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AUGUST 8



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- 1. Climate talks show why India should hold the red line (BUSINESS STANDARD)**
- 2. Only Yes Means Yes (THE TIMES OF INDIA)**
- 3. The changing logic of the India-U.S. partnership (THE HINDU)**
- 4. Cut the bull about Bitchat and State powers, Mr Dorsey (HINDUSTAN TIMES)**



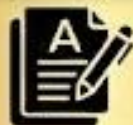
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Climate talks show why India should hold the red line

In a world of transactional inter-state relations, India must stay firm on issues of national interest, no matter the pressures



SHYAM SARAN

After a disappointing outcome at the 30th Conference of Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) at Belem in November 2025, there is not much to look forward to in the forthcoming COP 31 meeting in Antalya in Turkey in November. From the high point reached in 1992 at the Rio de Janeiro climate summit, the trajectory of multilateral climate action has been steadily downhill. Antalya is unlikely to be an exception to this inexorable trend.

As India's chief negotiator on climate change, I attended COP 15 in Copenhagen in December 2009, more than 18 years ago. The Copenhagen Accord, adopted late at night on the last day of the conference, was the result of a last-minute compromise reached between the United States President Barack Obama on the one hand and leaders of the BASIC nations (Brazil, South Africa, India and China) on the other. In retrospect, and in the light of subsequent developments, I believe that

the BASIC countries should have remained firm on their stand that the mandate for the negotiations given by the 13th COP held at Bali in December 2007, should be strictly adhered to.

The Bali Road Map had taken cognisance of the 4th Assessment Report of the Intergovernmental Panel on Climate Change, which warned that global climate change had become a more urgent and deeper challenge than had been reported earlier and that this called for the "enhanced implementation of the principles and provisions of the UNFCCC". The enhanced implementation was in respect of "4 pillars" — mitigation, adaptation, finance and technology. These ought to figure in a global climate change agreement, through multilateral negotiations under the UNFCCC, over a two-year period, culminating in COP15.

During the negotiating process, however, the US played the role of a spoiler, proposing major deviations from the Bali consensus and the UNFCCC itself. These included erasing the clear distinction between the commitments of the developed industrialised countries and those of the constituency of developing countries. This would have effectively overturned the key principle of equitable burden sharing, the well-known Common but Differentiated Responsibility and Respective Capabilities — the CBDR principle.

The US also opposed the strict compliance procedure laid down in the Kyoto Protocol to the UNFCCC, adopted in 1997. Instead of numerical targets for reduction in greenhouse gases by each developed country, subject to a strict compliance procedure, including penalties for shortfalls, the US proposed a voluntary Pledge and Review system with no penalties for non-performance.

The US also rejected any binding commitments for providing finance and technology to enable developing countries to undertake climate action, which were key elements of the Bali consensus.

It was unwilling to accept the principle of historical responsibility embedded in the UNFCCC, which acknowledged that the industrialised countries had been responsible for most of the greenhouse gases accumulated in the earth's atmosphere since the dawn of the industrial age in the 19th century and hence must take the lead in climate action. This was fundamental to the notion of equity and equitable burden sharing.

In short, the US took a wrecking ball to the entire edifice of the UNFCCC and the Copenhagen Accord proved to be the thin end of the wedge, enabling a relentless attrition process to the detriment of developing countries, which is still in play.

The Accord compromised the firewall in the UNFCCC between the developed and developing coun-



ILLUSTRATION: AJAYA MOHANTY

tries with differential commitments. At that fateful meeting with Mr Obama, the BASIC group agreed that there could be "international consultation and analysis" of their climate action under the UNFCCC, similar to the procedure already included for the developed countries. From this, the landmark Paris Agreement of 2015 moved to universal applicability, which the US had promoted assiduously all through the post-Copenhagen rounds of negotiations.

The promise to declare nationally determined commitments (NDCs) on mitigation,

which are voluntary in nature but subject to a stocktake every five years, is applicable to all states parties to the Paris Agreement. The voluntary nature of commitments means that the developed countries cannot be held accountable for not meeting even the progressively diminished targets on providing finance and technology to enable developing countries to undertake climate action.

The Paris Agreement also marked the end of BASIC acting as an influential negotiating group. In the run-up to Paris, the US and China agreed to a set of principles for their

bilateral declaration on climate action, which then became the template for Paris. The most pernicious was the dilution of the CBDR principle to which the words "according to national circumstances" were added and which found its way into the Paris Agreement.

This implied that each country could interpret and apply CBDR as it deemed appropriate to itself. A legal principle of equity was reduced to a discretionary commitment. India did not oppose it.

The compromise BASIC countries made in the Copenhagen Accord unleashed an attrition pro-

cess that eventually led to the much-diluted Paris Agreement. The US got virtually all that it set out to achieve — the evisceration of the UNFCCC — and then happily walked out, twice over, even from these meagre commitments.

It is important to go back and reflect on the climate negotiations as they unfolded over the 2007-2015 period and beyond. Through the various rounds of negotiations leading up to Copenhagen, India had drawn a red line on the integrity of the UNFCCC. India's position at the negotiations was portrayed as being rigid, negative and standing in the way of arriving at a consensus. All that India was insisting upon was not some unique Indian position but holding the developed countries to their own solemn commitments enshrined in the UNFCCC.

There were occasions when one had to remind those who wanted India "to be part of the solution and not the problem" that on an issue of national interest and in upholding the principle of equity, India had often preferred to stand alone. The refusal to sign the Nuclear Non-Proliferation Treaty or the Comprehensive Nuclear-Test-Ban Treaty are good examples. We drew a red line and stuck to it despite the considerable pain this entailed. In a world of transactional inter-state relations and mindful of the US record of chipping away at the positions of its negotiating partners and then walking out with no commitments upon itself, there is merit in holding the line on key issues of national interest, no matter what the pressures.

The writer is a former foreign secretary

- **Key Terms and Explanations**

- **UNFCCC (United Nations Framework Convention on Climate Change):** Established at the 1992 Earth Summit in Rio de Janeiro, this treaty serves as the foundational framework for global climate governance. It divided countries into Annex-I (industrialized/developed nations) and Non-Annex-I (developing nations) to reflect differing economic statuses and historical contributions to global warming.
- **CBDR-RC (Common But Differentiated Responsibilities and Respective Capabilities):** The core ethical and legal cornerstone of international environmental law. It dictates that while all nations share the duty to address global environmental degradation, developed countries must lead climate action due to their greater historical emissions and superior financial and technological capacity. *Example: A household where the highest earner who caused most expenses pays a larger portion of the utility bill than a low-income family member.*
- **Bali Road Map (COP 13, 2007):** A crucial negotiation milestone that laid down four distinct operational pillars for a post-2012 global climate treaty: mitigation, adaptation, technology transfer, and financial assistance.
- **BASIC Coalition:** A negotiation bloc formed in 2009 comprising four major emerging economies—Brazil, South Africa, India, and China. It was created to defend the interest of the developing world against attempts by developed states to erase historical responsibility.
- **Nationally Determined Contributions (NDCs):** Self-defined, non-binding national targets for reducing greenhouse gas emissions under the 2015 Paris Agreement. They shifted global climate strategy from top-down, legally mandated reduction goals to a bottom-up, voluntary framework.
- **Pledge and Review System:** A soft-law oversight mechanism where countries self-report their climate targets and undergo peer assessment without facing international penalties or strict enforcement mechanisms for failing to meet their pledges.

- **Main Arguments and Substantive Parts**

- **Systematic Erosion of the UNFCCC Architecture:** Global climate negotiations have witnessed a steady retreat from the principles agreed upon at the 1992 Rio Earth Summit. Developed countries have consistently sought to dismantle the structural "firewall" between developed and developing nations, seeking to distribute emission reduction burdens uniformly regardless of historical fault.
- **Shift from Legally Binding Targets to Voluntary Pledges:** The transition from the top-down obligations of the Kyoto Protocol to the voluntary regime of the Paris Agreement eroded strict accountability. By replacing enforceable emissions caps with self-determined NDCs, global governance moved away from binding equity to discretionary promises.
- **Dilution of Financial and Technological Commitments:** Developed nations have progressively weakened their treaty-bound obligations to deliver predictable climate finance and technology transfers to the Global South. Instead of mandatory transfers, climate finance is increasingly framed as voluntary aid or market-based investment.
- **Strategic Pitfalls of Diplomatic Compromise:** Tactical concessions made by developing country blocs during key summits—such as accepting voluntary compliance mechanisms—enabled developed states to weaken equity provisions. Compromises made under diplomatic pressure often lead to long-term structural disadvantages for emerging economies.
- **Imperative of Firm Strategic Autonomy:** Developing countries must establish non-negotiable positions ("red lines") when national developmental space is threatened. Standing firm on sovereign equality and developmental equity—much like historic stances on strategic treaties like the NPT or CTBT—is essential when international negotiations lean toward unfair burden-shifting.

Historical Evolution of the Issue

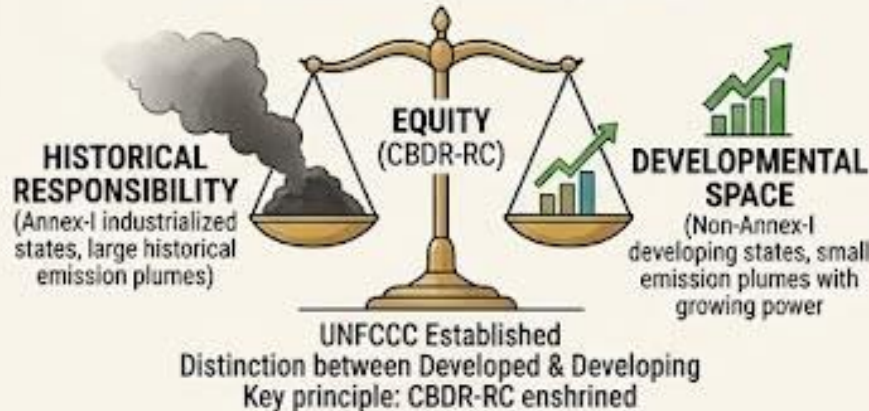
- **1992 (Rio Earth Summit):** Adoption of the UNFCCC framework. It enshrined the CBDR-RC principle and created a clear legal distinction between Annex-I (developed) and Non-Annex-I (developing) nations, establishing historical responsibility as the baseline for global climate action.
- **1997 (Kyoto Protocol):** Operationalized the UNFCCC by setting legally binding emissions reduction targets exclusively for developed countries. It featured a stringent compliance mechanism and acknowledged that developing countries needed developmental room to grow.
- **2007 (COP 13, Bali Road Map):** Reaffirmed the Rio architecture by framing climate action around four core pillars—mitigation, adaptation, finance, and technology transfer—aimed at negotiating a comprehensive post-2012 binding agreement.
- **2009 (COP 15, Copenhagen Accord):** A major geopolitical turning point. Brokered through intense negotiations between the US and the BASIC group, it introduced voluntary "pledge and review" commitments, bypassing the top-down architecture of Kyoto and fracturing the traditional firewall.
- **2014 (US-China Bilateral Declaration):** Established a bilateral consensus between the world's two largest emitters to pursue self-determined, voluntary targets, laying the strategic foundation for the universal Paris Agreement template.
- **2015 (COP 21, Paris Agreement):** Replaced mandatory targets with voluntary NDCs applicable to all nations. While CBDR was retained in phrasing, it was qualified by the clause "in light of national circumstances," diluting historical liability.
- **Present Day Dynamics:** Global negotiations remain fraught with friction over unmet financial promises (such as the \$100 billion annual climate finance pledge), increasing pressures on developing nations to rapidly phase out fossil fuels, and rising unilateral green trade barriers.



