-year macro horizon document called the Regional Plan (RP). This plan was envisaged to interweave government initiatives with socio-economic and ecological inputs from multiple stakeholders, progressively getting detailed

through Outline Development Plans (ODPs) and Comprehensive Development Plans (CDPs) in urban areas. Such detailing is useful for the line departments such as the Public Works Departments (PWD) and city planners for the placement of sewers and infrastructure.[1] Alongside this sit detailed documents called development regulations and by-laws that dictate heights of buildings versus road widths and mandatory checklists around fire safety and health.

The TCP 1947 emerged as the Indian Parliament saw its need to control the growth of large cities and lay down procedures to control urban sprawl into the countryside. All planning was subject to permission from local councils. Post the 73rd and 74th Constitutional amendments of 1992, it was seen as a tool of governance which, by its definition, is for the public and seeks equitable treatment of stakeholders in the process of development. It necessarily requires public participation and, by way of 'public interest', does not place any individual or stakeholder above the others, reflecting the Constitutional stance that 'All Indians are equal'. It is, however, a techno-legal process that employs checks and balances based on land-use mapping, by-laws and statistics, which are often incomprehensible to the common citizen.

It must be noted that some developed economies that prioritise the creation of an equitable society, such as the Nordic countries, Netherlands and Germany, take pains to translate plans into easily comprehensible communication. The governments engage citizens through their executive arms through public hearings, advertisements and model viewings, giving them enough time to absorb facts and provide feedback. When this process is abused, the planning process quickly becomes a tool for exploitation. Skewed development and chaos usually follow.

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1   Government of Goa, "The Goa, Daman and Diu, Town and Country Planning Act, 1974.," accessed December 20, 2022, http://alturl.com/eopo5

Centralized planning as a colonial legacy

Fraudulent planning --- a crime against citizens

The problem arises when engagement with citizens does not happen, leaving the populace ignorant of the plans or the consequences of the same. When not broken down for public consumption, planning protocol often escapes scrutiny. This has been historically exploited by political machinations which have introduced biased interpretations or amendments into plans that serve narrow private interests. Such interference almost always goes against norms of planning, the Constitution, or both.

An exercise of such a nature that allows individuals to change land use for personal gain via payments and Gazette notifications happened in Goa from 1988-2005 till it was stopped by an observant Chief Secretary.[2] Subsequently, the exercise of preparing the Regional Plan 2011 (RP2011), meant to have been notified in 2001 and already delayed by 5 years, fraudulently changed much land use behind closed doors and beyond public scrutiny. This would have escaped notice had it not been for diligent citizens comparing the zoning plans 'Before and After' notifications. This exercise revealed that even eco-sensitive areas such as mangroves were converted to settlements without having been displayed for public feedback.

This led to an uprising of the people in 2006 who galvanized as the *Goa Bachao Abhiyan*. The movement prompted the Government to rethink and integrate systems of public participation when preparing the subsequent Regional Plan 2021 (RP2021), which began in 2007-8.[3] Though not perfect due to the inevitable tensions between vested interests, this was a first since it involved people through *gram sabhas*

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[2]   Solano Da Silva, Kenneth Bo Nielsen, and Heather P. Bedi, "Land Use Planning, Dispossession and Contestation in Goa, India," *The Journal of Peasant Studies* 47, no. 6 (September 18, 2020): 1301–26, https://doi.org/10.1080/03066150.2020.1822822

[3]   TNN, "Regional Plan: Goa Bachao Abhiyan Response to Regional Plan Decision Is Lukewarm," *Times of India*, June 6, 2012, sec. Goa News, https://timesofindia.indiatimes.com/city/goa/goa-bachao-abhiyan-response-to-regional-plan-decision-is-lukewarm/articleshow/13858485.cms

and village ward committees in its process. It was the first to detail village maps at a readable scale of 1:5000 whereby survey numbers were identified along with eco-sensitive slopes, forests and agricultural lands. This four-year exercise helped citizens understand their rights in the process of planning as well as comprehension of land-use maps at the neighbourhood level. This all-consuming exercise produced the RP2021, and almost immediately after its notification, it was sought to be sidelined across successive governments through amendments and the setting up of parallel statutory bodies.

People's right to their environment and the 73rd and 74th Amendment to the Constitution

The Union government constitutionally activated systems of democratic justice through local governance by introducing the 73rd and 74th Amendments in 1992. This was an act of decentralization that empowered people with a right to their environment through their mandatory inclusion in the planning processes, both Rural and Urban. These amendments were required to be adopted by states within a limited time period, bringing all other acts in consonance with the same. However, today, three decades later, the Goa TCP Act, 1974 still has not integrated itself with the same. The only urban inclusion of the 74th Amendment in Goa has been the Corporation of the City of Panaji Act. All the other urban centers with municipalities continue to follow a mix of the Municipalities Act and TCP Acts.[4] Erroneous overlays of ODPs that contradict and conflict with the RP best highlight these problematic efforts. Such random planning has been subject to multiple challenges in courts as the local bodies often do not follow through with proper systems of groundwork or people's participation. Villages partially follow the constitutional 73rd amendment as adopted into the Goa Panchayati Raj Act 1994. However, the system remains fragmented as the nodal officers and their offices at Zilla

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[4] Comptroller and Auditor General of India, "Financial Audit on Urban Local Bodies and Panchayati Raj Institutions" (Government of Goa, 2009).

Panchayat level are not fully functional, hobbled by lack of funding, nor do they integrate into any protocol for the preparation of the RP. The Goa TCP Act, 1974 continues to define the preparation of a RP in outdated terms, leaving the ideal where bottom-up (village) planning meets top-down (State and Central) planning ever elusive.

Incomplete Acts, parallel authorities, amendments obfuscating people's participation or redressal

Parallel Authorities

The system as laid down by the Constitution for people's participation and accountability are continuously being sidelined with the establishment of parallel authorities. Emerging at both the central and state levels, they obfuscate and emasculate the existing Acts of our Constitution. These 'usurper' Acts, authorities or amendments are potentially exploitative. They lack proper accountability and redressal systems and tend to bypass people's participation, often framed as an urgency, or bundling powers into one authority to override others. When holding this to the light of basic tenets of equitable planning, they fail the test. For example, the Goa State Infrastructure Development Corporation Limited (GSIDC) emerged as a parallel regulator to the Public Works Department (PWD), the nationalization of Goa waterways and the Captain of Ports Bill that seeks to override the rights of constitutional local bodies over the waterways or coastal touch points. More recently the draft jetty policy at the state level further seeks to have rights over riverine infrastructure, interestingly, even suggesting authority over the Captain of Ports.

Another case in point is the Smart City Project, a centrally mandated Special Purpose Vehicle (SPV) on the lines of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), that has been working at cross purposes with the local Corporation of the City of Panaji.[5] De-

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[5] TNN, "Goa to Take Another Shot at Jawaharlal Nehru National Urban Renewal Mission Mission," *Times of India*, sec. Goa News, accessed September 11, 2024,

struction of old infrastructure without due diligence to lay new infrastructure at the risk of increasing city floods is real, with potentially huge public costs.[6]   The Smart City project functioning has thus left enough loopholes in its management and accountability to have created one CEO accused of corruption through complaints to have gone incognito.   Incompetent supervision has led to multiple road sinkholes which have partially or completely swallowed countless vehicles, caused at least three deaths due to non-existent signage and safety measures.   Reminiscent of medieval fiefdoms, a maze of parallel authorities and vague accountability firmly distances people and rights to planning, as laid down by the Constitution.

Incoherent amendments to Acts

Amendments within Acts provide multiple 'breakaway' points that destroy the coherence of the RP.

The emergence of Amendment 16A of the TCP Act was the first step to sideline the RP2021 in the interest of Public-Private Participation (PPP). Without properly defining PPP, an extra 20% Floor Area Ratio (FAR) was granted to large hotels that was supposed to increase the earning potential for the tourism industry.[7]   Introduced through a finance bill in the legislative assembly, it ignored planning issues like parking, the carrying capacity of roads, safety audits for structure and fire safety, focusing purely on profitability, out of sync with any established protocols.   In addition, another Amendment 16B made to the TCP Act allowed private parties to purchase zone-changes without heed to the environment by treating a 'zone' as an individual land ownership parcel.   Needless to say, this has been contested in court,

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https://timesofindia.indiatimes.com/city/goa/goa-to-take-another-shot-at-jawaharlal-nehru-national-urban-renewal-mission-mission/articleshow/17565721.cms

[6]   Herald Team, "Operation 'Save St Inez Creek' Need of the Hour," *Herald* Goa, May 21, 2018, https://www.heraldgoa.in/goa/na/operation-save-st-inez-creek-need-of-the-hour/131090

[7]   TNN, "GBA Seeks Repeal of Sec 16/16A of TCP Act," *Times of India*, November 25, 2011, sec. Goa News.

with the government verbally promising its withdrawal in 2022, after having processed thousands of hopeful applications.[8]

Others include a recent amendment through the Department of Revenue whereby the Collector may provide conversion *sanads* favouring individual applicants, regardless of planned land use, if No-Objection-Certificates (NOCs) from the concerned line departments are not submitted within 20 days. If the intent was to streamline systems, it would have charged penalties on the erring departments to speed up processes and not override them. The inference of this is clearly in favour of individuals wishing to change their land use, bypassing established systems and concentrating power in the hands of officials. In this mayhem, the idea of justice and equitable distribution of systems, services and rights to citizens over their environment are lost.

