

Mélange of Malpractice in Public Examinations of India: Analysis from a Legal Perspective

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ABSTRACT

In 2024, India recorded two major incidents of examination malpractice and alleged paper leakage in public examinations. A general search on the topic yields a massive trail of malpractice across the decades in public examinations conducted either for eligibility in government universities or securing posts in government office. There were state legislations to counter it but they proved phenomenally ineffective. With the advent of the digital era, where dissemination of information has become quite easy and fast, a stringent legal framework is required to match up to the new tactics of malpractice. The first Act from Union government to uphold sanctity of public examinations went into force in the early months of this year. This paper analyses the situation prior the 2024 Act, assesses if the Act is equipped to deal with the intricacies of malpractice that has emerged in the digital era and how other countries deal with such issues.

Keywords: Cheating, digital era, legislation, malpractice, paper leak, penalty.

INTRODUCTION

India hosts the largest population in the world, which comes with its share of debilitating issues of poverty, burden on health sector, disparity in resource allocation as well as availability of employment opportunities. Naturally, public examinations in academic pursuits as well as for securing employment bears the brunt of this population explosion, with several candidates vying for minimal number of seats. The competition is cut-throat with opportunities barely enough to sustain 1.5 billion population of the nation. Culturally, the idea is sown in the psyche of the populace that holding government office of any kind comes with stability, security, during employment as well as upon retirement. This narrative is rejuvenated every time each generation passes on the same idea to the younger one. It is more prevalent and observed in the lower socio-economic strata. This cultural and social 'baggage' has ensured more applications for few posts raising the competition level higher. Consequentially, cheating in such government exams is rampant with next to nil effective measures to curb it.

Cheating in exams to secure professional or academic success is not a novel phenomenon as the same behavior can be traced back to ancient civilisations, that abhorred dishonesty in exams in spite of no codified laws against it and ensured steps to prevent cheating. During the Sui Dynasty in China (581-618 CE) the **Imperial Examination system** was established, which is one of the earliest systems of comprehensive and formal examination observed in world history. The objective was to select candidates as government officials on the basis of meritocracy rather than nepotism. As it directly secured public office, cheating in the Imperial exam was considered a grave offence. Several measures were in place to prevent such activities and if caught, penalties included a varied range from loss of candidature to banishment from government office for life. The candidates were subjected to strict scrutiny and integrity of the exam was rigorously protected.¹

Before The Union Legislation Of 2024

Before 2024, there was no formal legislation of the central government to penalise cheating and use of dishonest means in public examinations in India, albeit there were a few in the state level that eventually proved blatantly ineffective.

One of the first states to legislate in this matter was Uttar Pradesh with the **Uttar Pradesh Public Examination (Prevention of Unfair Means) Act of 1998**.² It penalised offences related to state exams such as leakage of question paper and using dishonest means to cheat in public exams. For use of unfair means, the penalty stipulated in the Act is imprisonment of three months or fine upto 2000 Rupees (Section 9)³ whereas for paper leak, imprisonment may extend

¹O'Sullivan B. & Chen L. (2022) Lessons from the Chinese imperial examination system. *Language Testing in Asia* 12(52) <https://doi.org/10.1186/s40468-022-00201-5>

²Uttar Pradesh Public Examination (Prevention of Unfair Means) Act of 1998 https://www.indiacode.nic.in/bitstream/123456789/11640/1/public_exam_.pdf (last accessed 16 October 2024)

³Uttar Pradesh Public Examination (Prevention of Unfair Means) Act, 1998, (UP Act No. 13 of 1998): 9

to one year and fine upto 5000 Rupees (Section 10).⁴ Although a very short Act, its provisions and general essence are reflected in the legislation prohibiting unfair means in public exams passed by the Union 26 years later.