EVOLUTION OF GLOBAL CLIMATE GOVERNANCE: IMPERATIVES FOR INDIA

Analysis of UNFCCC Negotiations, Equity, and National Interest

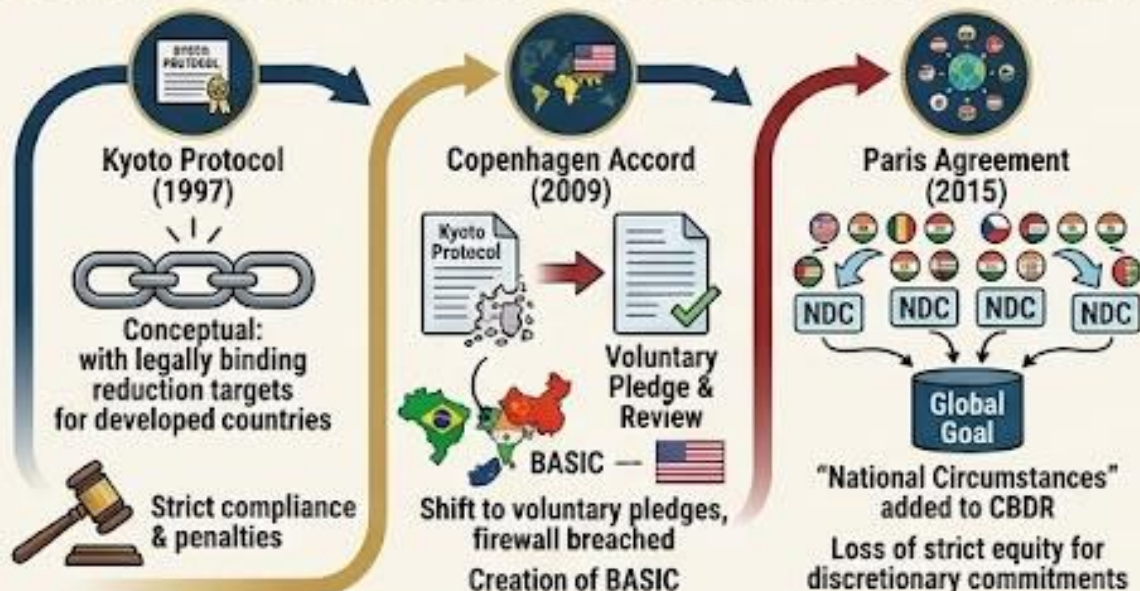
CONCEPTUAL FOUNDATIONS & RIO EARTH SUMMIT (1992)



HISTORICAL LIABILITY vs. CAPACITY



BALI ROAD MAP (2007): CORE NEGOTIATION PILLARS



PRESENT CRISIS & INDIA'S STRATEGIC IMPERATIVE



WAY FORWARD: BALANCED SOLUTIONS

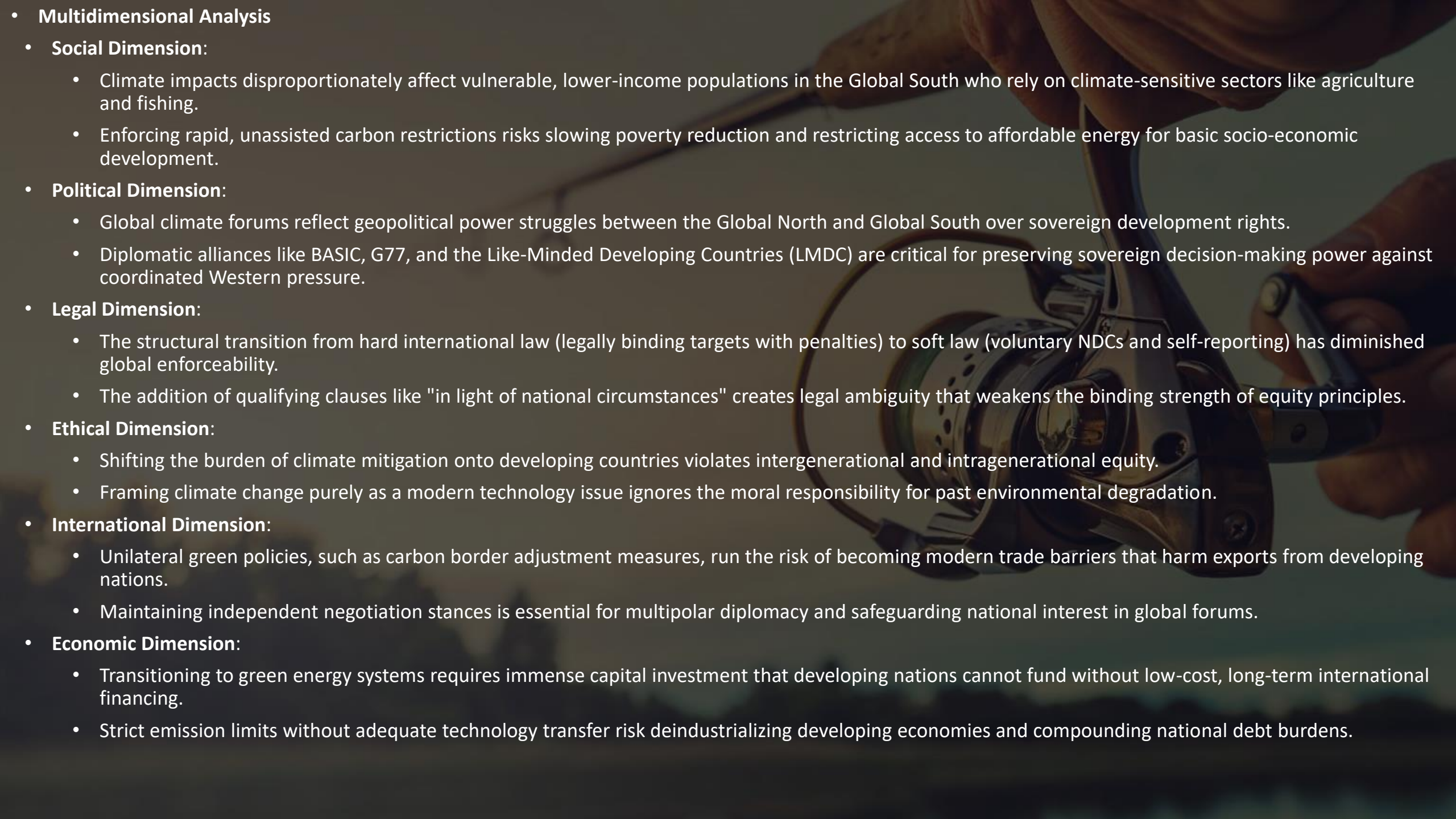
1. Predictable, grant-based finance
2. Green Tech as public goods (relaxed IP)
3. Strong Global South Coalitions (BASIC+G77)
4. Preserving sovereign developmental rights

UPSC Syllabus Mapping



Logical and Philosophical Base

- **Distributive and Corrective Justice:** Grounded in John Rawls' theories of justice and classical tort law, corrective justice demands that those who caused environmental damage (industrialized nations) bear the costs of remediation. Distributive justice asserts that carbon space is a shared resource that must be allocated fairly to ensure equal opportunity for human development.
- **Atmospheric Commons and Ecological Debt:** The global atmosphere is a finite common-pool resource. Industrialized nations consumed a disproportionate share of the global carbon budget during their industrial growth, effectively creating an "ecological debt" owed to developing nations whose development options are now constrained by climate limits.
- **Survival Emissions vs. Luxury Emissions:** Philosophically, emissions generated to provide basic electricity, food security, and poverty alleviation for millions (survival emissions) cannot be treated as morally equivalent to emissions driven by high-consumption lifestyles (luxury emissions).
- **Realism vs. Liberal Institutionalism in Global Governance:** While liberal institutionalism assumes international treaties foster equitable cooperation, realist power dynamics show that dominant states frequently use international forums to rewrite rules in ways that shift burdens onto weaker states.



• **Multidimensional Analysis**

• **Social Dimension:**

- Climate impacts disproportionately affect vulnerable, lower-income populations in the Global South who rely on climate-sensitive sectors like agriculture and fishing.
- Enforcing rapid, unassisted carbon restrictions risks slowing poverty reduction and restricting access to affordable energy for basic socio-economic development.

• **Political Dimension:**

- Global climate forums reflect geopolitical power struggles between the Global North and Global South over sovereign development rights.
- Diplomatic alliances like BASIC, G77, and the Like-Minded Developing Countries (LMDC) are critical for preserving sovereign decision-making power against coordinated Western pressure.

• **Legal Dimension:**

- The structural transition from hard international law (legally binding targets with penalties) to soft law (voluntary NDCs and self-reporting) has diminished global enforceability.
- The addition of qualifying clauses like "in light of national circumstances" creates legal ambiguity that weakens the binding strength of equity principles.

• **Ethical Dimension:**

- Shifting the burden of climate mitigation onto developing countries violates intergenerational and intragenerational equity.
- Framing climate change purely as a modern technology issue ignores the moral responsibility for past environmental degradation.

• **International Dimension:**

- Unilateral green policies, such as carbon border adjustment measures, run the risk of becoming modern trade barriers that harm exports from developing nations.
- Maintaining independent negotiation stances is essential for multipolar diplomacy and safeguarding national interest in global forums.

• **Economic Dimension:**

- Transitioning to green energy systems requires immense capital investment that developing nations cannot fund without low-cost, long-term international financing.
- Strict emission limits without adequate technology transfer risk deindustrializing developing economies and compounding national debt burdens.

Linkages with NCERTs

- **Class 12 Political Science: Contemporary World Politics (Chapter 7 - Environment and Natural Resources):**
 - *Relevance:* Directly covers the origins of the UNFCCC, the Rio Earth Summit, the principle of CBDR-RC, and the contrasting viewpoints of the Global North and Global South in global environmental diplomacy.
- **Class 11 Political Science: Political Theory (Chapter 10 - Development):**
 - *Relevance:* Discusses the trade-offs between traditional models of economic growth, environmental sustainability, socio-economic justice, and democratic rights.
- **Class 12 Economics: Indian Economic Development (Chapter 9 - Environment and Sustainable Development):**
 - *Relevance:* Examines the economic costs of environmental degradation, the imperative of sustainable growth, and the challenge of balancing industrial energy demands with global ecological limits.
- **Class 11 Geography: Fundamentals of Physical Geography (Chapter 12 - World Climate and Climate Change):**
 - *Relevance:* Provides the physical science foundation for anthropogenic greenhouse gas emissions, global warming mechanisms, and IPCC assessment reports.

- **Linkages with UPSC CSE Syllabus**
 - **GS Paper 1 (Geography & Society):**
 - *Salient Features of World Physical Geography:* Climate change impacts, global atmospheric changes, and environmental vulnerability.
 - *Social Empowerment and Poverty:* Impact of climate policies on agrarian livelihoods, energy poverty, and social displacement.
 - **GS Paper 2 (International Relations & Governance):**
 - *Bilateral, Regional, and Global Groupings:* Dynamics within UNFCCC, BASIC, G77, and G20.
 - *Effect of Policies of Developed Countries on India's Interests:* Analysis of international treaties, unilateral green tariffs, and diplomatic pressure tactics.
 - **GS Paper 3 (Environment, Economy, & Infrastructure):**
 - *Conservation & Environmental Pollution:* Mitigation and adaptation strategies, COP outcomes, and renewable energy mandates.
 - *Indian Economy and Growth:* Balancing rapid industrial expansion with green energy transitions and energy security.
 - **GS Paper 4 (Ethics):**
 - *Environmental Ethics & International Relations Ethics:* Distributive justice, historical responsibility, climate justice, and ethical obligations between nations.
 - **Optional Subjects:**
 - *Political Science & IR (PSIR):* Global Environmental Politics, North-South Dialogue, Realism vs. Constructivism in treaty negotiations.
 - *Geography Optional:* Applied Climatology, Environmental Management, Sustainable Development Models.



- **Way Forward**

- **Institutionalize Unconditional Climate Financing:** Replace non-binding climate finance promises with predictable, grant-based financing mechanisms dedicated to adaptation and loss-and-damage funds in the Global South.
- **Treat Critical Green Technologies as Public Goods:** Establish international protocols to share key clean technologies—such as grid-scale energy storage and green hydrogen production—by relaxing rigid intellectual property barriers for developing states.
- **Strengthen Global South Coalitions:** Re-energize unified diplomatic platforms across BASIC, G77, and the LMDC to defend CBDR-RC and counter unilateral carbon trade restrictions in global negotiations.
- **Accelerate Domestic Transition While Preserving Sovereignty:** Pursue ambitious national renewable energy targets driven by domestic economic interest, while firmly resisting externally imposed schedules that threaten energy stability.
- **Establish Robust Domestic Carbon Markets:** Build robust local carbon credit mechanisms to retain capital, attract clean investments, and protect export industries from foreign carbon border adjustments.

- **UPSC CSE Mains Questions**

- **GS Paper 3 (2021):** "Describe the major outcomes of the 26th session of the Conference of the Parties (COP) to the UNFCCC. What are the commitments made by India in this conference?"
- **GS Paper 2 (2020):** "Critically examine the role of the UNFCCC in addressing climate change. Has it succeeded in ensuring climate justice for developing countries?"
- **GS Paper 3 (2018):** "Access to affordable, reliable, sustainable and modern energy is integral to achieving Sustainable Development Goals (SDGs). Comment on the progress made in India in this regard."
- **GS Paper 4 (2019):** "Environmental ethics requires a fundamental shift in human attitude toward nature. Discuss with respect to international climate diplomacy and equity."

- **APSC Mains Questions**

- **GS Paper 3 (2023):** "Discuss the impact of climate change on developing nations. How does the principle of Common But Differentiated Responsibilities (CBDR) safeguard India's national interests in international forums?"
- **GS Paper 2 (2021):** "Evaluate the role of emerging economic coalitions like BASIC in reshaping global environmental governance."



