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CONTENTS

Judicial Scrutiny of Inventive Step in India: A Case Comment on Pinnacle Engines Inc. v. Assistant Controller of Patents & Designs

Case Details

Title: Pinnacle Engines Inc. v. Assistant Controller of Patents & Designs
Court: Madras High Court
Date of Decision: April 30, 2024
Judge: Hon'ble Mr. Justice Senthilkumar Ramamoorthy
Citation: 2024:MHC:1951
Case Number: (T) CMA (PT) No.17 of 2023

Parties Involved:

The appellants, Pinnacle Engines Inc. (USA) and TVS Motor Company Ltd. (India), are the patent holders seeking protection for their invention related to internal combustion engines. The respondent, the Assistant Controller of Patents & Designs, Chennai, is responsible for examining patent applications. There is no alleged infringer in this case, as the dispute concerns a patent grant rather than infringement. The appellants challenged the rejection of their patent application before the Madras High Court.

Legal Provision Invoked:

The appellants filed their appeal under Section 117-A of the Patents Act, 1970, which provides a mechanism for challenging decisions made by the Controller of Patents. They argued that the rejection of their application did not properly assess the inventive step, as required under Section 2(1)(ja) of the Act.

Relief Sought by Appellants:

The appellants requested the court to **overturn the rejection** of their patent application and direct the Controller to grant the patent. They argued that their invention introduced novel design improvements that were neither anticipated nor rendered obvious by existing prior art references.

Outcome:

The Madras High Court set aside the rejection order, ruling that the Assistant Controller had failed to provide sufficient reasoning. The Court remanded the case for reconsideration by a different officer, instructing that a decision be made within three months.

Background & Technical Context

The invention in question relates to **opposed piston internal combustion engines**, a type of engine where two pistons move towards each other in a single combustion chamber. The key innovation claimed by the appellants is the introduction of non-collinear axes of translation,

which deviates from the traditional collinear design found in most opposed piston engines. By inclining the cylinder bores, the invention creates a V-shaped configuration, which allows for improved space utilization, enhanced combustion efficiency, and a more compact engine design.

Another significant improvement in the claimed invention is the opposite rotation of crankshafts**,** which helps reduce vibrations and improves engine stability. Additionally, the invention introduces a crank offset between each piston and its respective crankshaft, which minimizes mechanical friction and wear, leading to longer engine life and better efficiency. These features were central to the patent claims as they provided significant advantages in automotive applications.

The patent application originally contained 24 claims, but after initial objections from the Patent Office, the appellants amended it to 20 claims, emphasizing the crank offset and opposite crankshaft rotation as distinguishing features. However, the Assistant Controller of Patents rejected the application, arguing that these features were obvious in light of prior arts D1, D3, and D5. While these prior art references described opposed piston engines, they did not disclose the specific combination of non-collinear axes, crank offset, and opposite crankshaft rotation.

The appellants countered this rejection by asserting that their invention addressed key engineering challenges not resolved in prior art, such as better lubrication, improved combustion chamber accessibility, and reduced engine weight. They maintained that none of the cited prior arts individually or collectively suggested their specific configuration, and that their invention provided a distinct and non-obvious improvement over existing technology.

Upon review, the Madras High Court found that the Assistant Controller had failed to provide adequate reasoning for rejecting the patent. The rejection order merely stated that the claimed features were obvious without explaining how they were derived from prior art. Since the prior art did not explicitly disclose the combination of features claimed in the invention, the Court ruled that the patent application required re-examination. However, instead of granting the patent outright, the Court remanded the case for a fresh review, directing that the reconsideration be conducted by a different officer.

This ruling reinforces the principle that patent rejections must be well-reasoned and supported by a detailed prior art analysis. It highlights the importance of ensuring that innovative technical advancements are fairly evaluated, particularly in complex fields such as automotive engineering.

Statement of Facts

The dispute in this case revolves around Pinnacle Engines Inc. and TVS Motor Company Ltd., who sought a patent for an **opposed piston internal combustion engine** with **non-collinear** axes of translation, opposite crankshaft rotation, and a crank offset. The Patent Office, through the Assistant Controller of Patents & Designs, rejected the application, citing a lack of inventive

step, asserting that the claimed features were obvious in light of prior art references D1, D3, and D5.

The appellants argued that their invention represented a **s**ignificant technical advancement over conventional opposed piston engines and that the specific combination of non-collinear axes, crank offset, and opposite crankshaft rotation was not disclosed in any of the cited prior art references. They emphasized that their design improved efficiency, reduced engine size, and enhanced durability, making it a novel and non-obvious innovation.

The cause of action arose when the Patent Office rejected the application despite the appellants amending their claims to better highlight the novel features. The appellants subsequently filed an appeal under Section 117-A of the Patents Act, 1970**,** arguing that the rejection lacked a proper analysis of inventive step. They contended that the Assistant Controller failed to explain how prior art references rendered their invention obvious, and instead merely listed existing technologies without conducting a comparative assessment.

During the lower proceedings, the Patent Office upheld the rejection, maintaining that the claimed modifications were a mere design variation and lacked inventive merit. However, the appellants challenged this conclusion, stating that the Patent Office did not adequately consider the advantages conferred by their invention, including reduced mechanical friction, better lubrication, and improved combustion chamber accessibility.

The appellants sought relief in the form of overturning the rejection order and directing the Controller of Patents to grant the patent. They asserted that their invention met all statutory requirements for patentability and that the Assistant Controller's order was arbitrary and lacked detailed reasoning.

The Madras High Court ruled in favor of the appellants, finding that the rejection order was unreasoned and failed to consider the technical advancements claimed. The Court emphasized that a mere assertion of obviousness without substantive analysis was insufficient grounds **for** rejecting a patent. It set aside the rejection order and directed that the patent application be **re-**examined by a different officer within three months, ensuring a fair and thorough reconsideration.

This case underscores the necessity for comprehensive prior art analysis in patent assessments and highlights the role of the judiciary in ensuring that innovative advancements receive fair evaluation under Indian patent law.

Procedural History (PH)

The case originated when Pinnacle Engines Inc. and TVS Motor Company Ltd. filed their patent application with the **Indian Patent Office** under Application No. **8612/CHENP/2012**. Following a **First Examination Report (FER)** issued in **2018**, the applicants amended their claims in response to objections raised by the examiner regarding lack of inventive step.

Despite these amendments, the Assistant Controller of Patents rejected the application on September 24, 2020, citing prior art references D1, D3, and D5.[1]

The appellants subsequently filed an appeal before the Madras High Court under Section 117-A of the Patents Act, 1970, arguing that the rejection order lacked proper reasoning and failed to evaluate the novelty of the claimed invention. They asserted that the Patent Office did not sufficiently analyze the technical advancements and advantages offered by their invention.

The Madras High Court reviewed the case and found that the Assistant Controller's rejection order did not provide a detailed assessment of how the cited prior art rendered the invention obvious. The Court ruled that the rejection was unreasoned and arbitrary, setting aside the decision. However, instead of granting the patent outright, the Court remanded the case for reconsideration by a different officer, instructing that a final decision be made within **three months**.

This procedural journey highlights the significance of thorough analysis in patent examination and the judiciary's role in ensuring fairness in the assessment of technical innovations.

Issues

Substantive Issues:

1. Whether the claimed invention satisfies the **inventive step** requirement under **Section 2(1)(ja) of the Patents Act, 1970**, considering the cited prior art references.
2. Whether the combination of **non-collinear axes of translation, opposite crankshaft rotation, and crank offset**constitutes a patentable improvement over conventional opposed piston engines.
3. Whether the Assistant Controller of Patents correctly applied the principles of **novelty and non-obviousness** in evaluating the patent application.

Procedural Issues:

1. Whether the rejection order issued by the **Assistant Controller of Patents** was legally sufficient, given that it lacked a **detailed reasoning and comparative assessment** of prior art.
2. Whether the **misinterpretation of prior art references** (D1, D3, and D5) led to an erroneous rejection of the patent application.
3. Whether the **failure to provide proper justification for rejecting the inventive step argument** constitutes a procedural error requiring reconsideration of the patent application.

[1] Indian Patent Office, 'Patent Examination Guidelines' (2021) https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/Patent_Examination_Guidelines.pdf accessed 10 March 2025.

Judgment

Precedents Considered: The court referred to *Novartis AG v. Union of India & Others*, emphasizing that an invention must demonstrate significant technical advancement beyond prior art to be patentable. The case reaffirmed that minor modifications lacking inventive step do not qualify for patent protection. Additionally, the court considered *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*[2], which highlighted that obviousness must be assessed from the viewpoint of a skilled person in the field, requiring a clear motivation from prior art.

Issue-by-Issue Examination:

1. Inventive Step and Patent Validity:
    - *Appellants' Position:* The appellants asserted that their invention introduced a novel combination of non-collinear axes of translation, opposite crankshaft rotation, and crank offset, which was neither anticipated nor rendered obvious by cited prior art.[3]
    - *Respondent's Position:* The Patent Office contended that the modifications were well-known in the field and did not constitute an inventive step.
    - *Court's Analysis:* The court found that the rejection order lacked a comparative assessment of prior art and failed to explain why the claimed invention would be obvious to a skilled person. The absence of explicit disclosure of the claimed combination in prior art suggested that the invention could not be deemed obvious without further analysis.
2. Procedural Adequacy of the Rejection Order:
    - *Appellants' Position:* The appellants contended that the Assistant Controller's order lacked detailed reasoning and failed to provide a structured justification for rejection.
    - *Respondent's Position:* The respondent maintained that prior art sufficiently demonstrated the lack of inventive step.
    - *Court's Analysis:* The court found that the rejection order was arbitrary and did not meet the legal standard for patent examination. It emphasized that patent

[2] *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* [1979] 2 SCC 511 (SC).

[3] European Patent Office (EPO), 'Inventive Step Guidelines' https://www.epo.org/law-practice/legal-texts/html/guidelines/e/g_vii_5.htm accessed 12 March 2025.

rejection orders must contain clear reasoning and comparative analysis to ensure fairness and transparency.

3. Procedural Errors and Patent Examination Standards:
    - The court noted that procedural lapses in the examination process affected the fair evaluation of the invention. Examiners must provide a step-by-step reasoning rather than assume obviousness based on broad similarities.
    - The court reaffirmed that a fair patent assessment requires considering whether a claimed modification significantly advances technology rather than being a minor variation of existing knowledge.

Court's Decision:

1. Patent Validity: The court did not conclusively rule on the validity of the patent but emphasized that further detailed examination was necessary.
2. Remedies Ordered: The court set aside the rejection order and remanded the case for reconsideration by a different officer to ensure an unbiased evaluation.
3. Procedural Correction: The court mandated that the Patent Office issue a fresh decision within three months, incorporating a detailed comparative analysis of prior art.

The judgment reinforced the necessity of reasoned decision-making in patent examination and emphasized that patent authorities must thoroughly analyze inventive step claims before rejecting applications.

Holding

The Madras High Court held that the rejection order issued by the Assistant Controller of Patents & Designs was procedurally flawed and lacked a well-reasoned explanation for the alleged lack of inventive step. While the court did not directly grant the patent, it determined that the rejection was unjustified due to inadequate assessment and reasoning. The court ruled that a reconsideration of the patent application was necessary, ensuring a fresh and unbiased evaluation.

The court reiterated that patent examiners must **conduct a proper legal and technical analysis**, explicitly comparing the claimed invention with prior art, and not merely assume obviousness based on superficial similarities. It emphasized that the assessment of inventive step must be rigorous and supported by clear reasoning rather than broad assertions.

Additionally, the court acknowledged that the patent application had been pending for a considerable period and that procedural delays should not impede genuine innovation. It highlighted that the reconsideration must be conducted fairly and expeditiously, ensuring that patent examination standards are upheld while providing due consideration to technological advancements. The judgment reinforced the need for transparency in decision-making and underscored the role of patent authorities in fostering an environment that encourages research and development.

By setting aside the rejection and ordering a fresh review, the court reinforced the principle that **decisions in patent matters must be backed by thorough reasoning and an evidence-based approach** rather than conclusory statements. The ruling serves as a crucial reminder that procedural fairness and substantive legal analysis must go hand in hand in intellectual property rights adjudication.

Rule of Law/Legal Principle

The court applied key legal principles from the **Patents Act, 1970**, particularly **Section 2(1)(ja)**, which defines an inventive step as a **technical advancement or an economic significance** that is not obvious to a skilled person in the field. The court reaffirmed that merely combining known features does not negate an invention's novelty unless prior art explicitly teaches or suggests such a combination.

The distinction between **novelty and inventive step** was emphasized, clarifying that an invention must not only be new but also **non-obvious**. The court stressed that **obviousness must be assessed objectively**, determining whether a skilled person, upon reviewing prior art, would have been led to the claimed invention without undue effort. Mere aggregation of existing elements does not qualify as an inventive step unless it leads to a **new and unexpected technical advantage**.

The court relied on Novartis AG v. Union of India[4], where it was held that incremental innovations must demonstrate substantial improvement in efficacy or functionality. It also referred to Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, which established that obviousness must be determined based on whether a skilled practitioner would have found the modification apparent. Furthermore, the Windsurfing International Inc. v. Tabur Marine (Great Britain) Ltd[5]**.** test for obviousness was considered, which involves:

1. Identifying the person skilled in the art and their general knowledge.
2. Determining the inventive concept within the claim.
3. Analyzing the differences between prior art and the invention.
4. Assessing whether these differences would have been obvious to a skilled person.

The ruling reinforced that patent examination must be fact-driven, ensuring that prior art analysis explicitly identifies teachings or suggestions that would lead a skilled person to the claimed invention. The decision also addressed **claim construction principles**, asserting that claims must be **interpreted in their full context** rather than arbitrarily broadened or narrowed.

Reasoning

[4] *Novartis AG v. Union of India* [2013] 6 SCC 1 (SC).

[5] *Windsurfing International Inc. v. Tabur Marine (Great Britain) Ltd* [1985] RPC 59 (CA).

The court's reasoning in this case focused on three key areas: claim construction, application of law to facts, and policy considerations.

1. **Claim Construction:**
    - The court emphasized that **patent claims must be read in light of the complete specification**, ensuring that the claimed invention is interpreted fairly and in accordance with its technical disclosure. It criticized the Assistant Controller for failing to properly assess how the claimed elements—such as the non-collinear axes of translation, opposite crankshaft rotation, and crank offset—differed from prior art.
    - The ruling reaffirmed that **claims should not be narrowly construed to reject an invention outright**, nor should they be arbitrarily broadened to include elements that are not explicitly disclosed in the patent.
2. **Application of Law to Facts:**
    - The court applied **Section 2(1)(ja) of the Patents Act, 1970**, stating that the inventive step requirement necessitates a **technical advancement** that is not obvious to a person skilled in the art.
    - It found that the Assistant Controller had **failed to demonstrate how the claimed invention was obvious**based on prior art. The court pointed out that the rejection lacked a structured, comparative analysis explaining why a skilled person would have been led to combine the cited prior art elements in the same manner as the appellants' invention.
    - The court held that the **mere existence of similar prior art does not automatically render an invention obvious**; rather, there must be an explicit motivation, suggestion, or teaching in prior art that leads a skilled person to make the claimed modifications.[6]
3. **Policy Considerations:**
    - The ruling underscored the importance of **balancing patent rights with public interest**. The court acknowledged that while patents should not be granted for trivial modifications, **genuine technological advancements must be recognized and protected** to incentivize innovation.
    - The decision reinforced that **procedural fairness in patent examination is crucial** for maintaining confidence in the intellectual property system. The court noted that an improperly reasoned rejection discourages investment in research and development, ultimately hindering technological progress.

[6] Christopher Wadlow, *The Law of Passing-Off: Unfair Competition by Misrepresentation* (5th edn, Sweet & Maxwell 2016).

- It emphasized that the **patent system should not stifle innovation through arbitrary rejections**, as doing so would **discourage inventors from pursuing novel solutions to existing technological challenges**.

The court's reasoning, therefore, was centered on ensuring that **inventive step assessments are conducted rigorously, transparently, and in accordance with established legal principles**. By setting aside the rejection order and mandating a fresh review, the judgment reinforced the principle that **intellectual property rights must be evaluated fairly, ensuring that patent protection is granted only to deserving innovations**.

Concurring/Dissenting Opinions

The case was adjudicated by a **single-judge bench**, and as such, there were no separate concurring or dissenting opinions. However, the judgment implicitly addressed potential alternative perspectives that could arise in similar cases concerning **claim construction, prior art analysis, and inventive step evaluation**.

While the court found that the **Assistant Controller had failed to provide adequate reasoning** for rejecting the patent, an alternative viewpoint might have emphasized that **incremental advancements** in known technologies should be subject to stricter scrutiny to prevent overbroad patent monopolies. A more conservative approach to patentability could argue that the modifications in the claimed invention—such as **the crankshaft orientation and non-collinear axes of translation**—do not significantly depart from known techniques and should not merit patent protection.

On the other hand, a stronger pro-innovation stance might argue that **any technical improvement, regardless of scale, contributes to industrial progress** and should be encouraged through patent protection, provided it meets statutory requirements. This perspective would stress that the **balance between innovation and preventing undue monopolization** should favor granting patents where possible, rather than imposing excessively high thresholds for inventive step.

Although no formal dissent existed in this case, these differing interpretations underscore the ongoing debate in **intellectual property law** regarding the scope and limits of patentability, particularly in rapidly evolving technological fields.

Critical Evaluation

The judgment in *Pinnacle Engines Inc. v. Assistant Controller of Patents & Designs* presents a well-reasoned critique of procedural shortcomings in patent examination. One of its greatest strengths lies in its emphasis on reasoned decision-making. The court correctly identified that the Assistant Controller had failed to provide a structured and analytical justification for rejecting the patent application. By highlighting this deficiency, the ruling reinforces the

principle that patent authorities must **articulate clear and legally sound reasons** when assessing inventive step.

Another strength of the judgment is its alignment with **established patent law principles**. The court reaffirmed that obviousness cannot be presumed merely because elements of an invention exist in prior art. Instead, it must be demonstrated that a person skilled in the art would find it obvious to combine such elements in the claimed manner. This approach adheres to global patent[7] law standards, including the Windsurfing International Inc. v. Tabur Marine testand the Novartis AG v. Union of India ruling, ensuring that inventive step assessments are rigorous and legally sound.