In 2021, when the **UPTET** (Uttar Pradesh Teachers' Eligibility Test) was disrupted and cancelled due to paper leak few hours prior, this Act was invoked. So were IPC provisions such as Sections 409 (criminal breach of trust), 120B (criminal conspiracy), and 420 (cheating).⁵

Bihar records a long line of malpractices in examinations and to curb the same, **Bihar Conduct of Examination Act, 1981**⁶ was passed which focussed primarily on examinations conducted at the school level by Bihar State Examination Board (BSEB) as well as other state agencies. The penalty for contravention of the provisions of the Act includes upto sixmonth term of imprisonment and fine upto 2000 Rupees (Section 10)⁷. The investigation of crimes committed under the Act is to be undertaken by an officer not below the rank of Deputy Superintendent of Police(Section 12)⁸. While the offences should be disposed off in a summary trial by an Executive Magistrate, an appeal could lie with District/ Sessions judge (Section 13)⁹.

In 2016, the state of Bihar made headlines nationwide with its **Intermediate Board Exam scandal**. Allegations of cheating and paper leakage rocked the state and to add fuel to the fire, a news interview made rounds showing the top ranking students of the board exam not being able to answer generic questions. The credibility of BSEB was tarnished.

The Bihar Conduct of Examination Act, 1981 was applied as well as Penal code provisions. It led to the arrest of several individuals including students, school administrators, external officials and an urgent call for reforms from Patna High Court.¹⁰

The **Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982**¹¹ is one of the most stringent legislations in the country to deal with examination malpractice. It stipulates provisions and punishments upon contravention regarding duties of persons entrusted with printing and providing copies of question papers (Section 4)¹², persons who are custodian of question papers (Section 5)¹³, prohibition on copying and impersonating a candidate (Section 7)¹⁴, punishment for abetment to offences (Section 8)¹⁵ etc.

In 2017 **Maharashtra Higher Secondary Certificate(HSC)** board exams underwent the same issue of paper leakage which resulted in an abrupt halt and cancellation of exams, impacting the lives of several students. The case was filed under this Act and the relevant provisions of the then applicable penal code. The Bombay High Court while criticising the negligence of examination centres implored for stricter surveillance during exams.¹⁶

Paper leaks and instances of cheating, impersonating candidates in exam, selling of leaked question paper for insolent sums of money to eager aspirants and other issues in this context in both offline as well as online examinations has been rampant throughout the country. The state legislations in this regard have similar provisions and punishments,

⁴Uttar Pradesh Public Examination (Prevention of Unfair Means) Act,1998, (UP Act No. 13 of 1998): 10

⁵Indian Penal Code, 1860 (Act 45 of 1860): 409, 120B, 420.

⁶The Bihar Conduct of Examinations Act, 1981

<https://indiankanoon.org/doc/27397505/#:~:text=%2D%20No%20person%20shall%20take%20recourse,to%20any%20matter%20of%20the> (last accessed 16 October 2024)

⁷The Bihar Conduct of Examinations Act, 1981 (Act 1 of 1982): 10

⁸The Bihar Conduct of Examinations Act, 1981 (Act 1 of 1982): 12

⁹The Bihar Conduct of Examinations Act, 1981 (Act 1 of 1982): 13

¹⁰Kamraju M. (2023) A Study on the Impact of Paper Leaks on Students. *Indonesian Journal of Teaching in Science* 3(1).

¹¹The Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982<https://htedu.maharashtra.gov.in/Main/DocMasters/Website/Media/1/THE%20MAHARASHTRA%20PREVENTION%20OF%20MALPRACTICES.pdf>(last accessed 15 October 2024)

¹²The Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 (Act XXXI of 1982): 4

¹³The Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 (Act XXXI of 1982): 5

¹⁴The Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 (Act XXXI of 1982): 7

¹⁵The Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 (Act XXXI of 1982): 8

¹⁶Kapoor U. (2017, March 11) Maharashtra HSC Exam 2017 Paper Leaked: 5 students booked using unfair mains. *india.com* <https://www.india.com/education/maharashtra-hsc-exam-2016-paper-leaked-5-students-booked-using-unfair-mains-1917084/>(last accessed 20 October 2024)

with the Courts ordering for more transparency and accountability from time to time. These Acts are applied in tandem with the provisions of the IPC that dealt in conspiracy and cheating. The Information Technology Act, 2000 was applied where relevant. But all these measures proved ineffective due to some major issues such as inconsistent application and coordination issues due to a lack of centralised legislation. The penalties stipulated were so meagre that the desired deterrence effect was not obtained either.