Only Yes Means Yes

What the Tarun Tejpal case highlights is that no matter how much the law is reformed, courts that implement it still speak in different voices. Women continue to be humiliated, retraumatised, and scrutinised as if they are the ones on trial. Courts still need to unlearn a lot of prejudice

Mihra Sood



In 1978, in the infamous Mathura case, the Supreme Court of India acquitted two constables accused of raping a teenager at a police station, holding that the girl must have consented. The trial court had decided that she was habituated to sexual intercourse, and this was enough to doubt her word.

In the case of *Bhagishabai Hirjibhai*, the court said that Western women might be inclined to file false complaints of rape (as they may be neurotic, vengeful, jealous, attention-seeking, gold-diggers etc) but Indian women should be believed, because the social stigma and victim-blaming that would naturally ensue acts as an in-built check on false (and even real) complaints. Some urban elites may be an exception to this norm. This was in 2003.

In 1992, Bhanwari Devi was gang-raped in Rajasthan as punishment for her govt-led work against child marriage. Even though forensic evidence implicated the accused, they were acquitted of rape charges and convicted of minor offences such as assault.

This judgment was riddled with assumptions and stereotypes to support the dismissal of rape charges, such as: it is inconceivable that the village head could rape a woman; elderly men would not rape; no man would rape a woman along with his relatives; a higher caste man would not 'defile' himself by raping a lower caste woman. Bhanwari Devi's case led to the establishment of Vishaka guidelines against workplace harassment, but her appeal against the judgment is still pending.

In 2005, Mahmood Farooqui was accused of raping an American scholar when she was in India for research. He was initially convicted, but this was overturned by the Delhi high court, and the Supreme Court upheld his acquittal. The HC judgment rested its findings on there being pre-existing familiarity between the two, the fact that she knew about his alcoholism, and that they had, in the past, exchanged hugs and kisses.

While the world was moving beyond a simple 'No Means No' standard to one of 'Yes Means Yes' – suggesting the requirement of clear, unequivocal willingness to a sexual act, instead of just passive submission – the HC developed its own theory of a

'feeble no'. It held that there can be instances where a feeble no can mean a yes, especially if the parties are known to each other, more so if they are highly educated or intellectual people.

This prejudice against educated, empowered women is a common one in much of our jurisprudence on sexual crimes. From the urban elite who cannot be trusted, to the feminist who is unconsciously composed during a professional event, being aware of one's rights and unafraid to claim them are viewed with suspicion rather than support.



Not only is this construct of an ideal victim based on patriarchal stereotypes that bear little relevance to women's realities, it is not even internally consistent. Women who speak out lack sufficient shame, those who stay silent must have consented. Women who provide detailed testimony have been tutored, those who misremember minor details are obviously liars. Trauma has only one acceptable response, but too much trauma can undermine your case.

It is against this backdrop that the Bombay HC judgment in the Tarun Tejpal case must be appreciated. In 2013, *Tehelka* editor Tarun Tejpal was accused of

sexual assault by a junior colleague during a conference they were organising in Goa. In 2021 he was acquitted by the trial court, but perhaps more shocking than that was the judge's reasoning.

From character assassination of the survivor, to grilling her on her past sexual history and speculation as to her motives, the judgment read like a primer on how not to approach sexual assault cases. Additionally, the court found her guilty of not displaying proper victim behaviour because she did not cry after the assault, or display appropriate levels of trauma. It failed to consider that being her employer, Tejpal held a position of dominance over her, which aggravated the charges and rendered any suggestion of consent untenable.

All these aspects were considered by the HC and it delivered a remarkably progressive judgment, rejecting these stereotypes and recognising the power imbalance between the parties.

Prejudice against educated, empowered women is common in our jurisprudence on sexual crimes. Being aware of one's rights and unafraid to claim them are viewed with suspicion rather than support

These examples represent a fraction of what goes on in India on a daily basis, and most of those cases do not make headlines. It doesn't take much imagination to grasp how many women are violated, not just by men, but by the judicial system as well. The fact that our judiciary speaks in so many different voices does not improve the situation, rather it highlights the inequities within the system.

Mathura's case resulted in a series of legislative changes, including a shift in presumption of innocence in cases of abuse of power. After the 2012 Nirbhaya case, more laws were introduced. The two-finger test was discarded, the definition of rape was expanded beyond mere penile-vaginal penetration, and evidence of a woman's sexual history was banned.

Despite this, women are humiliated, retraumatised, and scrutinised as if they are the ones on trial. Law can be endlessly reformed, but what about those who have to implement it?

*The writer is a lawyer and her book *Courting Equality* will be published this month.*

- **Key Terms and Concepts**

- **Affirmative Consent ("Yes Means Yes"):** A legal and ethical standard requiring active, voluntary, and continuous agreement from all participants before engaging in sexual activity. Unlike the passive "No Means No" model—which assumes consent exists until explicit verbal or physical resistance is mounted—affirmative consent dictates that the absence of a clear, uncoerced "Yes" constitutes a lack of consent.
 - **The "Feeble No" Fallacy:** A controversial judicial doctrine suggesting that a weak, hesitant, or non-confrontational verbal refusal ("no") might be interpreted as implied consent, particularly between educated individuals or acquainted partners. This construct ignores shock, power imbalances, and fear-induced paralysis.
 - **Judicial Stereotyping & The "Ideal Victim" Myth:** A cognitive bias where judges measure a survivor's credibility against patriarchal assumptions of how a "true" victim ought to behave (e.g., crying hysterically, reporting immediately, offering physical resistance, or demonstrating intense emotional distress). Failure to conform to these narrow expectations often leads courts to question the survivor's honesty.
 - **Reversal of Burden of Proof (Presumption of Lack of Consent):** A specialized statutory rule in Indian criminal law (such as Section 114A of the Indian Evidence Act, 1872, now incorporated into the Bharatiya Sakshya Adhiniyam, 2023) applicable in cases of custodial rape or non-consensual sexual acts by persons in positions of authority. Once sexual intercourse is proven and the victim states under oath that she did not consent, the court legally presumes a lack of consent, shifting the onus onto the accused to prove otherwise.
 - **Institutional / Secondary Victimization (Retraumatization):** The harm inflicted on a survivor not by the perpetrator, but by state apparatuses—specifically police interrogations, hostile cross-examinations, character assassination in courtrooms, and moralizing judicial observations during trial.
 - **Workplace Power Asymmetry & Quid Pro Quo:** A structural dynamic where superior professional hierarchy, managerial authority, or social status is weaponized to exploit a subordinate. Under such conditions, passive compliance or delayed reporting cannot be equated with voluntary consent, as fear of professional retaliation overrides free agency.
 - **Inadmissibility of Sexual History:** A statutory mandate prohibiting defense counsel from introducing evidence regarding the survivor's past sexual character, moral conduct, or prior relationships to establish consent or undermine credibility.
-

- **Analytical Framework & Core Arguments**
- **Modernizing the Consent Architecture: From Resistance to Affirmative Agency**
 - Criminal jurisprudence surrounding sexual violence has evolved from examining physical injuries to scrutinizing the psychological boundary of consent. Historically, courts required physical proof of struggle to establish non-consent, effectively treating a woman's body as a crime scene that required physical damage to prove a violation. Modern legal theory rejects this requirement, recognizing that shock, fear, freezing responses, and professional vulnerability often prevent physical resistance.
 - The transition to an **Affirmative Consent Model ("Only Yes Means Yes")** establishes that silence, lack of physical struggle, or passive endurance under pressure do not constitute consent. Consent must be a clear, unambiguous, and continuously communicated choice.
- **The Persistence of Judicial Subjectivity and Moralism**
 - Despite legislative amendments introducing gender-neutral definitions and strict evidentiary boundaries, trial courts frequently apply subjective moral codes rather than statutory provisions. A central point of failure in the administration of justice is the "Judicial Discretion Gap"—where individual judges interpret evidence through socio-cultural biases regarding class, caste, gender, and social status:
 - **The Class/Urban Biased Construct:** Educated, independent, or urban women are frequently subjected to an inverted standard of scrutiny. Courts have erroneously reasoned that empowered women are less vulnerable to coercion or more likely to lodge false complaints due to personal grudges, ignoring the reality that education and empowerment do not shield individuals from assault.
 - **The Rural/Caste Stereotype:** Lower-caste or economically marginalized women are often disbelieved due to entrenched social hierarchies, where judges consider it "unthinkable" that high-caste figures or respected village elders would commit such acts.
- **The Double Standard of Trauma Expression**
 - Survivor demeanor continues to be misinterpreted in judicial reasoning. The human response to severe trauma is diverse: it ranges from immediate emotional collapse to functional dissociation, emotional numbness, composure, or delayed reporting.
 - When courts demand a uniform, standardized expression of trauma, they create a logical trap for survivors:
 - **If a survivor demonstrates emotional composure or continues normal professional activities:** The court suspects a lack of genuine trauma or infers implied consent.
 - **If a survivor provides a meticulous, clear account:** The court assumes the narrative is rehearsed or tutored.
 - **If minor discrepancies appear in testimony:** The court labels the survivor untruthful.
- **Structural Hierarchies and Workplace Exploitation**
 - Assaults occurring within workplace environments involve complex dynamics of professional authority and economic dependence. Position, age, and professional reputation create an environment where open confrontation is rendered difficult.
 - Judicial reasoning that treats workplace assault as an isolated interaction between two social equals fails to account for the coercive nature of authority. A survivor's strategic attempt to maintain professional composure after an incident is frequently misconstrued as consent or acquiescence, rather than a survival mechanism to mitigate professional harm.

- **Historical Timeline of Indian Sexual Violence Jurisprudence**

- **1978 – The Mathura Rape Case (*Tukaram v. State of Maharashtra*):**

- *Context:* A young tribal girl was raped inside a police station by two constables.
- *Judicial Stance:* The Supreme Court acquitted the accused, ruling that her lack of visible physical marks implied consent and suggesting her past sexual activity rendered her testimony unreliable.
- *Impact:* Triggered nationwide protests and an open letter by legal academics, directly forcing the first major structural reform of Indian rape laws.

- **1983 – Statutory Reforms & Judicial Contradictions (*Bhoginbhai Hirjibhai Case*):**

- *Legislative Action:* The Criminal Law (Amendment) Act, 1983 introduced Section 376 of the IPC, criminalized custodial rape, made trials *in-camera*, and introduced Section 114A to the Evidence Act (presumption of non-consent in custodial settings).
- *Judicial Paradox:* While the Supreme Court noted that Indian women rarely make false rape allegations due to social stigma, it created an exception for "urban elites," laying the groundwork for judicial suspicion toward educated women.

- **1992–1997 – Bhanwari Devi Case & The Birth of the Vishaka Guidelines:**

- *Context:* Bhanwari Devi, a state-employed grassroots worker, was gang-raped by dominant-caste men for protesting child marriage.
- *Trial Court Ruling:* The trial court acquitted the accused using caste-based stereotyping, stating that upper-caste men would not rape a lower-caste woman and that village elders would not commit such acts together.
- *Systemic Legacy:* The outcry led directly to the landmark *Vishaka v. State of Rajasthan (1997)* judgment, which established workplace sexual harassment guidelines that eventually became the **POSH Act of 2013**.

- **2012–2013 – The Nirbhaya Movement and the Justice J.S. Verma Committee:**

- *Context:* The 2012 Delhi gang-rape prompted systemic legal evaluation.
- *Legislative Transformation:* The Criminal Law (Amendment) Act, 2013 expanded the definition of rape beyond penetrative acts to include non-penetrative sexual assault, criminalized stalking and voyeurism, prohibited the "two-finger test," and banned references to the victim's sexual character under Section 146 of the Evidence Act.

- **2015 – The "Feeble No" Controversy (*Mahmood Farooqui Case*):**

- *Judicial Stance:* The High Court overturned a conviction by introducing the concept of a "feeble no," suggesting that in relationships where the parties are acquainted or highly educated, an unenthusiastic refusal could be interpreted by the perpetrator as implicit consent.
- *Impact:* Re-introduced subjective standards of consent and undermined the statutory requirement for explicit agreement.

- **2013–2021 – The Tarun Tejpal Trial and High Court Reversal:**

- *Trial Court Approach:* The trial court focused heavily on the survivor's post-event conduct, messaging history, and emotional state, acquitting the accused based on behavioral expectations.
- *High Court Rectification:* The High Court rejected these stereotypes, affirming that professional power imbalances invalidate assumptions of consent and reiterating that trauma responses vary across individuals.