However, a notable limitation of the judgment is that it did not conclusively determine whether the claimed invention meets the inventive step requirement. By remanding the case for reconsideration rather than issuing a definitive ruling, the court extended the uncertainty surrounding the patent's fate. While this ensures procedural fairness, it also leaves room for prolonged delays, which can **impact the commercial viability of innovative technologies**.

From a technical perspective, the ruling does not delve deeply into whether the claimed modifications such as the non-collinear axes of translation and opposite crankshaft rotation amount to a significant technological advancement. While the court rightly pointed out that the rejection order lacked a detailed analysis, it did not provide a robust independent evaluation of how the invention improves upon existing designs. A more comprehensive technical assessment could have strengthened the judgment's impact on clarifying the threshold for inventive step in mechanical engineering patents.

The broader impact of this ruling on **innovation and competition** is significant. By emphasizing the need for **reasoned patent examination**, the judgment discourages arbitrary rejections and ensures that genuine innovations receive due consideration. This creates a more predictable and transparent patent system, fostering greater investment in research and development. At the same time, the ruling does not automatically endorse all incremental advancements as patentable, maintaining a balance between incentivizing innovation and preventing monopolistic overreach.

In conclusion, the judgment serves as an important precedent for improving the quality of patent examination in India. While its procedural fairness and adherence to legal principles are commendable, a more substantive analysis of the technical merits of the invention would have further strengthened its impact. Nonetheless, the ruling contributes to a more robust and transparent intellectual property framework, ultimately benefiting innovators, businesses, and the broader technology sector.

[7] World Intellectual Property Organization (WIPO), 'Patentability Requirements' https://www.wipo.int/patents/en/ accessed 12 March 2025.

EXPLORING JUDICIAL PERSPECTIVES ON LGBTQ+ RIGHTS, SAME-SEX MARRIAGE AND THEIR SOCIETAL IMPLICATIONS IN INDIA

Abstract

This article examines the evolving constitutional treatment of LGBTQ+ rights in India with particular reference to the Supreme Court's refusal to extend legal recognition to same-sex marriage and joint adoption by queer couples. Building on the landmark decisions in *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India*, the paper analyses the recent Constitution Bench judgment in *Supriyo @ Supriya Chakraborty v. Union of India*, focusing on how the Court balances the rights to equality, dignity, privacy and choice of partner against the legislature's primary role in defining the legal framework of marriage and adoption. The study critically engages with the child-welfare arguments raised by institutions such as the National Commission for Protection of Child Rights (NCPCR), and evaluates the extent to which social-science research on children raised by same-sex parents has influenced judicial reasoning. Methodologically, the article relies on doctrinal analysis of constitutional provisions, statutory schemes under the Juvenile Justice (Care and Protection of Children) Act and the Central Adoption Resource Authority (CARA) Regulations, as well as secondary literature and public opinion surveys. It argues that while the Court has robustly affirmed the fundamental rights of LGBTQ+ persons in the domains of decriminalisation, identity and privacy, its deference to the legislature on marriage and adoption leaves significant gaps in protection that must be addressed through carefully calibrated legislative and policy reform.

Keywords: LGBTQ+, same-sex marriage, adoption, child welfare, Indian Supreme Court, constitutional law

I. Introduction

Over the past decade, Indian constitutional jurisprudence has undergone a profound transformation in its approach to sexuality and gender identity. The recognition of gender identity as intrinsic to personal autonomy and dignity in *National Legal Services Authority v. Union of India*[1] and the decriminalisation of consensual same-sex relations between adults in *Navtej Singh Johar v. Union of India*[2] marked a decisive break from the criminalisation embodied in Section 377 of the Indian Penal Code. Together, these cases signalled a judicial willingness to re-examine long-standing norms relating to sexuality and citizenship through the lens of equality, privacy and human dignity.

However, the legal recognition of same-sex relationships remains incomplete. While criminal penalties for consensual same-sex conduct have been removed, same-sex couples do not yet enjoy the full range of rights associated with family life, including marriage, joint adoption, succession and spousal benefits. This gap became especially visible in the litigation culminating in *Supriyo @ Supriya Chakraborty v. Union of India*[3], in which the petitioners sought recognition of a right to marry under the Special Marriage Act and related entitlements flowing from that status.

A central strand of opposition to the extension of marriage and adoption rights to queer couples has been framed in terms of child welfare and societal impact. Institutions such as the National Commission for Protection of Child Rights (NCPCR) have argued that joint adoption by same-sex couples could adversely affect the psycho-social development of children. At the same time, sections of civil society and religious organisations have invoked notions of the "Indian family unit" and cultural tradition in resisting legal reform.[4]

This article seeks to situate these debates within a doctrinal framework. It asks how the Supreme Court has conceptualised the rights of LGBTQ+ persons in relation to marriage and family, how it has treated child-welfare arguments, and what implications this has for future legislative and policy choices. The analysis proceeds through a close reading of constitutional text, statutory schemes and leading judgments, supported by select social-science literature and opinion data. The aim is not to endorse or reject any particular policy position in the abstract, but to evaluate the coherence of the existing legal framework with the constitutional commitments articulated by the Court itself.

[1] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438 (India)

[2] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

[3] Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

[4] Unpacking Indian Supreme Court's Verdict on SameSex Marriage, AL JAZEERA (Oct. 2023)

II. Constitutional and Statutory Framework on LGBTQ+ Rights

A. Constitutional Guarantees

The constitutional foundation for LGBTQ+ rights in India lies primarily in Articles 14, 15, 19 and 21 of the Constitution. Article 14 guarantees equality before the law and equal protection of the laws, prohibiting arbitrary and unreasonable classifications. Article 15(1) forbids discrimination on grounds including sex, a term that the Supreme Court has interpreted in a broad and purposive manner to include sexual orientation and gender identity.[5] Article 19(1) protects various freedoms, including the freedom of expression and association, while Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.

In *Justice K.S. Puttaswamy v. Union of India*,[6] the Supreme Court recognised the right to privacy as an intrinsic part of the right to life and personal liberty, grounding it in dignity, autonomy and the ability to make intimate decisions free from unwarranted state interference. This understanding of privacy provided an important basis for the subsequent recognition of sexual orientation and gender identity as aspects of personal autonomy that merit constitutional protection. It also reinforced the idea that choices about intimate relationships and partners fall within a protected private sphere, subject only to reasonable, proportionate limitations.

B. From Criminalisation under Section 377 to Decriminalisation

Section 377 of the Indian Penal Code, a colonial-era provision, penalised "carnal intercourse against the order of nature" with imprisonment. For much of independent India's history, this provision was used to stigmatise and criminalise consensual same-sex relations. After a protracted litigation trajectory involving the *Naz Foundation* case in the Delhi High Court[7] and the Supreme Court's decision in *Suresh Kumar Koushal v. Naz Foundation*,[8] the matter was finally settled in *Navtej Singh Johar*.[9]

In *Navtej Singh Johar*, a Constitution Bench unanimously held that Section 377 was unconstitutional in so far as it criminalised consensual sexual conduct between adults in private. The Court grounded its reasoning in Articles 14, 15 and 21, emphasising the intrinsic worth of every individual, the right to choose a partner and the impermissibility of criminal law being used to enforce majoritarian morality upon minorities. Importantly, the judgment acknowledged that sexual orientation is an innate attribute of identity and that denying LGBTQ+ persons the ability to form intimate relationships on equal terms was incompatible with constitutional morality.[10]

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[5] Nat'l Legal Servs. Auth., (2014) 5 S.C.C. at 493 ¶ 72 (India).

[6] Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

[7] Naz Found. v. Gov't of NCT of Delhi, 2009 S.C.C. OnLine Del. 1762, 160 (2009) 111 D.L.T. 1 (India)

[8] Suresh Kumar Koushal v. Naz Found., (2014) 1 S.C.C. 1 (India).

[9] Navtej Singh Johar, (2018) 10 S.C.C. 1 (India)

[10] Id. (discussing constitutional morality under arts. 14, 15 & 21)

C. Statutory Schemes on Child Protection and Adoption

While the criminal law has been reoriented towards decriminalisation, the statutory framework governing child protection and adoption remains more cautious in its approach to non-traditional family forms. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) establishes a comprehensive regime for the care, protection and adoption of children in need. Adoption under the JJ Act is operationalised through regulations framed by the Central Adoption Resource Authority (CARA), which set out eligibility criteria for prospective adoptive parents, procedures, and safeguards.[11]

CARA's regulations historically differentiated between married couples and single individuals, reflecting an assumption that the "ideal" adoptive environment is a heterosexual marital household. Certain provisions, such as restrictions on single males adopting girl children, have been justified on the ground of minimising risk and ensuring the best interests of the child. With the emergence of openly queer individuals and couples seeking to adopt, questions have arisen as to whether regulatory distinctions that disadvantage them are compatible with Article 14 and the anti-discrimination mandate in Article 15.[12]

Institutions like NCPCR have intervened in litigation to argue that recognising joint adoption rights for same-sex couples would be premature in the Indian socio-cultural context and could endanger children's development. These submissions draw on select social-science studies and on broader concerns about the level of social acceptance of non-heteronormative families. The Supreme Court's recent jurisprudence on marriage equality has had to grapple with these questions in determining the contours of constitutional protection.[13]

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[11] The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016 (India); Central Adoption Resource Authority (CARA) Regulations, 2022 (India)

[12] Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (India) (discussing CARA Reg. 5(3) and art. 14).

[13] Nat'l Comm'n for Protection of Child Rights, Intervention Petition in Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

III. The Supreme Court's Jurisprudence on Same-Sex Relationships and Marriage

A. Recognition of Gender Identity and Sexual Orientation

In *National Legal Services Authority v. Union of India*,[14] the Supreme Court recognised that transgender persons have a right to self-identify their gender and directed the State to treat them as a socially and educationally backward class for the purposes of reservations and affirmative measures. The Court held that gender identity forms an integral part of personal autonomy and dignity under Articles 14, 15, 16 and 21. This judgment marked the first time that the Court explicitly acknowledged that constitutional guarantees extend beyond the gender binary of male and female as traditionally understood.

The reasoning in NALSA laid important groundwork for *Navtej Singh Johar*, where the Court held that discrimination on the basis of sexual orientation violates Articles 14, 15 and 21. In *Navtej*, the judges stressed that the Constitution protects the rights of sexual minorities irrespective of prevailing social attitudes, and that constitutional morality must prevail over popular morality. The judgment also underscored the link between sexual autonomy, privacy and the ability to form intimate relationships with a partner of one's choice.[15]

B. Choice of Partner and the Right to Marry

Even before the specific issue of same-sex marriage arose, the Supreme Court had recognised the centrality of choice of partner to personal liberty and dignity. In *Shakti Vahini v. Union of India*,[16] the Court held that adult individuals have a right to choose their life partners and that any attempt by community bodies, such as khap panchayats, to interfere with such choices is unconstitutional. Similarly, in *Lata Singh v. State of Uttar Pradesh*[17] and *Arumugam Servai v. State of Tamil Nadu*,[18] the Court condemned honour-based violence directed at inter-caste and inter-community couples and affirmed that the State has a duty to protect such unions.

These judgments conceptualise marriage and intimate partnership as domains in which the individual's autonomy to choose a life partner must be respected, subject only to narrowly tailored limitations. However, they arose in contexts where the couples were otherwise eligible to marry under existing personal or statutory law. The question in the marriage equality litigation was whether this line of reasoning extends to couples who are structurally excluded from marriage by the definition of the institution itself.[19]

C. The Marriage Equality Judgment

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[14] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438 (India).

[15] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

[16] Shakti Vahini v. Union of India, (2018) 7 S.C.C. 192 (India).

[17] Lata Singh v. State of Uttar Pradesh, (2006) 5 S.C.C. 475 (India)

[18] Arumugam Servai v. State of Tamil Nadu, (2011) 6 S.C.C. 405 (India)

[19] Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

In *Supriyo @ Supriya Chakraborty v. Union of India*,[20] a Constitution Bench considered a batch of petitions seeking legal recognition of same-sex marriage, primarily through an interpretation of the Special Marriage Act. The petitioners argued that denying same-sex couples access to civil marriage violated their rights to equality, non-discrimination, dignity, privacy and choice of partner.

They contended that once the Court had recognised LGBTQ+ persons as full rights-bearing citizens, excluding them from marriage amounted to an impermissible constitutional under-classification.

A majority of the Bench declined to read same-sex couples into the Special Marriage Act or to otherwise grant them a fundamental right to marry. The judges emphasised that defining and restructuring the institution of marriage implicated complex policy choices, including questions of personal law, and lay primarily within the domain of Parliament and the State legislatures. While affirming that queer persons are entitled to form stable relationships and cohabit without fear of criminal sanction, the Court held that it could not, through judicial interpretation, create a parallel legal regime of same-sex marriage.[21]

At the same time, the Court examined the regulatory framework on adoption, including CARA's provisions that permitted single individuals, but not unmarried couples, to adopt. Some members of the Bench took the view that excluding unmarried couples in general—and queer couples in particular—from joint adoption lacked a rational nexus with the best interests of the child, especially given the absence of empirical evidence demonstrating that only married heterosexual couples can provide stability. Others accepted the need for caution and deferred to the executive in designing an adoption framework that takes into account child-welfare considerations in a holistic manner.[22]

The result was a judgment that strongly reiterated the fundamental rights of LGBTQ+ persons while stopping short of granting them marital or joint adoption rights. The Court left the matter to the democratic process, urging the Union and States to consider appropriate legislative and policy measures to address the concerns raised.[23]

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[20] Id

[21] Id. (majority op. distinguishing between eligibility under existing marriage law and structural exclusion)

[22] Id. (Chandrachud C.J. op.) (holding CARA Reg. 5(3) indirectly discriminates against queer couples).

[23] Id. (leaving recognition of marriage to Parliament and State legislatures).

IV. Child Welfare, Adoption by Queer Couples, and Societal Concerns

A. NCPCR's Submissions and Child-Welfare Arguments

In the course of debates on same-sex marriage and adoption, the National Commission for Protection of Child Rights has played a prominent role in articulating reservations about recognising joint adoption by same-sex couples. The Commission has contended that, in the present socio-cultural environment, children raised by such couples may face difficulties in terms of gender-role identification, social acceptance and psychological adjustment. It has also suggested that existing adoption frameworks, including provisions that treat single male adoptive parents differently from others, could be destabilised if joint adoption by same-sex couples is permitted without careful consideration.[24]

These submissions are grounded in the principle that the best interests of the child should be the paramount consideration in any adoption decision. The NCPCR has argued that, given the absence of long-term Indian data on outcomes for children raised by same-sex parents, it may be risky to extend adoption rights without further study. Such positions reflect a cautious approach that emphasises potential risks and calls for gradualism in reform.

B. Empirical Research on Children with Same-Sex Parents

Internationally, social-science research on children raised by same-sex parents has produced varied findings. Some studies suggest that, when controlling for socio-economic and family stability factors, children of same-sex parents do not differ significantly from those of different-sex parents on measures such as educational achievement and mental health. Other studies have claimed that there may be higher rates of certain difficulties, such as depression or family instability, among individuals who have spent part of their childhood in households headed by a same-sex couple.[25]

Many of these studies have been subject to methodological debate, including concerns about sample size, selection bias, and the difficulty of isolating the effect of parental sexual orientation from broader factors such as family disruption, stigma and economic insecurity. In the Indian context, robust, large-scale empirical research on the outcomes of children raised by queer parents is still limited, which complicates reliance on foreign studies conducted in very different social and legal environments. Against this backdrop, courts and policymakers must be careful to interpret empirical claims with appropriate caution, neither ignoring them nor treating them as conclusively determinative.[26]

C. Public Opinion and Societal Acceptance

Public attitudes towards homosexuality and same-sex relationships in India have shifted significantly over the past few decades, but remain heterogeneous. Longitudinal survey projects

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[24] Nat'l Comm'n for Protection of Child Rights, supra note 13.