The Public Examinations (Prevention of Unfair Means) Act, 2024

The Public Examinations (Prevention of Unfair Means) Act, 2024¹⁷ aiming at upholding and preserving security and integrity of public examinations in the country came into effect in the early months of 2024. It reflects some of the provisions of the legislations prevalent in the states regarding sanctity of examinations. Under 'unfair means' it includes leakage of question papers or answer keys, unauthorised access to examination materials, tampering with answer sheets, violation of exam norms, security breaches, cybercrimes, threats and obstruction etc. (Section 3)¹⁸ Conspiracy to cause malpractice and any sort of disruption in the conduct of exams are offences as well under the Act (Sections 4 and 5).¹⁹ The punishment comprises of imprisonment from 3 years extending upto 5, and fine upto Rs. 10 Lakhs (Section 10(1))²⁰ and in the case of a service provider committing or facilitating in the offences so defined under the Act, fine imposed upon them would be upto Rs. 1 Crore along with recovery of proportionate examination costs from them. Furthermore, they would be barred from the responsibility of conducting any examination for 4 years (Section 10(2)).²¹ Senior management being involved in such crime may face imprisonment of upto 10 years with exorbitant fines.

The Act exhibits a near perfect solution with its wide application and prioritising candidates' welfare. The bona fide candidates who are not involved in dishonesty, are not under the ambit of its application, neither does it provide penalties for those candidates who do indulge in such means. Rather punishments are stipulated for service providers, management and personnel responsible for the exam malpractice. It is comprehensive and the penalties stipulated are hefty enough to act as deterrents. It has imposed much more stringent penalties than its predecessors.

However, its effectiveness has been questioned since massive paper leaks followed immediately after its enactment. Analogous to the previous legislations of states, this Act does not stipulate affirmative provisions on guidelines to conduct fair examinations either. It leaves out the need for capacity building, better infrastructure, use of advanced technology to safeguard integrity of exams etc.²² There is no provision for a special committee to be constituted of experienced members or ad hoc measures to investigate immediately after an incident tampering sanctity of public examination occurs. Like previous state legislations, investigation is to be carried on by Deputy Superintendent of Police. Additionally, Assistant Commissioner of Police can also be appointed in the investigation and central government holds power to defer the matter to a central agency (Section 12).²³

Major Exam Malpractice of 2024

The trust of citizens in government machinery erodes each time such instances happen and they rightly feel cheated in their academic or professional endeavours, whichever gets hindered due to rampant malpractice in government exams leading to their cancellation and unprecedented delay in reaching a solution. When it comes to exams that directly correspond to securing a government post, there are certain age limits for candidates for application or eligibility for grants. These exam malpractice result in loss of precious time of aspirants who are consistently vying for minimal seats in tests where success rates of selection are abysmal.

Recently in a controversy regarding **NEET- UG** (National Eligibility cum Entrance Test- Undergraduate) examination which determines admission of students to medical colleges across the country, 24 lakh aspirants were left in a lurch as allegations of paper leaks and severe exam malpractice resulted in tremendous uncertainty and outrage. In the court case²⁴ that followed, among other issues, it was discussed 'whether the sanctity and integrity of the exam were compromised at a systemic level'.²⁵ In the decades bearing a trail of precedents in judicial discussions on the integrity of examinations, this factor has been looked at with a nuanced perspective. The Court stated that the goal of determining whether the exam's integrity has been compromised at a systemic level is to make sure that cancelling the exam and

¹⁷The Public Examinations (Prevention of Unfair Means) Act, 2024 (Act No. 1 Of 2024)<https://www.indiacode.nic.in/bitstream/123456789/20100/1/a2024-01.pdf>(last accessed 24 October 2024)

¹⁸The Public Examinations (Prevention of Unfair Means) Act, 2024 (Act No. 1 Of 2024): 3