AXIA IAS ACADEMY

RISE ABOVE THE REST

COMPREHENSIVE ANALYSIS: GENDER JUSTICE & THE INDIAN JUDICIARY | THE PERSISTENT CHALLENGE OF STEREOTYPES

THE CORE CHALLENGE: PATRIARCHAL STEREOTYPES & THE 'IDEAL VICTIM' CONSTRUCT



The Double Bind for Survivors

Speak Out

Lack Shame

VS

Stay Silent

Implied Consent

HISTORICAL EVOLUTION OF JUDICIAL PREJUDICE



MOVE BEYOND 'No Means No' TO "YES MEANS YES"
(Requirement of clear, unequivocal willingness)

THE SYSTEMIC GAP: LAW vs. IMPLEMENTATION

RAPE
ENDRAY



THE NEED TO
UNLEARN
PREJUDICE

THE PROGRESSIVE SHIFT: REVERSING THE NARRATIVE (TARUN TEJPAL CASE)



- Trial Court Acquittal (2021) based on behavioral expectations
- PROGRESSIVE HC JUDGMENT (2023):
 - Rejected 'Ideal Victim' behavior expectation, validated varied trauma responses
 - RECOGNIZED POWER IMBALANCE (Employer Dominance)
 - BANNED CHARACTER ASSASSINATION



- **Logical and Philosophical Foundations**

- **Legal Realism vs. Legal Positivism**

- From a **Legal Positivist** view (e.g., H.L.A. Hart), statutory reform is sufficient: once the legislature amends the text of the law, the legal system updates accordingly. However, gender jurisprudence reveals the limits of this view, aligning more closely with **Legal Realism** (Oliver Wendell Holmes Jr.). Realism observes that the law in practice is determined by the subjective attitudes, personal experiences, and socio-cultural biases of the judges who enforce it. Statutory reforms remain ineffective if the bench interprets statutes through patriarchal assumptions.

- **Feminist Legal Theory & Structural Power**

- Feminist legal scholarship (notably Catharine MacKinnon) deconstructs the traditional view of sexual assault as an act of passion, reframing it as an assertion of structural power, dominance, and hierarchy.

- Jurisprudence that evaluates consent strictly as a momentary, isolated decision ignores how systemic power dynamics function. When a court fails to analyze professional, economic, or socio-caste dominance, it treats unequals as equals, transforming formal legal neutrality into substantive inequality.

- **Kantian Autonomy and Human Dignity**

- Under Kantian ethics, human beings possess intrinsic dignity and must be treated as ends in themselves, never merely as means to an end. Bodily autonomy is an absolute right derived from rational agency.

- The requirement for **Affirmative Consent** directly reflects this Kantian framework: engaging with another person's body requires explicit, uncoerced authorization. Interpreting silence, fear, or a "feeble no" as implied consent treats the individual as an object, violating fundamental principles of personal dignity.

- **Epistemic Injustice and the "Credibility Deficit"**

- Philosopher Miranda Fricker defines **Epistemic Injustice** as a harm done to a person specifically in their capacity as a knower. In sexual violence trials, this manifests in two forms:

- **Testimonial Injustice:** A survivor's testimony is given less credibility by judicial actors due to underlying prejudices regarding gender, past sexual conduct, or social empowerment.
- **Hermeneutical Injustice:** A survivor's non-standard trauma response (such as shock or dissociation) is misunderstood because the court applies outdated models of victim behavior.

- **Multidimensional Analysis**
- **Social Dimension**
 - Sexual violence cases reflect entrenched societal expectations regarding gender roles and caste hierarchies. The construct of the "ideal victim" requires women to act submissively, show immediate distress, and maintain traditional notions of "modesty."
 - When educated, financially independent, or assertive women report sexual assault, their social standing is often weaponized against them. Similarly, the intersection of caste and gender creates compounding layers of marginalization, where upper-caste perpetrators frequently benefit from societal and institutional disbelief toward lower-caste survivors.
- **Political Dimension**
 - Legislative changes in criminal law have largely been reactive—triggered by public outrage and mass movements (such as those following the Mathura and Nirbhaya cases) rather than proactive institutional planning. State machinery, including police forces and public prosecutors, often lacks the training and resources required to handle trauma-sensitive investigations.
 - Political will frequently focuses on increasing statutory punishments (such as introducing death penalties for certain offenses) rather than addressing institutional failures in conviction rates, trial delays, and courtroom environments.
- **Ethical Dimension**
 - The judiciary bears an ethical duty to administer justice objectively without subjecting survivors to institutional harm. Subjecting a survivor to character scrutiny, intrusive cross-examination regarding personal lifestyle choices, or moralizing commentary constitutes secondary victimization by the state. This creates an ethical dilemma: a system designed to protect individual rights can inflict psychological harm on those seeking protection.
- **International Dimension**
 - India is a signatory to the **UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which obligates state parties to eliminate gender discrimination in legal processes. The global standard for sexual violence jurisprudence has increasingly shifted toward an explicit, affirmative consent framework:
 - **International Criminal Tribunal for Rwanda (ICTR - *Jean-Paul Akayesu Case*)**: Redefined sexual violence as an exercise of power and coercion, establishing that genuine consent cannot exist in coercive environments.
 - **Istanbul Convention (Council of Europe)**: Explicitly defines consent as a voluntary agreement given as a result of the person's free will, evaluated in light of the surrounding circumstances.
 - **UN Sustainable Development Goal 5 (Gender Equality)**: Focuses on eliminating violence against women and ensuring full, effective participation in public life—outcomes directly tied to workplace safety and gender-fair legal systems.
- **Economic Dimension**
 - There is a direct correlation between safety, unbiased judicial enforcement, and economic participation. India's **Female Labour Force Participation Rate (FLFPR)** remains lower than potential global benchmarks.
 - When workplaces lack clear protection mechanisms, or when legal processes subject survivors to scrutiny and career disruption, women face increased barriers to long-term career advancement. Fear of workplace harassment and the prospect of a hostile legal process act as informal barriers to economic mobility and institutional leadership.

- **Linkages with NCERT Textbooks**

- **Class 8 Political Science (Social and Political Life - III):**

- *Unit 3: "The Judiciary" and "Understanding Our Criminal Justice System"*
 - *Relevance:* Explains the fundamental role of courts as impartial guardians of constitutional rights. Juxtaposing these conceptual foundations with real-world judicial stereotyping helps students evaluate the gap between theoretical access to justice and procedural realities.

- **Class 11 Political Theory:**

- *Chapter 2: "Freedom" & Chapter 3: "Equality"*
 - *Relevance:* Defines bodily autonomy as an essential component of negative liberty and self-determination. Highlights the distinction between formal equality (applying the same law equally on paper) and substantive equality (accounting for power imbalances, gender biases, and social structures).

- **Class 11 & 12 Sociology:**

- *Indian Society & Social Change in India: "Social Institutions," "Social Inequality," and "Social Movements."*
 - *Relevance:* Traces how patriarchal norms and caste hierarchies shape institutional behavior. Illustrates how the Indian women's movement has historically used legal reform, public advocacy, and constitutional litigation to drive institutional change.



- **Syllabus Mapping (UPSC CSE & APSC)**
 - **General Studies Paper 1 (Indian Society & Social Issues):**
 - *Topics:* Role of women and women's organizations, social empowerment, intersectionality of gender, caste, and class.
 - *Application:* Analyzing the persistence of patriarchal mindsets within formal state institutions, the myth of the "ideal victim," and how social stratification impacts judicial outcomes.
 - **General Studies Paper 2 (Governance, Constitution, & Judiciary):**
 - *Topics:* Structure, organization, and functioning of the Judiciary; mechanisms, laws, institutions, and Bodies constituted for the protection and betterment of vulnerable sections.
 - *Application:* Evaluating the "Judicial Discretion Gap," the implementation failures of statutory amendments (such as the 2013 Criminal Law Amendment and POSH Act), and the need for institutional judicial accountability.
 - **General Studies Paper 3 (Economy & Security):**
 - *Topics:* Inclusive growth, employment, and workplace safety infrastructure.
 - *Application:* Assessing how workplace safety, structural power dynamics, and legal protections influence Female Labour Force Participation (FLFPR) and broader economic output.
 - **General Studies Paper 4 (Ethics, Integrity, & Aptitude):**
 - *Topics:* Attitude, moral and political attitudes, empathy, compassion towards weaker sections, ethical concerns in governance and judiciary.
 - *Application:* Case studies evaluating judicial ethics, subjective moral bias versus constitutional morality, and the ethical obligation of state machinery to prevent secondary victimization.
 - **Relevant Optional Subjects:**
 - *Law:* Criminal Jurisprudence, Law of Evidence (Sections 114A, 146), Consent Architecture, and Constitutional Feminism.
 - *Sociology:* Gender Stratification, Patriarchy, Institutional Power Structures, and Social Change Movements.
 - *Political Science & IR (PSIR):* Feminist State Theory, Conceptions of Justice (Rawlsian vs. Feminist), and Rights-Based Frameworks.
- 

- **Strategic Recommendations and Way Forward**
- **Statutory Codification of the Affirmative Consent Standard**
 - The Bharatiya Nyaya Sanhita (BNS) and Bharatiya Sakshya Adhiniyam (BSA) should explicitly adopt an **Affirmative Consent Model**. The statutory definition of consent must explicitly state that consent requires active, uncoerced, ongoing verbal or non-verbal communication of willingness. It should clarify that silence, lack of physical resistance, past relationship history, or professional acquaintance cannot be construed as implicit consent.
- **Systemic Reform in Judicial Training and Sensitization**
 - Judicial education requires structural modernization beyond basic lecture series:
 - **Mandatory Trauma-Informed Curricula:** The National Judicial Academy (NJA) and State Judicial Academies should integrate mandatory, continuous modules on trauma-informed jurisprudence, human behavioral psychology, and the impact of cognitive biases in judicial decision-making.
 - **Peer Evaluation and Judicial Audits:** Periodic gender-audit reviews of trial court judgments should be conducted by expert committees to identify recurring patriarchal tropes, systemic errors in evidence appreciation, and improper character scrutiny.
- **Strict Enforcement of Evidentiary Protections**
 - Trial court judges must actively enforce existing statutory bars regarding character evidence during proceedings:
 - **Immediate Judicial Intervention:** Judges should proactively bar questions during cross-examination that target a survivor's past sexual history, lifestyle, or social behavior, holding defense counsel accountable to statutory guidelines.
 - **Regulating Digital Evidence:** Courts must establish strict protocols for admitting personal digital communications (such as text messages or social media activity), ensuring that personal materials are not selectively introduced to attack a survivor's character.
- **Strengthening Workplace POSH Architecture**
 - To address workplace power asymmetries, internal compliance frameworks require continuous oversight:
 - **Independent External Oversight:** Internal Committees (ICs) under the POSH Act must feature independent external members to prevent management interference, especially when high-ranking executives are involved.
 - **Protection Against Retaliation:** Clear legal safeguards must protect complainants from professional retaliation, lateral career penalties, or constructive dismissal during and after an investigation.

- **Mains Questions**

- **General Studies Paper 1 (Social Issues)**

- *"Despite significant legislative reforms in rape laws, Indian courts continue to struggle with societal stereotypes and patriarchal biases in judicial decision-making."* Critically analyze this statement in the light of major judicial judgments from the Mathura case to contemporary times. (15 Marks, 250 Words)
- Discuss the concept of the "Ideal Victim" myth and explain how intersectional factors like caste, class, and social status impact women's access to justice in cases of gender-based violence in India. (10 Marks, 150 Words)

- **General Studies Paper 2 (Polity, Governance, & Vulnerable Sections)**

- *"Laws can be endlessly reformed, but structural justice depends on those who implement them."* In the context of judicial discretion and police administration in India, examine the reasons for the persistence of secondary victimization of women within the criminal justice system. (15 Marks, 250 Words)
- Evaluate the efficacy of the Sexual Harassment of Women at Workplace (POSH) Act, 2013 in addressing workplace power asymmetries. What institutional reforms are needed to make Internal Committees truly independent? (10 Marks, 150 Words)

- **General Studies Paper 4 (Ethics, Integrity, & Aptitude)**

- **Case Study / Ethical Theory:** A trial court judge observing a case of alleged sexual assault evaluates the victim's credibility based on her emotional composure, delayed reporting, and continued professional interaction with the accused.
 - Identify the ethical dilemmas, cognitive biases, and legal missteps present in this judicial approach.
 - How can judicial training academies integrate ethical empathy and trauma sensitivity without compromising objective trial standards? (20 Marks, 250 Words)

The changing logic of the India-U.S. partnership

The Trump administration's latest tariffs on several trading partners, including India, are widely seen as another trade dispute. That interpretation misses the larger picture. Alongside growing demands for greater burden-sharing, tighter technology restrictions and a more reciprocal approach to international partnerships, the tariffs reflect a broader shift in American statecraft. Washington is increasingly judging partners and competitors through the lens of national interest rather than strategic convergence. The immediate impact will be felt in trade negotiations; the more enduring implications are strategic. They signal a changing American approach to alliances and partnerships with important implications for India.