Incomplete Acts

Goa is home to a time-tested communal system referred to as the Code of the Comunidades or *Gaunkari*, where villagers collectively owned common lands. These lands could never be sold, however, were leased out with villagers partaking in the share of profits at the end of each harvest. Today, urban-driven economics places land value on its outright sale instead of potential for sustainable produce, following an investment model of ever-increasing profits through private possession and resale. This sole focus on fragmentation-demarcation, occupation and profit breaks the critical interconnectedness of ecosystems that anchored the well-being of the older agrarian communal systems.

Too much has gone askew, and it is time to shed the flawed 19th century anthropocentric model and embrace a 21st century eco-centric, commons-based model.

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8   PTI, "TCP Act Amendments Scrapped along with Clearances under Section 16B: Goa Minister," *ETRealty*, September 27, 2022, sec. ET RealEstate, https://realty.economictimes. indiatimes.com/news/industry/tcp-act-amendments-scrapped-along-with-clearances-under-section-16b-goa-minister/94468299

The balance of commons and the beauty of community systems

The hyper-centralized paradigm has come into conflict with the de-centralized, older tribal and community systems of balance and fair play. These systems have worked due to manageable community size. Goa's *Gaunkari* or Comunidade system placed value on the fertility of the land, a lease-auction model with focus on Year-On-Year sustainability and production. This worked to protect the grazing lands, forest produce and provide water security. Villagers as stakeholders received their yearly dividends called 'Zon', and through such inter-dependency, they collectively crowd-managed checks and balances to the system. While such systems may have flaws, in this case, Comunidades are decidedly patriarchal in the sense that such proceeds only go to the first-born males, usually of dominant caste groups, they can be reformed to include women and handle the fast-changing demography to include those that have made Goa their home, and therefore democratise people's stake in their environment.

The Comunidade system came under severe attack once the Land Revenue Code took over post 1961. While the Goa Government has in principle allowed the ancient system to exist without interference, they have repeatedly tweaked various acts with sub texts which 'allow for takeover of such lands for projects of public importance' without necessarily specifying what these projects may entail. Goa being a small state suffers from a paucity of land for large projects, favoured for development by elected representatives, for their high visibility and sources of revenue. Add to this the current trend of second homes in Goa, the pressure to sell and get rich quick has been irresistible for many of the Comunidade management committees. Massive frauds have been uncovered and continue to be uncovered. The largest Comunidade in Goa, the Serula Comunidade, covers a number of villages and is at the cynosure of such an inquiry.[9] This hold on a

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[9]   Herald Team, "Serula Land Scam: HC Directs Petitioners to Approach Inquiry Commission,"

time-tested system is being lost and needs to be revitalized and held as a template for a new Planning Act that will be equitable in its roots.

The recognition of environment in planning as a stakeholder

If land use planning was always anthropocentric, the 2015 Conference of Parties 21 (COP21) has introduced an urgency for planning to become eco-centric to combat climate change.[10] It is a testament to our democracy that newer, environmentally friendly Central Acts having far reaching consequences have found their way into the Indian system. This has been influenced in part due to the international focus on supporting the value of ecosystems, ground water, riverine, coastal, mangrove, wetland and biodiversity.

The Biodiversity Act 2002 is built on the underlying logic of protection of biodiversity for the advantage of the native populace, with a view to protect community resources for trade economics.

The fallout of decades of old school centralized planning practices resulted in heightened conflict and a large number of court cases related to the protection of the environment. Providing relief to the main judicial systems, the National Green Tribunal was set up under the National Green Tribunal Act in 2010 to dispense justice with a focus on the environment, and India is one of few countries to do so.

The emergence of these systems is a step in the right direction for two reasons — a stepping stone towards the idea of nature having its own rights in the eyes of the law, shifting away from the anthropocentric model, and at the very least, incorporating the wisdom that a protected environment by extension provides quality of life for its denizens.

Herald Goa, October 10, 2022, https://www.heraldgoa.in/goa/serula-land-scam-hc-directs-petitioners-to-approach-inquiry-commission/194968

[10] United Nations Framework Convention on Climate Change, "Key Aspects of the Paris Agreement |," UNCC, 2015, https://unfccc.int/most-requested/key-aspects-of-the-paris-agreement

In a world that values the currency of economics and speaks in terms of GDP, efforts must be made to accurately devise the value of our ecosystems by breaking it down into its fractions. In a first, the value of a tree was calculated at Rs. 74,500/- per year multiplied by the tree's lifespan, according to the committee appointed by the Supreme Court of India in response to a Public Interest Litigation (PIL). It is a commendable move and yet throws light on the inadequacy of our grasp on the interdependency of items in a system so large. The value of a mangrove tree that handles life in the intertidal systems is of higher value to the inhabitants living off the marine life that arises from there or use them as flood protection. This is why planning needs to respect smaller manageable socio-environmental zones, including all stakeholders in that microcosm. A highway that destroys trees in the area, concretizing fertile intertidal ecology, will have a far greater impact than in another area, possibly more than Rs. 74,500/- per year per tree.[11]

Need for an independent, constitutionally sound Regional Planning process, including climate justice, people's participation and environment as a stakeholder

With so many Acts and authorities working in tandem, how does this stitch into a common minimum framework and what takes precedence? Resource and land use lies at the base of justice. This comes back to the key issue, which is that this can only happen with the inclusion of all stakeholders, recognition of the commons, and a system that compulsorily weighs in on smaller self-governing clusters while looking at the larger picture.

The regional planning process is too important to remain subservient to an outdated TCP Act. It needs to function with its own standing, firmly rooted in our Constitutional rights, ready to integrate and yet not be overwritten by emerging acts so that it becomes a true vehicle of justice and development.

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[11]   Utkarsh Anand, "What's the Value of a Tree? Age Multiplied by Rs. 74.5k: SC Panel," *Hindustan Times*, February 4, 2021, http://alturl.com/qu7cm

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EXPLORING THE CONCEPT OF ECO JUSTICE IN THE CLASSROOM AND AMONG CITIZENS

NANDINI VELHO , SRISRIVIDHIYA KALYANASUNDARAM , YAMINI SRIKANTH & SALIL SUBEDI

- The essay addresses the concept of eco-justice, claiming that non-human nature must be included in ethical frameworks and presenting it as an inter-human and inter-species concept.

- The purpose of this essay is to raise important questions about the relationship between learning and action in the context of environmental protection.

WHY ECO-JUSTICE THROUGH BODY AND SENSES:

- Deepens understanding
- Transformative activities

INTERSECTIONALITY AND DIVERSE REALITIES:

- Promoting Inclusivity through Intersectionality
- Exploring Diverse Realities

CROSS-AND-CIRCLE ACTIVITY:

- Fosters Perspective Expansion
- Encourages Political Discourse

JUSTICE adda

KOKUM

14. Exploring the Concept of Ecojustice in the Classroom and among Citizens

Nandini Velho[1]*, Srisrividhiya Kalyanasundaram*[2]*, Yamini Srikanth*[3]*, Salil Subedi*[4]

Background

I N this chapter, we explore the various learning tools related to ecojustice for both humans and more-than-humans. We consider ecojustice in terms of aesthetic, ecological, and moral kinship values, which can help us navigate cultural and socio-political engagements of our time. We develop the concept of ecojustice by interweaving biodiversity conservation, ecological consciousness, and social justice in a relationship-centric model.

Working in South Asia presents rich challenges and possibilities for developing a framework for ecojustice. The region has a highly pluralistic culture with diverse socio-economic, cultural, and political realities. The essential challenge for us is to develop a framework for ecojustice, as a practice of education and activism that fosters a culture of open inquiry rather than a boundary of definition. To meet this challenge, we explore the following values, principles, and practices as emerging categories for an open framework. The ecojustice framework we

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[4]   M.Phil, English, & Performing Artist, Kathmandu, Nepal.

present in this chapter engages with seven critical values: kinship, resonance, plurality, complexity, beingness, openness, and rumination.

We examine the relationship between learning and action and how this can provide a framework for ecojustice. Here, we consider the Freirean idea of a "true word."[5]

In the context of social justice, spoken words begin to lose their meaning if not reinforced by action. In many ways, learning about ecological justice can feel the same way. When we talk about issues but fail to provide avenues for action, discussions can feel empty at best and further demotivating at worst.

Conversely, environmental education can itself be a strong determinant of taking action.[6] Combining motivation for action and mechanisms for action within educational frameworks can therefore be an excellent method for generating meaningful actions.