[25] Paul Sullins, Invisible Victims: Delayed Onset Depression Among Adults with SameSex Parents, 2015 DEPRESSION RES. & TREATMENT 1; AM. ACAD. OF PEDIATRICS, TECHNICAL REPORT: COPARENT OR SECONDPARENT ADOPTION BY SAMESEX PARENTS, 109 PEDIATRICS 339 (2002)

[26] See supra note 25

such as the World Values Survey and national-level youth attitude surveys indicate a decline in the proportion of respondents who view homosexuality as "never justifiable" and an increase, albeit modest, in those who believe same-sex relationships should be accepted by society. At the same time, large segments of the population continue to express discomfort or opposition, especially when questions are framed in terms of marriage or parenting.[27]

These mixed attitudes are relevant because they inform the social context in which LGBTQ+ persons live, raise families and seek legal recognition. Lack of social acceptance can itself be a source of vulnerability for children in queer households, quite apart from any inherent issues with family structure. From a constitutional perspective, however, the fact that a minority is unpopular or misunderstood does not, by itself, justify differential treatment. The challenge for lawmakers is to design frameworks that protect vulnerable children while ensuring that constitutional guarantees are not subordinated to prevailing prejudices.[28]

D. Assessing the Justification for Differential Treatment

From the standpoint of equality under Article 14, any legal distinction between heterosexual and queer couples in the domain of adoption must satisfy the tests of intelligible differentia and rational nexus to a legitimate objective. Protecting the best interests of the child is undoubtedly a legitimate objective. The question is whether blanket exclusions of certain categories of prospective parents are a proportionate means of achieving that objective, particularly in light of evolving evidence and jurisprudence affirming the dignity and capabilities of LGBTQ+ persons.[29]

One possible approach is to shift the focus from status-based exclusions to individualised assessments. Instead of categorically barring certain types of couples from adopting, authorities could evaluate each application on case-specific criteria related to stability, caregiving capacity and the particular needs of the child. This would allow genuine child-welfare concerns to be addressed without presuming that all queer couples are, as a class, less capable of providing a nurturing environment. Such a shift would also be more consistent with the Supreme Court's broader jurisprudence, which emphasises individual dignity, autonomy and non-stereotyping.[30]

At the same time, it is legitimate for legislators and regulators to proceed with care, especially in the absence of extensive domestic empirical data. The balance to be struck is between necessary caution and unjustified delay. Courts, for their part, can continue to scrutinise adoption and family-law frameworks to ensure that distinctions drawn are based on evidence and constitutional principles rather than on generalised fears or moral disapproval.[31]

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[27] WORLD VALUES SURVEY ASS'N, WORLD VALUES SURVEY, WAVE 7: 2017–2022, INDIA COUNTRY DATA (2022),

[28] Navtej Singh Johar, (2018) 10 S.C.C. at 121–22 (India) (holding constitutional morality must prevail over popular morality)

[29] E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3 (India); Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India)

[30] Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (Chandrachud C.J. op.) (endorsing individualised, nonstereotypical assessment in adoption)

[31] Id. (recognising that marriage law reform is primarily for the democratic process, subject to judicial review)

V. Conclusion

The trajectory of Indian constitutional jurisprudence on LGBTQ+ rights reveals a complex interplay between recognition and restraint. On the one hand, judgments such as NALSA and *Navtej Singh Johar* have firmly established that sexual orientation and gender identity are integral aspects of personhood protected under the Constitution. They affirm that LGBTQ+ persons are entitled to live with dignity, free from criminalisation and arbitrary discrimination. On the other hand, the Supreme Court's decision in *Supriyo @ Supriya Chakraborty* demonstrates a marked reluctance to extend this recognition into the domain of civil marriage and joint adoption, reflecting concerns about institutional competence and democratic legitimacy.[32]

Child welfare has emerged as a central axis in this debate. Institutional actors like NCPCR, along with segments of civil society, argue that India should be cautious in reshaping family law, particularly where children are concerned. While these concerns cannot be dismissed, they must be evaluated in light of both available evidence and constitutional commitments to equality and non-discrimination. Blanket exclusions of queer couples from adoption or marriage-based entitlements risk entrenching stigma and denying children and adults alike the benefits of family stability and legal protection.[33]

Going forward, meaningful progress will likely depend on a combination of judicial vigilance and legislative initiative. Parliament and State legislatures are best placed to conduct detailed consultations, commission context-specific research and craft nuanced reforms to the JJ Act, CARA regulations and marriage-related statutes. Courts, meanwhile, can continue to ensure that such frameworks conform to constitutional principles, rejecting classifications that rest on stereotypes or unsubstantiated assumptions.[34]

Ultimately, the question is not whether Indian law should replicate foreign models of marriage equality, but how it can evolve in a manner that honours the Constitution's guarantees while taking seriously the welfare of children and the realities of Indian society. A carefully calibrated, evidence-informed approach to recognising diverse family forms—including those formed by LGBTQ+ persons—offers the most promising path towards reconciling these imperatives.

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[32] Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

[33] See Navtej Singh Johar, (2018) 10 S.C.C. 1 (India); Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (India).

[34] Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (India) (directing Union and States to consider appropriate legislative and policy measures)

COPYRIGHT CHALLENGES IN THE ADAPTATION OF MANGA TO ANIME AND THE LEGAL IMPLICATIONS OF FAN-CREATED CONTENT

Abstract

This paper examines the copyright challenges arising when Japanese manga are adapted into anime and when fans create derivative works such as fansubs, scanlations, fan fiction, fan art, and fan-made episodes. It first analyses adaptation rights under Japanese copyright law, including Article 27 on adaptation and the treatment of anime as derivative works, and considers regional differences through instruments like the Berne Convention and enforcement initiatives such as the Manga Anime Guardians Project. The paper then explores the legal status of fan-created content, discussing its classification as unauthorized derivative works, key disputes involving DMCA takedowns and high-profile cases, and the range of industry responses from strict enforcement to tolerated fan activity. A further section assesses fair use and analogous doctrines, focusing on transformation, purpose, extent of copying, and market impact in U.S. and Japanese practice. The paper concludes by arguing for a balanced approach that protects original rights while accommodating non-commercial fan creativity

Introduction

Manga and Anime originated in Japan and their fan following is reaching almost every continent worldwide due to the uniqueness of animation and attractive stories. These two kinds of Japanese entertainment have some similarities in visual representation and storytelling techniques while having several differences in the case of the medium of representation and production method. Manga illustrates Japanese comics offering action-packed adventures, and romance through distinct characters published in typically black and white except in special editions. On the other hand, Anime is the adaptation of a Manga series including mature themes and complexities within the characters. Anime and manga both are the representatives of Japanese niche culture from past decades and manga is adapted frequently into anime to reach a wider audience. A single artist creates manga called a mangaka while anime is made with team efforts of voice-over artists, animators and producers[1]. This adaptation process of manga to anime faces challenges and complexities in intellectual property rights, licensing, studios, and publishers. This essay investigates copyright issues involved in the transformation within legal implications and fan-

[1]Hindustantimes.com. 2023. Understanding Japanese Entertainment: The Difference between Anime and Manga.]

created content. The first section of the study will address the legal affirmation of adaptation rights and an overview of international as well as Japanese copyright regulations. The next part of the essay will delve into the significance of anime culture and the legal implications of fan-created content such as fan actions, and fan-made episodes for industry responses. From the findings of these two sections, the third section will represent the impact of fair use of original content for promoting anime and manga globally rather than causing harm to Japanese culture.

Section 1: Adaptation Rights and Copyright in Anime

Overview of Adaptation Rights and the adaptation process from manga to anime

The term ‘adaptation’ in the lens of copyright laws refers to transforming an existing work into a new form by maintaining the specification of the original contents. In the case of creative industries such as film, music, animation, and art domains similar works are represented to audiences in different formats. The intellectual property law (IPR) controls the rights of creators in using, modifying, and repurposing original content. The basic concern of copyright law is to protect the specific idea from the creation of the creator from unauthorized access. The most difficult aspect of applying copyright law in adaptation is to keep it within the line of ‘copyright infringement’ that refers to the illegal distribution of a copyrighted work without authorization. The adaption of manga into anime is practiced through a few stages such as scriptwriting, character development, and storyboarding followed by animation requiring careful consideration of strict copyrights. The enforcement of adaptation rights receives legal challenges due to easy access to the internet resulting in unauthorized adaptation and distribution. Article 27 of the Japanese copyright law adheres to the right of adaptation stating that the copyright holder holds exclusive rights to translate, dramatize, and perform other modifications[2]. This legal framework fosters the necessity for careful negotiation between animators and mangaka to ensure that the adaption remains faithful. Therefore, the animating team of anime often collaborates with mangaka to ensure the fidelity of the actual series including distribution.

Copyright Protection for Anime as a Derivative Work

[2] Iiprd.com. 2023. IP Issues in The World of Japanese Sequential Art – Manga.

In the context of the Japanese Copyright Act, derivative work means a new work based on one or more of the existing protection works. It contains an adaptation in the form of translation or a different style, arrangement, or transformation of an existing work made to express new ideas while embodying the character of the original work. Licensing agreements define the rights that exist, for how long the adaptation will be used, within which geographic jurisdictions, and through which conduits. Without such authorizations, studios are exposed to legal cases that may lead to the shutdown of production or fines. For instance, Article 119 of the Copyright Law of Japan shows that the penalty for infringement of materials under copyright is 10 years imprisonment or fines of 10 million yen[3].

Regional Differences in Copyright Law

Japanese anime and manga, starting with the example of Pokémon in the 1990s, have initiated the formation of Japan's Manga Anime Guardians Project (MAGP) targeting piracy around the world. Japan's Copyright law protects novels, music, and animations, and entitles the owner of a copyright, unlike the laws of the United States of America. For instance, *Popeye* and *Tintin* will enter into the public domain in the USA from the 1st of January in 2025. This is dictated by the U.S. copyright law as the law states that an original work gains access to the public domain after 95 years from its first publication. Japan is a member of the Berne Convention (1899), an international treaty for the protection of literature and artistic works globally[4]. In terms of global collaborations and distributions, streaming platforms such as Crunchyroll, Netflix, and Amazon Prime which operate in various jurisdictions encounter several legal hindrances. These platforms seek licensing agreements with creators and copyright holders for adhering to terms and royalties calculated based on the popularity and number of streaming. For instance, Netflix has successfully co-produced anime such as *Devilman Crybaby* that bridges cultural and legal gaps while maintaining global appeal. Copyright laws vary within countries to prevent the proliferation of pirated content and generate effective revenues for creators and studios.

Case Studies

[3] Liu, Kung-Chung, and Shufeng Zheng. "Asian IP law: an area of rising importance." GRUR International 69.3 (2020): 249-259.
[4] Schendl, Emily. "Japanese anime and manga copyright reform." Wash. U. Global Stud. L. Rev. 15 (2016): 631.

A well-known example of a manga-to-anime adaptation is *Naruto,* which was adapted from Masashi Kishimoto's manga series. The legal negotiations involved securing rights from the original creator and ensuring that the adaptation team had the necessary permissions to proceed. In *Attack on Titan* the adaption process lay in several consultations between the creator of the manga series Hajime Isayama and the Wit studio that initiated the project. The anime makers did not deviate from the manga's sentiments as they brought movie features to the anime with clear licensing of their program and coupling with another company for benefits. On the other hand, the unsuitable legal compliances caused impairments during the illustration of Jojo's Bizarre Adventure anime. In the early stages of the game industry, some games suffered from the misuse of music, and copyright laws and improper usage of designs hindered game production and the market reputation of the studio.

Challenges in Enforcing Copyright

Copyright protection in the anime industry poses lots of challenges with technological advancement. Lack of licensing and releasing copyrighted works in other countries illicitly are one of the crucial problems. Unofficial illustrations or translations harm creators and their revenues as fans post models without authorization. The Internet also presents a major challenge to enforcing copyrights since infringements are cross-border and identifying the offender becomes difficult. Due to the high risk of copyright infringement, studios need to hire lawyers and invest in technology to detect hackers. International regulations, industry associations, and creative industries provide the necessary support to enhance the enforcement structures and IP rights. The emergence of AI-generated fan content such as fan art or fan actions blurs the strict guidelines of copyright ownership due to lack of human involvement. AI-generated treasure of anime raises issues for copyright law and policy by creating modified storylines and visual representations. For example, to mitigate these issues, digital rights management (DRM) technologies are used to protect content against a database of copyrighted material to identify potential infringements.

Section 2: Fan-created content and copyright infringement

Introduction to Fan Works

There are several numbers of fan groups that are motivated to edit, share and translate manga and anime online. In anime, the fan work mainly involves creating 'Fansubs' that are video files with English subtitles. On the other hand, for manga, the fan groups significantly produce 'scanalation' that are the edited versions with English text replacing the original Japanese[5]. However, they believe that they help other fan of understanding and access the Japanese media with feelings of ownership leading towards entitlement issues. This particular fan work often develops out of a deep desire and admiration to engage more deeply with the original content. However, these fan works could take following types:

Fan-made episodes: This indicates animation or videos created by fans which mimic the content and style of the original series.

Fan Fiction: This shows the stories written by fans that continue or expand the original narratives sometimes exploring the alternative plotline.

Fan Art: This involves visual art-created fans such as digital art, paintings, drawings and other featured characters[6].

The fan works significantly lead towards the discussion, discovery and collaboration of new talent in the fan community by allowing them to show their creativity, connect with others and share their interpretation.

Legal implications of fan creation

Under the copyright law, fan works that use the protected elements without any permission could be seen as unauthorized derivative works that might violate original creators' rights. Selling of fan arts without permission cause copyright infringement claims resulting in several legal actions involving fines, cease-and-desist orders or even lawsuits. For example, Disney's hostile copyright enforcement from DMCA notices in '***Star Wars' Fan Art Lawsuit***, where an artist was primarily sued for selling unlicensed Star Wars fan art. The '***Digital Millennium Copyright Act***' notches show the legal complexities around the fan-created content and sharing the copyright materials[7]. In 2015, Disney issued takedown notices to Star Wars fans who posted photos of an early-released

[5] Leigh, Danielle. "Manga before Flowers -- Fanworks and How the Fan Works." CBR, 27 May 2008

[6] "The Intersection of Copyright Law and Fan Made Content." The IP Press, 15 Oct. 2024,

[7] "Disney Slaps Star Wars Fans with Copyright Notices for Sharing Pictures of a Toy Online." CBC, 16 Dec. 2015.

Rey action figure, claiming copyright infringement, also images were user-generated and showed publicly sold merchandise. While Disney wanted to protect its brand and avoid pre-release spoilers, critics say that such moves repress community involvement and create concerns regarding the fair use of items bought in public.

The cases of ***Klinger v. Conan Doyle Estate and Paramount Pictures v. Axanar*** significantly highlight the critical factors of copyright law regarding fan adaptations and creation[8]. In the case of ***Klinger***, the court ruled that characters such as Sherlock Holmes and Dr. Watson entered the public domain in the same way their origin stories were predated in 1923. In the case of ***Paramount v. Axanar***, there are several distinctive features from the Star Trek universe were used, such as logos, uniforms and ship designs in a fan film[9]. It mainly aimed at the implementation of the rules that could greatly balance with the fans but it would also negatively impact the brand image. Although it is acceptable not to criticize fans' creations in a significant way that one can boost the involvement of the targeted community and use the material for costs-free advertisement.

Industry responses to fan creations

The relationship between fan fiction creators and copyright holders is usually complicated by the creators themselves. However, for example, a creator such as J.K. Rowling may feel quite glad over fan content since they treat this as an important sign of appreciation of the work produced by them, whereas authors such as George R.R. Martin and Anne Rice regard it as to an illegal exploitation of intellectual property rights[10]. In 2004, Media Factory which is a Japanese Studio, sent a Cease-and-Desist letter towards AnimeSuki.com which is a popular anime BitTorrent and forum site and demanded to stop sharing torrents of its own products. Therefore, AnimeSuki quickly removed all the torrents and decided not to list any more titles from the media factory. The studio sent similar letters to Fansub groups such as Wannbe Fansubs and Lunar Anime asking them to stop distributing its anime series. During 2016, the Kyoto Prefectural Police arrested the two individuals for effectively uploading the anime episodes with Chinese subtitles without the authorization[11]. Moreover, the international organizations such as Funimation effectively filed a lawsuit against the BitTorrent users for distributing the unauthorized copies of the Anime called

[8] Klinger v. Conan Doyle Estate, Ltd., Justia Law, 2014.
[9] "Paramount Pictures Corp. V. Axanar Productions, Inc. 2016
[10]. "The Fine Line between Fan Art, Fan Fiction, and Finding Yourself Sued." CBA's @TheBar, 11 Nov. 2022.
[11] Crunchyroll.com, 2024.

‘One Piece’ in 2011. However, the case was eventually dismissed which highlights the commitment towards unauthorized distribution.

Section 3: Fair Use Considerations for Fan Works

Introduction to Fair Use Doctrine

Copyright law has an exception which is known as fair use in which a given amount of the original creation can be used in a limited manner without getting permission from the original creator. Such use of copyrighted work is incorporated within the purpose of continuous commentary, criticism, education, news reporting and parody. In the U.S Copyright Act of 1976, the four principles of fair use include the purpose and character of the use, nature of the copyrighted work, amount comprised to the original work and the effect of the usage on the market for the original work.

Transformative Nature of Fan Works

In the case of fans, work offers a new manner of expression, message or meaning altogether which can be taken into the fair use category. For instance, if the work is fan fiction or fan art, it is re-created in a manner that either parodies or adds elements to the original work. The practices of fans, for instance, can be a case of parody or satire, by building on top of anime or manga, bending the original in attempts of offering social commentary. A parody of critical content created by fans mainly critiques the original work which is more likely to be considered fair use than satire. Manipulating the characters or the motifs of One Piece to point out mistakes or generate new storylines in fun ways altogether by creating fan art is considered one of the prime instances[12]. On the other hand, the Japanese copyright law does not have a general fair use of provision and does not specifically recognize satire or parody as expectations. This indicates that unauthorized derivative works, even it is they are parodies, can hamper the original content creator’s rights.

Purpose and Intent of Fan Creations

The common fan-based practices that are made without the aim of earning money are recognized more positively concerning the principles of fair use. The derivative works are not made for

[12] Xiao, Jingxi. "Intellectual Property Issues of Fan Fiction." (2024).

commercial purposes and are incorporated into the fair use assessment; however, it failed to ensure the automatic panoply of fair use protection. Fan fiction and fan art can create demand for the source material bringing new fans to the universe or initiating fans to interact with them more deeply[13]. The commercial intention under the fan works become an issue in bringing fair use claims. Specifically, as a fan work and derivatively created, the work world is likely to be considered fair use unless the fan creator is profiting from it, for instance, if they are selling the work or using the characters in a commercial product. However, in the case of fan works that help the original work to increase the popularity of the show, they may still serve the purpose of fair use since the promotion of the original work cannot be prohibited[14].

Extent of Copying and Market Impact

The assessments of fair use also involved the degree of replicating. Chapter recitation fan works are likely to be non-fair use because they embody a great portion of expressive material from the original work, including scenes and even chapters of the Manga. Nonetheless, writing that adaptively changes characters or with plot features may be more acceptable. For instance, an anime series such as Manga includes a fan-created episode that redescribes its storyline or its visual setting as falling under fair use under sufficient originality[15]. Those fan works that attempt to capture the same sales as the original work or are replicas of the original work are less likely to be considered fair use. However, works contingent on the original works in a non-injurious fashion, such as the fan art that brings awareness to a series, should cause less market harm and are more likely to qualify for fair use.

Judicial Interpretations and Precedents

A few precedents have ruled on the claim to the appropriation or parody right and the limits to the fair use of fan creations. One encouraging example is Campbell v. Acuff-Rose Music, Inc. (1994) where the U.S. Supreme Court considered a parody of a song as fair use because it was

[13] Schroff, Simone. "Where to draw the line: the difference between a fan and a pirate in Japan." International Journal of Cultural Policy 26.4 (2020): 433-445.
[14] Węgrzak, Małgorzata. "Intellectual Property Law in Japan. Contemporary trends and challenges." Gdańskie Studia Azji Wschodniej 21 (2022): 27-40.
[15] Issues in the World of Japanese Sequential Art (Manga)." *Indian Institute of Patent and Trademark*, 2024.

transformative[16]. Legal aspects related to fan works in the Japanese Manga Industry offers a little space for fan art while protecting the author's right to ownership since they do not endanger the authors' commercial interests. Japanese courts have distinguished between transformative stories and those that are reloads done with new commenting or artistic insight. Fan-created translations, which are secondary, transformative and proselytizing are usually acceptable.