This approach reflects what the Trump administration describes as 'flexible realism'. Unlike the post-Cold War liberal international order, this approach places national interest at the centre of American foreign policy. It treats trade, technology, industrial policy, and security as integrated instruments of statecraft. Partnerships are judged less by shared values or historical goodwill than by the tangible strategic and economic value they deliver. Rather than signalling a retreat from global engagement, it recalibrates how the United States pursues its interests in an increasingly competitive international environment.

The China factor

It is useful to recall the strategic logic that has underpinned the India-United States partnership over the past decade. With China's emergence as Washington's principal strategic competitor, India assumed growing strategic importance in the U.S.'s calculations. Defence cooperation expanded, the Quad gained momentum, technology partnerships deepened, and supply-chain resilience became a shared priority. While democratic values provided a favourable political backdrop, it was the convergence of strategic interests driven by China's rise that gave the partnership its real momentum. For both



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India's challenge
is to build
capabilities that
make it an
indispensable
U.S. partner

New Delhi and Washington, managing the geopolitical consequences of a more powerful China became the principal driver of bilateral cooperation. This shift in American statecraft does not diminish India's strategic importance, but it does redefine the basis on which that importance will be judged. Strategic convergence with the U.S. remains important, but it can no longer be assumed to be the principal driver of the relationship. Washington is increasingly likely to assess even close partners through the lens of reciprocal economic benefit, technological capability, and strategic contribution. Consequently, India can no longer assume that intensifying U.S.-China competition will, by itself, continue to enhance its strategic relevance. The partnership must increasingly rest on what India brings to the table than on China's rise alone.

The next phase

The more significant implication of this evolving approach is that it redefines the nature of strategic partnerships. The first phase of the India-U.S. relationship was shaped by strategic convergence driven by China's rise. The next phase will increasingly depend on strategic complementarity, with each country expected to contribute capabilities that reinforce the other. Defence cooperation, critical technologies, resilient supply chains, and advanced manufacturing will matter not merely because they help manage China's rise, but because they strengthen the resilience and competitiveness of both economies. The India-U.S. partnership is therefore evolving from one defined primarily by a shared strategic challenge to one sustained by mutual strategic value. Far from weakening the relationship, this evolution could make it more balanced and resilient.

If flexible realism encourages Washington to rely on stronger and more capable partners, it also creates greater space for India's strategic agency. A more economically competitive, technologically advanced, and militarily capable India is not only a more valuable partner for the

U.S. but also better positioned to pursue its own strategic interests. The relationship can therefore evolve from one shaped primarily by China's rise to one anchored in India's capabilities and strategic contribution.

For India, this evolution reinforces rather than weakens the relevance of strategic autonomy. In the emerging international environment, strategic autonomy is not about maintaining equal distance from competing powers; it is about preserving the ability to make independent choices based on India's own interests. That also means that India's approach to China should increasingly be guided by its own long-term strategic calculations rather than by the trajectory of U.S.-China relations. In practice, this requires a strategy of multi-alignment: strengthening the strategic partnership with the U.S., managing competition and cooperation with China on India's own terms, and deepening strategic, economic, and technological partnerships with the European Union, Japan, and Global South.

Looking ahead

The India-U.S. partnership is entering a new phase. During the past decade, its momentum was driven by a shared response to China's rise. That strategic convergence will remain important, but it will no longer be sufficient on its own. In this emerging strategic environment, enduring partnerships will increasingly be built on capability, reciprocity, and strategic value. For India, this carries a broader strategic lesson. India's strategic relevance must increasingly flow from its own economic dynamism, technological capabilities, defence preparedness, and diplomatic influence. The challenge, therefore, is not merely to remain relevant in Washington's strategic calculus, but to build the capabilities that make it an indispensable partner. That would not only strengthen the India-U.S. partnership but also reinforce India's strategic autonomy in an increasingly contested world.

The views expressed are personal

- **Key Terms and Explanations**

- **Flexible Realism:** A foreign policy doctrine that prioritizes immediate national self-interest, economic reciprocity, and pragmatic burden-sharing over ideological solidarity or permanent alliances. Unlike liberal internationalism, which relies on rules-based international orders and shared values, flexible realism treats diplomacy as a transactional instrument to maximize national security and economic power.
 - *Example:* A nation imposing targeted trade tariffs on a strategic ally to protect domestic industry, while simultaneously expanding deep military-technology sharing with that same ally.
- **Strategic Convergence:** The alignment of two or more nations' long-term geopolitical interests, usually triggered by a common external threat or a shared strategic vision for a region.
 - *Example:* India and the U.S. aligning their naval doctrines in the Indo-Pacific primarily to balance China's expanding maritime influence.
- **Strategic Complementarity:** A structural partnership built on distinct, mutually reinforcing national capabilities, where each nation fulfills critical gaps in the other's industrial, technological, or military power. It moves beyond sharing a common enemy to building deep, systemic interdependence.
 - *Example:* Combining American high-end R&D and capital with India's massive engineering talent pool, manufacturing scale, and software ecosystem to build resilient semiconductor supply chains.
- **Strategic Autonomy:** A foreign policy posture wherein a nation reserves the sovereign right to make independent decisions based strictly on its national interest, without being coerced or dictated to by formal military alliances or major power blocs.
 - *Example:* India maintaining robust defense ties and energy trade with Russia while concurrently deepening high-tech defense partnerships with the U.S. and Europe.
- **Multi-Alignment:** The diplomatic practice of simultaneously cultivating deep, functional partnerships with rival or diverse global powers across different sectors to maximize a nation's strategic leverage and hedge against geopolitical volatility.
 - *Example:* Active participation in the Quad (alongside Western democracies) while simultaneously engaging in BRICS and the Shanghai Cooperation Organisation (SCO) to maintain Eurasian stability.

- **Main Arguments and Substantive Parts**

- **The Structural Shift in Global Statecraft**

- The contemporary international order is witnessing a fundamental transition away from post-Cold War liberal internationalism toward transactional realism. Foreign policy is no longer anchored primarily in shared democratic values, historical goodwill, or multilateral norms. Instead, major powers are integrating trade tariffs, technology export controls, industrial subsidies, and defense partnerships into unified, hard-nosed instruments of national power. Under this framework, alliances are continuously evaluated based on tangible economic balance sheets, reciprocal market access, and equitable burden-sharing.

- **The Limits of Pure Threat-Driven Convergence**

- For over two decades, the primary engine driving India-U.S. strategic proximity was mutual concern over China's rapid economic and military expansion. However, relying solely on a shared threat creates a fragile foundation for a long-term alliance. As Western statecraft turns increasingly inward and transactional, shared geopolitical threats alone can no longer insulate bilateral relations from acute economic friction. Washington expects strategic partners to offer reciprocal economic value and hard military/technological capabilities, rather than relying on geopolitical location or ideological alignment alone.

- **Moving from Shared Challenges to Mutual Strategic Value**

- To build an enduring architecture, the India-U.S. relationship must evolve from strategic convergence (cooperating *against* a common competitor) to strategic complementarity (cooperating *for* mutual industrial and technological resilience). This requires building deep synergies across critical domains:

- **Defense Industrial Co-production:** Transitioning from buyer-seller dynamics to joint R&D and manufacturing of critical defense platforms.
- **Critical and Emerging Technologies (iCET):** Cooperating on artificial intelligence, quantum computing, biotechnology, and semiconductors to secure technological superiority.
- **Supply Chain De-risking:** Creating secure, alternative manufacturing hubs to reduce global dependence on single-source supply chains.

- **Reimagining Strategic Autonomy and Multi-Alignment**

- Far from rendering strategic autonomy obsolete, this transactional global landscape makes independent decision-making even more crucial. Strategic autonomy is not passive non-alignment or keeping an equal distance from all major powers; it is the active, pragmatic assertion of national interest.

- For India, this means managing its relations with China through independent deterrence and diplomatic channels, rather than viewing its neighborhood through the lens of Washington's foreign policy shifts. Simultaneously, India must practice robust multi-alignment—deepening ties with the U.S., Europe, Japan, and the Global South to preserve maximum diplomatic maneuverability.

- **Historical Evolution of the Issue**
- **Cold War Estrangement (1947–1990)**
 - During the Cold War, India's choice of Non-Alignment and its close ties with the Soviet Union ran counter to Washington's global containment policy. The U.S. built formal military alliances with Pakistan (CENTO/SEATO) and developed a strategic pact with Beijing in the 1970s. Following India's peaceful nuclear explosion in 1974 (Pokhran-I), the U.S. spearheaded global technology denial regimes (such as the Nuclear Suppliers Group), severely restricting India's access to dual-use technologies, space research, and nuclear energy for decades.
- **Post-Cold War Thaw and Re-engagement (1991–1998)**
 - The collapse of the Soviet Union and India's 1991 Liberalization, Privatization, and Globalization (LPG) reforms created new avenues for economic engagement. The 1991 Kicklighter Proposals established the foundation for joint service-to-service military exercises. Although India's 1998 nuclear tests (Pokhran-II) led to temporary U.S. sanctions, they also catalyzed the intense Jaswant Singh–Strobe Talbott dialogues, which reshaped mutual understanding and paved the way for modern strategic ties.
- **Transformational Breakthrough (1999–2013)**
 - The strategic trajectory changed dramatically in the 2000s. Recognizing India's economic growth and potential as a regional counterweight, the U.S. negotiated the historic 2005 India-U.S. Civil Nuclear Agreement (123 Agreement). This deal effectively ended India's nuclear isolation without requiring it to sign the NPT. It signaled a major shift, leading to higher defense sales, expanded joint military exercises (such as Exercise Malabar), and growing cooperation across maritime security and counter-terrorism.
- **Institutionalized Convergence and the Indo-Pacific (2014–2023)**
 - The relationship deepened into a structural partnership driven by shared concerns over Chinese assertiveness across the Indo-Pacific. Key milestones included:
 - **Designation as a Major Defense Partner (2016):** Placing India on par with closest U.S. allies for defense technology access.
 - **Foundational Agreements:** Signing LEMOA (logistics), COMCASA (secure communications), and BECA (geospatial intelligence) to enable seamless military interoperability.
 - **The Quad:** Revitalizing the Quadrilateral Security Dialogue alongside Japan and Australia.
 - **iCET Launch (2023):** Accelerating joint production in semiconductors, AI, defense innovation, and space.
- **The Emerging Era of Flexible Realism**
 - Recent global shifts have introduced new transactional friction into the partnership. Tariff disputes, demands for broader market access, and strict expectations of reciprocity highlight that strategic alignment alone no longer shields economic ties. The partnership is now entering a mature phase where sustained cooperation requires clear, reciprocal economic benefit and tangible technological capabilities.



AXIA

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— RISE ABOVE THE REST —

THE CHANGING LOGIC OF INDIA-U.S. PARTNERSHIP

U.S. APPROACH: FLEXIBLE REALISM



Integrated Statecraft

Places National Interest at center.
Reciprocal economic benefit & burden-sharing.
Treat trade as statecraft.



DEFENSE & INNOVATION

Advanced Manufacturing, joint innovation, co-production of critical technologies.

PAST PHASE: CONVERGENCE



Driven by Shared China Threat
Defence cooperation, Quad momentum, technology partnerships, supply chain priorities.
Shared democratic values backdrop.

NEW PHASE: COMPLEMENTARITY



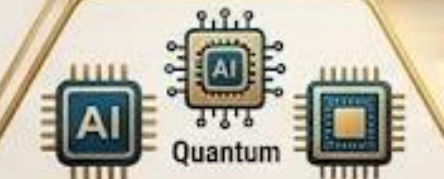
Sustained by Mutual Strategic Value
Contributions reinforce resilience & competitiveness.
Focus on capabilities each country brings to the table.

INDIA'S RESPONSE: STRATEGIC AUTONOMY & AGENCY



Multi-Alignment

Making independent choices based on India's interests.
Not about distance, but self-interest.
China approach guided by own calculations.



CRITICAL TECHNOLOGIES (iCET)

Joint R&D, resilient supply chains, secure digital infrastructure, global competitiveness.

LOOKING AHEAD: BUILDING THE FUTURE

Ending partnership on capability, reciprocity, and strategic value.
India's relevance must flow from its economic dynamism and technological capabilities.
Build capabilities that make India an indispensable partner.



SUPPLY CHAIN RESILIENCE

Building economic dynamism and competitiveness in both nations.
Diversifying critical hubs.



ADVANCED MANUFACTURING

Cooperating not just for China, but to strengthen both economies.
Capabilities flow value.