Actions also need to be contextualized well, to prevent further perpetuation of injustices. Who undertakes an action can be just as important as what action is taken. This includes an understanding of who we are, our upbringing, religion, caste, gender, and overall positionality, which determines how we see an issue. Privilege is a complex and multifaceted ecojustice experience that requires a deep understanding of one's own positionality in relation to others. Discussions about privilege is not just about the benefits and advantages that one receives in society but also requires a reflection on certain attributes and identities. For example, one may be advantaged in some ways, such as having access to education or financial stability, while also being disadvantaged in other ways, such as facing discrimination based on caste, religion, gender, or sexuality. Acknowledging and under-

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5   Paulo Freire, *Pedagogy of the Oppressed*, trans. Myra Bergman Ramos, A Continuum Book (New York: Herder and Herder, 1970).

6   Varela-Candamio et al. (2018) find environmental education to be a powerful tool in inspiring "green behavior" Laura Varela-Candamio, Isabel Novo-Corti, and María Teresa García-Álvarez, "The Importance of Environmental Education in the Determinants of Green Behavior: A Meta-Analysis Approach," *Journal of Cleaner Production* 170 (January 1, 2018): 1565–78, https://doi.org/10.1016/j.jclepro.2017.09.214

standing privilege may require space for reflection that allows for self-knowledge and awareness to recognize that few forms of advantage may not take away deeply inequitable generational injustices. Additionally, it may help to expand our frameworks of relationship with values of plurality, allowing for multiple voices to emerge within a complex space. Cognitive justice requires the idea of plurality to go beyond tolerance but towards actively recognising the need for diversity.[7]

In a culture that is grappling with decolonization, secularism, and caste-based hierarchies, it would be important to understand the complexity of diverse voices, with openness as another key value. Such considerations require pondering about the kind of people we need to be to engage with our external realities. What are the ways in which we can cultivate an inner consciousness to enable a better level of outer consciousness in our actions (being as a form of action), and find creative mind-body-heart connections in the field of ecojustice?

Engaging through the arts can provide new tools for these ruminations, as they provide us with creative ways to question beingness. Identity can become a porous experience through practices in theatre, writing, artistic work, and other forms of engagement. Both individuals and groups may be able to transcend isolated situations and embark upon inner journeys that allow deeper contemplation of the human condition. In these aesthetic and creative practices emerges a possibility for kinship and resonance. Enabling action through these acts of transcendence from one's own limited identity to an identity that can embrace both the human and more-than-human conditions of diverse beings creates spaces for new dialogue. Ecojustice then becomes open, adaptive and fluid as a pedagogical construct, rather than limiting it to a definition.

It also leaves us open to ruminate on 'justice' as an abstract inquiry, and to ask if any resolution can completely benefit all stakeholders in a given context. The arts allow us to grapple with uncertainty and para-

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[7] Shiv Visvanathan, "The Search for Cognitive Justice," 2009, https://www.india-seminar.com/2009/597/597_shiv_visvanathan.htm

dox through their creative tools and give us new lenses to perceive and cognize problems, beings and actions.

We explore the idea of ecological justice in the context of biodiversity conservation, given that we have often experienced injustice (e.g. displacement of people, unequal access to natural resources, disparity in who causes climate change and who faces the consequences) that we have to hold in tandem with our appreciation and awe for the natural world. Academia often fails to consider justice for nature[8], leading to a perception of eco-centrism and social justice as anti-human or pro-animal dichotomies. Eco-centrism does not necessarily argue for the equivalence of all species or prioritize non-human needs over human needs but rather seeks to understand and appreciate the ecological reality of interconnectedness between species.[9]

Eco-centrism is also not new. Many indigenous philosophies have argued to go beyond even wilderness preservation. Bartel et al. describe the Aboriginal Lowlands where the maintenance of ecological balance and processes is paramount.[10][11] In recent times, there has been increasing prominence and broadening of the concept of ecological justice.[12] This recent expansion of the concept of ecological justice includes issues such as climate change and human rights, acknowledging that conservation efforts must also address historical and current global inequalities and lack of access to resources and recognition of rights.

Our proposal is that ecojustice is not anti-human but rather an inter-human and inter-species concept that promotes justice-driven con-

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[8]   Haydn Washington et al., "Foregrounding Ecojustice in Conservation," *Biological Conservation* 228 (December 1, 2018): 367–74, https://doi.org/10.1016/j.biocon.2018.09.011

[9]   J. Stan Rowe, "Ecocentrism: The Chord That Harmonizes Humans and Earth," *The Trumpeter* 11, no. 2 (1994): 106–7

[10] Robyn Bartel and Marty Branagan, 'Reimagining Wilderness and the Wild in Australia in the Wake of Bushfires', In Susan J. Smith and James I. MacPherson (eds.), *Rethinking Wilderness and the Wild* (Routledge 2020).

[11] Christine Black, "Maturing Australia through Australian Aboriginal Narrative Law," *South Atlantic Quarterly* 110, no. 2 (April 1, 2011): 347–62, https://doi.org/10.1215/00382876-1162489

[12] Washington et al., "Foregrounding Ecojustice in Conservation," 367–74.

servation.[13]

Enabling action in the teaching-learning journey of ecojustice involves contributing, moving, and adapting to a framework of thinking about ecojustice. Contributing involves actively participating in the creation and thinking of a just and inclusive world. Building a framework entails categorizing and analyzing emerging ecojustice categories, including philosophical and socio-political frameworks. Examples of such frameworks include the introduction of terms such as Management of Actual or Potential Aggression (MAPA), recognition of indigenous rights by scientists, and may also involve moving beyond individual actions to identifying political, historical, cultural, and structural factors that have resulted in the environmental injustices we see today. Philosophical frameworks may also include concepts such as eco-feminism, deep ecology, and biocentrism, which emphasize the interconnectedness of all living beings and the importance of valuing and protecting more-than-human life, the disproportionate impact of environmental harm on marginalized communities, and the rights of nature. Aesthetic Frameworks could include concepts of perception and cognition and how our notion of environmental and ecological aesthetics can shift our connection with the natural world.[14]

Three principles of creativity as well as design and aesthetics suggested by Jusuck Koh in his seminal work on ecological aesthetics --- inclusive unity, dynamic balance, and complementarity --- could provide important dimensions to ecojustice in pedagogy as well as practice.[15]

These would provide key tools for perception and cognition to look at biodiversity and conservation through sharing a cognizance of the creative principles of all life.

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[13] Adrian Treves, Francisco J. Santiago-Ávila, and William S. Lynn, "Just Preservation," *Animal Sentience* 4, no. 27 (January 1, 2019): 1, https://doi.org/10.51291/2377-7478.1505

[14] Jusuck Koh, "An Ecological Aesthetic," *Landscape Journal* 7, no. 2 (1988): 177–91.

[15] Koh.

Adapting refers to being flexible and responsive to the changing needs and contexts of the environment and society. The concept of moving involves taking actionable steps towards implementing ecojustice principles and practices, whether through individual or collective efforts. This involves considering ecojustice from socio-political, emotional, and pedagogical perspectives, and identifying cathartic as well as pragmatic actions that can be taken to address issues of environmental justice.

Contributing to Ecojustice

The chapter draws from curriculum design at Srishti Institute (SI) and Srishti Manipal Institute (SMI), pedagogical teaching methods at SMI and Azim Premji University (APU) in Bengaluru, India, as well as from socio-environmental engagement with the Amche Mollem movement. The exploration found ways in which ecological consciousness could evolve in tandem with social justice.

The Earth Education and Communication Master of Design Program at SI & SMI

Srivi K set up the Earth Education and Communication program (EEC) at Srishti Institute of Art, Design and Technology (SI) in 2016 and it was absorbed into SMI[16] in 2020. It has been worked with a relationship-centric approach to the curriculum design, aiming to emphasize the dilemmas and complexities of ecojustice, ecological consciousness, environmental ethics and conservation through critical inquiries in education, pedagogy and communication design. Situated in an Art, Design and Technology college, this program re-imagines biodiversity conservation through the transdisciplinary lenses that arts and design offer. The central inquiry for this program was to look at what it takes to be 'human' and move beyond 'silo-ed' and dualistic views

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[16] Anupama Arun and Padmini Nagaraja are acknowledged for their brainstorming and collaborative discussions towards the designing of the Earth Education and Communication curriculum at Srishti Institute of Art, Design and Technology in 2016 and Sandhiya Kalyanasundaram for collaborative curriculum work in 2018.

in the environmental paradigm and is an "attempt to explore how polarised, 'silo-ed' views in conversations and debates around environmental issues can be made to gradually come together and overlap, dissolving discipline-based perceptions and preconceived ideas, allowing for new discourses to emerge.[17] During the last six years, the Earth Education and Communication program, as an emerging program, has worked with eight students who have graduated or are graduating from the program, as well as several others who have opted to do their final Capstone projects within the framework of this program. In observing the varied dimensions of ecojustice that have emerged over a two-year period for each student during their final Capstone thesis, some of the thematic areas have included:

- Social justice and the Forest Rights Act
- Cultural, artistic, and linguistic diversity as essential to ecological diversity
- Human actions, sustainability, and ethical action as ecojustice for the planet
- Eco-feminism and its central role in providing justice to both women and more-than-human worlds
- Introducing ecological consciousness as a way to develop ecojustice in the classroom
- Embodiment, cultural frameworks of perception, cognition, and consciousness as essential to create new frameworks of ecojustice
- Juxtaposing philosophical inquiries of consciousness with the socio-political challenges of on-ground realities.