¹⁹The Public Examinations (Prevention of Unfair Means) Act, 2024 (Act No. 1 Of 2024): 4, 5

²⁰The Public Examinations (Prevention of Unfair Means) Act, 2024 (Act No. 1 Of 2024): 10(1)

²¹The Public Examinations (Prevention of Unfair Means) Act, 2024 (Act No. 1 Of 2024): 10(2)

²²Tripathi S. & Raghuvansh S. (2024, June 19) Examining Public Examinations (Prevention Of Unfair Means) Act: Does It Pass Critical Lens? *LiveLaw.in* https://www.livelaw.in/lawschool/articles/neet-paper-leak-and-public-examinations-prevention-of-unfair-means-act-260865#_ftnref12(last accessed 22 October 2024)

²³The Public Examinations (Prevention of Unfair Means) Act, 2024 (Act No. 1 Of 2024): 12

²⁴*Vanshika Yadav Vs Union of India*, 2024 SCC OnLine SC 1870

²⁵*Ibid.*

holding a new one is a reasonable and proportionate response, citing *Anamica Mishra Vs. U.P. Public Service Commission*²⁶. For this reason, judges must determine the degree of unfair tactics used and separately examine whether it is feasible to distinguish between ‘tainted and untainted applicants’²⁷. The court further looked to *Disha Panchal Vs. Union of India*²⁸ where the **CLAT** (Common Law Admission Test for eligibility to National Law Universities in undergraduate and postgraduate courses), 2018 had to bear the brunt of backlash over technical issues faced by thousands of candidates during exam. While not related to paper leakage or dishonest means in examinations, the choices for resolution of the matter before the court were either cancellation due to inability of testing agencies to conduct examinations properly or find a compensatory formula to satiate the affected candidates. ‘The court ultimately decided that the entire test should not be cancelled, but rather provided a solution to compensate the students who lost time due to technical issues.’ In all such cases of malpractice in exams, be it for paper leaks or technical issues or any other reason, the inefficiency of testing agencies and need for stringent laws that promote not just penalties upon crime but directions and standards on conduct of examination as well, is brought to the forefront. A holistic perspective is needed overall.²⁹

However, before a resolution to the NEET controversy, the **UGC NET** (University Grants Commission- National Eligibility Test)³⁰ examination of June cycle 2024 was cancelled a day after its conduct, citing strong probability of paper leak as intercepted by authorities. The apex court refused the demands of publication of results even when an ongoing CBI probe in the matter revealed that the allegations of leakage may have been false.³¹ The Court affirmed the Education Ministry’s decision for a re-examination.

As discussed earlier, India has a long history of paper leaks that result in cancellation of examinations and propelling candidates towards uncertain future, lowering morale further when rescheduling of cancelled examinations occurs months, or in some cases, years later.

In the arrests made or accused identified after each of these exam paper leaks or malpractice, several culprits are apprehended including coaching institutions, students, teachers and government officials. It attests to the speculation on how large the web is, perpetrating examination malpractice at such organised levels continually across the country. **Insinuating monetary motives would not be incorrect as leaked question papers are sold before examinations at exorbitant prices.**

The advent of ‘Digital India’ has brought in the utilisation, or in this case, misuse of social media to the advantage in perpetrating crimes. Social media plays a key role in disseminating information at a second’s notice. In previous decades, what could have taken efforts and time to leak paper and sell it to aspirants, now, happens with ease and speed with, abject difficulty tracing the source to perpetrators.³²

Another issue to note is that these issues become politicised soon, during elections in states and dies down afterwards, creating instability in futures of aspirants and uncertain climates not conducive to the progress of academia in the country or ensuring eligibility to government jobs. The entire education system loses its credibility.