- **Logical and Philosophical Base**
- **Neorealism and the Balance of Power**
 - The strategic shift in global partnerships aligns with Neorealist (Structural Realist) theory, as articulated by scholars like Kenneth Waltz and John Mearsheimer. In an anarchic international system, state behavior is driven by the distribution of power and the imperative of national survival.
 - Under this framework, states form partnerships based on relative power dynamics rather than shared ideology. When a major power adopts flexible realism, it calculates the utility of its allies strictly through hard power metrics: defense budgets, technological innovation, industrial capacity, and willingness to share security burdens.
- **Departure from Liberal Internationalism**
 - This approach explicitly steps away from the Post-Cold War Liberal Order, which relied on global institutions (WTO, UN), free-trade agreements, and democratic peace theory. Liberal internationalism posited that trade integration and shared democratic values would naturally foster peace and strong alliances. Flexible realism counters this by arguing that unconstrained free trade can create dangerous economic dependencies, hollow out domestic industrial bases, and weaken national security. Consequently, trade, industrial policy, and security are treated as interconnected tools of national survival.
- **Classical Kautilyan Realism (*Arthashastra*)**
 - For India, this evolving landscape reflects classic Kautilyan statecraft. The *Arthashastra* emphasizes that alliances are inherently transient and sustained only so long as they serve a state's core interests (*Swartha*). Kautilya's concepts of *Samsraya* (seeking shelter or building alliances) and *Yana* (preparing national power) teach that external strategic partnerships are effective only when backed by internal strength (*Atma-Shakti*). India's pursuit of strategic autonomy through capability-building mirrors this timeless statecraft.



- **Multidimensional Analysis**
- **Social Dimension**
 - **Diaspora as a Bridge:** The nearly 4.5 million-strong Indian-American diaspora serves as an influential bridge, shaping innovation, technology, business, and policy in both countries.
 - **Education and Human Capital:** Over 300,000 Indian students in the U.S. drive academic and technological exchanges. However, shifts toward protectionism and stricter visa regimes (such as H-1B quotas) create social and economic uncertainty for Indian talent.
 - **Public Perception:** Shared democratic values foster strong cultural affinity, but transactional foreign policy moves—such as sudden trade barriers or visa restrictions—can erode public trust in long-term strategic reliability.
- **Political Dimension**
 - **Bipartisan Support with Varying Tactics:** While India-U.S. relations enjoy strong bipartisan support in Washington, tactical approaches differ sharply. Traditional establishments favor institutionalized alliances, whereas pragmatic realists prioritize transactional deals, reciprocal trade, and immediate burden-sharing.
 - **Domestic Political Imperatives:** Domestic political needs heavily influence foreign policy choices. The U.S. focus on protecting domestic manufacturing directly collides with India's *Make in India* initiative, requiring careful diplomatic navigation to manage competing domestic priorities.
- **Legal Dimension**
 - **Trade Frictions and WTO Governance:** Disagreements over agricultural subsidies, intellectual property rights, and tariffs frequently lead to trade disputes, highlighting the friction between national industrial policies and global trade rules.
 - **Defense Regulations and Sanctions Risks:** Strict U.S. export control frameworks (such as ITAR) complicate joint technology development. Additionally, secondary sanctions legislation—like CAATSA (Countering America's Adversaries Through Sanctions Act)—creates legal uncertainty for India's strategic procurements from traditional partners like Russia.
- **Ethical Dimension**
 - **Values vs. Pragmatism:** A shift toward transactional foreign policy creates a tension between values-led diplomacy (protecting global commons, human rights, democratic solidarity) and pragmatic national interest.
 - **Equity in Global Governance:** A strictly transactional approach by major powers risks sidelining the development needs of the Global South. As a self-identified voice of the Global South, India faces the challenge of balancing its high-tech partnership with the West while advocating for equitable global access to energy, technology, and capital.
- **International Dimension**
 - **Reshaping the Indo-Pacific Architecture:** The shift toward capability-based partnerships encourages more flexible, multi-layered security arrangements (such as Quad, AUKUS, and I2U2) rather than rigid, NATO-style alliances.
 - **Managing the Eurasia-Indo-Pacific Balancing Act:** As Washington focuses heavily on reciprocal commitments, India must carefully manage its strategic relations across Eurasia (via BRICS, SCO, and Russia-Iran corridors) alongside its maritime commitments in the Indo-Pacific.
- **Economic Dimension**
 - **Trade Imbalances and Protectionism:** Bilateral trade exceeds \$190 billion, yet persistent disputes over market access for agricultural products, medical devices, and digital services regularly spark tariff tensions.
 - **Supply Chain Resilience and "Friendshoring":** Mutual efforts to diversify critical supply chains away from single-country dominance offer major opportunities for India in electronics, pharmaceuticals, and green energy manufacturing, provided domestic infrastructure and regulatory frameworks keep pace.

Linkages with NCERTs

NCERT CURRICULAR LINKAGES

Class 12 Political Science: Contemporary World Politics

- Chapter: "Alternative Centres of Power"
→ Explores rise of India & changing global power equations.
- Chapter: "US Hegemony in World Politics" (Historical Perspective)
→ Examines structural power, hard power, and soft power dynamics.

Class 12 Political Science: Politics in India Since Independence

- Chapter: "India's External Relations"
→ Traces evolution from Non-Alignment (NAM) to modern pragmatism.
→ Contextualizes past conflicts, Soviet ties, and the U.S. pivot.

Class 11 Political Theory

- Chapter: "Sovereignty" & "National Interest"
→ Provides theoretical foundations for Strategic Autonomy.

- **Linkages with UPSC CSE Syllabus**
- **General Studies Paper 2 (Governance, Constitution, Polity, Social Justice & International Relations)**
 - **Bilateral, regional, and global groupings and agreements involving India and/or affecting India's interests:** Direct application for analyzing the structural transition of India-U.S. defense agreements (LEMOA, COMCASA, BECA), iCET, and the Quad architecture.
 - **Effect of policies and politics of developed and developing countries on India's interests:** Essential for evaluating how U.S. economic policies, tariff adjustments, tech export controls, and immigration regulations directly impact India's foreign policy and economic growth.
- **General Studies Paper 3 (Technology, Economic Development, Bio-diversity, Environment, Security & Disaster Management)**
 - **Indian Economy and issues relating to planning, mobilization of resources, growth, development, and employment:** Analyzes how trade frictions and supply chain relocations impact domestic manufacturing (*Make in India*).
 - **Science and Technology - developments and their applications and effects in everyday life:** Directly maps to critical technology transfers under iCET, semiconductor fabrication, AI R&D, and defense technology co-production.
- **General Studies Paper 4 (Ethics, Integrity, and Aptitude)**
 - **International Ethics:** Examines the moral trade-offs between value-based diplomacy (promoted by liberal internationalism) versus self-interest-driven statecraft (flexible realism) in addressing global challenges like climate change and global health equity.
- **Essay Paper & Optional Subjects**
 - **Essay Themes:** Directly relevant for essays on: *"Strategic Autonomy in a Multipolar World"*, *"The Intersection of National Interest and Global Order"*, or *"Technology as the New Currency of Geopolitics"*.
 - **PSIR Optional (Paper 2: Comparative Political Analysis and International Politics):** Core content for modules covering Indian Foreign Policy, Hegemony and Multipolarity, Neorealist Theories, and India's evolving relations with Major Powers.



- **Way Forward**
- **Accelerate Domestic Industrial and Technological Capability (*Atmanirbhar Bharat 2.0*)**
 - To remain an indispensable partner in an era of flexible realism, India must focus on building core domestic industrial and technological strength. Strategic value flows directly from tangible capabilities.
 - Increase national expenditure on Research and Development (R&D) from ~0.7% to at least 2% of GDP, with targeted investments in deep-tech sectors such as semiconductors, quantum computing, biotechnology, and artificial intelligence.
 - Expand the scope and execution of Production-Linked Incentive (PLI) schemes to position India as a global manufacturing hub, securing a central role in resilient, "friend-shored" global supply chains.
- **Deepen Economic Complementarity and Resolve Trade Frictions**
 - Rather than allowing trade disputes to undermine strategic gains, India and the U.S. should establish a predictable, long-term framework for economic engagement:
 - Negotiate a Bilateral Trade Agreement or targeted sector-specific pacted agreements focused on high-tech trade, critical minerals, and green energy technologies.
 - Establish institutionalized mechanisms under the U.S.-India Trade Policy Forum (TPF) to resolve tariff disputes, market access barriers, and intellectual property concerns before they escalate into major political frictions.
- **Operationalize Technological Partnerships (iCET to Execution)**
 - Move the Initiative on Critical and Emerging Technologies (iCET) from high-level policy statements to concrete, scalable industrial outcomes:
 - Streamline defense procurement and export control approvals (such as U.S. ITAR regulations) to fast-track joint development projects, including jet engine manufacturing, autonomous systems, and advanced communications.
 - Promote joint ventures between Indian technology firms, defense startups, and leading U.S. technology giants to create deeply integrated supply chains.
- **Practice Pragmatic Multi-Alignment and Strengthen Strategic Autonomy**
 - India should continue to leverage its strategic autonomy to build diverse, overlapping partnerships that reinforce its global standing:
 - Deepen high-tech, defense, and economic ties with alternative global partners, including the European Union, Japan, Australia, and South Korea, to avoid single-point strategic dependencies.
 - Maintain an active, constructive role in Eurasian and Global South platforms (such as BRICS, SCO, and the Voice of Global South Summit), serving as a crucial diplomatic bridge between the West and the developing world.
- **Develop an Independent, Capability-Based Strategy Toward China**
 - While U.S.-India cooperation in the Indo-Pacific remains vital, New Delhi must ensure its policy toward China is grounded in its own long-term strategic needs:
 - Strengthen border infrastructure, military readiness, and economic resilience along the Line of Actual Control (LAC) through sustained, independent defense investments.
 - Engage Beijing diplomatically and economically from a position of strength, ensuring India's neighborhood policies are driven by direct national interests rather than shifts in Western foreign policy.

UPSC CSE Mains Questions

GS Paper 2 (International Relations)

- *"The India-U.S. strategic partnership has transitioned from cold war estrangement to an indispensable 21st-century alliance. However, growing trade friction and protectionist policies pose significant hurdles."* Critically analyze this statement in light of recent global political shifts. **(2023, 15 Marks)**
- *What is the strategic significance of the Quad for India's national security interests in the Indo-Pacific region? How should India balance its engagement in the Quad with its commitments to Eurasian groupings like BRICS and SCO?* **(2022, 15 Marks)**
- *"Strategic Autonomy is no longer about maintaining equal distance from rival superpowers, but about expanding strategic choices through pragmatic multi-alignment."* Discuss with reference to India's evolving foreign policy posture. **(2021, 10 Marks)**
- *Evaluate the impact of U.S. secondary sanctions frameworks (such as CAATSA) on India's defense procurements and its sovereign foreign policy choices.* **(2020, 10 Marks)**
- *Emerging technologies are fast becoming the central arena of geopolitical competition. In this context, examine how initiatives like iCET can reshape India-U.S. relations beyond traditional security cooperation.* **(2019, 15 Marks)**

APSC CCE Mains Questions

- *Analyze the evolution of India's foreign policy from Non-Alignment to Strategic Autonomy and Multi-Alignment. How does this shift benefit India's national interest in a multipolar world?* **(GS Paper 2 - Recent Cycle, 10 Marks)**
- *Discuss the importance of the Indo-Pacific region for India's maritime security and economic development. Highlight the role played by the India-U.S. defense partnership in maintaining stability in the region.* **(GS Paper 2 - Recent Cycle, 15 Marks)**



Cut the bull about Bitchat and State powers, Mr Dorsey

The government of India would be remiss if it did not prevent a technology from being deliberately deployed to frustrate law enforcement

In his famous essay, *On Bullshit*, philosopher Harry Frankfurt wrote that the "essence of bullshit" is a "phony" statement that is "disconnected from a concern with the truth". It comes from a person who simply does not care what is true or false but wants only to posture. Such flippancy, Frankfurt argued, makes it "a greater enemy of the truth than lies are".

A notable sample of the same was served up by Jack Dorsey, the co-founder and former CEO of Twitter, who took to X to complain when, in the midst of a student protest in Central Delhi, the government ordered GitHub to block access to Bitchat, an app that he designed to allow users to communicate over a "mesh" of Bluetooth connections and thereby evade government control over and surveillance of internet channels.

Dorsey's post, now viewed nearly four million times, shared the blocking order and curtly declared that the Government of India "does not like technologies like Bitchat". The curtness is not new. In 2018, Dorsey posed with a caption that said "Smash Brahminical Patriarchy", signalling his deep knowledge of the millennia-old civilisation he was visiting for the first time (he visited the Dalai Lama too, but somehow omitted to carry a placard saying "Smash Serfdom"). Or consider Dorsey's bio on X, which simply reads "no state is the best state", a grand statement from an individual whose wealth and property are protected by the immense powers of the US.

Since Dorsey is evidently given to skingamering, what should we think about the Indian government's order? Consider three criticisms.

It is possible to argue that peer-to-peer messaging apps like Bitchat — which free users from dependence on a network or server — should be permitted because they can prove useful when

outages or disasters affect internet service. This argument is not conclusive, however. The fact that a technology has legitimate emergency uses does not establish a right to deploy it during serious disturbances.

