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A Double Peer-reviewed Student Journal

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JOURNAL FOR LAW AND JUSTICE

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MESSAGE FROM FACULTY EDITOR-IN-CHIEF

I am privileged to present to all our dear readers the first volume of *Journal for Law and Justice* 2025. Congratulations to Prof. Pinki Sharma and her entire editorial team comprising faculty members and students, who have done an exemplary work by bringing out this issue regularly with enhanced zeal and quality! Students take a lead role in managing the students' Journal society as well as learning the skills of editing from a team of esteemed faculty members on the editorial board. Bringing out a student journal is an act of conviction. From the first draft to the final proof, each article has gone through a rigorous review and refinement. Sincere efforts need to be made to care a toddler journal, which can be seen when reading the articles.

The present volume has selected articles on topics, such as competition law, constitutional law, cyber law, securities market regulation, international law relating to outer space, labour law, and the investment law. Seven long and short articles on these topics have been carefully peer-reviewed and sincerely edited by the entire editorial team. In addition, an attractive section, i.e., book review, adds another feather in the cap of this journal as it has selected three books- one on consumer law, another on IPR, and the last on Jurisprudence. This time, a case comment section is also added, which examines a much-discussed case law on investment. I wish the entire editorial team a great success in broadening the base of readers by this inspiring example. I wish this volume will not spark debates but contribute to shaping better laws in future.

PROF. DR. ANUPAM JHA
PROFESSOR-IN-CHARGE
FACULTY EDITOR-IN-CHIEF

MESSAGE FROM FACULTY EDITOR AND CO-EDITOR

We are pleased to share the latest edition of the Journal for Law and Justice. It showcases the sharp thinking and strong dedication of the student editorial board at Law Centre, II, University of Delhi. As the legal landscape changes quickly, this volume not only addresses those shifts but also contributes to the ongoing discussion. This issue guides readers through some of today's most pressing legal issues. It begins with the digital realm, looking at the challenges law enforcement faces with the hidden aspects of cybercrime and considering new ways to regulate digital markets. The focus then moves to outer space, where the challenges of managing commercial resource use beyond Earth become clear.

The journal then grounds us in the fast-paced world of corporate finance, tracing the rise of Indian IPOs and examining the effects of recent policy changes. It then explores a complex issue that has challenged democracies for decades; the delicate balance between the Right to Protest and the needs of Public Order. This discussion naturally leads to our Case Comment section, which looks closely at Cairn Energy v. India. This arbitration is more than a legal case; it questions the very notion of sovereignty and could reshape international law for years. To enhance these analyses, our student reviewers offer new insights into both classic and modern scholarship. Their critiques cover the principles of ancient Indian law and the changing areas of consumer and biodiversity law. They weave together traditions and current challenges, showcasing the law's ongoing evolution.

Together, these contributions are more than just articles or reviews; they form part of a broader dialogue about justice, governance, and society. This volume, created through the hard work of our student editorial board, demonstrates what can occur when bright, dedicated minds are given the space to question, examine, and innovate. I hope you will find its pages as thought provoking and rewarding as I did.

Warm regards,

PROF. (DR.) PINKI SHARMA
FACULTY EDITOR

DR. AMRENDRA KUMAR
FACULTY CO-EDITOR

MESSAGE FROM STUDENT EDITOR

The Journal of Law and Justice proudly presents a compelling collection of scholarly works that engage with pressing legal and socio-economic challenges shaping India and the global arena. This issue encapsulates a rich tapestry of interdisciplinary analyses, ranging from ancient Indian jurisprudence to contemporary issues like cybercrime, space law, and wage disparities. Each contribution underscores the dynamic interplay between law, policy, and societal transformation, offering critical insights for academics, practitioners, and policymakers.

The review of *Reflections on Ancient Indian Jurisprudence* revives the philosophical underpinnings of dharma, urging a re-examination of modern legal systems through India's historical lens. Another analysis of *The Global Regime for the Enforcement of Intellectual Property Rights* navigates the delicate balance between proprietary control and public access, while review of *Emerging Trends in Consumer Law* highlights the evolving consumer-citizen identity in a digital era. The article on of *Biodiversity Law in India* emphasizes sustainable governance, bridging community roles with legal frameworks. The case note on the *Cairn Energy v. India* arbitration probes the tension between fiscal sovereignty and international law, and the article on the *Digital Competition Bill 2024* addresses regulatory gaps in digital markets. The work on cybercrime calls for a reconceptualized law enforcement paradigm, while the analysis of space resource utilization advocates for unified global standards. The study on FOCC downstream investments and the discourse on wage disparities illuminate structural reforms needed for equitable economic growth.