The Act of 2024 to prevent and penalise these offences has not been fruitful so far. It does not mention stipulations for fair conduct of examinations. None of the state legislations did as well. Only reactionary measures were outlined.³³

The **Bharatiya Nyaya Sanhita (BNS)** which replaced the Indian Penal Code, and came into effect from July 2024, has added some crucial new provisions in the compendium of criminal laws in the country. One of the additions is organised crime (Section 111)³⁴ and petty organised crime (Section 112)³⁵. Petty organised crime, inter alia, includes

²⁶ *Anamica Mishra v. U.P. Public Service Commission* (1990) Supp SCC 692

²⁷ Supra at 24

²⁸ *Disha Panchal Vs Union of India*, AIR 2018 SC 2824

²⁹ Naik Y. (2024) NEET Exam 2024: A Troubled History of Paper Leaks, Mark Scams, and Corruption in India. *Idea Legal Research Paper Series 2024-25* <http://dx.doi.org/10.2139/ssrn.4859471>

³⁰ It is a qualifier test that gives eligibility for ‘Assistant Professor’ posts to candidates to apply in Universities and colleges across India. It also determines JRF (Junior Research Fellowship) eligibility to a small percentage of candidates having the highest of scores.

³¹ (2024, July 11) CBI likely to file chargesheet against youth in UGC-NET paper leak case. *The Hindu* <https://www.thehindu.com/news/national/cbi-likely-to-file-charge-sheet-against-youth-who-circulated-doctored-screenshot-of-ugc-net-paper/article68392225.ece> (last accessed 20 October 2024)

³² Chauhan R. (2024, June 20) 70 paper leaks in 7 years, 1.7 crore aspirants affected. *India Today* <https://www.indiatoday.in/education-today/featurephilia/story/paper-leaks-in-india-over-17-crore-aspirants-affected-in-7-years-2555716-2024-06-20?onetap=true> (last accessed 21 October 2024)

³³ Ibid.

³⁴ The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023): 111

‘selling of public examination question papers or any other similar criminal act’, punishable by not less than one but extending upto seven years imprisonment and fine.

Comparison with Other Countries

Malpractice in examinations is not restricted to India, in fact it is a prominent issue found in several countries, if not all around the globe. In 2011, there was a massive scandal in the **United States Scholastic Assessment Test (SAT)** which determines high school students’ eligibility for entrance into colleges. Several students confessed that they had paid others to impersonate them during the SATs with fake ID cards, to secure good marks. While this particular case resulted in arrest of the impersonator and students involved, some being expelled from their schools, it resulted in reforms in the overall security of SATs consequentially by the college board.³⁶ The multiple accused were charged under New York Penal Law for scheming to defraud³⁷ and criminal impersonation³⁸.

In 2015, Kenya witnessed the worst cheating scandal in the history of the country. **Kenya Certificate of Secondary Education (KCSE)** faced widespread paper leaks where students and teachers colluded to distribute question papers prior examination, and these were easily available and making rounds on social media platforms. Results of over 5000 candidates were held back as Kenya recorded 71.4% increase in the incidents of cheating, the highest as observed in the past decade.³⁹ The **Kenya National Examinations Council (KNEC) Act, 2012**⁴⁰ was invoked charging several of the accused with examination malpractice (Section 28) which is punishable with prison term of upto 5 years or fine of 1 million shilling or both.⁴¹ Students caught cheating were disqualified from future examinations.

In the past few years, mode of examinations has been shifted to the digital sphere, owing to the Covid 19 lockdown and introduction of new technology. Social media adding to the quick dissemination of information, the nature of examination malpractice has also changed. Leaking question papers has been made easy, while difficulty incremented in controlling the spread and identification of the culprit. The new era has brought in new challenges that require ‘future proofing’ the law to keep up with the issues cropping up.

Gaokao, sometimes considered as the toughest entrance examination in the world, is the annual public examination of China to get eligibility in undergraduate courses. During the 2022 Gaokao, an aspirant smuggled a smartphone into the examination centre, surreptitiously took pictures of the question paper and published them on a Chinese messaging platform in an attempt to crowdsource answers. It was fabricated to appear as if it was published earlier than the actual time indicating towards a ‘leak’.