A second objection is that it is futile to try to control open-source technology. When GitHub was ordered to take down Bitchat, copies of its repository quickly appeared elsewhere, while downloads and usage reportedly increased, leading critics to gleefully cite it as an example of the Streisand Effect. This objection is unpersuasive as well. A sufficiently motivated government can employ technical countermeasures, impose requirements on devices sold in the country, and, in emergencies, permit the inspection of phones. It is all very well to co-opt a Soviet dissident by talking up features such as Bitchat's "panic wipe" (where tapping three times on the app's icon erases its data), but such theatrics are unlikely to withstand determined thwarting.

A third objection is that the takedown order lacks statutory and constitutional authority because it relies on Section 79C(b) of the Information Technology Act, which grants intermediaries (in this case, GitHub) immunity from prosecution so long as they remove content (in this case, Bitchat) that is deemed unlawful. According to critics such as the Internet Freedom Foundation (IFF), Section 79C(b) was never meant to be employed as "a blocking power" and using it to block an entire application — rather than a particular unlawful use of that application — violates Article 19(2) of the Constitution.

The statutory complaint stands on shaky ground. In its widely circulated commentary on the Bitchat order, the IFF omitted to discuss the recent decision in *X v. Union of India* (2023), in which the Karnataka High Court upheld this use of Section 79C(b). The court relied in substantial measure on the argument that the blocking procedures authorised under Shriya Singhal v. Union of India (2015) — which require "a hearing and reasons recorded in writing, subject to review" — can stymie prompt intervention in an era when technological advances have vastly increased the scale and speed with which "unlawful content" can spread. It is certainly



When Jack Dorsey writes that the government of India does not "like" Bitchat, and when advocacy groups describe its takedown order as "authoritarian", they are insinuating that the government of India is acting illegitimately.

possible that, upon further review, courts will add or refine safeguards on the use of Section 79C(b). But, as a matter of principle, it is hard to see how they can disagree with Justice M. Nagaprasanna's observation that every State is entitled to exercise "timely and effective regulation" over speech and expression when important public interests are at stake.

This brings us to the constitutional issue: Is it reasonable to block an entire application, specifically one that allows the circumvention of internet shutdowns? When Dorsey writes that the government of India does not "like" Bitchat, and when advocacy groups like IFF describe its takedown order as "authoritarian", they are insinuating that the government of India is acting illegitimately — that it is acting rashly or contrary to what the Constitution or citizens will permit.

As a matter of constitutional principle, this is nonsense. To safeguard citizens is an essential duty of the State. Hence the timeless doctrine, *salus populi suprema lex* (the safety of the people is the supreme law). Of course, safety is not the only interest in play. A constitutional regime seeks to shape how varied and often conflicting interests are to be balanced against one another. The constitutional imperative, per Article 19(2), that the government of India only impose "reasonable restrictions" on speech and expression is well established — and for good reason. The abuse of power is always a concern and citizens are certainly entitled to demand safeguards — and officers are correspondingly obliged to abide by such rules. But this does not mean the power in question should not exist. In the current context, the government of India would in fact be remiss if it did not prevent a technology

from being deliberately deployed to frustrate law enforcement. Courts may, of course, choose to ask for an *ex post* showing as to the necessity of an internet shutdown — and why alternative, less draconian, measures will not suffice. But the suggestion that the State should be wholly deterred from employing shutdowns presumes there can be no public interest whatsoever in preventing subversive elements from taking advantage of a protest or disturbance.

This brings us to a deeper point about political legitimacy. It has become fashionable to belittle decisions of the government of India as mere expressions of "authoritarianism". Perhaps, it needs to be underscored that the government of India exercises its authority in the name of a sovereign people, whose democratically elected representatives and constitutionally mandated institutions give political and legal expression to their interests.

The preferences expressed through this arrangement may be noisy and disorderly, and our existing political system may translate them imperfectly into policy.

But, for all its flaws, this arrangement vests the government of India with far greater political legitimacy than that enjoyed by unelected individuals and advocacy groups that grandiloquently assume that everyone likes — or ought to like — their preferred policies. If Indians repeatedly vote for a law and order agenda, then that is their sovereign choice. And so, with all due respect, spare us the bull, Jack.

Rahul Sagar is a Global Network associate professor at NYU Abu Dhabi. His latest book is *The Birth of Indian Liberalism*. The views expressed are personal.

- **Key Terms and Conceptual Framework**

- **Peer-to-Peer (P2P) / Mesh Communication Networks:** Traditional communication platforms rely on centralized servers or cellular towers operated by telecom providers. Mesh networks, by contrast, create ad-hoc local networks where individual devices (like smartphones) connect directly to one another using short-range wireless protocols like Bluetooth or Wi-Fi Direct. Because messages hop from phone to phone without passing through an Internet Service Provider (ISP) or central server, these networks are exceptionally difficult for state authorities to monitor, trace, or disable through conventional internet shutdowns.
- **The Streisand Effect:** A phenomenon wherein an attempt to censor, block, or suppress a piece of information, application, or website inadvertently leads to its wider publicization and distribution. When state authorities order the takedown of a tool from a central repository, mirrors and forks often proliferate across decentralized networks, amplifying public interest and adoption.
- **Safe Harbor vs. Blocking Orders (Section 79 vs. Section 69A of the IT Act, 2000):**
 - *Section 79:* Grants legal immunity ("safe harbor") to digital intermediaries (e.g., GitHub, cloud providers, social networks) against third-party content, provided they expeditiously remove or disable access to unlawful content upon receiving official notification under Section 79(3)(b).
 - *Section 69A:* The dedicated statutory mechanism empowering the central government to issue orders blocking public access to information on grounds such as national security, public order, or sovereignty. Section 69A requires strict procedural safeguards, including written reasons and a review committee oversight.
- **Article 19(1)(a) and Article 19(2) of the Indian Constitution:** Article 19(1)(a) guarantees the fundamental right to freedom of speech and expression, which courts have extended to include digital communication and access to the internet. However, this right is not absolute. Article 19(2) permits the State to impose "reasonable restrictions" on specific grounds, including the sovereignty and integrity of India, state security, friendly relations with foreign states, public order, decency, morality, or in relation to contempt of court, defamation, or incitement to an offense.
- **Salus Populi Suprema Lex:** A foundational legal maxim translating to "*The safety of the people is the supreme law.*" It establishes that the primary duty and legitimizing mandate of any sovereign state is the preservation of public order and the physical security of its citizenry, which can temporarily override individual conveniences during crises.
- **Techno-Libertarianism:** A political philosophy holding that digital technologies, cryptography, and open-source code should remain entirely autonomous from state regulation. Proponents argue that software architecture ("code") should supersede state laws to protect absolute individual autonomy.

- **Core Arguments and Substantive Issues**

- The tension between state authority and decentralized technologies centers on whether a constitutional democracy can legitimately restrict software tools designed to evade law enforcement.

- **Dual-Use Technology: Emergency Utility vs. Public Order Hazards**

- Decentralized mesh messaging tools represent quintessential dual-use technology. Proponents emphasize their utility during natural disasters, power grid failures, or network blackouts when standard telecommunications collapse. Conversely, state authorities highlight that the exact same features— anonymity, off-grid communication, and "panic-wipe" capabilities—can be exploited during civil unrest to coordinate violent crowds, spread unverified rumors, and frustrate lawful police intervention. The legitimate presence of emergency utility does not grant an automatic, unassailable right to deploy such tools during active public order emergencies.

- **State Capacity and the Limits of Technical Evasion**

- While techno-libertarians argue that open-source software cannot be suppressed due to the Streisand Effect, this overestimates technological immunity and underestimates state power. While code can be mirrored endlessly, state regulation does not require total technical eradication to achieve its goals. By targeting primary distribution nodes (like major software repositories or app stores), imposing technical compliance mandates on hardware importers, and deploying targeted enforcement, state interventions introduce sufficient friction to prevent widespread operational adoption during critical security windows.

- **Statutory Mechanics: Section 79(3)(b) versus Section 69A**

- A key legal dispute concerns the government's procedural choice when restricting access to software repositories. Civil liberties advocates argue that using Section 79(3)(b) (withdrawing intermediary safe harbor) to force the removal of an entire application bypasses the stringent procedural checks built into Section 69A, which were mandated by the Supreme Court in *Shreya Singhal v. Union of India* (2015).

- However, recent judicial precedents (such as *X Corp v. Union of India*, 2025) have observed that Section 79(3)(b) can serve as a legitimate regulatory mechanism when rapid technological dissemination outpaces the slower administrative timelines of standard blocking committees. The judiciary recognizes that speed is vital when managing rapidly escalating digital threats to public safety.

- **Democratic Legitimacy versus Technocratic Absolutism**

- At the philosophical heart of this clash is a question of political legitimacy. Democratic state institutions derive their authority from popular sovereignty, expressed through free elections, constitutional mandates, and parliamentary legislation. When tech executives or non-governmental organizations challenge state restrictions, they often operate from an unelected, non-accountable position. A democratically elected government carries the constitutional duty to maintain public safety (*salus populi suprema lex*)—a heavy responsibility that private tech developers do not bear when releasing unaccountable, enforcement-evading software into complex social environments.

- **Historical Evolution of Digital Regulation and State Power**
- **Pre-Independence to Early Digital Era (1885–2000)**
 - **The Telegraph Act Paradigm (1885):** State control over communications originated under Section 5(2) of the Indian Telegraph Act, 1885, authorizing the interception or suspension of transmissions during public emergencies or in the interest of public safety.
 - **Enactment of the IT Act (2000):** As digital communications expanded, India passed the Information Technology Act, 2000, primarily to facilitate e-commerce and recognize electronic records, with limited focus on sophisticated cyber-threats or encrypted communications.
- **Legislative Reforms and Statutory Bifurcation (2008–2011)**
 - **2008 IT Act Amendments:** Recognizing the growth of Web 2.0, Parliament introduced **Section 69A** (powers to issue blocking orders for web content) and overhauled **Section 79** (creating a safe harbor regime for online intermediaries).
 - **Intermediary Guidelines (2011):** Operationalized "due diligence" rules, establishing that intermediaries must take down unlawful content upon receiving actual knowledge, laying the groundwork for safe harbor conditions.
- **Judicial Calibration and Procedural Safeguards (2015–2020)**
 - **Shreya Singhal v. Union of India (2015):** The Supreme Court struck down Section 66A for vagueness but **upheld Section 69A** and Section 79(3)(b). Crucially, the Court ruled that "actual knowledge" under Section 79(3)(b) must mean a court order or a government notification clearly tracking Article 19(2) grounds, while reading strict procedural natural justice into Section 69A.
 - **Telecom Suspension Rules (2017):** The executive promulgated formal rules under the Telegraph Act to regulate internet shutdowns, shifting network-level interventions from broad police orders to standardized executive reviews.
 - **Anuradha Bhasin v. Union of India (2020):** Following prolonged communication restrictions in Jammu & Kashmir, the Supreme Court ruled that freedom of speech and the right to carry on trade over the internet are constitutionally protected under Article 19(1)(a) and 19(1)(g). It declared that indefinite internet shutdowns are illegal and mandated that all shutdown orders must satisfy the **doctrine of proportionality**.
- **The Contemporary Frontier: Mesh Networks and App-Level Conflicts (2020–2026)**
 - **Shift to Decentralized Protocols:** As state authorities refined network-level suspension techniques, civil movements increasingly adopted off-grid, Bluetooth-mesh, and peer-to-peer applications to bypass local cell tower shutdowns.
 - **Direct Interventions Against Repositories (2025–2026):** Confronted with off-grid tools, state regulation expanded from ISP-level filtering to targeting developer repositories (such as GitHub) under Section 79(3)(b). Higher judicial forums, notably in *X Corp v. Union of India (2025)*, have recognized the necessity of executive agility under Section 79 to prevent the rapid, unmediated spread of public order disruptions.



DECENTRALIZED COMMUNICATION VS. STATE SOVEREIGNTY: A BALANCING ACT

Comprehensive Analysis for UPSC CSE and State PCS

KEY CONCEPTS

PEER-TO-PEER (P2P)/MESH COMM NETWORKS



Directly, devices connecting directly with each other with signals, bypasses towers/ servers.

THE STREISAND EFFECT



Growing megaphone cloud with concerns to spreading widely from enmeshed at a restriction point.