This issue invites readers to reflect on law's transformative potential, fostering dialogue on justice, equity, and governance in an ever-evolving world.

Warm regards,

MR. ANKIT RAJ
STUDENT EDITOR

MESSAGE FROM STUDENT CO-EDITOR

The release of a new journal signifies both an end and a beginning. It represents the completion of a long and often difficult process. This journey involves more than just gathering papers; it focuses on creating a coherent and meaningful intellectual product. As Co-Editor, I am honored to share some insights about the journey that brought this volume to you. The works featured in these pages emerged from a thorough selection process. Our editorial team, made up of committed student editors, faced the challenging task of identifying which submissions truly addressed current legal debates. We looked for strong arguments and new viewpoints; papers that would question assumptions, spark discussion, and highlight top notch legal research at Law Centre - II.

This volume highlights our efforts with an exploration of several key themes. One example is the rise of digital society, a force reshaping every aspect of law. We present a focused inquiry into the legal framework of this new landscape, featuring a standout article on innovative digital market oversight. This piece exemplifies the forward-looking research we support; it not only defines a problem but also proposes a practical solution. Additionally, we delve into the intricate world of international arbitration through a detailed Case Comment on the Cairn Energy v. India arbitration. This goes beyond a mere summary; it carefully breaks down a case that challenges the idea of state sovereignty. It brilliantly shows how one legal conflict can resonate throughout the global legal system. Lastly, the Book Review section offers a moment for thoughtful reflection. The review of "Reflections on Ancient Indian Jurisprudence in the Current Social & Judicial Set-Up" connects our historical legal roots with today's complexities. It serves as a reminder that law is a continuous thread, not a series of separate events.

The quality of the scholarship you have in your hands is a direct result of the hard work put in by our team. Every citation was checked, every argument refined, and every word chosen carefully. This unseen work helps maintain the integrity and reputation of this journal. We hope these selected pieces, and the entire volume, spark your curiosity and encourage you to engage more deeply with the ever-changing world of law.

Warm Regards,

MR. OJASWI DADHICH
STUDENT CO-EDITOR

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REVAMPING THE INDIAN CODE: INNOVATIVE APPROACH TO DIGITAL MARKET OVERSIGHT

Yagya Aggarwal and Eshita Gupta[*]

Abstract: *In recent years, the rapid expansion of digital platforms in India has significantly impacted the relevance of existing competition law, prompting authorities to adapt to the dynamic and evolving market circumstances. This shift led to the introduction of the Digital Competition Bill in 2024, which aims to target the anti-competitive behaviors of large digital enterprises by imposing specific obligations on them. This paper explores the unique characteristics of digital platforms that distinguish them from the traditional market. Then, it analyses the rationale behind the Digital Competition Bill 2024, emphasizing its necessity by examining recent trends, particularly the growing dominance of digital platforms in India. Additionally, several gaps in the Bill, such as the failure to implement a specific end-user threshold for the designation of an enterprise as a Systematically Significant Digital Enterprise (SSDE), are also identified and discussed elaborately, by drawing comparisons with the legislative frameworks in other jurisdictions.*

Keywords: *Digital market, ex-ante regulation, dominance, core digital service, end-user threshold.*