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[17] Srishti Manipal Institute of Art, Design, and Technology, "Postgraduate Program in Earth Education and Communication," Srishti Manipal Institute of Art, Design, and Technology, accessed August 28, 2024, https://srishtimanipalinstitute.in/programs/postgraduate-program-in-earth-education-and-communication.html

Each student approached these central concepts through contextual inquiries, creative design or artistic outputs, and fieldwork appropriate to their chosen theme. The diversity that has emerged over the last seven years of running this program has enabled us to expand on the pedagogical possibilities of ecojustice in Indian education. With very plural practitioners teaching in the program, including ecologists, visual and performing artists, designers, philosophers, humanities scholars, writers, game designers, human geographers, and naturalists, the diversity of practices introduced to the students has provided immense opportunities to challenge and guide them towards new directions of inquiry.

The ecojustice studio at SMI

Working as faculty with the Earth Education and Communication program, NV, a wildlife biologist interested in the human dimensions of wildlife management, was a lead facilitator for a month-long ecojustice and creative conservation studio (from 13th January to 24th February 2022). SS, a musician and performing artist, used movement as a co-facilitator to get students to open up to nature and aspects of injustice in a more expansive way, especially given that the studio was conducted during the COVID-19 lockdown and students were confined to their rooms. The specific aim of NV and SS's studio was to connect with students' own perspectives and those of their colleagues and citizens in order to understand how they could learn to attend to contexts more closely than ordinarily. They also aimed to explore ways to approach the unknown, across boundaries, and engage with ecojustice in multi-disciplinary ways.

Additionally, the video series Young Voices for the Planet provided engagement for both teachers and students on civic engagement and democracy curriculum. The Conservation Leadership Model, which focused on understanding the kind of leadership that serves biodiversity best, was also a helpful resource for those involved in the ecojustice movement.[18]

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[18] Simon A. Black, "A Leadership Competence Framework to Support the Development of Con-

This model emphasized authenticity, purpose, dignity, multiculturalism, operational knowledge, pragmatic realism, and vision as key components of successful biodiversity conservation efforts.

Another useful resource was a paper that facilitated discussions about privilege among future conservation practitioners, which encouraged practitioners and citizens to think about their own positionality in relation to environmental issues.[19]

What is Environmental Justice in India — Workshop at Azim Premji University

YS was a student at Azim Premji University who developed a workshop titled "What is Environmental Justice in India". With a background in education and biology, and a focus on ecology, the idea was to connect seemingly disparate threads of biodiversity conservation and education. Central to the development of the workshop was Freire's *Pedagogy of the Oppressed* and Augusto Boal's *Theatre of the Oppressed*. More than independent events of injustice, the focus was to examine historical, cultural, social and political structures which enabled an event of such injustice to occur. Local case studies were also chosen to provide a better understanding of the context of environmental justice in India.

In addition to case studies and a Freireian outlook, movement was also a key pillar of the workshop. Understanding oppression of the self, situations where one has acted as the oppressor, and the trauma that people around us have undergone are not easy things to do. Movement was designed to both engage at the beginning of the workshop, and prepare participants to share, as well as to conclude at the end of the workshop, to soothe and ensure no participant returned with feelings unfelt and thoughts unfinished.

servation Professionals," *Open Journal of Leadership* 10, no. 4 (November 11, 2021): 300–337, https://doi.org/10.4236/ojl.2021.104019

[19] Holly Milton Brown, Ambika Kamath, and Margaret Rubega, "Facilitating Discussions about Privilege among Future Conservation Practitioners," *Conservation Biology* 31, no. 3 (2017): 727–30, https://doi.org/10.1111/cobi.12810

The workshop took place three times in two different formats. The first workshop was entirely online, with participants from all over the country. It consisted of five sessions and ten participants, conducted each Saturday over five weeks. The next two workshops were conducted at community or art spaces in Bengaluru, in person. It consisted of four sessions, spaced over a weekend.

Each workshop followed roughly the same structure:

Session 1 was dedicated to framing environmental justice as an intersectional issue, and identifying threads such as caste, healthcare, education, bureaucracy and corporations which lead to environmental injustice.

Session 2 examined specifically the nexus of power between corporations and the government, and case studies of how this plays out in India.

Session 3 examined caste and the environment, and how caste plays a role in environmental unfreedoms and limiting access to natural resources.

Session 4: In workshop 1, session 4 addressed only environmental issues in the contexts of the participants, which they used to determine actions they could take. In workshops 2 and 3, this was combined with an attempt to debrief and consolidate threads from the entire workshop.

All workshops had a pre-workshop and post-workshop survey to understand participant views and how they changed, as well as to incorporate feedback. Case studies and instances, as well as feedback, was used to evaluate the efficacy of the *Pedagogy of the Oppressed* as an educational tool.

Adapting Aesthetics with Ideas of Ecojustice

An aesthetic principle of ecojustice could involve the use of embodied engagement tools in theatre, visual arts, and writing.

Theatre, art, and interdisciplinary lenses are used to tap into the human aesthetic dimension of environmental justice. Through the experience of the spirit first and subsequent expression through various art forms, a bigger picture of connection and inter-relationship between theory and practice can be observed. In the context of ecojustice, performance seeks to go beyond the human world and considers tools, action, and creative processes that make the invisible visible. By disaggregating theatrical exercises and reintegrating them into the broader concepts of ecojustice, intersections between theater, writing, and visual arts can be opened up.

Being part of multi-artistic engagements can provide a better understanding of ecojustice and its application to the world we live in. This approach recognizes that art and creativity can play an important role in deepening our connection to the natural world and in promoting sustainable practices. Through this lens, performance becomes a tool for fostering eco-consciousness and enacting positive change. Recent research shows that "sitting is the new smoking," and the book *Minding Bodies* helps facilitators use physical movement and their spatial environment to broaden their sensitivities.[20] This thinking was paired with movement-based activities from the book *The Nature of Transformation*: *Environmental Adult Education.*[21]

By engaging the whole self, individuals can deepen their understanding, connection, and sense of community. This approach to learning and facilitation aligns with the idea that the mind and body are interconnected, and that learning is not solely a mental activity but also involves our physical and sensory experiences.[22]

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[20] Susan Hrach, *Minding Bodies: How Physical Space, Sensation, and Movement Affect Learning, Teaching and Learning in Higher Education* (Morgantown, WV: West Virginia University Press, 2021).

[21] Darlene E. Clover et al., *The Nature of Transformation: Environmental Adult Education* (Springer Science & Business Media, 2013).

[22] Pulkki et al. (2017) argue that good education is always a mind-body process, Jani Pulkki, Bo Dahlin, and Veli-Matti Värri, "Environmental Education as a Lived-Body Practice? A Contemplative Pedagogy Perspective: Environmental Education as a Lived-Body Practice?," *Journal of Philosophy of Education* 51, no. 1 (February 2017): 214–29, https://doi.org/10.1111/1467-

By incorporating movement and spatial awareness into the learning process, individuals can engage their whole selves in the learning experience. Augusto Boal created movement exercises intended to encourage participants to engage with power dynamics in their lives and connect with other members of the group. For example, the exercise "Colombian Hypnosis" (Theatre of the Oppressed, Boal) involves pairs of participants taking turns controlling each other's movements. Initially, there may be a sense of glee in being able to control another's movements, but this quickly fades, and the controller takes little pleasure in controlling their partner's movements. This leads to a very intuitive understanding of power dynamics, as participants ask themselves: What does it feel like to be controlled? What does it feel like to do the controlling?

The notion of embodiment as an aesthetic principle, further enables us to question the body as a space that is both bounded and boundless in its relationships with the natural world. As an educational tool, it allows us to bring more expansive concepts of the body from diverse cultures, and also allows for a phenomenological opening up of how students experience their bodies in relation to the movement of life around them.

Shubham Shrivastava, a civil engineering student who participated in NV and SS's studio, was an active performer despite having COVID during the studio sessions. He noted, "Doing these exercises in this studio not only taught me an element of theatre but was also helpful for the physical functionality of the body. The exercise of the rising ball was, in fact, feeding the mind and soul." Additionally, incorporating movement-based activities into group learning environments can create a more collaborative and inclusive space by engaging in physical activities together and breaking down barriers to create a sense of shared experience and connection.