SAFE HARBOR VS. BLOCKING ORDERS



Balance with gavelhss ans anastiection and presentationn with Shreya Singhal safeguards

CONSTITUTIONAL BALANCING ACT

INDIVIDUAL LIBERTIES (ARTICLE 19(1)(a) Rights)



- Rights and Protectights
- Free Digital Expression and resistance narm Overreach



STATE SOVEREIGNTY (ARTICLE 19(2) & SECURITY)



- Restrictions on Roles
- Restrictions of subversiorl law's supreme Law

EVOLUTION OF DIGITAL STATE POWER (1885-2026)



MULTIDIMENSIONAL ANALYSIS

Social & Dissent: Comm. channels vs channel vs unverified rumors



Political & State Power: Weberian Monopoly on violence vs unregulated networks



Legal Framework: Statutory Friction



Ethical & Dual-Use: "Emergency Utility vs. Public Order Hazards"



Economic & International: "Shutdowns vs. Targeted Restrictions"



Transnational Digital Sovereignty: Global repos vs national law



A BALANCED WAY FORWARD



Logical and Philosophical Foundations		
Philosophical Theory	Core Concept	Application to State vs. Tech Conflict
Social Contract Theory (<i>Hobbes, Locke, Rousseau</i>)	Individuals surrender certain absolute freedoms to the sovereign state in exchange for peace, security, and the protection of basic rights.	Private tech developers creating untraceable, off-grid networks act outside this contract. Without state authority to maintain order (<i>Hobbesian Leviathan</i>), individual rights become unenforceable amidst chaos.
Frankfurt's Critique of "Bullshit" (<i>Harry Frankfurt</i>)	Differentiates <i>lies</i> (deliberate subversion of known truth) from <i>bullshit</i> (statements made completely indifferent to truth, designed purely for performative posturing).	Accusing democratic states of being inherently "authoritarian" for enforcing law and order is often performative posturing. It ignores complex constitutional mechanics, judicial oversight, and democratic accountability.
Technological Determinism vs. Social Construction	<i>Determinism</i> holds that tech drives human history; <i>Social Construction</i> argues human societies must shape tech according to their values and legal standards.	Rejecting the idea that software architecture ("code is law") is unalterable. Democratic societies retain the sovereign authority to shape, restrict, or direct software development to align with constitutional order.
Popular Sovereignty vs. Silicon Valley Technocracy	Legitimate power flows from the consent of the governed through democratic elections, not from market cap or user count.	Unelected tech executives and platform architects lack democratic mandates. Their commercial or ideological goals cannot override the sovereign legislation passed by elected parliaments.

- **Multidimensional Analysis**
- **1. Social Dimension**
 - **Civil Dissent vs. Crowd Safety:** Off-grid messaging platforms offer citizens alternative communication channels when conventional networks fail or are suspended. However, during high-voltage civil protests, the total absence of content moderation or identity verification can facilitate the rapid spread of panic, unverified rumors, and targeted violence.
 - **Fragmentation of the Digital Public Sphere:** The proliferation of hyper-localized mesh networks creates unmonitored communication pockets. This makes public peace building harder, as rumors can circulate without any ability for public authorities to issue counter-factual clarifications.
- **2. Political Dimension**
 - **State Authority and Monopolization of Violence:** Max Weber famously defined the State as an entity that successfully claims the monopoly on the legitimate use of physical force. If non-state actors deploy tools specifically designed to neutralize law enforcement's monitoring capacities, the state's ability to maintain public order is directly challenged.
 - **Democratic Legitimacy vs. Digital Anarchism:** The debate pits elected political representatives against global digital elites. While democratic governments are held accountable through elections, courts, and legislative oversight, private developers and platform leaders face no such public accountability when their tools spark real-world disorder.
- **3. Legal Dimension**
 - **Statutory Friction (Section 69A vs. Section 79):** The reliance on Section 79(3)(b) notice procedures to disable access to software repositories circumvents the detailed review mechanisms established under Section 69A rules. This creates an ongoing administrative law challenge regarding which legal route is appropriate for software-level restrictions.
 - **Evolution of Proportionality Jurisprudence:** Under the doctrine established in *Anuradha Bhasin*, state restrictions on communication tools must pass a four-step test: legitimate goal, rational connection, necessity (least restrictive measure), and proportionality *stricto sensu*. Determining whether an absolute ban on a mesh application meets this threshold remains a key judicial question.
- **4. Ethical Dimension**
 - **Dual-Use Dilemmas in Code:** Software engineers face an ethical responsibility when building tools with "panic-wipe" or off-grid routing features. While built to protect privacy against authoritarian overreach, these same features hinder legitimate criminal investigations into grave offenses like human trafficking or coordinated violent riots.
 - **Paternalism vs. Public Safety:** Ethics demands balancing the state's protective duty to prevent harm (*salus populi*) against the danger of administrative paternalism, where executive authorities might classify political inconvenience as a "public order" threat.
- **5. International Dimension**
 - **Transnational Digital Sovereignty:** Most major software repositories and social platforms are headquartered in Western jurisdictions, particularly the United States. This geographic asymmetry often leads to conflicts between domestic Indian public order demands and Western liberal tech ideals.
 - **Global Fragmentation (Splinternet):** As developing democracies assert regulatory control over foreign digital platforms and software repositories, global digital architecture is increasingly splitting along national legal boundaries, challenging the original vision of an open global internet.
- **6. Economic Dimension**
 - **Broad Network Shutdowns vs. Targeted App Restrictions:** Broad-brush internet shutdowns cause immense economic damage, disrupting digital payments, gig-economy workers, and e-commerce. Targeted restrictions on specific law-evading applications provide a far less economically disruptive alternative for state authorities managing localized unrest.
 - **Developer Ecosystem Impacts:** Overly broad regulatory action against platform hosts like GitHub risks creating a chilling effect among domestic software developers, potentially hindering the growth of open-source innovation within India's broader tech economy.

- **Strategic Linkages with NCERT Textbooks**
- **Class 11 Political Science: *Indian Constitution at Work***
 - **Chapter 2: Rights in the Indian Constitution:** Directly addresses the fundamental rights guaranteed under Article 19, detailing the mandatory balance between individual liberties and the grounds for "reasonable restrictions" under Article 19(2). This helps answer questions on how individual privacy aligns with state security.
- **Class 11 Political Science: *Political Theory***
 - **Chapter 2: Freedom:** Explains negative versus positive liberty and examines John Stuart Mill's "Harm Principle." This conceptual framework helps evaluate when state intervention in individual expression becomes morally and legally justified.
 - **Chapter 3: Equality & Chapter 10: Development:** Discusses state authority, social order, and the essential role of law in preventing anarchy, offering context for evaluating state power against individual autonomy.
- **Class 12 Sociology: *Social Change and Development in India***
 - **Chapter 6: Social Movements:** Analyzes how modern communication tools alter the scale, speed, and nature of social protest in India.
 - **Chapter 8: Mass Media and Communications:** Details the evolution of media technology from state-controlled broadcasting to decentralized digital networks, highlighting its impact on national integration and public order.

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- **Mapping to the UPSC CSE Syllabus**
 - **GS Paper 2: Governance, Constitution, and Polity**
 - **Fundamental Rights & Reasonable Restrictions:** Article 19(1)(a) vs. Article 19(2); evolving judicial standards from *Shreya Singhal (2015)* to *Anuradha Bhasin (2020)*.
 - **Statutory Bodies & Regulatory Frameworks:** The Information Technology Act, 2000 (specifically Sections 69A and 79); administrative law challenges concerning executive discretion versus judicial oversight.
 - **Role of Non-State Actors:** How global tech platforms and international civil society groups interact with sovereign state institutions.
 - **GS Paper 3: Internal Security, Cyber Infrastructure, and Technology**
 - **Cyber Security Challenges:** The operational security risks posed by unmonitored, end-to-end encrypted, and peer-to-peer off-grid communication channels during violent civil unrest.
 - **Internal Security & Communication Networks:** The role of social media and decentralized messaging apps in accelerating radicalization, mob mobilization, and hybrid warfare threats.
 - **Internet Shutdowns vs. Targeted Countermeasures:** Assessing alternatives to blanket network suspensions under the Temporary Suspension of Telecom Services Rules.
 - **GS Paper 4: Ethics, Integrity, and Aptitude**
 - **Ethical Dilemmas in Governance:** Balancing public safety (*salus populi suprema lex*) against individual freedom of expression and digital privacy.
 - **Corporate Ethics of Big Tech:** The moral responsibilities of software engineers and tech corporations when releasing dual-use, enforcement-evading platforms in sensitive socio-political environments.
 - **Essay and Optional Subjects**
 - **Essay Paper:** Themes around "*Liberty vs. Security in the Digital Age*," "*Technology as a Double-Edged Sword*," or "*Sovereignty in an Interconnected World*."
 - **Political Science & International Relations (PSIR):** State sovereignty theories (Hobbes, Bodin); the decline of state power versus the rise of non-state technical actors.
 - **Law Optional:** Constitutional Law (Articles 19, 21), Administrative Law (Principles of Natural Justice, Procedural Ultra Vires under the IT Act), and Cyber Law.

- **Way Forward and Policy Recommendations**

- **1. Harmonize Sections 69A and 79 of the IT Act**

- The government should issue explicit statutory guidelines clarifying the operational boundary between Section 69A and Section 79(3)(b). When an administrative order effectively bans or blocks an entire application or software repository, it must adhere to the procedural natural justice safeguards built into Section 69A—including written notice, recorded reasons, and review committee oversight—rather than relying solely on quick safe harbor revocations under Section 79.

- **2. Operationalize the Four-Tier Proportionality Test**

- Every regulatory intervention targeting communication platforms should strictly follow the proportionality framework established in *Anuradha Bhasin*:

- **Legitimate Goal:** The order must clearly serve an Article 19(2) ground, such as preserving public order or state security.
- **Rational Connection:** Authorities must show how restricting the specific app directly counters the imminent security threat.
- **Necessity & Least Restrictive Means:** Broad app bans should only be used after demonstrating that less intrusive measures (such as targeted content moderation or localized warnings) would fail.
- **Proportionality Stricto Sensu:** The public order benefit gained must demonstrably outweigh the infringement on public speech and economic activity.

- **3. Establish an Independent Judicial Oversight Mechanism**

- To address concerns about executive overreach, blocking and takedown orders issued during emergencies should be submitted for *ex-post facto* approval to an independent judicial authority or specialized cyber-review tribunal within 48 to 72 hours. This maintains the executive's agility during crisis situations while establishing meaningful judicial accountability.

- **4. Enhance Tactical Law Enforcement Capabilities**

- Rather than relying on broad internet shutdowns or blanket app bans, police and intelligence agencies should upgrade their cyber-forensic capabilities. Investing in advanced, targeted network analysis, localized signal management, and sophisticated threat-monitoring allows law enforcement to isolate bad actors without disabling broader communication platforms for peaceful citizens.

- **5. Engage Tech Communities in "Safety-by-Design" Frameworks**

- The government should foster open dialogue with open-source communities, technical experts, and digital rights groups. Moving toward a "Safety-by-Design" framework encourages developers to build abuse-prevention mechanisms (such as rate-limiting broadcast messages or combating automated spam) directly into decentralized protocols without undermining end-user privacy.

- **UPSC CSE Mains Questions**

- **GS Paper 2 (Polity and Governance)**

- *"Freedom of speech and expression on digital platforms is a fundamental right, but it cannot be an absolute license to undermine public order."* Critically analyze this statement in light of recent judicial decisions regarding content blocking and intermediary liability under the IT Act. **(2023, 15 Marks)**
- Discuss the procedural safeguards mandated by the Supreme Court in the *Shreya Singhal (2015)* judgment regarding web content blocking under Section 69A of the Information Technology Act. To what extent have these safeguards been maintained in recent regulatory actions? **(2021, 10 Marks)**
- Examine the doctrine of proportionality as laid down in *Anuradha Bhasin v. Union of India (2020)*. How does it balance fundamental rights under Article 19 with national security imperatives during communication suspensions? **(2020, 15 Marks)**

- **GS Paper 3 (Internal Security & Cyber Technology)**

- "Decentralized technologies, encrypted communications, and peer-to-peer networks present unique challenges to traditional law enforcement." Evaluate the internal security implications of off-grid messaging apps during civil unrest and suggest balanced regulatory measures. **(2024, 15 Marks)**
- What are the key internal security threats posed by social media platforms and encrypted communication apps? How can state agencies counter these threats without infringing upon citizens' digital privacy? **(2022, 15 Marks)**
- Internet shutdowns are often described as a blunt tool for maintaining law and order. Discuss the economic, social, and administrative impacts of frequent communication suspensions, and explore technical alternatives. **(2019, 10 Marks)**

- **GS Paper 4 (Ethics, Integrity, and Aptitude)**

- You are the District Magistrate of an area experiencing severe communal tension. A crowdsourced, peer-to-peer messaging application with no central server is being used to bypass mobile internet suspensions and coordinate violent gatherings. Describe the ethical dilemmas you face, your administrative response, and how you would balance public safety against civil liberties. **(Case Study - 20 Marks)**



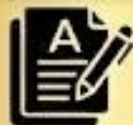
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