Conclusion

The essay concludes that the transformation of Manga into anime shows complex legal nuances relating to copyright law and the preservation of license-specific works from manga production studios. The increasing number of fan-created works such as fan art, fan fiction, and fan-made episodes offers competency since some productions fall on the edge of infringement and remakes. Laws such as the Japan Copyright Act, and the Berne Convention work to protect the rights of the original manga creators and enable the worldwide popularization of anime and manga culture. Nonetheless, due to the changing, creative, and non-commercial-oriented character of fan works, the promotion of new content highlights the need to maintain IPR and encourages the fair use of creative work. Therefore, the global market impact and judicial interpretation emphasize the need for flexibility to protect the existing IP rights while fostering a fan-based appreciation of creativity. For instance, Japan 's Comiket permits the selling of doujinshi which is a fan-made works in light of set measures. Some corporations have taken the time to fully explain what constitutes legal usage and sharing of fan works.

[16] Lee, Hye-Kyung. "Between fan culture and copyright infringement: manga scanlation." Marketing the Arts. Routledge, 2010. 173-190.

Eroding the UN Charter? A Critical Appraisal of the 2026 Iran Conflict and the Law on the Use of Force

Abstract

The 2026 Iran conflict happening in Israel, the United States of America, and Iran marks an important turning point in the steady breakdown of the United Nations Charter and the global rules on using force.[1] This paper takes a critical look at the conflict through a legal viewpoint, placing it within the view of Charter erosion that dated back in 1945.[2] The Charter's core pillars sovereignty, the ban on force, collective security, and peaceful dispute resolution were made to stop wars and ensure military moves only got the green light from the collective.[3].

The paper kicks off with the Charter's historical and legal roots, spotlighting early hurdles and key doctrinal shifts like humanitarian intervention, anticipatory self-defense, and the Responsibility to Protect.[4] The Security Council's deadlock puts together collective security, while vague doctrine, blurs legal lines. By unpacking the clash in depth and linking it to wider historical and legal paths, this paper adds real value to studies on Charter erosion and international law's road ahead.[5]

Key words

1. 2026 Iran conflict
2. UN Charter erosion
3. Use of force and self-defense
4. Collective security paralysis
5. Humanitarian impact of warfare

[1] United Nations Charter, 1945, Articles 2(4) and 51
[2] Thomas Franck, The Power of Legitimacy Among Nations (Oxford University Press, 1990).
[3] Christine Gray, International Law and the Use of Force (Oxford University Press, 2018).
[4] GRAY, supra note 3
[5] GRAY, supra note 3

Introduction

The 2026 Iran conflict, including the United States, Israel, and Iran into the fray, is one of the biggest shakes to the international legal setup since the UN Charter kicked in back in 1945.[6] It sparks big questions about the Charter's pull, the reach of the force ban, and whether collective security can hold up against these geopolitical clashes. This paper makes the case that the Iran conflict lays bare the Charter's erosion, as countries dodge group processes, grab onto shaky self-defense claims, and make force exceptions feel normal.

Right from the start, this intro sets the scene, spells out the main idea, and draws the paper's blueprint. To pull that off, we look at the root of the Iran conflict in international law's bigger story, highlight the key legal stakes, and explain why this one's a game-changer. The Charter aimed to peace has failed the global population in ensuring security, since 1945, we've seen breach after breach from Korea to Kosovo, Iraq, Syria, and now Iran. Each one chips away at Charter's costs, combining picky rule-following and handy excuses. The Iran conflict keeps that pattern alive, forcing hard looks at international law's future.[7]

Context and Background

The spark for the Iran conflict ties back to years of bad blood between Israel and Iran, especially over Iran's nuclear push. Israel has always seen Iran's nuclear goals as a do-or-die danger, fearing bombs that could wipe out its cities. The US, Israel's top partner, shares those worries and wants to curb Iran's sway in the region. Early 2026 brought intel saying Iran ramped up uranium work past safe civilian levels. Israel hit back with pre-emptive strikes on those sites, saying any wait for a real hit would be deadly. The US jumped in fast, offering military and logistics help. Iran fired missiles and rallied regional allies, turning it into a full-blown regional mess.[8]

Zoom out, and the Middle East has long been ground zero for Charter tests. Think Arab- Israeli wars, US moves in Iraq and Syria. Iran's own rap sheet from the 1953 coup to the Iran- Iraq War and nuclear fights shows a history of iffy legality and cherry-picked rules. That's the backdrop for unpacking 2026.

Legal Issues at Stake

The Iran clash spotlights core legal fights. First up, Article 2(4)'s force ban against any state's turf or independence unless self-defense saves it. Second, Article 51's self-defense trigger only after an armed hit; Israel pushed anticipatory, US collective, Iran straight sovereignty.
Each twists the Charter differently. Third, Security Council freeze-up no binding calls thanks to vetoes torpedoes collective security, pushing solo plays. Fourth, proportionality, necessity, and humanitarian rules get tested hard with nuke-site hits and civilian hits.[9]

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[6] United Nations Charter, 1945, Articles 2(4) and 51.
[7] GRAY, supra note 3
[8] International Atomic Energy Agency (IAEA), Safeguards Report on Iran, 2026.
[9] International Court of Justice, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports 1986

Significance of the Case

Why care about Iran? It ropes in big players with clashing claims, showing law's splinter. Stakes sky-high with nukes and chaos. Great-power rifts paralyze the Council. It echoes old breaches but amps up with nukes and proxies. Perfect for probing Charter fade and law's next chapter.

Central Thesis

Bottom line: The Iran conflict spotlights UN Charter erosion. Countries skip groups, grab fuzzy doctrines, normalize outs. Bans stay on paper but get ignored in the real world. It shows how law gets twisted for convenience, Council stalls from rivalries, force bans watered down by wide self-defense reads. Result? Charter norms lose teeth, law turns to lip service.

Structure of the Paper

The paper rolls out in twelve parts. Section 2 covers history and law background, rooting Charter in big-picture violations. Section 3 facts the Iran fight timeline, reactions. Section 4 maps legal tools: Articles 2(4)/51, Council role, custom law. Sections 5–7 pick apart US, Israel, Iran actions vs. Charter fit.[10] Section 8 eyes UN/world role, collective security bust. Section 9 sums erosion case. Section 10 compares Kosovo/Iraq/Syria for patterns. Section 11 dives critical views realist vs. legalist, scholar fights. Section 12 sums, reflects, recommends Charter boosts.

Methodology and Approach

This work blends legal deep-dive with history and politics. We parse Charter text, doctrines, Iran state moves, tie to history/scholar chat. It's cross-field law doesn't float alone from strategy/power. Balanced take: owns legal limits and real-world musts, spotlights legality vs. need clash.[11]

Historical and Legal Background

The United Nations Charter, born in 1945 from the ashes of World War II, aimed to create a fresh international legal order. It sought to stop countries from launching unilateral wars and insisted that force could only be used collectively, with the Security Council's green light.[12] At its core, the Charter banned the threat or use of force against any state's territorial integrity or political independence that's Article 2(4) while Article 51 carved out an exception for self-defence in the face of an armed attack.[13]

These rules form the foundation of how modern international law handles the use of force.

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[10] Michael Glennon, “The Fog of Law: Self-defense, Inherence, and Incoherence in Article 51 of the United Nations Charter,” Harvard Journal of Law & Public Policy 25 (2002): 539–558.

[11] Ian Hurd, After Anarchy: Legitimacy and Power in the United Nations Security Council (Princeton University Press, 2007).

[12] United Nations Charter, 1945, Preamble

[13] United Nations Charter, Articles 2(4) and 51 and Ian Brownlie, International Law and the Use of Force by States (Oxford University Press, 1963).

But since 1945, history has been full of violations, heated debates over interpretations, and a slow chipping away at the Charter's authority.

The Charter’s Foundational Principles

The Charter rests on a few key ideas that still shape global relations. Sovereignty comes first: every state gets to govern its own territory and stay independent without outsiders meddling. Then there's the non-use of force rule states can't resort to violence except in self-defense or with Security Council approval. Collective security puts the Council in the driver's seat for keeping peace, with its decisions binding everyone. And finally, disputes must be settled peacefully through talks, mediation, arbitration, or courts, not bullets.[14] Together, these principles paint a picture of law holding power in check, swapping solo adventures for team efforts.

Early Challenges to the Charter

Right out of the gate, the Charter hit real-world roadblocks. Take the Korean War in 1950 it put collective security to the test. The Security Council greenlit action against North Korea, but only because the Soviet Union was boycotting and couldn't veto.[15] That moment showed the system's promise, but also how fragile it could be. Fast-forward to the 1956 Suez Crisis, where Britain, France, and Israel attacked Egypt without any authorization, exposing the Charter's limits. The Vietnam War drove home how tough it is to rein in superpowers. These early tests proved the Charter offered a solid legal blueprint, but politics often called the shots.

The Middle East as a Testing Ground

No region has stressed the Charter more than the Middle East. The Arab-Israeli wars of 1948, 1967, and 1973 sparked fierce arguments over self-defense claims and pre-emptive strikes, with Israel's moves constantly probing the edges of Article 51 and anticipatory self-defense.[16] U.S. interventions in Lebanon (1958), Iraq (1991 and 2003), and Syria (2014) highlight the clash between going it alone and waiting for collective buy-in. Iran has been right in the thick of it too, from the 1953 foreign-orchestrated coup to the brutal Iran-Iraq War (1980–88), packed with sovereignty breaches and humanitarian law nightmares. The Middle East has become the ultimate lab for watching the Charter fray.

Doctrinal Developments

As time went on, new ideas popped up to challenge or patch the Charter. Humanitarian intervention, anticipatory self-defense, and the Responsibility to Protect (R2P) stand out. The 1999 Kosovo crisis saw NATO bomb without Security Council okay, arguing it had to stop ethnic cleansing a move dubbed "illegal but legitimate."[17] That captured the messy tug-of-war between strict law and moral urgency. The U.S. pushed anticipatory self-defense further in its

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[14] UN Security Council Resolution 82 (1950) on Korea.
[15] Christine Gray, International Law and the Use of Force (Oxford University Press, 2018).
[16] Independent International Commission on Kosovo, The Kosovo Report (Oxford University Press, 2000).
[17] UN General Assembly, 2005 World Summit Outcome Document, endorsing R2P.

2002 National Security Strategy, claiming the right to strike emerging threats first; the 2003 Iraq invasion leaned on this, though most called it unlawful.

Then came R2P in 2005, endorsed by the UN, which says states must shield their people from genocide, war crimes, ethnic cleansing, and crimes against humanity and if they don't, the world steps in.[18] These concepts try to update the law for today's threats, but they blur the Charter's sharp lines.

The Security Council's Paralysis

The Council's power hinges on its five permanent members agreeing no veto, no action. Cold War rivalries locked it up constantly, blocking enforcement. Post-Cold War, it did authorize moves in Iraq (1991), Somalia (1992), and Libya (2011), but gridlock from big-power clashes think Syria and now Iran keeps it stalled.[19] The veto was meant to curb lone-wolf actions, but it's backfired, deepening divides and gutting collective security. Stuck states then go rogue, further weakening the Charter.

Scholarly Debates

Experts can't agree on the Charter's staying power. Realists say power trumps law violations happen whenever big interests are on the line. Legalists insist its rules are ironclad and must be followed. Pragmatists argue it needs to evolve, pointing to R2P and humanitarian intervention as smart bridges between law and ethics.[20] These arguments boil down to a bigger puzzle: is international law a real leash on nations, a handy tool, or just diplomatic spin?

Continuity and Change

Looking back, the Charter's story mixes steady patterns with shifts. The constants? Countries keep cooking up solo excuses for force, steadily eroding the no-force rule. The changes? Doctrines like R2P and stretched self-defense claims adapt norms to fit the world as it is. Kosovo, Iraq, Syria, Iran they all show powerhouses sidestepping the Council when it suits them. Yet these evolutions reveal how legal ideas bend to politics.[21] The result? The Charter's framework looks solid on paper but feels increasingly hollow in action.

Implications for the Iran Conflict

This backdrop is crucial for the Iran conflict. Israel's anticipatory self-defense play mirrors its history and reignites imminence debates. The U.S. collective self-defense call fits its habit of broad readings and solo moves. Iran's sovereignty plea nods to the Charter's roots but invites scrutiny on proportionality and humanitarian rules. The Council's deadlock underscores its chronic flaws. Overall, Iran exemplifies the Charter's ongoing erosion building on past

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[18] Ian Hurd, After Anarchy: Legitimacy and Power in the United Nations Security Council (Princeton University Press, 2007).
[19] Michael Glennon, "The Fog of Law: Self-defense, Inherence, and Incoherence in Article 51 of the United Nations Charter," Harvard Journal of Law & Public Policy 25 (2002): 539–558.
[20] Thomas Franck, The Power of Legitimacy Among Nations (Oxford University Press, 1990).
[21] International Crisis Group, Middle East Briefing: Iran Conflict, 2026.

breaches while layering in fresh twists like multi-player dynamics and nuclear stakes. The self-defense excuses have been widely criticised by authors, people of the nation and UN as well in some cases, although we cannot deny the fact that invasions in past in the middle-east have been nothing short of shady.

The 2026 Iran Conflict: Factual Overview

The 2026 clash with Iran stands out as a real game-changer for international law and the messy world of global politics. Before diving into what it all means legally, let's get the facts straight timeline, main players, what they did militarily, and how the rest of the world reacted. Laying out this full picture sets us up perfectly for the legal deep dive coming next.

Timeline of Events

It all got over a few intense months, starting early in 2026 when tensions boiled over Iran's nuclear ambitions. Reports from intelligence circles warned that Iran was pushing uranium enrichment way beyond anything civilian, hinting they might be on the cusp of going nuclear.[22] Israel, feeling its very existence was at stake, didn't wait they hit Iranian nuclear facilities with pre-emptive strikes back in February 2026.[23] The targets? Enrichment plants and research spots, leaving major wreckage and sadly, plenty of lives lost.

Come March 2026, the U.S. waded in deep, deploying troops and gear to prop up Israel. They pitched it as collective self-defense: Israel had taken an armed hit and called for backup. Iran fired right back, lobbing missiles at Israeli cities and American bases nearby, which quickly turned the whole thing into a regional powder keg. By April, Iran looped in its proxies Hezbollah up in Lebanon, militias across Iraq and Syria spreading the chaos further.

The Security Council scrambled for emergency talks in May 2026, but vetoes from Russia and China killed any binding action. The General Assembly managed a resolution bashing the one-sided moves and pleading for everyone to cool it, though it had zero enforcement muscle. Skirmishes rumbled on all summer, with ceasefire tries that kept fizzling out.

Key Actors

At the heart were three big names: Israel, the United States, and Iran, each with their own angle and legal spin.

Israel pulled the trigger first, bombing those Iranian nuclear sites. They called it straight-up self-defense for survival, given how Iran's program loomed as an immediate nightmare a tactic they've leaned on for years, shaped by their tough neighborhood and history of do-or- die threats.

The U.S. was quick to back them up with troops and supplies, framing it as collective self-defence since Israel had been attacked and reached out for help.

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[22] International Atomic Energy Agency (IAEA), Safeguards Report on Iran, 2026.
[23] BBC News, Israel Launches Strikes on Iranian Nuclear Facilities, February 2026

Iran, not one to sit idle, unleashed missiles on Israeli urban centers and U.S. outposts, waving the flag of sovereignty and territorial rights. They saw Israel's strikes as the armed attack that unlocked Article 51 self-defense. Bringing in proxies only thickened the plot around who answers for what.

Military Actions

The operations were wide-ranging and hit hard. Israel's initial strikes zeroed in on nuclear facilities, research labs, and military setups, gutting Iran's nuclear push but also claiming civilian lives and stirring humanitarian headaches. The U.S. pitched in with joint strikes, cyber ops against Iranian setups, airstrikes, and endless logistics.[24]

Iran's comeback involved missile salvos on Israeli cities and U.S. bases, piling on the body count and rubble. Then they unleashed proxies Hezbollah, Iraqi and Syrian militias to hammer Israeli and American spots, dragging neighbors into the fray and blurring lines on state responsibility.

International Responses

The global reaction? Pure divide, mirroring those deep-seated rivalries. Western allies offered guarded nods to Israel and the U.S., zeroing in on security fears and the need to box in Iran. Russia and China? They slammed it all as sovereignty tramplings and shut down any U.S.-Israel plays.[25] Europe, via the EU, kept calling for everyone to pump the brakes and get back to the negotiating table.

Security Council emergencies went nowhere fast, thanks to those Russian and Chinese vetoes.[26] The General Assembly's take a slap at unilateralism and a plea for restraint lacked any real bite.

Even regional groups split: Arab League ripped into Israel and the U.S. over sovereignty and meddling. NATO sided with Israel's security angle, loyalty to the U.S. running deep. Voices from the Global South hammered home the unilateral no-go and stuck to Charter basics.[27]

Humanitarian Impact

No ignoring the human wreckage here. Bombings of nuclear sites and key infrastructure shattered everyday lives deaths, people fleeing, full-on crises. Missiles raining on cities meant civilian fatalities and homes in ruins. Proxies fanned the flames into Lebanon, Iraq, Syria, hitting ordinary folks there too.[36]

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[24]) US Department of Defence, Operational Report on Iran Campaign, 2026
[25] Avi Shlaim, The Iron Wall: Israel and the Arab World (Penguin, 2014).
[26] UN Security Council, Emergency Sessions, supra note 27.
[27] Arab League Communiqué, June 2026.

Relief outfits begged for mercy toward civilians and spotlighted the mounting toll: casualty lists, displaced families, basics like power and water cut off.It's a stark reminder of how war goals crash headlong into humanitarian must-dos, making legal calls all the trickier.

Legal Implications of the Factual Context

Zooming out on the facts, legal red flags pop everywhere. Israel's pre-emptives poke at Article 51 limits and whether anticipatory self-defense holds water.[28] U.S. backup raises eyebrows on collective self-defense without Council say-so. Iran's counterpunch juggles sovereignty, self-defense, and humanitarian rules. The Council's freeze shows collective security's soft underbelly. And the human side? It forces hard looks at proportionality, necessity, and sticking to humanitarian law.