I. INTRODUCTION

The Competition Act was originally enacted in 2002 with the aim of encouraging business entities to compete in a fair manner, which would eventually translate into better consumer welfare. The essence of the act is based on the theory of harm[1] which states that the anti-competitive behavior of the entities can unduly distort the competition in the market in favor of such entities, with consumers eventually bearing the cost in variety of ways. Section 32 of the said act deals with acts taking place outside India but having an effect on competition in India. However, over time, the advancement of science and technology led to the rapid growth of the digital market that is global in scope and has no boundaries. This new market environment has enabled new anti-competitive practices given the unique characteristics of the digital market in terms of economies of scale, personalized data, conglomerate business models, direct and indirect market effects, etc. All these factors can contribute to the anti-competitive behavior by these entities which may not be effectively addressed by the traditional jurisprudence of competition law. Hence, a pressing need has arisen for a new ex-ante legislation that is equipped with modern instruments of the competition law. To meet this need, the Digital Competition Bill, 2024 was planned to be enacted, which would have assigned certain obligations to large digital enterprises as laid down in the law. The essence of this law has been based on the neo-classical theory[2] which advocates for a competitive market where new firms can enter the market without facing undue hindrances from the dominant entities, allowing them to fairly compete and capture the market share. The underlying principle of law is to maximize consumer welfare while having

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[1] Hans Zenger and Mike Walker, *Theories of Harm in European Competition Law: A Progress Report SSRN* (2012) (Jul. 7, 2025, 1:30 PM) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009296/

[2] Louis Lefeber, *Classical vs. Neoclassical economic thought in Historical Perspective: The Interpretation of processes of economic growth and development*, 21 *JSTOR* 3 (2000), https://www.jstor.org/stable/26219719?seq/

no adverse effect on the market. This article will firstly explore the key traits of the digital market and the rationale for the need of an ex-ante regulation, particularly in light of Competition Commission of India (CCI) flagging anti-competitive behaviors by large digital enterprises. It will also discuss the drawbacks of the Bill in comparison to international counterparts, the lacunas in defining a uniform end-user threshold for the designation of enterprises as Systematically Significant Digital Enterprises (SSDE), and the multi-jurisdictional challenges that may arise due to variations within international legal frameworks. Furthermore, the article will examine the potential consequences and propose suggestions based on the legislation framework of the United States, the European Union, the United Kingdom and Singapore.

II. TRADITIONAL TO DIGITAL: KEY TRAITS AND THEIR CHALLENGES

In economics, a market is traditionally defined as a place where the buyer and seller come together to exchange goods and services for a price, known as consideration, within a particular geographical location. The traditional theory of markets emphasizes 'territorial jurisdiction' and 'exchange for consideration' aspects of the definition.[3] However, with the advent of the internet, the conventional market dynamics have shifted. The internet now penetrates every aspect of our lives, such as shopping, communications, social interactions, payment systems, food delivery, and travel. This has given origin to an online market, which leverages information and communication systems to facilitate the interaction between buyers and sellers. The growth of these online markets has gained traction during the pandemic, drawing more time and attention from people to online platforms. A salient characteristic of these platforms is that they transcend the fixed territorial jurisdiction, allowing for seamless cross-border trade and making it effortless to capture customers throughout the globe. However, this is not the only factor distinguishing online platforms (markets) from conventional markets; several other unique features contribute to this distinction, such as:

A. Zero Price Model

Many digital platforms provide services to the consumer at no cost. For instance, users of Google and Facebook can avail their services for free. However, what appears free comes at a hidden cost. Consumers pay the price through the sharing of their data or by bearing increased prices for goods and services. In the former case, a platform collects and analyses user data for targeted advertising, generating substantial revenue.[4] In the latter, business users pay commissions to the platforms, which are eventually passed on to consumers in the form of a higher price of goods and services.[5] For instance, platforms like Ola and Uber charge the business user (taxi drivers) a commission, which results in taxi riders paying an enhanced fare. This 'free' service model employed by digital platforms contributes to their dominance in the market, especially benefiting first-movers in the industry by creating significant entry barriers for new entrants in the market. For example, In India, Google has established dominance in the search engine market,[6] Facebook

[3] Hahn, Hans Peter, and Geraldine Schmitz, *Market as Place and Space of Economic Exchange: Perspectives from Archaeology and Anthropology*, *JSTOR* (2018), https://doi.org/10.2307/j.ctvh1dm8p/
[4] In Re: Delhi Vyapar Mahasangh v. Flipkart. Internet Private Limited and Ors., Combination Registration No. 40 of 2019 dated Jan. 13, 2020, 10.4.
[5] Re Samir Agrawal v. ANI Technologies Pvt. Ltd. & Others, 37/2018, 6.
[6] Tanushree B., Leading search engines in India 2018-2025, by market share, *Statista*, (June 26, 2025), https://www.statista.com/statistics/1405689/search-engines-market-share-india-all-devices/

and Instagram have captured dominance in the social media market[7] and Amazon and Flipkart dominate e-commerce.[8] This dominance is further reinforced as consumers become accustomed to the interface and features of the platform, making it difficult for users to transit to other platforms.