It resulted in immediate disqualification and penalties for the candidate. China follows a system of strict scrutiny in all its examinations, with malpractices being classified as a criminal offence. However, paper leaks and cheating incidents are not uncommon in China as well, in spite of such measures.⁴² The security has been further tightened post Covid 19 and advent of the digital era. Exam rooms are equipped with surveillance cameras and signal-jamming devices to prevent electronic cheating. Biometric testing before starting of examination was also implemented to prevent impersonation. Besides, new AI based monitoring systems are used to recognise suspicious activity during online testing.

Countries are developing more stringent measures to curb the new methods of malpractice in public examinations in this new web generation, an adaptation to changing times. India should follow suit if it aims to curb the onslaught of malpractice, and adopt a 0tolerance policy.

³⁵The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023): 112

³⁶Anderson J. & Applebome P. (2011, Dec 1) Exam Cheating on Long Island Hardly a Secret. *The New York Times*<https://www.nytimes.com/2011/12/02/education/on-long-island-sat-cheating-was-hardly-a-secret.html> (last accessed 25 October 2024)

³⁷New York Penal Law § 190.60 defines the crime of "scheme to defraud in the second degree" in the state of New York. Scheme to Defraud in the Second Degree is a class A misdemeanor in New York, which carries a maximum sentence of one year in jail and a fine of up to \$1,000.

³⁸New York Penal Law § 190.25 criminalizes the act of criminal impersonation in the second degree.

³⁹Chemweno B. (2016) Examination cheating in Kenya goes up by a record 70 per cent. *The Standard*<https://www.standardmedia.co.ke/article/2000193783/examination-cheating-in-kenya-goes-up-by-a-record-70-per-cent> (last accessed 25 October 2024)

⁴⁰Kenya National Examinations Council (KNEC) Act of 2012
https://www.academia.edu/8602706/Kenya_National_Examinations_Council_Act_No29of2012 (last accessed 25 October 2024)

⁴¹Kenya National Examinations Council (KNEC) Act, 2012 (Act No. 29 of 2012): 28

⁴²(2022, Jun 8) Suspected gaokao leaks were just cheating attempts and malicious online editing: authorities. *Global Times*<https://www.globaltimes.cn/page/202206/1267561.shtml> (last accessed 25 October 2024)

CONCLUSION

The new Act may prove useful to some extent if its implementation and execution is widespread and efficient.

However, it still leaves a lot of room for improvement.

- The global leap towards digitisation that has brought in an era of speed and convenience has massively contributed to the facilitation of more malpractice. In the UGC NET exam that was recently cancelled, a screenshot of a segment of question paper made rounds in the dark web, which was later proved to be doctored. In the same way that rampant unregulated misuse of Artificial Intelligence (AI) has made paper leaks and use of dishonest means in examinations easier, the same technology can be utilised to facilitate maintaining integrity of exams and bringing in anti-cheating and anti-leakage infrastructure.
- Generative AI may be used to frame questions after providing the topic and parameters concerned. Multiple question sets can be generated in this way having similar difficulty levels. This multiplicity reduces the chances of leakage of paper.
- In most cases, public examinations used to be and still is, conducted offline in pen and paper mode or OMR (Optical Mark Reader) mode. To ensure the question papers are not handled poorly, they can be delivered to exam centers at last possible minute through secure channels. In case of CBT (computer based test) which has found popularity in the current decade, encryption and multi factor authentications may be used to avoid interference and interception by unauthorized personnel. In the contemporary world, initiating or accessing a Gmail account or WhatsApp messaging requires more authentication and consists of more security measures than question papers of crucial public examinations are subjected to, in the country.
- A method of audit trail could be used to track identities of each person who access the question paper along with the timestamp. Accountability can be assessed and assigned in this way.

A holistic effort from government machinery, progressive judgements from courts, Information Technology department and legal professionals need to be made to curb the menace of mishaps and scandals in public examinations in practicality. More stringent laws are needed. Besides, it calls for tremendous cooperation and knowledge sharing among departments and ministries for effective implementation. The welfare of aspirants and fairness in allotment of seats in academics as well as posts in government office is the objective, and keeping this goal in mind, one can only hope for a positive change in the future.