Broader Context and Continuity

To really get Iran 2026, slot it into the bigger story of the Charter wearing thin. It rhymes with old flashpoints: Kosovo, Iraq, Syria, but layers on extras: tangled players, nuclear doomsday vibes, proxies messing with accountability.[29] We're seeing the same old erosion, sure, but also law stretching to fit our wild new world.

Legal Framework

You know, the legal guardrails around the 2026 Iran showdown really boil down to the United Nations Charter, that trusty old pillar of customary international law, plus all those doctrines we've hashed out over decades of nations pushing the envelope. If we're going to judge whether Israel, the U.S., or Iran played by the rules, we've got to roll up our sleeves and dig into the Charter's core bits the Security Council's heavyweight role, the ins and outs of self-defense, and those forever-debated twists that keep redefining what the law actually says. Think of this section as your roadmap: it sketches the whole legal landscape and slots the Iran tangle right into international law's long, bumpy road toward collective security.

The UN Charter as the Cornerstone

Picture the UN Charter as the absolute foundation for how we govern force in today's world it's that foundational. The genius stroke? It killed off the lone-wolf wars of the pre-1945 era, trading raw state sovereignty for a shared security net. Article 2(4) draws the line hard: no threats or actual use of force against any country's territorial integrity or political independence.[30]This one's hailed as the load-bearing wall of the global legal setup, a flat ban on throwing punches. Article 51, though, leaves a lifeline, nodding to a state's built-in right to self-defense when an armed attack strikes a member. Weave those together, and force becomes a no-fly zone, open only in these razor-narrow windows.

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[28] Michael Glennon,"The Fog of Law: Self-defense, Inherence, and Incoherence in Article 51 of the United Nations Charter," Harvard Journal of Law & Public Policy 25 (2002): 539–558.
[29] Independent International Commission on Kosovo, The Kosovo Report (Oxford University Press, 2000).
[30] United Nations Charter, Article 2(4).

Don't forget, the Charter crowns the Security Council as the top dog for world peace and security. Chapter VII arms it to authorize crackdowns when trouble brews.[31] And those decisions? They're law for every member state no ifs and you absolutely need that stamp for any team-up military effort.

Article 2(4): Prohibition on Force

At its core, Article 2(4) is the Charter's tough-love rule against force threats included aimed at any state's turf or independence.[32] Carve-outs? Just two: self-defense under Article 51, or the Council's Chapter VII green light.

Fast-forward to Iran: Israel's pre-emptive swipes at those nuclear facilities? Classic Article 2(4) breach, full stop unless self-defense saves the day. The U.S. piling on? Same story, unless collective self-defense kicks in. Iran's counter-missiles dance the same tightrope, dressed up as self-defense but still flirting with violation.

Article 51: Self-defense

Here's where it gets juicy: Article 51 guarantees individual or collective self-defense if an armed attack hits a member state. For the Iran puzzle, this is ground zero. Israel leaned hard into anticipatory self-defense, swearing Iran's nuclear program was seconds from doomsday. The U.S. rode shotgun with collective self-defense Israel took the hit first and dialed them up. Iran flipped the script, claiming self-defense against Israel's starter pistol.

Truth is, Article 51's boundaries are a battlefield of opinions. Purists insist on actual attacks boots crossing borders. The bold crowd stretches it to anticipatory action when the storm's gathering fast. But here's the rub: what's "imminent," really? Israel bet Iran's nukes qualified; doubters shrugged it off as crystal-ball stuff.

Security Council Authorization

The Security Council holds the peace portfolio, no question. Chapter VII lets it unleash enforcement if peace teeters. In the Iran firestorm, they huddled in emergency mode but couldn't land a binding resolution vetoes from Russia and China saw to that.[33] It's a glaring symptom of those geopolitical fault lines, and yeah, it seriously dents faith in our collective security dream

Analysis of US Actions

The United States’ involvement in the 2026 Iran conflict represents one of the most legally complex and politically consequential episodes in the recent history of international law. While Israel initiated the conflict through pre-emptive strikes on Iranian nuclear facilities, the United States quickly escalated the situation by deploying military forces, providing logistical support, and conducting joint operations with Israel. The US justified its actions primarily

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[31] UN Charter, Chapter VII, Articles 39–42.
[32] Ian Brownlie, International Law and the Use of Force by States (Oxford University Press, 1963).
[33] UN Security Council, Emergency Sessions on Iran Conflict, May 2026.

under the doctrine of collective self-defense, claiming that Israel had been the victim of an armed attack and had requested assistance. Yet this justification raises profound questions about the scope of Article 51 of the UN Charter, the legality of anticipatory self-defense, and the broader implications of unilateral military action in the absence of Security Council authorization.[34]

Collective Self-defense and Article 51

Article 51 of the UN Charter recognizes the inherent right of individual or collective self-defense if an armed attack occurs against a Member State. The United States argued that Israel's pre-emptive strikes were a legitimate exercise of self-defense against an imminent Iranian threat, and that Iran's retaliatory missile attacks constituted an armed attack triggering Israel's right to request assistance. On this basis, the US claimed that its military involvement was lawful collective self-defense.[35]

The difficulty with this argument lies in the timing and sequencing of events. Israel struck first, targeting Iranian nuclear facilities before any direct attack had been launched against it. The United States then intervened, framing its actions as collective self-defense. Critics argue that collective self-defense requires a prior armed attack, not a speculative or anticipatory threat. By joining Israel's pre-emptive campaign, the US blurred the line between lawful defence and unlawful aggression. Supporters counter that Iran's nuclear program posed an existential threat to Israel, and that waiting for an actual attack would have been strategically irresponsible.

Anticipatory Self-defense and US Practice

The United States has long advocated for a broader interpretation of self-defense, including anticipatory and even pre-emptive measures. This position was most famously articulated in the 2002 National Security Strategy, which asserted the right to act against emerging threats before they materialize. The 2003 invasion of Iraq was justified in part on this basis, though it was widely criticized as unlawful. In the Iran conflict, the US echoed similar reasoning, arguing that Iran's nuclear program represented an imminent threat to Israel and regional stability.

Anticipatory self-defense remains highly contested in international law. Traditional interpretations require an actual armed attack to trigger Article 51. Expansive interpretations, favored by the US, allow for action when an attack is imminent. The difficulty lies in defining imminence. In the Iran case, the US claimed that intelligence indicated Iran was on the verge of weaponizing its nuclear program. Critics argue that such claims are speculative and do not meet the threshold of imminence.

Security Council Authorization and Unilateralism

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[34] United Nations Charter, Article 51

[35] ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports 1986

The UN Charter establishes the Security Council as the primary authority for authorizing enforcement actions. In the Iran conflict, the Council convened emergency sessions but failed to adopt binding resolutions due to vetoes by Russia and China.[36]The United States proceeded unilaterally, arguing that collective self-defense provided sufficient legal basis. This approach reflects a broader pattern of US unilateralism in the face of Council paralysis.

Proportionality and Necessity

Even if the US claim of collective self-defense is accepted, its actions must meet the requirements of proportionality and necessity.
Proportionality requires that defensive measures be commensurate with the threat faced. Necessity requires that force be used only when no alternative exists. In the Iran conflict, the US deployed significant military forces, conducted joint operations with Israel, and targeted Iranian infrastructure. Critics argue that these actions exceeded what was necessary to defend Israel and escalated the conflict unnecessarily.[37]

Strategic Interests and Legal Justifications

The US involvement in the Iran conflict cannot be understood solely in legal terms. Strategic interests played a central role. The US has long sought to contain Iran’s regional influence, protect Israel’s security, and maintain dominance in the Middle East. By intervening, the US reinforced its alliance with Israel, deterred Iran, and signaled its commitment to regional stability. Legal justifications, such as collective self-defense, provided a veneer of legitimacy for actions driven primarily by strategic considerations.[38]

Analysis of Israeli Actions

Israel sat at the epicenter of the 2026 Iran crisis, both in what happened and what it means legally. They lit the fuse with those pre-emptive strikes on Iranian nuclear sites, so we owe it to the facts and the law to give their moves a close, unflinching look. Here, we'll unpack Israel's playbook: their legal defences, that whole anticipatory self-defense angle, whether it passed muster on proportionality and necessity, the human cost of the strikes, and how their forever-precarious security world factors in. Breaking this down really spotlights the raw tug- of-war between a nation's do-or-die survival instincts and the straightjacket of the UN Charter.[39]

Israel’s Security Environment

Israel's been shouting from the rooftops for years that their spot on the map demands a wider lens on self-defense. Hemmed in by hostile states and non-state wild cards who openly wish them gone, threats feel not just real, but right around the corner existential, every time. Flash back to the wars of 1948, 1967, 1973; toss in the endless bad blood with Hezbollah, Hamas,

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[36] UN Security Council, Emergency Sessions on Iran Conflict, May 2026.
[37] International Committee of the Red Cross (ICRC), Report on Civilian Protection in Armed Conflicts, 2026.
[38] Thomas Franck, The Power of Legitimacy Among Nations (Oxford University Press, 1990).
[39] United Nations Charter, Article 2(4).

and the like. It's forged this proactive defence mindset. Remember Israel's 1981 takedown of Iraq's Osirak reactor or the 2007 Syria nuke hit?

Classic plays from the doctrine: strike first against what looks like an endgame threat.[40]

Anticipatory Self-defense

So Israel framed those Iran nuclear strikes as pure anticipatory self-defense. Their pitch? Iran's uranium sprint was barreling toward a bomb that could wipe them out waiting for the mushroom cloud would be national suicide. Thing is, anticipatory self-defense? It's a hot potato in legal circles. Stick to the classics, and Article 51 demands an actual armed attack before you swing back. But the bolder crowd says go early if the storm's truly brewing.

Proportionality and Necessity

Okay, say we buy the anticipatory bit then comes the real test: did Israel's response match the threat in scale (proportionality) and leave no other options (necessity)? Proportionality means your counterpunch fits the punch coming your way. Necessity? Force only when talks or alternatives are toast. Those strikes hammered Iran's nuclear setup good, no doubt, but they left civilian bodies and aid-group headaches in the wake. Detractors? They say Israel overcooked it, way beyond what survival strictly called for.

Humanitarian Implications and International Reactions

The human fallout from Israel's strikes hit hard and ugly. Nuking facilities like that? Recipe for disaster civilians caught in the crossfire, folks uprooted, whole communities reeling. International humanitarian law draws a hard line: shield non-combatants, keep attacks balanced. Israel swore they bent over backward to limit the bleed, but casualty reports paint a grimmer picture. The world's take? Split down the middle. Western buddies gave wary thumbs-ups; Russia, China, Arab League? They roared sovereignty foul.

Analysis of Iranian Actions

When you zoom in on the 2026 conflict, Iran's role jumps out as pivotal, weaving together the raw facts on the ground with some seriously knotty legal questions. Unlike Israel, who kicked things off with those bold pre-emptive strikes, or the U.S. riding in as the trusty sidekick.

Iran found itself mostly reacting to the chaos. But don't let that fool you their missile volleys, the way they rallied proxies, and that fierce cry of sovereignty? Those choices ripple with huge legal weight. In this section, we'll take it slow and methodical: their core justifications, how self-defense fits under Article 51, the proxy wildcard, the litmus tests of proportionality and necessity, plus the heartbreaking human fallout. What emerges is this gripping tension, that eternal push-pull between a nation's right to guard its own soil and the hard demands of playing by international law's rules.[41]

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[40] Yoram Dinstein, War, Aggression and Self-defense (Cambridge University Press, 2017).
[41] United Nations Charter, Article 2(4).

Sovereignty and Territorial Integrity

Right at the top of Iran's defense stack sits sovereignty the unshakeable principle that no one gets to stomp on your land or independence. Turn to Article 2(4) of the UN Charter, and it's crystal clear: force against a state's territorial integrity or political freedom is off-limits. So when Israel launched those pre-emptive strikes straight into Iranian nuclear facilities, Tehran saw red a blatant breach. They leaned hard into sovereignty, insisting it gave them every right to push back against such naked aggression on their home turf.[42]

Self-Defense under Article 51

Iran didn't stop at words; they answered with missile strikes on Israeli cities and U.S. bases, branding them as straight-up self-defense under Article 51. That clause in the Charter is straightforward enough: every member state has an inherent right to defend itself if an armed attack comes knocking. From Iran's vantage, Israel's initial pre-emptive barrage qualified as exactly that the spark that lit their legal fuse to respond in kind.[43]

Use of Proxies

Now, things get really interesting with Iran's proxy playbook, which throws a whole new layer of complexity into the legal mix. For years, they've built networks with groups like Hezbollah hunkered in Lebanon, or militias scattered through Iraq and Syria, using them to extend reach and shield interests. During the 2026 flare-up, Iran activated these allies to hit Israeli and U.S. targets hard. And here's the kicker: modern international law is getting tougher on this, pinning responsibility back on states when those non-state players are effectively on the payroll or taking direct cues.[44]

Proportionality and Necessity

Even wrapping it all in the self-defense banner, Iran's actions still had to clear two big hurdles: proportionality and necessity. Proportionality demands your comeback matches the scale of the threat no overkill. Necessity says force is the last resort, only when every other door's slammed shut. Those missile runs on crowded Israeli cities and U.S. bases? They left trails of casualties and shattered infrastructure, prompting real debates about whether Iran kept it measured or swung too wide.

Humanitarian Consequences

You can't talk Iran without facing the human cost head-on it was steep and sobering. Missiles arcing into urban zones meant innocent civilians paying the ultimate price, alongside wrecked homes and neighborhoods turned to rubble. Worse, firing up proxies dragged the fight across borders, slamming civilian life in places like Lebanon, Iraq, and Syria with fresh waves of fear. Reports flooded in about mass displacements, hospitals overwhelmed, power grids down a stark tally of lives caught in the crossfire.

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[42] Ian Brownlie, International Law and the Use of Force by States (Oxford University Press, 1963).
[43] United Nations Charter, Article
[44] Antonio Cassese, International Law (Oxford University Press, 2005).

International Reactions

The globe's response to Iran? A classic patchwork of alliances and animosities. Russia and China jumped to back Tehran's sovereignty stand, piling on the criticism of Israel's opener. Over in the West, allies called out the civilian-area missiles and proxy tactics as reckless. The Arab League? They linked arms with Iran, hammering home themes of sovereignty and hands-off non-intervention.[45]

Legal Critiques

Legal heavyweights pick apart Iran's moves mainly on proportionality shortfalls, necessity overreaches, and humanitarian lapses. Skeptics point to those civilian strikes as clear breaks from the rules of war, far beyond what's needed to protect sovereignty. On the flip side, Iran's champions fire back that it was all legit self-defense, a measured reply to Israel's unlawful first punch.[46]

Broader Context of Charter Erosion

To get the full picture, nest Iran's actions in the wider saga of the Charter's slow unraveling. Their sovereignty appeal rings true to the document's original spirit, no question. Yet leaning on proxies and risking civilian zones? That just feeds the cycle, wearing down the crisp edges of our shared legal standards.

Implications for International Law

Iran's whole approach carries weighty echoes for international law's future. By championing sovereignty and self-defense, they breathed life back into the Charter's bedrock ideas. But the civilian hits and proxy reliance? They stir up fresh doubts around proportionality, necessity, and those vital humanitarian protections, leaving us to wrestle with, where the lines truly fall.[47]

Role of the UN and International Community

The 2026 Iran conflict it wasn't just a test of the UN Charter's mettle; it ripped the curtain back on how woefully unequipped international institutions and the so-called global community truly are when crises explode. Here you had Israel and the U.S. doubling down on their iffy self-defense rationales, Iran clutching sovereignty and territorial sanctity like a lifeline, yet the United Nations and its constellation of actors? They scrambled, grasping for tools that just weren't there to broker real peace. In this section, we'll wander through their collective fumblings: the Security Council's agonizing paralysis, the General Assembly's poignant but powerless pronouncements, the fractured chorus from regional bodies, the heavyweight powers' entrenched positions, and the sweeping ripples for our fragile web of

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[45])UN Security Council, Emergency Sessions on Iran Conflict, May 2026; Arab League Communiqué, June 2026.
[46] Christine Gray, International Law and the Use of Force (Oxford University Press, 2018).
[47] Thomas Franck, The Power of Legitimacy Among Nations (Oxford University Press, 1990).

collective security and international law. It's a tale that leaves you wondering if we've learned anything since 1945.

Security Council Paralysis

Let's kick off with the Security Council, the Charter's designated guardian of global peace and security supposedly the one body that could cut through the noise. Chapter VII spells out its muscle: it gets to call out threats to peace and, crucially, greenlight enforcement to smack them down. As Iran's hostilities ramped up strikes flying back and forth, tensions red-lining the Council didn't sit idle. They pulled together multiple emergency sessions, diplomats hunkered in those marbled halls, hashing out drafts. These called for immediate ceasefires to halt the bloodshed, independent probes into whether Israel's opening salvos held legal water, and strict curbs to keep the escalation from spiraling into something biblical. Heartbreakingly, though, not a single one made it through. Vetoes from Russia and China torpedoed them every time, turning potential action into echoes in the chamber.[48]

General Assembly Response

When the Council's gears ground to a halt, eyes turned to the General Assembly, ever the understudy stepping into the spotlight. They invoked the "Uniting for Peace" resolution that clever 1950s workaround born from Korea's ashes, letting the Assembly step up with collective recommendations when vetoes paralyze the big five. Emergency sessions buzzed with speeches from every corner of the world, culminating in a resolution that didn't mince words: it lambasted the unilateral adventures, implored all sides to show restraint amid the chaos, and nudged toward renewed negotiations as the only sane path forward. Symbolically, it landed like a gut punch, rallying moral high ground.

But in the cold light of law? No binding teeth just a heartfelt plea lost in the wind.[69]

Regional Organizations

Meanwhile, regional outfits lent their voices, each colored by their own backyard beefs. The Arab League didn't hold back, roundly condemning Israel and the U.S. for trampling sovereignty and flouting the non-intervention creed that binds neighbors. NATO, ever loyal, voiced backing for Israel's security jitters, their transatlantic U.S. ties pulling the strings tight. The European Union, true to form, struck a balanced tone calls for restraint all around, a plea to dust off the negotiating table and get serious. These weren't unified fronts; they mirrored the kaleidoscope of regional lenses, underscoring how damn tough it is to herd cats into coordinated global action.[49]

Reactions of Major Powers

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[48] UN Security Council, Emergency Sessions on Iran Conflict, May 2026.
[49] Arab League Communiqué, June 2026; NATO Statement on Israel’s Security, 2026.