B. Network Effects

In simple terms, platforms act as intermediaries, connecting the buyers and sellers in one place, and the value of services is enhanced as the number of users on both sides of the platform grows. This effect can be divided into two parts:[9] direct and indirect network effects. In the case of direct network effects, the value of the service increases when the number of users on the same side of the platform grows; for instance, a social media platform becomes more valuable to users as more end users join, i.e., friends and family members. In indirect network effects, the value of the service increases due to a rise in the number of users on the opposite side of the platform; for example, e-commerce will be more attractive to consumers as the number of business users increases, and vice versa. These effects enhance the platform's attractiveness to new potential users, causing it to expand further. However, they also pose two significant challenges to the competition authorities, i.e., *firstly*, network effects can make the platforms prone to monopolies or oligopolies, as one or a few large platforms would be there to provide services to a substantial user base. *Secondly*, strong network effects create barriers for new enterprises, as they face the challenge of building a new user base already captured by the large digital platforms. The network effect is further heightened in India due to the large number of internet users[10] and varying levels of digital literacy[11] among the users, leading many users to join platforms without applying conscious cognition, creating a domino effect, i.e., new users join the platform following one after another. These challenges compel new entrants to either work in the small share of the market, provided they have initial monetary resources, or they will be gradually wiped out of the market.

C. Data Dominance

As the digital platform expands, it caters to a larger number of consumers, resulting in the handling and collection of vast amounts of data generated through consumer activities. This collection of data is used to drive data innovation, which can be utilized in several ways; *firstly,* the platform can enhance the quality of the product by analyzing the habits, needs, and preferences of the consumer using data footprints. *Secondly,* data can be used for targeted advertisement, allowing the platform to deliver more personalized advertisements tailored to the individual needs of the consumer. *Thirdly*, data fosters innovation by identifying gaps in the

[7] Statcounter Global Stats. (n.d.), Social Media Stats India, *Statcounter Global Stats* (June 2025), https://gs.statcounter.com/social-media-stats/all/india/

[8] Minhas, A., Market share of retail e-commerce in India 2022, by marketplaces, *Statista* (Jun. 23, 2025), https://www.statista.com/statistics/1426790/india-ecommerce-market-share-by-marketplaces/

[9] Stobeierski T., *What Are Network Effects?*, HBS Online Business Insights *Blog* (Nov. 12, 2024) https://online.hbs.edu/blog/post/what-are-network-effects/

[10] Tanushree B., *Number of Internet users in India 2010- 2050*, Statista, (Apr. 14, 2025) https://www.statista.com/statistics/255146/number-of-internet-users-in-india/

[11] Oxfam Report, *India Inequality Report 2022: Digital Divide* (Dec. 5, 2022) https://www.oxfamindia.org/knowledgehub/workingpaper/india-inequality-report-2022-digital-divide/

supply chain, allowing platforms to address these gaps without carrying out extensive research and development. However, this practice is not free of criticism, as the use of consumer data in exchange for services raised significant privacy concerns, especially when it includes sensitive personal data fetched through first-hand users. For example, the Cambridge Analytica case highlighted the privacy concerns for misuse of user data, where Facebook sold the user data to build voter profiles to influence voting patterns and behavior in the US elections.[12] Additionally, an investigation by the Department for Culture, Media & Sport (DCMS) committee of the UK revealed that Facebook shared consumer data with app developers in exchange for ?? high price for targeted advertisements.[13] Furthermore, the privacy policy update by WhatsApp in India sparked concerns, as it allows the platform to share its user data with its parent company, i.e., Facebook (now Meta) and its subsidiaries, without providing an option to Indian users to opt out of the policy.[14]