A participant in YS's workshop commented, "Moving like that, so freely, felt strange. It felt like I was a kid again. When you see other

people crawl around on the floor and wave their arms, it's hard to take each other too seriously. There's no more judgment." Richard Schechner's (1968) work on 'The 6 Axioms for Environmental Theatre' served as an important resource for thinking about learning processes and the use of theatre in the context of performances.[23]

According to Schechner, the space used for performance should be a space for the audience as well, and scripts should serve as a starting point rather than a final production goal. Additionally, the methods of production are crucial, and events can take place in transformed or found spaces rather than on a fixed stage. SS's (2010) play, 'Gaida: The Muddy Truth', drew on the principles of Boal and Schechner's work to create a site-specific representation of illegal rhino poaching.[24]

At the end of the play the rhino character battles for survival inside a muddy pit. At this moment, members of the audience spontaneously broke the boundary between performance space and the audience space to rush and rescue the rhino character. The rescued rhino character then starts running towards the river through the village and *bazaar* area. Children in the audience spontaneously followed the character in a victory celebration chanting 'Gaida Jindabad' (long live the rhino). Here, the audience embodied the role of a responsible citizen breaking the audience-performer-wall stereotype, while the children embodied the beingness of the rhino taking its side to warn those who hurt it stating that they stand with the rhino and want to save it. SS has also applied environmental conservation theatre techniques to other endangered species, including the Gangetic River Dolphin and the hornbills of Pakke Tiger Reserve.

Nishant Saldanha, one of the Art Directors of the Amche Mollem campaign, who attended a Masterclass in NV and SS's ecojustice studio, shared an experience and connection when he heard SS's theater narrative on the Gangetic River Dolphin being massacred. "Oh gosh, I'm

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[23] Richard Schechner, "6 Axioms for Environmental Theatre," *The Drama Review* 12, no. 3 (1968): 41–64, https://doi.org/10.2307/1144353

[24] Sali Subedi, "Muddy Truth of Gaida," *My Republica,* July 17, 2010.

getting strong flashbacks of the Delhi pogrom. Imagining the same theater, in education about communalism is traumatic, even imagining these guys as dolphins This photo is making me realize what a huge disconnect arts on the ground have with social media aesthetics." Thus, beingness and consciousness as experienced through performative engagements of embodiment open new dimensions of self, relationship and resonance with life. Resonance is more than empathy, it is a capacity to vibrate with the cord of life, finding values, and in them a strong connection and sense of purpose towards ecojustice action.

Moving with ecojustice ideas in society

It is important to question and recognize the values that are being worked on within the classroom and society. This includes interrogating these values to embody different modalities of experience, ranging from physical to political to intersectional perspectives.

Shivangi Pant, a 2020 graduate of M.Des. Earth Education and Communication, Srishti Institute of Art, Design, and Technology, Bengaluru, created a unique script for a theater play that explored concepts of human and animal consciousness by juxtaposing a tea estate owner with a Nilgiri Langur, with their heads and bodies transposed.[25] The play engaged with the complex socio-political situation of a tea estate in Southern India closing down. Such closure would lead to economic challenges for the community and social issues for the people who inhabited the region for a long time, while potentially impacting biodiversity conservation positively.

With an undergraduate degree in applied arts, Shivangi engaged with a transdisciplinary course titled "Time as Paradox," led by Sandhiya

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[25] Shivangi Pant, 'Through the Eyes of the Other'. Capstone Project Documentation Book, Srishti Inst. of Art, Design & Technology, Bengaluru, India, Aug 6, 2020, https://issuu.com/shivangipant/docs/process_documentation_book_shivangi_pant

Kalyanasundaram and SK.[26][27]

This course opened an opportunity to reclaim urban wasteland through conscious gardening and extend her embodied engagement with the natural world through performance and visual arts. It opened new possibilities for Shivangi, and she began to synthesize the complexities of engagement with conservation issues. During her internship, she engaged with the Nilgiris Biodiversity and the endemic Nilgiri Langur as a vulnerable species, alongside the socio-cultural and political landscape of a tea estate in this region that was going to close down.

Mentored by another theater artist Ramneek Singh to incorporate socio-politics into her playwriting and working with SK to bring consciousness of the human-animal relationship, Shivangi emerged with a Capstone project as a creative yet critical piece of work delving into deep questions and dilemmas of ecojustice intertwined with social justice. Using playwriting and fiction as a Practice Research approach, she drew upon the work of actor and playwright Girish Karnad's "Hayavadana" as a starting point that was culturally rooted.

In her own words, Shivangi said, "Earth education and communication as a course helped me understand systems in three large categories --- ecological, social, and economic. While working on my project, which revolved around evoking ecological consciousness among people towards the non-human world located in KMTR, Tamil Nadu, I looked at how the social and economic systems merge with the ecological. I started by looking into the conservation issues faced by Nilgiri langurs in the region and soon realized that the solutions to these problems do not happen in silos and that to conserve a species

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[26] Sandhiya Kalyanasundaram, "Reclaiming Land-Rediscovering Body," *Theatre, Dance and Performance Training Blog* (blog), Sep 10, 2019, https://theatredanceperformancetraining.org/2019/09/reclaiming-land-rediscovering-body/

[27] Srisrividhiya Kalyanasundaram and Sandhiya Kalyanasundaram, 'Transdisciplinary Futures: Where Do Embodiment, Ethics and Education Meet for Sustainability Leadership?', In Marcelo Ambrosio and Carlo Vezzoli (eds.), *Desgining Sustainability for All* (Lens Network on Sustainability 2019).

or a landscape, it is necessary to look at the social and economic dynamics of the study area".[28]

She further explained that there was heavy dependence on tea cultivation in the region where her study was located, and issues around farmer rights, land rights, and government policies became critical in understanding the problems at large. Environmental issues often penetrate social life, as the degradation of soil quality because of mono-crop cultivation and heavy consumeristic patterns of the world, not only affect the ecological ecosystems but also impact the well-being of the people.

Shivangi's project focused on the social, political, and economic impacts of tea cultivation on tea estate workers in Tamil Nadu, most of whom were migrant laborers. In this complex situation of finding a just system that provides equitable access of resources to everyone while keeping in mind the limitations of nature, she wrote a play that concluded with a new constitution based on theories of 'deep ecology,' where the value of non-human life is independent of the usefulness of nature for human purposes, and all life forms should exist in harmony and balance.[29]

Kaveri Girish, an architecture graduate at NV and SS's ecojustice studio shared a similar statement, "The most attractive aspect for me was the inclusion of politics as a player in each context as it is something I have often found missing in the classroom." In other words, thinking about concepts of ecojustice must also focus more on participation, caste, marginality, and identity. She added that using conservation theater "is a tool to express truth and tell the real story to the open public, which can otherwise only be known to those who live in that reality."

This idea of expressing a difficult reality is highlighted in the case study of the Mollem National Park and Bhagwan Mahaveer Wildlife Sanctuary, where multiple forest clearance proposals were sanctioned virtually by the National Board for Wildlife amidst a pandemic and

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[28] Shivangi Pant, personal communication (12 March 2023).
[29] Pant, "Through the Eyes of the Other."

lockdown. Ongoing citizenship efforts have been spurred by the idea of ecojustice in relation to the Amche Mollem case study, where this chapter examined 17 different stakeholder representations sent to the Central Empowered Committee of the Supreme Court. These representations were sent by scientists, college students on One Health, Travel and Tourism Association of Goa, small-business owners, veterinarians, lawyers, political representations from the convener of Aam Aadmi Party Goa, Leader of Opposition from Indian National Congress, ex-Forest Minister, and member of the Bharatiya Janata Party, and independent elected members. Some groups were able to make direct connections with respect to ecojustice and redressal issues of human rights. For instance, a group of 19 lawyers sent a letter on 23rd July 2020, to the Central Empowered Committee of the Supreme Court, stating that "the highly controversial 57th meeting of the Standing Committee was held in the midst of an international pandemic and a national lockdown when the statutory right to appeal under Section 16 of the National Green Tribunal Act, 2010 was suspended due to the pandemic." They argued that due to such virtual meetings, all aggrieved citizens and civil society were unable to exercise their legal right to appeal before the appropriate forum. Additionally, the lawyers argued that "projects that do not directly benefit wildlife or their habitat cannot be allowed within protected areas, as it is a blatant and deliberate violation of Section 29 and 35(6) of the Wildlife (Protection) Act, 1972."

Whether or not the provisions of the Wildlife (Protection) Act, 1972, an important aspect of ecojustice, recognize the value of multiple species, including both humans and more-than-humans, it is necessary to foreground ecojustice in terms of multiple species and their aesthetic, ecological, moral, and kinship value. This point is exemplified by the concerns raised by 117 teachers in the Amche Mollem case study, by means of a letter they wrote to the Environment Minister on 5thSeptember 2020, about the destruction of forests in Mollem and the association of these forests with classroom values. The teachers

wrote, "As you know, an important part of a child's development is socio-emotional development. Children can empathize at a very young age. When students learn about co-existence and interdependence of plant and animal life in the forest, they are also learning empathy. Sensing this interconnectedness within nature is essential for developing a caring attitude towards the environment, and for many of us, and our students, these lessons happen in Mollem. This is the place where we can spot some of the 235 bird species or 219 butterfly species that coexist with each other."