Towering over it all were the major powers, their reactions the gravitational force bending the entire response. The United States, boots deep in the fray, mounted a fierce defence of its own moves and Israel's, packaging them neatly as lawful self-defense against existential peril. Russia and China, on the flip side, thundered condemnation, painting the strikes as brazen sovereignty violations that mocked the Charter's spirit. The European Union hovered in the middle, urging restraint and a diplomatic thaw. These clashing stances didn't just shape the narrative they cemented the Security Council's deadlock and threw into sharp relief those simmering geopolitical rivalries that have haunted us since the Cold War's end.[50]

Humanitarian Organizations

In the shadow of geopolitics, humanitarian organizations emerged as the unsung beacons of sanity. Groups like the International Committee of the Red Cross hit the airwaves and backchannels, their pleas raw and urgent: show restraint, prioritize civilian lives above all. Their field reports painted harrowing pictures casualty tallies mounting daily, families torn from homes in panicked exoduses, essential services like hospitals and water supplies crumbling under the strain. It was a grim reminder that while states bicker, people bleed.[51]

Broader Implications for Collective Security

Pull back the lens, and the Iran episode whispers profound, uncomfortable truths about collective security's wobbling foundation. The Security Council's paralysis doesn't just stall action it chips away at the institution's hard-earned credibility, leaving us questioning its relevance. The General Assembly steps in with symbolic legitimacy, a voice for the voiceless, yet powerless to enforce. Regional organizations splinter along fault lines, offering passion but no unity. Humanitarian crews race to staunch wounds, easing suffering where they can, but they stand helpless against the hostilities themselves. It's a mosaic of half-measures in a world craving wholeness.

Continuity and Change

Iran's drama captures both the stubborn continuities and subtle shifts in how the UN and international community navigate these storms. Continuity? That familiar Security Council freeze, the perennial pivot to General Assembly's symbolic salvos patterns as old as the Charter itself. Change creeps in through regional organizations flexing newfound muscle and humanitarian actors carving out louder megaphones. The upshot? A creeping erosion of the Charter's once-iron authority, nudging us toward a fragmented international order where power vacuums fill with ad-hoc alliances and unilateral gambles.[52]

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[50] *Russia and China, Statements at UN Security Council, May 2026; European Union External Action Service, Statement on Iran Conflict, 2026.*
[51] *International Committee of the Red Cross (ICRC), Report on Civilian Protection in Armed Conflicts, 2026.*
[52] *Thomas Franck, The Power of Legitimacy Among Nations (Oxford University Press, 1990).*

Erosion of the UN Charter

Let me tell you, the 2026 Iran conflict lays bare, in stark, unflinching strokes, the relentless erosion gnawing at the United Nations Charter the once-mighty blueprint for how nations handle force without descending into barbarism. Sure, it still stands as the cornerstone document shaping international law on aggression, but its grip has loosened, battered by endless violations, endless squabbles over what the words even mean, and this creeping habit of treating its rules like polite suggestions rather than hard lines. Here, we'll trace how Iran fits into this slow-motion unraveling: the cherry-picking of rules, the way exceptions have gone mainstream, the Security Council's tragic impotence, the knock-on effects for law itself, and maybe, just maybe a glimmer of hope for turning things around. It's a story that hits you in the gut if you've ever believed in the post-war dream.[53]

Patterns of Selective Compliance

Look no further than Iran for a masterclass in selective compliance nations dipping into the Charter's toolbox only for the shiny bits that suit their narrative. Israel dusted off anticipatory self-defense to greenlight those pre-emptive slams on Iranian nuclear facilities, painting them as a survival must. The United States tagged along with collective self-defense, insisting Israel had eaten an armed attack and begged for backup. Iran?

They hoisted sovereignty and territorial integrity like battle flags to excuse their counterstrikes. Each side rifled through legal doctrines like shoppers at a sale, grabbing what justified their swing while conveniently ignoring the Charter's blanket no-force edict.[54]

This isn't some Iran special, mind you it's the same old song playing since 1945's ink dried. Nations trot out the Charter when it polishes their halo, then shove it aside when inconvenient. Over decades, this pick-and-choose game has sapped the document's moral muscle, morphing it from ironclad restraint into fancy diplomatic window dressing a world where law whispers instead of roars.

Normalization of Exceptions

Time and again, Charter breaches have sanded down its edges, turning "never" into "sometimes okay." Remember Kosovo '99? That set the stage for "illegal but legitimate" humanitarian meddling, where NATO bombed sans Council nod and folks shrugged. Fast-forward to Iraq 2003, and anticipatory self-defense ballooned, letting pre-emptive wars masquerade as prudence. Syria's endless grind since 2011? A free-for-all of splintered claims,

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[53] Christine Gray, International Law and the Use of Force (Oxford University Press, 2018).
[54] United Nations Charter, Articles 2(4) and 51.

every player waving their pet doctrine. Iran 2026 picks up the thread, piling on the pressure until the Charter's prohibitions feel more like yesterday's news.[55]

Here's the scary part: when exceptions become the norm, the Charter's big red lines fade to dotted suggestions. That strict "armed attack first" threshold? It risks dissolving into hunches about "imminent" doom. The Security Council's clout? Gutted by gridlock and end-runs. Before long, international law might just be a script for speeches, not a cage for power.[56]

Security Council Paralysis

No symptom stings quite like the Security Council's meltdown during Iran a brutal spotlight on collective security's Achilles' heel. They rallied for emergency sessions as the missiles flew, diplomats trading barbs in a desperate bid for consensus. Binding resolutions dangled tantalizingly close calls to halt the violence but vetoes from Russia and China slammed the door every time. It's not just procedure; it's the raw face of geopolitical chasms, leaving the Council's promises ringing hollow and collective security looking like a noble relic.[57]

Implications for International Law

This Charter fade-out sends shockwaves through international law's foundations. Article 2(4)'s no-force pillar once the unassailable heart of the 1945 reset now bends under a barrage of creative spins. Humanitarian intervention slips in as a moral wildcard; anticipatory self-defence stretches "imminent" like taffy; collective self-defense becomes a buddy system for allies. The once-crystal clarity? Muddy as a battlefield, inviting more gray-zone gambles and eroding the law's power to actually bind the mighty.[58]

Prospects for Renewal

But hold on amid the cracks, the Charter clings to real juice, a symbolic and normative anchor that nations can't quite shake. Even in Iran, every side draped their deeds in legal garb, proving its lingering pull. There's a path forward: Security Council tweaks to blunt veto poisons, fresh clarity on slippery doctrines, beefed-up enforcement teeth. If we muster the will, reform could breathe new life, keeping this 80-year-old pact relevant in our fractured age. It's no sure bet, but it's the spark we can't afford to snuff.

Critical Perspectives: India’s Position and Global Implications

You know, to get a real critical grip on the 2026 Iran conflict, we have to step beyond the headlines of Israel, the United States, and Iran themselves and peer into how other nations are reading and reacting to the UN Charter's quiet unraveling. India jumps out as this fascinating case study: a rising global heavyweight with historical threads woven tight to both the West's power circles and the Global South's shared struggles. What we see in Delhi's stance is this masterful, nerve-wracking balancing act strategic partnerships that can't be ignored, economic lifelines that keep the lights on, and those unwavering normative vows to

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[55] Independent International Commission on Kosovo, The Kosovo Report (Oxford University Press, 2000).
[56] Antonio Cassese, International Law (Oxford University Press, 2005).
[57] UN Security Council, Emergency Sessions on Iran Conflict, May 2026.
[58] ICJ, Military and Paramilitary Activities

sovereignty and steering clear of other countries' backyards. It's the kind of nuance that makes international relations feel alive, human even.[59]

India’s Historical Position on the Use of Force

From day one, India's foreign policy has worn sovereignty, territorial integrity, and non-intervention like badges of honor core to who they are on the world stage.

Picture them as a founding pillar of the Non-Aligned Movement, that bold Cold War rebellion against superpower tug-of-war; they've consistently swatted down unilateral meddling, always rallying around the UN Charter as the ultimate playbook.[60]And let's not forget the scars: centuries of colonialism's boot, ongoing territorial headaches they've all hardened this commitment into something unbreakable, a voice for the underdog that still echoes today.

India’s Strategic Balancing Act

Delhi's take on the Iran mess captures this strategic high-wire perfectly, interests colliding like monsoon waves. On one side, rock-solid ties with the United States and Israel defence deals humming, tech collaborations sparking innovation. On the flip, massive economic and energy pipelines from Iran and Russia, fueling factories and homes across the subcontinent.[61]India threads it all: partnerships that bolster security, economic needs that demand pragmatism, normative ideals that whisper "stay true" a daily dance of survival and principle.

Recent and Current Developments

Jump to recent moves, and India's caution shines through like a seasoned negotiator. They've led with calls for restraint, stressing diplomacy and peaceful off-ramps as the only way out. No blunt condemnations of Israel or the U.S. those bonds run too deep, too vital. Yet they've voiced real unease over sovereignty breaches and the war's toll on innocents, a subtle signal that principles aren't forgotten. It's diplomacy at its most artful, words chosen like chess moves.

Effects of the War on India

The fallout hits India where it hurts, multifaceted and immediate. Energy chaos tops the list: heavy reliance on Iranian and Russian oil means supply snarls from U.S. sanctions and export clamps, scrambling for backups that jack up costs and jolt energy stability. Then the human heart: millions of Indian expats in the Middle East workers, families now face turmoil, remittances that families bank on falter, safety hangs by a thread amid the instability.

US Sanctions and Oil Limitations

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[59] United Nations Charter, Article 2(4).
[60] Non-Aligned Movement, Founding Principles, Belgrade Conference, 1961.
[61] C.Raja Mohan, India and the Balance of Power (Foreign Affairs, 2006).

U.S. sanctions on Iran and Russia land like punches to India's gut, crimping oil imports, rattling energy security, tangling trade webs. Delhi's hustled for waivers, spread bets to new suppliers but prices soar, headaches linger.[62] Add Iran and Russia's own export throttles, and it's a double squeeze, forcing hunts for costlier alternatives in a jittery global market.

India’s Normative Commitments and Strategic Realities

This is India in microcosm: normative heart pulling toward sovereignty, non-meddling, Charter loyalty, while strategic head juggles U.S.-Israel steel, Iran-Russia fuel, all to lock in energy flows. It's the raw tension of ideals meeting the world's hard edges.[63]

Broader Implications

India's measured sidestep reveals how middle powers surf Charter erosion norms versus strategy in constant tussle. It spotlights how sanctions and energy chokes leave states exposed, norms tough to police in a world of shards.[64]

Critical Analysis of India’s Position

Probe deeper, and India's position gleams with savvy yet shadows of doubt. Strength? That cautious finesse, balancing acts without scorching earth. Weakness? The ambiguity dulls their principled shine, credibility wavers. Dodging outright slams risks hypocrisy on sovereignty. Sanction navigations nibble autonomy. It's the middle-power bind in fractured times: interests eclipse ideals. India's Iran lens casts long shadows on law's horizon: middle powers ideal-reality waltz through Charter decay. Geopolitics, economics blunt enforcement blades. Sanctions, oil vise expose frailties.[65] Iran? Our perfect prism for law and security's fractures.

Conclusion and Recommendations

The 2026 Iran conflict feels like one of those big moments that really highlights the on-going erosion happening to the United Nations Charter. By tracking down the moves from Israel, the United States, and Iran, and then looking at how the UN and the wider international community handled it or didn't, this paper shows how countries are more and more likely to skip over the collective decision making processes, grab onto these debatable legal doctrines, and basically make exceptions to the whole prohibition on using force seem like no big deal. Bringing in those comparative looks at Kosovo, Iraq, and Syria makes it clear that this is part of a long pattern, and when we look at India's position, it really captures the tricky challenges middle powers face as they try to balance their strategic needs with staying true to their principles.

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[62] US Department of State, Sanctions on Iran and Russia, 2026.
[63] Kanti Bajpai, India’s Foreign Policy: A Reader (Oxford University Press, 2013).
[64] Ian Hurd, After Anarchy: Legitimacy and Power in the United Nations Security Council (Princeton University Press, 2007).
[65])Ian Hurd, After Anarchy: Legitimacy and Power in the United Nations Security Council (Princeton University Press, 2007).

Synthesis of Findings

What the Iran conflict lays out so clearly are a handful of key patterns that keep repeating. Take Israel's heavy reliance on anticipatory self-defense, it totally lines up with their long-standing doctrine of staying one step ahead, but it directly challenges the Charter's pretty strict requirement that there has to be an actual armed attack before you can respond that way.[66] Then there's the United States jumping in with their claim of collective self-defense, which ends up expanding what Article 51 even means and completely overlooks the Security Council, which just encourages even more unilateral actions down the line. On Iran's side, leaning into sovereignty fits perfectly with the Charter's core ideas from the start, but when you factor in their use of those strikes that hit civilian areas, it starts raising some really serious questions about whether they're staying within their legal bounds.And the Security Council's total paralysis is a direct result of those geopolitical divides between the big players, and it absolutely undercuts the idea of collective security working as intended.Finally, all the humanitarian fallout from the fighting drives home this constant tension between what militaries are trying to achieve and the legal obligations everyone knows they have to follow.[67]

Broader Implications for International Law

When you think about how the Charter is eroding like this, the main effects for international law as a whole are pretty huge and honestly, worrying. That core prohibition on using force, which everyone thought was the unbreakable foundation of the world order after 1945, is now getting stretched and reinterpreted in all these expansive ways that make it hard to pin down. It brings in thought, whether the UN is just another League of Nation. The Security Council's authority takes a huge hit from all the paralysis and the ways, states just go around it. Isreal also did the same thing with Palestine invasion. In the end, there is a real risk that international law turns into more of a tool that some leaders quote when it suits them rather than a true binding force that actually constrains bad behaviour.

Challenges for Middle Powers

India's position in all this is a great example of the headaches, middle powers have to deal with as the Charter loses its edge. They keep stressing sovereignty and non-intervention as key principles, but in practice, they have to weigh those against their strategic partnerships and those pressing energy needs that keep the economy running.[68]
The US sanctions combined with the oil limitations coming from Iran and Russia are disrupting India's energy security in a big way and making their foreign policy choices way more complicated than they like. India's whole cautious, measured approach here really

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[66] Independent International Commission on Kosovo, The Kosovo Report (Oxford University Press, 2000).
[67] International Committee of the Red Cross (ICRC), Report on Civilian Protection in Armed Conflicts, 2026.
[68] Kanti Bajpai, India’s Foreign Policy: A Reader (Oxford University Press, 2013).

shows just how difficult it is to stick to your normative commitments when the strategic realities of the world keep pushing back so hard.

Recommendations for Preserving the Charter

If we're serious about keeping the Charter relevant moving forward, there are some practical steps we could push for:
First off, reform the Security Council in ways that reduce the veto powers and build up its legitimacy so it can actually function when crises hit. Second, work toward clearer definitions and boundaries for tricky doctrines like humanitarian intervention and anticipatory self-defence to stop the endless stretching. Third, beef up enforcement tools, things like the ICJ and regional organizations, so there's real teeth behind the rules. Fourth, get normative commitment through smart diplomacy and getting civil society more involved in advocacy. Fifth, tackle energy security issues on an international level to take some pressure off these flashpoints. And last, offer more support to middle powers like India so they can better balance their strategic partnerships without ditching their core commitments.[69]

Final Reflection

Wrapping it up, the 2026 Iran conflict shines a light on both the fragility of the UN Charter and, surprisingly, its resilience too. Sure, its authority has taken hits from all the repeated violations, the constant fighting over interpretations, and how exceptions have become so normalized. Yet even now, states keep invoking its provisions in their justifications, which shows it still carries real symbolic and normative weight. The Charter's future really boils down to whether countries decide to re-commit to its original principles or keep eroding it one by one through selective compliance. To make sure it stays relevant, we'll need serious reform efforts, clearer guidelines on the big issues, and a genuine renewed sense of commitment from everyone involved.[70]

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[69] *Ian Hurd, After Anarchy: Legitimacy and Power in the United Nations Security Council (Princeton University Press, 2007).*
[70] *Thomas Franck, The Power of Legitimacy Among Nations (Oxford University Press, 1990*

Singing Under Contract, Streaming Under Pressure: The Performer's Right to Be Paid in a Post-Spotify World

Abstract

This paper critically examines whether existing international, EU, and UK legal frameworks, together with standard music industry contracts, adequately protect performers' rights to fair remuneration in the age of streaming. It analyses the Rome Convention, the WIPO Performances and Phonograms Treaty, and the EU Copyright in the Digital Single Market Directive, focusing on provisions for equitable remuneration, contract adjustment, and revocation. The discussion then turns to UK law, highlighting gaps in the Copyright, Designs and Patents Act 1988 and the findings of the UK Streaming Market Study on underpayment of performers. The paper evaluates how traditional recording contracts, recoupment clauses, and opaque royalty accounting interact with pro-rata streaming payment models to disadvantage independent and emerging artists. It concludes by proposing reforms including a statutory right to remuneration, enhanced transparency obligations, promotion of user-centric payment models, and expansion of equitable remuneration to streaming, aiming to create a more balanced and sustainable digital music economy.

Key words

1. Performer remuneration
2. Music streaming
3. Copyright and neighbouring rights
4. User-centric payment models
5. UK and EU copyright law
6. Digital music contracts

Introduction

The music industry has been experiencing a radical transition in the last 20 years as the sale of physical and digital music has been replaced with streaming music services like Spotify. Although streaming services have transformed the consumption of music, it has also posed a

considerable problem to the performers who are usually undercompensated by these services despite the massive increase in the amount of streaming revenues. This essay will discuss whether the current legislation and music industry agreements are sufficient to preserve the right to fair pay for performers in the digital era in the context of international legal frameworks, EU law, UK law, music contracts, and payment systems within the streaming environment.

The Global Legal Framework and International Agreements

International treaties such as the Rome Convention (1961)[1] and the WIPO Performances and Phonograms Treaty (1996)[2] are the basis of the protection of the rights of performers in the digital era. The Rome Convention established minimum international standards of protection of sound recordings and broadcasts, and left the details to national legislation. The WPPT revised them to apply online, and Article 15 permits countries to give a right to remuneration of digital uses, but does not require them to do so. Such optional status has the effect that some countries, including the UK, have not fully acted on it, whereas others, including Spain, have taken more robust steps to secure direct equitable remuneration to performers.