The way forward

This chapter offers suggestions centered around the concepts of moving, adapting, and applying practices of ecological justice as a philosophical rumination rather than a prescription.

Evaluating audience-performer or writer-reader responses poses inherent challenges in measuring the effectiveness of our pedagogical methods. In YS's workshops, which were outside of a formal education framework, there was little motivation to do assessments given that the primary goal was to deepen learning, rather than achieve specific grades. While this is a valid stand in itself, we feel that in this context, active workshop hours should be curated as sufficiently meaningful, eliminating the need for formal interventions.

However, in NV and SS's studio, within the institutional framework, considering the breadth of topics covered, breaking down an ecojustice studio into smaller daily assignments in the future could be beneficial. This approach would allow students to identify environmental concerns on their own terms at a slower pace. During their studio, students took a long time to identify a context, and their final outcome exceeded the deadline. Therefore, specific and creative assignment briefs may be needed, that are not only long-form final assignments. Additionally, managing institutional expectations and planning future university courses based on negotiated outcomes for grading are important, and grading rubrics should be revised to prioritize smaller

assignments and involve facilitators from diverse backgrounds. Such ideas are explored as conversational ruminations rather than seeking solutions to assess and examine the effectiveness of ecojustice frameworks. We argue the key is to find flexibility between theory and engagement.

Some may argue that this type of thinking about ecojustice has a moral dimension that is valuable in and of itself, that goes beyond evaluations. Indeed, such spaces may allow for students and citizens to be shaped by their surroundings in conversation and collaboration with an appreciation for larger contexts.

We find that through a 'value' centered approach, it becomes possible to create these pedagogical possibilities for varied contexts and return to our key values as a collective.

- KINSHIP — A relationship-centric dimension that allows for a socio-ecological space to emerge.
- RESONANCE — An aesthetic dimension that emphasizes deep empathy and seeks to build resonance with the more-than-human worlds.
- PLURALITY — A dimension of plurality that enables diverse voices to engage and co-create.
- COMPLEXITY — An ethical/moral dimension that grapples with the complexities and dilemmas of ecological and social justice.
- BEINGNESS — A dimension of action that is grounded in beingness and transformation, bridging the socio-political with the cultural-psychological.
- OPENNESS — A dimension of fluid dialoguing that prioritizes listening as a vital exercise.
- RUMINATION — A philosophical dimension that encourages pondering on multilayered narratives, viewpoints, and realities.

An authentic voice for each actor of ecojustice emerges at the intersection of their lived lives and their ability to empathize and find resonance with all life. In each of our experiences discussed above, we find

that students and participants become engaged stakeholders in this conversation on ecojustice as fundamental shifts in their consciousness occur through a shift in their value systems. At the same time keeping the values in an aesthetic flow that allows for moving, adapting and applying philosophical rumination frees individuals from ideological frameworks and fragmentation of consciousness, providing an opportunity for clarity in perception and cognition. As in all human endeavors, there will remain challenges in developing such an open system into a constructive pedagogy. We find that the key to any educational action lies in developing a culture of pedagogies, rather than prescriptive principles of action. Jerome Bruner (1996) makes a very important case for looking at education as a meaning-making process, bringing the significant value of a 'narrative' as a cultural tool that can enable a deeper understanding of the past, present and all that is possible of us as a species.[30]

There is a key need, therefore, to shift what we claim or interpret as education, to make new dialogue possible for ecojustice education at large. A culture that allows for meaning-making, aesthetic experiences of resonance, narrative constructions that allow for past, present and future to flow into newer meanings will be critical to construct a new mind capable of taking on the challenges of ecojustice. A culture that seeks dialogue with plurality, ruminates on the self and the other in a relationship, is willing to stay open instead of falling into the comfort of ideological constructs, will set apart the nature of consciousness that seeks to engage with all life and beings with authenticity.

In the words of J. Krishnamurti, "A different kind of education is necessary. It is not the mere cultivation of memory with all its emphasis on compulsion, conformity, imitation, leading to violence, but the total culture of man in which the "you" and the "me" disappear and are not replaced by the State or by a new figure of sanctity. This different education is concerned with knowledge, with freedom, with what is, and

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[30]   Jerome S Bruner, 'Culture, Mind, and Education Edited by Jerome Bruner', In Jerome Burner (ed.), *The Culture of Education* (7th print, Harvard University Press 2003).

to go beyond what is."[31] As his book is titled, "The Whole Movement of Life is Learning" and it is in enabling our students to look at cultures of learning ecojustice, where they see life as a whole, that we may see possibilities of meaningful action emerge in kinship with life.

This culture of engagement seeks to enable an examination of multiple perceptions towards biodiversity conservation, the dimensions that emerge when thinking about ecojustice, and the capacity it enables for inner transformation and outer actions, while retaining the core principles of human and more-than-humanness.

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31   Jiddu Krishnamurti, *The Whole Movement of Life Is Learning: J. Krishnamurti's Letters to His Schools* (Krishnamurti Foundation Trust, 2006).

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REFLECTIONS ON THE DESIGN FOR JUSTICE FELLOWSHIP

BY NAOMI JOSE
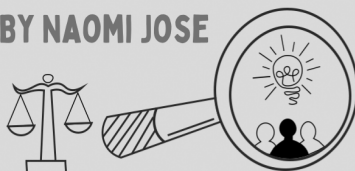
This essay reflects on 'The Design for Justice (DFJ)' Fellowship, created by Justice Adda (JA) and Kokum Trust (KT) in partnership with Konrad Adenauer Stiftung (KAS), aimed to explore how design thinking can improve access to justice in Goa, India. Recognizing that justice institutions like courts, prisons, and police stations often prioritize the needs of professionals over citizens, the fellowship focused on designing these spaces to better serve the public.

INSTITUTIONS INVOLVED

- Birla Institute of Technology and Sciences, Pilani Goa campus
- Salgaocar College of Law
- Goa College of Architecture

PURPOSE AND STRUCTURE

- Address design issues in justice institutions using a grassroots approach
- Promote experiential learning among students from diverse disciplines
- Three-month program with fieldwork, weekly reflection sessions, and support
- Collaboration among students from three Goa-based educational institutions

IMPACT AND OUTCOMES

- Stimulated inquiry among fellows, experts, and participants
- Fostered collaboration and innovative thinking for justice reform
- Created actionable insights to make justice institutions more accessible
- Set the stage for ongoing dialogue on justice accessibility

Acess to Justice

JUSTICE adda   KOKUM

CHALLENGES AND ADAPTATIONS

- Varied skill levels required tailored training and more targeted interventions
- The fellowship adapted to focus more on reflective exercises and shared field experiences

15. Reflections on the Design for Justice Fellowship

Naomi Jose

I N everyday life in India, and particularly in Goa (due to its unique civil code),[1] institutions of justice are some of the most visited spaces in the city. A rule of law society prioritises equality of all before the law and equal participation by all in decision making. Justice institutions (courts, prisons, police stations) are intended to serve as public spaces where this rule of law is upheld. Traditionally, in the construction of such spaces, the focus has been on the needs of professional users such as lawyers, judges, police officers etc.[2] However, such a focus disregards the needs of the citizen who has to navigate these spaces, and the impact of such a design on their own ability to access justice. The 2012 National Courts Management System Policy and Action Plan demonstrated a link between poor infrastructural facilities and the efficiency of judicial systems.[3]

The architecture, especially the design of certain public buildings like educational institutions and hospitals, is heavily regulated through state-level town planning acts and municipal byelaws. Regulatory

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[1] "Portuguese Civil Code, 1867" (Government of Goa, August 2018), https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf.

[2] Alexandra Marks, "What Is a Court?" (JUSTICE, June 3, 2016), 5, https://justice.org.uk/our-work/what-is-court/

[3] National Court Management Systems, "Policy and Action Plan" (Supreme Court of India, 2012), https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf

inputs on the design of justice institutions remain only recommendatory. For example, in the Model Prison Manual (2016) published by the Government of India, only 9 out of the 337 pages address architecture and even those recommendations remain vague.[4]

Justice Adda (JA) and Kokum Trust (KT), in partnership with Konrad-Adenauer-Stiftung (KAS), sought to understand the particularities of the relationship between the average citizen and justice institutions in Goa. To that end, we created the Design for Justice (DFJ) project that aimed to identify the issues on the ground and propose possible solutions. This piece is a reflection on the experience of creating a research fellowship aimed to address the question of how design thinking could be applied to justice institutions in Goa, keeping in mind the specific issues mentioned above.