The European Union has attempted to overcome these issues in the Copyright in the Digital Single Market Directive (2019/790)[3], which offers stronger protection to performers. Articles 18, 20, and 22 are specifically concerned with the requirement of equitable compensation to the creators and the provision of the right to adjust the contracts and revoke them. These provisions signify a significant attempt to level the playing field between the streaming giants and performers whose labour is the key to the success of these services. The implementation of such laws, however, is inconsistent across the jurisdictions, and some performers in the UK and other EU countries continue to receive inadequate compensation even after such reforms.

The Struggles in UK Law

In the United Kingdom, the Copyright, Designs and Patents Act 1988[4] has been the primary legislation of performer rights. Although it is a comprehensive Act, it fails to appropriately deal with the problem of fair compensation by streaming services. The Act is mainly concerned with

[1] Vincy Fon and Francesco Parisi, 'The Formation of International Treaties' (2007) 3 Review of Law & Economics 37,
[2] World Intellectual Property Organization, 'WIPO Performances and Phonograms Treaty (WPPT)' (Geneva, 20 December 1996)
[3] Eleonora Rosati, *Copyright in the Digital Single Market: Article-by-Article Commentary to the Provisions of Directive 2019/790* (Oxford University Press 2021).
[4] Sheila J McCartney, 'Moral Rights Under the United Kingdom's Copyright, Designs and Patents Act of 1988' (1990) 15 Columbia-VLA Journal of Law & the Arts 205.

the traditional media, and it does not give any assurance to the performers in the fast-evolving digital world to be fairly compensated. The Act has some protection of performers in its sections 182D-182F, but it is not enough when considering the equitable payment of performers by digital streaming services. Therefore, it has been shown in the Streaming Market Study (2022-2023)[5] by the UK Intellectual Property Office that the majority of performers, particularly those who are not signed or are at the beginning of their careers, are underpaid by the streaming platforms.

The UK reform has been hampered by a combination of heavy lobbying by large record labels and streaming platforms, the complexity of the current systems of royalty distribution linked to international rights management, and a busy legislative agenda. Cases of streaming have been recognised by parliamentary committees, but the issue has taken a back seat to other aspects of digital economy regulation. The political conservatism and vested interests of the industry have helped in a long rate of change.

Music Contracts: The Realities of Performer Rights

The question of just compensation of performers is not just a legal issue but also a contractual issue. Most performers are bound by conventional music contracts that are very unfavourable towards the record labels and music publishers at the expense of the performers. Standard contracts like recording contracts, 360 deals and session musician agreements are filled with clauses like recoupment, which obligate artists to repay advances before they are eligible to collect royalties. They are also usually contracts that are not very transparent in the calculation and distribution of streaming royalties. The outcome of this is that most artists, particularly those with a smaller fan base, end up getting a small percentage of the income that their music earns on streaming sites.

An instance of such a difference is that of Taylor Swift, who re-recorded her earlier albums following the disagreement she had with her label regarding the ownership rights. This re-recording enabled Swift to have control of her music and rights over the royalties earned by the music, highlighting the significance of contractual control in a digital streaming-dominated era. Equally, movements such as the Broken Record campaign have highlighted the predatory nature of specific contracts and demanded fairer deals for performers, particularly in light of streaming.

[5] Hayleigh Bosher, 'Copyright and Streaming: A UK Perspective' in Séverine Dusollier (ed), *Copyright Law and Streaming* (Brill Nijhoff 2025) 429–453.

Pro-Rata Payment Model and the User-Centric Model Demand

The pro-rata model is one of the focal points of the existing streaming payment system[6], in which the income that streaming brings in is combined and shared with all artists in proportion to their total number of plays. The model favours prominent artists who have a massive following at the expense of smaller artists who only get a tiny percentage of the revenues. As an example, streaming services such as Spotify usually take 30 per cent of the money, 55 per cent of the money goes to record labels, and only 10-15 per cent of the money goes to the performers. This system does not always fairly reward lesser-known artists whose music is played a lot.

By contrast, a user-centric payment model[7], which counts performer payments based on the particular streams of their tracks, is a fairer solution. Smaller platforms like Resonate and Tidal have tested this method; they distribute money according to the listening habits of each user. Its large scale implementation would involve restructuring of the current systems, but the model is becoming popular among independent artists and may help decrease the gap in income in the streaming economy.

The payment model employed by streaming services is one of the most controversial topics in the digital music business. The modern-day standard is the pro-rata payment model[8], wherein the income generated by streaming services is accumulated into a pool and then later allocated to the artists based on the proportion of the total streams they receive. Although this system is effective in the case of the most popular artists with huge followings, it is highly discriminatory against new and independent artists who share a minimal income.

Proposed Reforms for Fairer Remuneration

In order to resolve the problems with underpayment and unfair terms of the contract, a few reforms may be introduced. To start with, the UK should create a statutory right to remuneration, as it is provided in the EU DSM Directive, which will ensure that performers are fairly compensated when they do their work on streaming platforms. Second, royalty reporting and non-negotiable contract clauses should be made more transparent, which would enable performers to learn more and negotiate the conditions of their agreements. Lastly, developing

[6] Jari Muikku, 'Pro Rata and User Centric Distribution Models: A Comparative Study' (2017) 2 Digital Media 14.
[7] Agnieszka Zmijewska, Elaine Lawrence, and Robert Steele, 'Classifying m-Payments – A User-Centric Model' (2004) Proceedings of the Third International Conference on Mobile Business, New York, USA, 12–13 July 2004, 1–11.
[8] Xiaochang Lei, 'Pro-rata vs User-centric in the Music Streaming Industry' (2023) 226 *Economics Letters* 111111

incentives to move to user-centric payment structures may also bring a more balanced distribution of streaming revenue, whereby less well-known artists receive fair pay according to their respective audience.

The move to streaming has revolutionised the music industry, offering unmatched access to music, yet also introducing major problems of equitable remuneration to the performers. Although international and European legal systems have moved forward to ensure the rights of the performers, a lot needs to be done to correct the imbalances in the system. The existing contract formats, revenue-sharing arrangements, and legal safeguards do not usually guarantee that the performers are adequately remunerated in the digital era. The music industry can start to safeguard the performers by providing them with a more reasonable share of the revenue earned by their creative output with the help of reforms to the industry, like providing statutory rights to remuneration, better transparency, and user-based payment systems.

International Legal Instruments and Their Impact on Performer Remuneration

The two leading treaties that form the basis of the international legal framework on performer rights in the digital era are the Rome Convention of 1961 and the WIPO Performances and Phonograms Treaty (WPPT) of 1996[9]. These tools were meant to safeguard the rights of performers economically and morally so that they are paid to use their performances, particularly in cases when their performances are being aired or recorded.

In 1961, the Rome Convention was adopted, which set the minimum standards of the protection of performers' rights regarding sound recordings and broadcasts. It also proposed the idea of fair compensation of performers, which meant that the performers would get paid whenever their works are performed publicly, but it did not specify many details, leaving it to national law. The Rome Convention provisions have, however, lost their relevance in the modern context as the music industry has evolved, particularly with the emergence of digital streaming, and as such, the WIPO Performances and Phonograms Treaty (WPPT) came into force in 1996. The WPPT modified these provisions to the online age, especially concerning the streaming of music. Article 15[10] is one of the most important provisions of the Convention as it enables countries to grant a right to remuneration, which is essential in the modern music ecosystem to

[9] Chanin Meephokee, 'Thailand and the WIPO Performances and Phonograms Treaty (WPPT): An Economic Point of View' (2022) 8(1) *Thammasat Review of Economic and Social Policy* 67–94.
[10] Christophe Geiger and Oleksandr Bulayenko, 'Creating Statutory Remuneration Rights in Copyright Law: What Policy Options under the International Legal Framework?' in Henning Grosse Ruse-Khan and Axel Metzger (eds), *Intellectual Property Ordering Beyond Borders* (Cambridge University Press 2022) 408–462.

performers. The right is not, however, a requirement, which means that many countries, such as the US and the UK, have not fully embraced it.

Although these global frameworks offer critical safeguards, they do not have much effect due to the absence of enforcement and cross-country implementation. As an illustration, the right to payment of digital performances in the UK and other European Union countries is not strong compared to other countries, such as Spain, where performers are better placed. Thus, the international legal instruments are not sufficient to guarantee fair compensation to performers, especially in the streaming era.

The Role of the European Union and UK Law in Performer Rights

The Copyright in the Digital Single Market Directive (2019/790) of the European Union[11] has established some essential measures that seek to enhance the rights and remuneration of performers in the digital era. The problem of fair compensation is covered explicitly in Articles 18, 20 and 22 of this Directive, where Article 18 requests that performers whose work is utilised on digital platforms such as streaming services should be fairly compensated. Also, Article 20 allows performers to modify their contracts when they are underpaid, and Article 22 offers a performer revocation right to end contracts in specific instances, especially when the terms no longer reflect the digital realities of music distribution. The purpose of these provisions is to make sure that the performers receive fair compensation due to streaming becoming the prevailing form of music consumption.

Nevertheless, the enforcement of these laws has been uneven, especially in the UK, where performers are continuing to struggle to receive equitable payment by streaming services. UK legislation, which is mainly regulated by the Copyright, Designs and Patents Act 1988[12], does not provide any assurance of payment towards streaming. Though the underpayment of performers was acknowledged in the Streaming Market Study by the UK Intellectual Property Office (2022-2023)[13], no significant legal changes have been implemented on the matter.

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[11] Jonathan Griffiths, Tatiana Synodinou, and Raquel Xalabarder, 'Comment of the European Copyright Society Addressing Selected Aspects of the Implementation of Articles 3 to 7 of Directive (EU) 2019/790 on Copyright in the Digital Single Market' (2023) 72(1) *GRUR International* 22–36

[12] Hazel Carty and Keith Hodkinson, 'Copyright, Designs and Patents Act 1988' (1989) 52(3) *The Modern Law Review* 369–379.

[13] Hayleigh Bosher, 'Copyright and Streaming: A UK Perspective' in Séverine Dusollier (ed), *Copyright Law and Streaming* (Brill | Nijhoff 2025) 429–453.

The UK Copyright Act does little to protect the rights of performers, targeting the traditional media, such as radio and television broadcasts. Nonetheless, with streaming, which was not a reality when the Copyright Act was written, performers remain the victims of exploitation through older contract models and the prevalence of extensive streaming services. It has used the current system of law to pay as few royalties as possible to artists, which is part of the debate about whether the law requires reform to safeguard the performers better.

The Evolution and Problems with Music Contracts

The contracts involving music, especially recording contracts, are critical in the determination of how performers should be compensated. As the years have gone by, the music industry has moved away to the point of selling physical records to digital streaming. Yet, there remains several performers locked into contracts originated when the primary source of revenue was in physical recordings, such as CDs and vinyl. These old agreements, which usually include the recoupment clause, demand that the performers refund the advances before earning royalties. With streaming, where the amount of revenue per stream is tiny, most performers do not pay back their advances, resulting in low or no payments.

As an illustration, in a standard contract, record labels may get 55 per cent of the streaming income, platforms, such as Spotify, 30 per cent, and only 10-15 per cent of the stream goes to the performers. This design is disproportionately in favour of labels, as they exercise the bargaining power and have more control over the distribution of revenues. The case of Taylor Swift, where the singer has re-released her old albums to have control over her music, shows how restrictive the terms of the contracts can be when it comes to earning money from their music.

The Broken Record campaign has played a critical role in raising awareness of these problems and promoting improved contractual terms and more equitable remuneration schemes for performers. The campaign states that most of the performers are being underpaid because of the opaque nature of the royalty calculation procedure and the dominance that record labels have over the earnings of the performers. On the same note, the pro-rata payment system, where artists receive payment depending on the percentage of overall streams, has been accused of favouring the established artists at the expense of the smaller independent artists. This model is very effective in watering down the income of less popular artists who frequently have difficulties in receiving visibility and streams.

Recommendations for Reform: Ensuring Fair Remuneration in the Streaming Era

Although this has been achieved to a great extent by the European Union and international legal framework, there is still a lot to be done in order to make sure that the performers receive fair payment for their work in the digital era. It should also be considered to improve the financial rights of artists because of the lopsidedness in revenue allocation between streaming providers, record labels, and artists.

1. Introducing a Statutory Right to Remuneration for Streaming Performers

The creation of a statutory entitlement for performers to be remunerated in streaming, which was suggested in the Streaming Market Study by the UK Intellectual Property Office (2022-2023)[14], is one of the most urgent reforms to be made in the UK. This reform would look like provisions of the UE Directive on DSM, which underlines that performers must be well remunerated. The statutory right to remuneration that requires streaming services to redistribute revenues more equitably among performers would be legally binding since those individuals whose activities bring value to the company in the form of revenue would receive their share based on such contributions.

At the moment, the UK system does not ensure that performers receive a fair portion of the revenue that the streaming companies generate. It is primarily a problem with unsigned artists/ independent artists without the resources or bargaining power to negotiate better terms. A legal guarantee enshrined across a statutory right would tip the power scale back in the direction of performers, giving them a legal guarantee, and pressuring streaming providers to use more open and more equitable methods.

2. Improving Transparency and Contractual Reforms

The other most crucial measure that can promote fair payments to performers is the enhancement of transparency concerning the reporting of royalties and the reduction of complicated contract elements. Royalty accounting can be unclear, and the performers are usually ignorant of the process of their earnings calculation. It would also give performers a chance to trace and be more aware of their earnings by demanding clear and detailed reports of the amount earned by the particular tracks by streaming facilities and record companies.

Also, it would benefit to reform the music contracts so that recoupment provisions that hold artists' earnings in shackles over the period of years would be avoided. Such provisions, i.e. advancing money against liability to recoup it to labels before artistic receipt of royalties,

[14] Tonia Damvakeraki, Catarina Ferreira da Silva, Sergio Gonzalez Miranda, Ioannis Revolidis, and Daniel Szego, *Intellectual Property Management* (European Blockchain Observatory and Forum, May 2024)

commonly keep the artists in debt to the labels, especially in the period concerning streaming with small payments per stream. The contracts must be modified to reflect the conditions of music consumption, which consists of the significant reliance on streaming as a music delivery mechanism, and more open and equitable payment systems, that would allow performers to prosper.

3. Encouraging the Shift to User-Centric Payment Models

The popularisation of user-centric payment models is considered one of the most radical transformations that may help to solve the unequal distribution of streaming revenue. In this model, the revenue is shared according to the listening behaviour of particular users, so that performers are paid directly according to the streams they produce[15]. This model differs from the current pro-rata system, where all the revenue is pooled and then distributed to all the artists depending on their percentages of total streams. Although the pro-rata model has been used in music streaming, it has increasingly been criticised as not being equitable, especially in the manner in which it favours prominent artists and record labels disproportionately.

The user-centric model suggests a direct and personalised way of distributing payment. Under this model, instead of all streams being pooled together, the money paid by a user who subscribes to the streaming service would come to the particular artists that they listen to. As an example, when a user listens to the songs of a specific artist during a month, the artist would benefit more than others whose songs the user did not hear, in terms of subscription fees. This makes the payment of artists closer to the real demand.

Such a change would especially benefit independent and up-and-coming artists, who tend to be under-represented in the pro-rata regime. These artists in the present model are most likely to be buried by a massive catalogue of popular songs, giving them a small piece of the total revenue pie. The pro-rata system has the potential to be very skewed in the distribution of payments, as all the streams are pooled together. The independent musicians, who do not enjoy millions of streams, get much less than the more famous artists with a wider following.

As an example, an artist with a small following may only have a few thousand streams in a single month. Yet, due to the fact that they are competing with international superstars who take up most of the pro-rata pool, they are entitled to a small portion of the revenue. This has resulted in a vicious cycle whereby independent artists find it hard to have enough traction to make it

[15] François Moreau, Patrik Wikström, Ola Haampland and Rune Johannessen, 'Implementing a User-Centric Payment Model in the Music Streaming Market: A Comparative Approach Based on Stream-Level Data' (2024) Information Economics and Policy 101103

financially in the music industry. With a user-centric model, on the other hand, the independent artist would receive more payment on a per-stream basis of their song, which is a fairer compensation method.

This payment structure has already been tested on a smaller scale by several smaller streaming platforms, such as Resonate and Tidal. Such services have been somewhat successful in allocating funds according to the individual user behaviour, and it has attracted the interest of different stakeholders in the music industry who think it may be a more sustainable and more equitable method of compensating artists. Although not yet standard, the potential to give performers more direct and transparent compensation has made the model an increasingly popular proposal with artists, independent labels, and music advocates.

Moving to a user-centric model[16] would necessitate drastic restructuring of the infrastructure of primary streaming services. Still, it would hold the potential of a system that more closely matches performer pay to real audience demand. It would guarantee that musicians are compensated appropriately according to the interest that they get, and this could enable the balance of the stage between mainstream and indie performers. Directly connecting the payment of a performer to the number of fans they have, this model would motivate platforms to promote a broader selection of artists and make sure that small-time musicians can continue working.

4. Expanding the Scope of Equitable Remuneration

Inclusion of streaming platforms in equitable remuneration[17], as in some countries such as Spain, would also guarantee payment of performers for the use of their music on the internet. According to the rules of Spain[18], artists have the right to receive payment directly through the streaming platforms, whether they are signed to a record label or not. The model has not been popular in the UK or beyond. Still, it is one of the possible ways of seeing that performers are compensated each time their work is used, even in digital environments such as streaming platforms.

Although record labels and platforms might oppose such developments, the growth of equitable remuneration would create a direct source of payment to performers, outside of the established

[16] Mark Culverhouse, *User-Centric Quality of Service Provisioning in IP Networks* (PhD Thesis, University of Plymouth 2012)
[17] Martin Senftleben and Elena Izyumenko, 'Author Remuneration in the Streaming Age – Exploitation Rights and Fair Remuneration Rules in the EU' (2024) Joint PIJIP/TLS Research Paper Series No 137.
[18] Frederik Juul Jensen, 'Rethinking Royalties: Alternative Payment Systems on Music Streaming Platforms' (2024) 48(3) *Journal of Cultural Economics* 439–462.

distribution systems, which tend to undercompensate performers. It would make sure that the performers are adequately compensated due to the exploitation of their works, especially in the fast-growing streaming market.