Why a Fellowship

JA and KT, with their experience of design thinking in their own work, were keen to bring that into play while creating the Design for Justice project. To that end, it was felt that running a survey and writing a case study on specific justice institutions in Goa would help to contextualise whatever solution we may develop, adopting a grassroots approach rather than a top down one. The survey asked some of the following questions:

- *What in your view, are the main ways in which a justice institution (courts, prisons, police) can serve the community?* (being responsive, social service, support to vulnerable, empowerment)
- *Do you think that justice institutions in Goa support people from all communities?*
- *What are some of the problems in justice institutions?*

The survey questions were directed at understanding the impression of justice institutions, what their expectations as users were, what their

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[4] Bureau of Police Research and Development, "Model Prison Manual for the Superintendence and Management of Prisons in India" (New Delhi: Ministry of Home Affairs Government of India, 2003), http://alturl.com/rxofb

experience had been, where had justice institutions let them down and in what possible ways could justice institutions reimagine themselves.

While the survey provided a context, the lynch pin of the DFJ project was the case study. The idea behind having a case study at the centre of the project was twofold. Firstly, it allowed us to explore how particularities could affect access to justice. A case study would allow for the combination of both quantitative data and qualitative data.

As a research strategy, the distinguishing characteristic of the case study is that it attempts to examine: (a) a contemporary phenomenon in its real-life context, especially when (b) the boundaries between phenomenon and context are not clearly evident.[5]

Besides this, we chose to use the case study to create an experiential learning experience by developing a fellowship model that would bring together research students from different disciplines to carry out the field work necessary for examining everyday practices at these institutions. We envisioned that a fellowship model would allow us to:

- Provide a space for dialogue and learning between different disciplines
- Build a support system for participants, providing both mentorship and a sense of community
- Ensure a sense of commitment and ownership in the researchers participating in the case study
- Bring together domain experts and practitioners ensuring that the solutions arrived at did not remain theoretical.

Why was it important for this project to have this element of experiential learning? An experiential learning model, one that brought together elements of experience, reflection, abstraction and experimentation, helps build realistic solutions. "Knowledge is continuously de-

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5   Robert K. Yin, "The Case Study Crisis: Some Answers," *Administrative Science Quarterly* 26, no. 1 (March 1981): 59, https://doi.org/10.2307/2392599

rived from and tested out in the experiences of the learner."[6] Creating the case study as part of an experiential learning process would help us to 'unlearn' a lot of our own assumptions and break down the silos that specialisation tends to create.

The idea was that students from different disciplines would work together for a period of time to investigate the research questions highlighted earlier. The fellowship would combine both training and research elements, with the bulk of the time being devoted to field work. The fellows were chosen from three different educational institutes based in Goa.

- Birla Institute of Technology & Sciences, Pilani – Goa campus
- Salgaocar College of Law
- Goa College of Architecture

A deliberate call had been taken to not limit ourselves to institutions belonging to a particular discipline such as law or design. We wanted the fellows to be able to learn from their peers as well as from the practitioners and domain experts. Consequently, they would bring to bear different perspectives in their work, combining what they learnt with the research methodologies and paradigms of thought particular to their disciplines.

Initially, there was some discussion on including fellows with a grounding in pure research in disciplines like history, sociology, economics etc. However, we decided to limit ourselves to fellows from disciplines that were primarily oriented towards applied research.

Structure of the Fellowship

The fellowship took place over a period of three months. Fellows carried out field work from Monday to Friday. On Saturdays there would be a two-hour working session. One half of that session would be dedicated to sharing the findings from the field that week, reflections on the data and finally determination of next steps. For the second half

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[6] David A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*, Second edition (Upper Saddle River, New Jersey: Pearson Education, Inc, 2015), 38.

of the session, fellows were provided training in different aspects of research to help them carry out field work, and write their final research paper. The main objective of these weekly working sessions was to create a supportive environment for the fellows to interact with the JA and KT team members to collectively reflect on the importance of designing justice institutions (courts, prisons, police stations), so as to make the justice sector equally accessible to all.

The idea behind setting a whole hour aside to discuss the field work done during the week was to ensure continuous conversation between the desk research and fieldwork being done by the different research groups. Since there were three separate research groups working on three different justice institutions, this was particularly important. The fellows had to identify points of difference or similarity from the early stages of their field work so that they could account for it when collecting data. The intent was that in this way, a richer profile of an average Goan justice user would emerge. It would also help to know the methods of data collection used by each of the groups, the lens they were using to filter the data collected and the ways in which they were managing the obstacles they would encounter in the field.

The one-hour of weekly sharing sessions served to hold the fellows accountable and for experts and team members to guide them. Given that the members of KT and JA would not be able to follow the fellows in the field, this served as a forum to track progress. However, the fellows were required to be able to dictate their own path of research, so our intervention was limited to comments and suggestions for next steps. We did not have a fixed format they had to follow as to how the data collected from the field was to be presented. Rather than being a formal presentation followed by a question answer session, the weekly working sessions were structured as conversations. Fellows were invited to share anecdotes, to express their doubts, to describe their eureka moments and to put forward any questions they may have.

Throughout the duration of the program, the fellows received constant support and guidance through these virtual sessions. However, the

importance of physical visits to the educational institutions to provide on-ground assistance and refine their ongoing research was also recognized. During these visits, the JA team had the opportunity to engage with the fellows directly. Sessions were conducted to define the research problem, expand the scope of the research, explore various methodologies, create a realistic timeline, and structure the final report. It served as a space where ideas were exchanged, doubts were clarified, and a deep understanding of the challenges faced by the fellows was developed.

By bridging the gap between virtual and physical support, an environment was created that nurtured collaboration, growth, and mutual learning. The combination of virtual training and on-site visits ensured that the fellows received comprehensive guidance and felt supported throughout their research journey.

Themes of the Fellowship

As mentioned earlier, the second half of the Saturday working sessions was intended to be learning sessions as we wanted the fellows to come away from the fellowship with a skillset that they would otherwise not be able to get from the formal learning structures within which they normally functioned. The curriculum of the weekly learning sessions was structured keeping in mind the likely trajectory they would be following while carrying out their field work and then writing down their data. The three months were split into three different stages — orientation, deep dives and connections.

The first set of sessions under the heading of orientation were intended to set the framework of the case study for the fellows. It would help the fellows set boundaries of their research, define the research problem and adopt a methodology. In the sessions that followed, fellows were taught about legal design and the significance of spaces in relation to the action of justice. They were introduced to research methodologies that would be of particular help in carrying out this

specific case study. In these sessions, they were asked to think in depth about the following questions:

- Which justice institution would be at the heart of their field work?
- Why that particular justice institution?
- What is the problem in this justice institution that they would be examining?
- What are the characteristics of that problem? Is it economic, social, political etc?
- Who are the stakeholders?
- What resources could they draw on for the purpose of this research?

To provide guidance to the fellows on the potential structure and objectives of the case study that they were expected to develop during the fellowship, we conducted several training sessions using national-level case studies to show that direct action and research has the potential to lead to reform of substantive laws, such as in the Right to Food campaign in India from early 2000s.[7] Other sessions were specifically designed as knowledge building exercises on newer aspects of interdisciplinary research. For instance, JA team members presented a session on the intersections between law and design thinking, and its application in research on issues relating to the Indian legal system. The fellows were first provided with the thematic and normative background of the problems associated with the Indian legal system.

The second set of sessions introduced the fellows to domain experts and practitioners, giving them a grounding in the existing research in this area as well as the new emergent streams. Through these sessions, fellows were expected to reflect on what justice meant to them and what it would look like in the spaces that they were studying. These sessions provided them exposure to work being done in disciplines

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[7] "Right to Food Campaign," accessed September 12, 2024, https://www.righttofoodcampaign. in/

entirely different from their own and served to encourage them to be more perceptive in their approaches for their own research. The fellows were encouraged to discuss their research with the speakers to receive feedback and to help them identify possible gaps in the work they had done so far.

The last set of sessions aimed at bringing together all the work the fellows had done and helped them to brainstorm about possible solutions to the problem they had identified. The sessions also served as a space to discuss how they would present their research and how they would write their papers. These also gave the JA and KT team members an overall sense of the research outputs from the fellows, to plan next steps on this project, particularly with the objective of building a strong, evidence-based study to inform local development policies in Goa.

Experience of the Fellowship

An unexpected benefit of including research fellows studying in institutions located in Goa was that they already had a connection at some level to the justice institutions that they were choosing to study. Each group of fellows opted to study justice institutions that were located close to their institute. They were able to draw from their ordinary, lived experience of the space to understand the external factors that may affect access such as transport or infrastructure issues.

Some fellows were not from Goa, so they had a unique perspective of both belonging to the space and not, and so, were able to approach it from the position of a critical observer. One of the major themes that emerged from the general survey about justice institutions conducted as part of the DFJ project was the disadvantaged position of migrants to the state. The research fellows were able to effectively engage with this particular group because of their own experience. Also having locals on the team helped overcome any language barriers. In certain instances, officials were unwilling to engage with them, so it was only

through interactions with local inhabitants that the research fellows were able to gain information on their chosen justice institution.