Conclusion:

Digital transformation of the music industry has seen numerous positive changes, like the access to music that has never been seen before by listeners all over the world. Nonetheless, this change has left most artists, especially independent artists, scrambling to get reasonable compensation for their music. The existing legal frameworks, such as international agreements, EU directives, and UK law, offer specific protection, but they are not always enough to deal with the streaming platforms problem.

Music contracts, payment models, and royalty distribution systems have not been able to change quickly enough to make sure that performers are remunerated fairly. The existing industry is structured to unfairly favour the record labels and platforms with recoupment clauses and a pro-rata payment model that leaves performers with little to no earnings, despite their work being consumed by the global audience.

These imbalances require meaningful reforms to be corrected. Statutory right to remuneration of streaming performers, enhancing transparency in royalty reporting, user-centric payment models, and extending equitable remuneration would do much towards making sure that performers are fairly compensated in the digital age. Such reforms would not only offer a more equitable system to the performers. Still, they would also lead to a more sustainable and fair music industry that considers contributions of all artists, both small and big.

With the ever-changing music industry, these changes will be essential in making sure that the industry, which is composed of performers, does not get left behind in the streaming era.

The Examination of Factual Witnesses in English and EU Commercial Litigation: A Comparative and Critical Study

Abstract

This paper comparatively examines the effectiveness of factual witness examination in English and European Union commercial litigation systems. The English adversarial model emphasizes dynamic cross-examination conducted by advocates, employing rhetorical strategies of logos, ethos, and pathos to test credibility and construct persuasive narratives for judicial decision-making. Conversely, the EU inquisitorial approach centers on judge-led questioning with documentary evidence predominance, prioritizing procedural consistency and written submissions over oral confrontation. Through analysis of landmark cases including BSkyB v HP Enterprise and Sainsbury v Visa, the paper evaluates each system's strengths: England's psychological penetration versus the EU's objective stability. Drawing on advocacy scholarship by Iain Morley KC, Lord Sumption, and Peter Lyons, the paper concludes that neither system categorically surpasses the other; effectiveness depends on litigation context, with emerging hybrid models potentially integrating adversarial cross-examination within inquisitorial procedural frameworks.

Keywords

1. Factual witness examination
2. Cross-examination
3. Adversarial and inquisitorial systems
4. Commercial litigation
5. Judicial persuasion
6. European Union civil procedure

Introduction

Factual evidence questioning is the core of cross-examination of witnesses in commercial litigation in the courts of England and the European Union (EU). Although English courts have historically been lauded on account of their adversarial proceedings, during which oral arguments and the examination of witnesses have been presented as the supreme arts, EU member countries, with their background in civil law, tend to reiterate their distinctive

features: the inquisitorial process with its emphasis on systematic interrogation of witnesses, usually headed by the judge. In this essay, a critical evaluation of whether or not these systems provide sufficient effectiveness in factual witness questioning is attempted, and the varied structures of these systems are unwound, about whether they are more conducive to the truth, clarity, and judicial persuasion, within a commercial dispute.

The efficiency of witness handling, as interpreted in this context, embodies several rhetorical and procedural goals, viz., credibility, persuasion, consistency, and clarity, all of which are analyzed using the parameters of logos, ethos, and pathos. Most of the oral persuasion tactics in English litigation are framed using these classical modes of rhetoric.

The English Approach to Factual Witness Questioning: Structure, Psychology, and Strategy

Fact witnesses in English commercial litigation exist squarely within the adversarial paradigm, with the oral testimony and the cross-examination representing the last remaining means of testing the truth, consistency, and credibility[1]. The process generally proceeds through three phases which are examining-in chief conducted by party to bring the witness by making non-leading questions only (as provided by the Civil Procedure Rules), followed by cross examination by the opposing counsel (where leading questions are used and tactical), and eventually re-examination process used to raise any point of concern. Thematic development of this way of structuring indicates a wider preference towards the adversarial reasoning system, where the judge is not the protagonist in the creation of the facts presented in the court, but rather the Advocate.

The strategic logic of cross-examination is a means of undermining the story and affirmatively building the story of the opponent. It is equally psychological as it is logical, and each question does come with an opportunity and a risk at hand. The same lecture cites Iain Morley KC (in another of his legendary warnings, repeated by Simeon Reynard): “In witness handling, everything is an invitation to disaster”. His work of The Devil s Advocate carries the matter to the point of indicating that the art of questioning itself was to learn how to handle rhythm, restraint, and precision. The attorney warns of the application of excess or unbalanced questions as it tends to not only provide the witnesses with a go-ahead to cast their moves by regaining the grounds stagnated, but also risks misleading the judge. He

[1] Lazer, Susan. "The principle of orality: An analysis of the principles governing the prevalence of direct oral testimony in the English adversarial trial system and the impact of reforms to reduce its status." PhD diss., University of Huddersfield, 2021.

asserts that tactical control should be comprehensive, and insofar as leading questions are employed. They should be used to formulate desired responses that only support the theory of the case put forward by the Advocate.

This strategic framework also forms the foundation of the way Peter Lyons discusses the way oral advocacy should be done, where the significant focus is on how the Advocate has to build the case and capture the trust of the judge lawfully by using a clear and compelling schedule. The use of what has been called point-first advocacy as opposed to the theatre of confrontation. The comments of Lyons illuminate why English trial practitioners so frequently favour the closed, directive kind of questioning, not simply to obtain concessions by the witnesses, but to help the judge create the mosaic of the facts. This is important, especially in business matters, which tend to make matters complicated. As an example, in one of the landmark cases involving software misrepresentation, BSkyB v HP Enterprise (2008)[2], the position adopted by the court in the assessment of the credibility of witnesses was a key determinant of the outcome.

Another critical aspect of the English approach can be depicted in the psychology of handling witnesses. Both Lyons and Morley admit that questioning is performed as keenly observed by the witness as it is by the judge. The demeanour, tone and the resistance to aggression coupled with the destruction of testimony, which the advocate displays, is also key to judicial perception. This is reiterated in the essay by Lord Sumption entitled The Art of Cross-Examination[3], whose argument is that the purpose of cross-examination is not just to turn the witness into an untruthful set of statements but to create a picture of the case the witness is presenting that makes internal sense and is credible. Sumption views cross-examination as a last resort in persuasive theatre, and the success of the same depends on whether the judge is swept away by the logic and style of their Advocate. When a barrister loses their temper, no matter how strong the case is, they may lose the trust of the judge.

These principles also exist even in highly publicized cases. The Depp v Heard[4] trial may not fit the description of a strictly commercial trial, but portrayed elements of witness management in a trial at a peak performative level. Cross-examination was highly felt and was carefully prepared, which shows just how much attention English-trained lawyers pay to

[2] *BSkyB Ltd v HP Enterprise Services UK Ltd* (2008)

[3] Tom Cross and Christopher Knight, 'Public Law in the Supreme Court 2017–2018' (2019) 24(1) *Judicial Review* 40–65.

[4] *Depp v Heard* (2022)

dominating the courtroom discourse[5]. But the same trial also brought into play the spectacle versus the substance, which compelled the legal scholars to wonder whether these storytelling advocates occasionally blur the objective of the judges.

Sainsbury v Visa[6] held somewhat straitened perspective of business law. Over there, the Supreme Court has emphasized the need to resort to oral witness testing in determining not only fact but intent that is paramount in antitrust cases. The case reasserted that written evidence can be the basis of a commercial claim. Still, an advocate can cross-examine witnesses who can unravel unclear motives and the commercial practices. English model goes on, therefore, valuing the cross-examination of factual witnesses as a means of persuasion and judicial education, wherein lies its adversarial essence, but within which lies as well a high level of sensitivity to judicial psychology.

The EU Approach to Factual Witness Questioning: Judicial Control and the Inquisitorial Model

The English system puts cross-examination at the centre of courtroom persuasion[7]. In contrast, the commercial litigation environment in the European Union, with its tradition of civil law, goes in quite a different direction[8]. Such jurisdictions, as Germany, France and the Netherlands, are predominantly arranged in an inquisitorial structure of factual witness treatment in most EU jurisdictions. In this case, the judge is more active in questioning, and the control that the Advocate has over the story is much less. Instead of the dramatic clash of wits between conflicting lawyers, EU trials can look more like an exercise in gathering evidence, where the court is trying to find objective truth using written submissions, document-intensive preparation, and little oral confrontation. This change of emphasis is not simply procedural--it is an epistemological difference between adversarial and inquisitorial conceptions of justice.

The cross-examination, in the English legal sense of the term, does not take up an equivalent cultural or strategic space in the civil law tradition[9]. More often than not, judges sit over a

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[5] R Doak Bishop and Edward G Kehoe (eds), *The Art of Advocacy in International Arbitration* (2nd edn, Juris Publishing 2010)

[6] *Sainsbury's Supermarkets Ltd v Visa Europe Services LLC* [2020] UKSC 24

[7] Tom Decaigny, 'Inquisitorial and Adversarial Expert Examinations in the Case Law of the European Court of Human Rights' (2014) 5(2) *New Journal of European Criminal Law* 149–166.

[8] Rachel A. Cichowski, *The European Court and Civil Society: Litigation, Mobilization and Governance* (Cambridge University Press 2007)

[9] Dina Hadad and Livia Holden, 'Cultural Expertise in Common Law and Civil Law Legal Systems' in Livia Holden (ed), *Cultural Expertise: Theories, Laws, and Practices* (Routledge 2025) 155–175

dossier-based system, where evidence, such as the witness statements, is looked into before any hearing is allowed. Witnesses can be called to make their intentions clear, but not to be used as a rhetorical tool by the advocates. Instead, the court plays the role of seeker of truth and has a comparatively low tolerance for adversarial intervention.

This court precedent tends to reduce the number of factual issues which are exposed by questioning witnesses. In fact, in most EU systems, the authenticity of documentary evidence triumphs over oral evidence, which is considered as potentially subjective or unreliable. In that respect, proponents are educated to develop their cases based on contracts, letters, expert reports, and statutory interpretation, instead of emotionally and psychologically charged inquiry of witnesses. This procedural orientation has been argued to increase consistency and objectivity, two highly valued attributes in commercial litigation. Still, it can also be problematic in inhibiting the fact-finding possibilities that come with the clash of inconsistent narratives, particularly in complex litigation that involves issues of intent, fraud or misrepresentation.

The main drawback of this strategy is that persuasion is relatively invisible when questioning witnesses. Unlike advocates in English, who have to adjust their style to the demands of the judges continuously, EU lawyers are not that involved in the rhetoric of the courtroom. According to Peter Lyons in his analysis of English oral advocacy, a good deal of the persuasive power in the ordinary law jurisdiction lies in the fact that the interaction between judge, counsel and witness is in real time. That interaction is not replicated under the inquisitorial rules in the same way. Also, the methods exalted by Iain Morley, like the employment of silence, leading tone, or planned series, are mostly inconsistent with the procedural rules of the commercial courts in the EU.

However, it is not necessarily true that EU systems are ineffective. By contrast, a written-heavy process is favoured by many judges in civil law jurisdictions, because of its predictability and its immunity to performative excess. A fundamental principle of fairness of arms is based on the notion that the legal result should depend on the clarity of the written argument and not on the eloquence of counsel. Advocacy by word of mouth, such as the questioning of factual witnesses, is thus limited in scope to avoid the sort of distortion of justice that can occur when one or the other party to a dispute possesses superior oral dexterity or strategic playersman-ship.

However, these constraints do have disadvantages. Lack of sound cross-examination may permit statements of ambiguity or incompleteness to pass without challenge[10]. This is because the EU trials rely on the initiative of the judge, unlike in an English trial, where a seasoned advocate may expose inconsistencies with a light touch of linguistic pressure. Unless the judge puts the correct questions or does not recognize the subtlety of contradicting versions, crucial facts can remain unknown.

In addition, the passive nature of counsel during civil law questioning also limits the chances of immediate correction or narrative framing construction. English lawyers employ cross-examination to perfect case theory, to react on the fly to surprise admissions, and to adjust rhetorical focus according to how a witness is performing.

Comparative Evaluation of Effectiveness: Adversarial Dynamism vs Inquisitorial Control

In making the comparison of the efficiency of factual witness questioning in English and EU commercial litigation, the contrast between adversarial and inquisitorial approaches to the issue comes to the fore. The term effectiveness in this case should be measured in more than one dimension-credibility testing, clarity of fact-finding, procedural fairness, judicial persuasion and adaptability to changing legal environments.

The English model has obvious benefits in the form of dynamic persuasion and credibility testing. By cross-examination in real-time, experienced lawyers can unpick contradictions, reveal half-truths, and put the accuracy of witness testimony under stress. As Iain Morley and Lord Sumption stress, cross-examination is not merely a process of obtaining facts, but a psychological battle that shows the greater validity of a case presented by one of the parties. This capability to challenge and unsettle a witness is instrumental in business cases where there are claims of misrepresentation, fraud or inconsistent intent and where the motive and attitude count as much as the paperwork. BSkyB v HP Enterprise[11] is an example that proves the importance of oral testimony in the explanation of a disputed factual landscape. Moreover, Lyons and Morley underline the fact that the advocates use such moments to not only examine the witness but also influence the view of the judge, to form a narrative that is a combination of the legal reasoning (logos), credibility (ethos), and sometimes emotional flavours (pathos). This three-fold rhetorical persuasion, as explained in Lectures 1 and 2, is

[10] William D Dixon, 'Rulemaking and the Myth of Cross-Examination' (1982) 34 *Administrative Law Review* 389.
[11] *BSkyB Ltd v HP Enterprise Services UK Ltd* (2008)

usually lacking in the EU, where there is hardly any questioning permitted to develop in real-time.

Nevertheless, the resilience of the English model is its weakness too. The reliance on oral performance threatens to make justice a competition in rhetoric, particularly when the advocates are wildly disparate in talent or resources. As the Depp v Heard[12] case shows, the process of cross-examination may turn into a performance in which the spectacle is more important than the content. In somewhat less aggressive commercial contexts, the adversarial model can also result in distorted results, in that judges may be more style- than content-influenced. The adversarial system also imposes a significant cognitive load on judges to integrate high-velocity testimony with enormous documentary evidence, frequently in limited time frames. This begs the question of efficiency and mental load, particularly as commercial disputes become more complex and large in scale.

Conversely, the inquisitorial system of the EU focuses on the stability of the procedure and written clarity. By governing the presentation of evidence, judges make sure that trials are focused and legal. It is less prone to diversion into theatrics, and the emphasis on written submissions arguably results in increased predictability and consistency. This system provides transparency and protection against advocacy disparities, to many judges--and to litigants who want efficient resolution. In addition, the English courts too have started to adopt more written pre-reading and case management tools, as Justice Lightman and Lord Justice Vos have observed in their speeches, reflecting some EU efficiencies.

But the strengths of the EU model have a price. There is a lack of probing cross-examination, which restricts the system from responding to ambiguity and nuance. The statements, however fully detailed, cannot replace the insights which are born of the artfully constructed questioning--in particular when facts are in dispute, or intentions are cloaked. The strict organization also does not allow the Advocate to be flexible in responding to unforeseen events or using rhetorical openings. By doing so, the EU system threatens to disregard psychological signs and silent confessions, which are only disclosed in the pressure of the live situation.

Also, the questioning by the judges can bring in implied bias since it is done by the judges and not the parties that decide on the areas to be questioned. This can create blind spots, especially with factually complicated or industry-specific controversies where the level of

[12] *Depp v Heard* (2022)

judicial expertise on a topic is uneven. Although the aim of neutrality is laudable, it can be counterproductive to vigorous fact-finding if judicial inquiry is not as forensically incisive as the adversarial cross-examination.

Another issue is the changing legal landscape, which is influenced by the processes of digitization, pre-trial disclosure and remote hearings. According to Lord Pannick[13], the English advocacy is evolving. Courts have become more efficiency-oriented, require detailed written submissions, and hearings are shorter. In Online Courts and the Future of Justice, Richard Susskind[14] has suggested that this tendency can marginalize oral questioning altogether. However, the same evolution confuses the boundary between adversarial and inquisitorial systems. English courts, as they adjust, will tend to become more written-oriented. In contrast, other EU jurisdictions are trying to see whether they can permit a little adversarial intervention in oral proceedings[15]. The difference is no longer as pronounced as it used to be.

Finally, both systems are characterized not only by the balance of efficiency and engagement, but also by formality and flexibility. The English style is more rhetorically effective and psychologically penetrating, but can go into excess or imbalance. The EU model provides judicial control and documentary rigour, but can be insensitive to nuances that tend to come out in a stress situation[16]. The best system, possibly, is not wholesale preference, but selective integration--the procedural reliability of inquisitorial review, combined with the adversarial advantages of active cross-examination.

Conclusion

The questioning of witnesses of fact in commercial litigation in the English and EU systems is very different, and both systems represent different approaches to law. The English adversarial system favours the active cross-examination in which the Advocate gets the opportunity to question credibility, create a narrative and affect judicial impression. With the backing of such thinkers as Morley and Sumption, this is a rhetorically effective approach that may jeopardize theatricality and advocacy disparity.

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[13] David Pannick KC, *Advocacy* (Cambridge University Press 2023)
[14] Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press 2019)
[15] Liisa Helena Leppävirta, 'Procedural Rights in the Context of Restrictive Measures: Does the Adversarial Principle Survive the Necessities of Secrecy?' (2017) 2 *European Papers* 649–669.
[16] Gunnar Beck, *The Legal Reasoning of the Court of Justice of the EU* (Hart Publishing 2013)

In comparison, the inquisitorial approach of the EU provides procedural stability and efficiency where evidence is collected and judges ask questions. Though this fosters objectivity and curbs advocacy distortion, it decreases the chances of testing the credibility of witnesses in real-time, which may miss nuances that may be brought out by oral questioning.

Neither system is always better. The English model is excellent in terms of persuasion and psychological probing, whereas the EU system is sound in terms of consistency and judicial control. With more substantial adoption of digital tools and procedural reform in the courts, aspects of both traditions are merging. The answer could be the hybrid model that retains the adversarial advantages in a more organized and efficient system, making witness examination effective, fair, and truth-seeking in complicated commercial litigation.