Having students from different institutions turned out to be both a strength and a weakness in some ways. The students ranged from fourth year law students to PhD research scholars. The research skill level was consequently widely varying amongst the different institutions and in one case amongst the fellows of a particular institution. It forced us to reassess our program for the fellowship. While we had initially envisioned a fair degree of collaboration between students during the online sessions, we instead stuck to having training and debrief sessions together but split up according to the institutions for the activity portion of the online sessions. This helped to ensure that the voices of those less confident, due to their capacity, did not get lost in the larger group. The in-person interventions by the JA and KT team also took on a different character as it was felt that it would be of benefit to focus solely on sharing of field experiences rather than skill. The in-person sessions then became a series of self-reflexive exercises, helping the fellows to challenge their own conceptions of access and justice.

The impact of this was felt at the point when the fellows started deliberating over potential solutions for the problems they had identified, as their solutions were (perhaps) more nuanced than they would have otherwise been. Instead of simply imagining a large-scale kind of change they focussed on very practical aspects, coming up with solutions that were more easily implementable and less dependent on elaborate structures being put in place. The students expressed that the whole process of the fellowship, which exposed them to such varying perspectives even amongst themselves, helped open up their own understanding of what the problems on the ground were.

Conclusion

The question at the end was naturally about the effectiveness of the fellowship. Based on the feedback provided by the fellows, they did feel that they

learnt a lot from the process of creating the case study. If one were to measure the success of the fellowship based on that feedback, one could say that the fellowship was successful. However, that would be a very shallow understanding of the impact of the fellowship. What made the fellowship a success was that it stimulated inquiry not just in the fellows but in all the participants of the fellowship, including the domain experts and researchers who were resource persons for the fellowship. Besides generating a body of knowledge, what the fellowship enabled was a process of knowing which was one of the fundamental objectives of the fellowship. In the process of generating answers to the questions raised, the fellowship also generated a way of viewing that was open and receptive, one that accepted gaps in knowledge, accounted for them and laid itself open to multiple revisions in the process of searching for solutions. Our hope is that going forward the DFJ fellowship becomes a fellowship known not just for building solutions but also for fostering public minded individuals who are committed to seeking dialogue at the level of the justice seeker.

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Epilogue

Justice Valmiki Menezes,

Judge, High Court of Bombay.

T HE Dharma Chakra Emblem of the Supreme Court of India consists of a 32-spoked wheel atop the Sarnath Lion Capital of Emperor Ashok, below which is the Sanskrit inscription *Yathodharmastato Jaya* — where there is Dharma there is victory. The design of this emblem is a powerful portrayal of authority, righteousness, and truth. In equal measure, the architectural designs of the oldest High Courts in India, the High Courts of Calcutta, Madras and Bombay are powerful symbols of justice and freedom.

Typically, all over the world Courts are designed to portray strength and are viewed by citizens as objects of stability and upholders of their rights. In India, many of these edifices were designed to function for the elite, their usability and aesthetics being dedicated mainly to financially and politically privileged classes dating to precolonial times. For their time, many of these Court structures were modern in amenities, planning and usability. With the passage of time, and with the coming into force of the Constitution of India, which ensured greater access to the justice delivery system for all classes of citizens, these old Courthouses were now required to accommodate greater numbers, thereby necessitating the redesign of their functionality and use. Courthouses are constantly faced with the conflict of preserving antiquity as opposed to a need for a fresh approach to reusing space and their function. It is this conflict, I believe, that can be resolved through improved and modern design concepts. Having some experience, both as an Advocate and now as a Judge working within the precincts of these structures, I share herein my views, which are purely

personal, on what I believe may contribute to making our Courts improved temples of justice.

Let me begin with a description of a typical Indian Courthouse and Court Registry, their functioning, their furnishings and tools used within. We obsess with the use of wood for Court furniture, but hardly question the ergonomics and bad posture design of the chairs, tables and other furniture used in Courts.

Speaking for myself, a large number of judges, Court employees and litigants, in most Courts, furniture is almost never designed for comfort, functionality and for their pleasing contours. From colour schemes of files, the Court Walls and their flooring to the machines used in Courtrooms and Court Registries, these can be transformed into vibrant spaces for the people, who provide services therein to be more productive, for litigants to feel less stressful and to lighten the atmosphere.

Changes are easy to achieve by incorporating modern design in every aspect of these spaces, with an "Ikea" kind of approach. The benches need not be straight backed, the desk may have no legs and the wireless mouse can be of a bright yellow colour. The use of any design concept is permitted. Function, comfort, usability, efficiency, aesthetics and above all, ergonomics being the end product is desirable. The scientific application of better design in equipment in these workplaces would achieve maximum productivity, reduce fatigue and increase comfort. It takes a new approach to human factors engineering.

So much having been said about a new design approach to create a new look to Courts and their Registries, no change could work well without a re-look at organisational ergonomics. There is an urgent need for redesigning rules and systems for simplifying processes of filing, movement of files within the system and ensuring their quick listing and disposal. Redesigning a job to fit the strength of the dealing hand to raise efficiency and decrease error is imperative.

Digressing a bit to the subject of building and designing of new prod-

ucts for applications in Court systems such as providing free legal services to needy litigants, educating citizens about their rights and legal remedies, there is a clear gap between what presently is and what could be. There is great need for a changed approach to our legal aid and legal education system. Presently the emphasis is laid on seeing that a larger number of people have access to aid rather than laying the emphasis on quality and excellence of the legal aid to which a needy litigant would be entitled. Similar to a Lego set, which has a variety of standard pieces which, if they work together, could form a system much bigger than themselves, we could conceptually construct a single service oriented legal aid network. Achieving this goal would entail redesigning legal services websites, programmes, brochures and resource materials to make them more attractive to the litigant, less complex to handle and access, and accessible across a States physical boundary. The NIC is already working hard along with the various e-committees of the Supreme Court and High Courts to provide such facilities for the litigant.

The larger question is, given the fact that the stakeholders within institutions are often averse to bringing about change in mindsets, in what area of the legal system does one initiate a design reform. It is heartening to see massive reforms undertaken by the Supreme Court in its own Registry and Court Rooms, leading the way to much greater transparency and access to the legal system. A fairly large number of Courts in the Supreme Court already run paperless and so do many Courts at the High Court. There is bound to be a percolative effect felt in lower Courts, where the Apex Court has led the way in accepting these reforms.

There is however a larger void in terms of reform and acceptance of design changes in Courtrooms, Registries and in the Court System. Application of the science of Ergonomics in Court infrastructure is wanting, both due to lack of finance provided to Court Administrations as also due to an aversion to effecting change from a few quarters. Institutions such as the National Institutes of Design, Indian
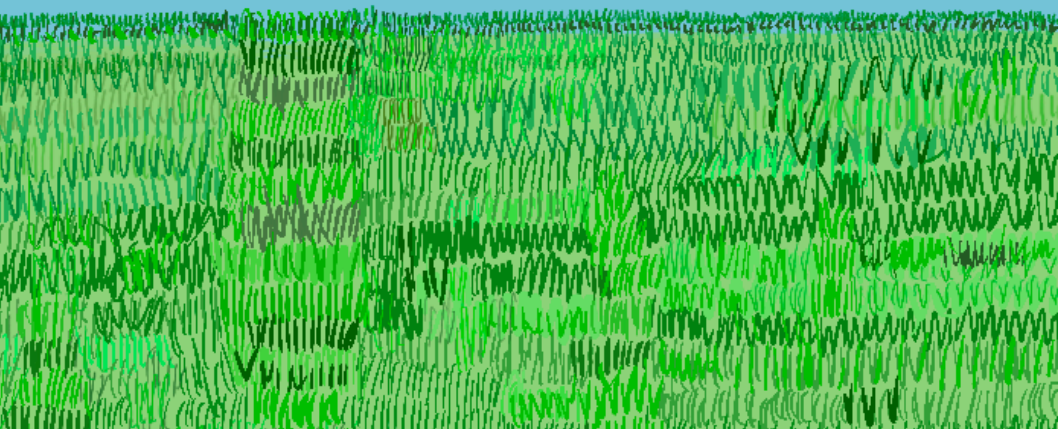
Institutes of Technology and Institutes of Architecture would do a great service to improve the justice delivery system by undertaking projects to assess the manner in which design reforms may be implemented in our Courts. Such projects may create modules for redesigning infrastructure, be it furniture, filing systems, websites, filing portals or even Court structures and such modules can be replicated across the Country. The involvement of these institutions in contributing to such change would itself lend a certain freshness to the process of Administration of justice.

While the thoughts expressed by me in this note are purely personal, my process of sharing these thoughts with you is with a view to, in some ways, to contribute to advance the cause of justice through change.

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This insightful book reimagines how justice systems can be reshaped to better serve the needs of people—especially those who are disadvantaged. Focusing on public spaces in Goa—courtrooms, police stations, protest sites, and classrooms—it asks how these spaces are structured, and what must change for them to truly support those seeking justice.

Drawing on insights from practitioners, activists, and researchers, the authors explore how ordinary people relate to these spaces and the barriers they face. Through grounded case studies and theoretical reflections, the chapters of this work offer a wider commentary on how we might design justice systems that are more inclusive, accessible, and people-centred.

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