D. Consumer Inertia, Multi-Homing and Switching

Once consumers become accustomed to the services of a particular platform, they tend to exhibit loyalty and preference towards the platform known as Inertia.[15] This behavior is further reinforced when the same platform offers a wide range of similar services to the users, as users are more inclined to stay under the ecosystem of one platform rather than switching to other platforms, known as single-homing.[16] For example, Google provides a suite of services like Calendar, Chrome, Classroom, Drive, Gmail, Search Engine, Meet, etc.; similarly, Microsoft offers Excel, LinkedIn, OneDrive, Outlook, PowerPoint, Word, etc. However, switching can be hampered by other technical factors, such as *Firstly*, when consumers move to a different platform, they often cannot transfer their personal data to a new platform; this loss of data discourages switching and hampers consumer mobility between platforms. *Secondly*, platforms usually tie together one service with another and further seamless interoperability of data between services makes the platform a preferable option for the user and restricts the switching to other platforms.[17] For example, Gmail offers the ability to attach links from Google Drive, Google Photos, and Google Docs, enabling seamless interoperability of data across Google's applications. This strategy discourages consumers from exerting their cognitive abilities to make reasonable choices by fomenting psychological and technical dependence on a single platform, complicating market entry and creating barriers for the new entrants.

III. A GLOBAL OUTLOOK ON DIGITAL MARKET REGULATION

A. European Union (EU)

The European Union has enacted the Digital Markets Acts, 2022 (DMA) as a part of the broader

[12] Boldyreva, Grishina, Duisembina, Cambridge Analytica: Ethics and Online Manipulation with Decision-Making Process, 5 *EPSBS*, https://www.europeanproceedings.com/files/data/art.icle/95/4063/art.icle_95_4063_pdf_100.pdf
[13] House of Commons, Digital, Culture, Media and Sport Committee, *Disinformation and fake news: Final Report* (2019), https://www.parliament.uk/Finalreport.html
[14] In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users, Suo Moto Case No. 01 of 2021.
[15] Australian Competition & Consumer Commission, *Digital platform services inquiry* (Interim report No. 2, 2021), https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March% 202021% 20interim%20report.pdf
[16] Google Search (Shopping) Case At. 39740.
[17] XYZ (Confidential) v. Alphabet Inc. and Other, Combination Registration No. 07 of 2020 dated Oct. 25, 2022.

Digital Service Act Package to address the anti-competitive behavior of large digital enterprises. This legislation is an inspiration for India, forming the foundation of India's *de novo* Digital Competition Bill, which draws upon the principles of the EU's framework. Both the EU's law and India's bill provide for both qualitative and quantitative thresholds for determining the applicability of these regulations. In the EU, the DMA specifically targets large undertakings, referred to as 'Gatekeepers', and outlines a detailed list of the activities categorized under 'core platform service'.[18] However, a key distinction between the two frameworks is in the authority to expand the scope of regulated services. Another notable distinction lies in the penalty provisions, where the gatekeeper can be fined up to twenty per cent of its total global turnover for repeated infringement in the same core platform service, particularly if the infringement occurs within eight years of the non-compliance decision[19] in DMA. Conversely, India's draft bill does not currently address penalties for repeated infringement. The Indian legislature can consider incorporating similar provisions that would strengthen enforcement and ensure compliance among gatekeepers. The European Commission (EC) has taken a leading role in enforcing the DMA, which is exemplified by the Commission's recent initiation of two specification proceedings against Apple to ensure its obligation to comply with the interoperability operations under the DMA.[20] The first proceeding primarily focuses on iOS connectivity features and functionalities used by connected devices like smartphones, headphones, etc., while the second addresses Apple's process for handling interoperability requests from the developers. These proceedings are expected to conclude within six months of initiation of the proceedings. This case could set a significant precedent, offering a benchmark for other countries like India for assessing compliance obligations.

B. United States of America (USA)

The United States of America (USA) has enacted twelve bills aimed at regulating large digital platforms, with two prominent examples being The Ending Platform Monopolies Act, 2021 and The Open App Market Act, 2021. A key distinction between India's approach to regulating Systemically Significant Digital Enterprises (SSDEs) and the USA's regulation of Covered Platforms is the duration of the regulatory oversight. In the former, regulations on the SSDEs will apply only for three years,[21] allowing for periodic reviews and the potential for regulatory withdrawal if the entity no longer meets the necessary thresholds. In contrast, in the USA, the obligations apply for ten years regardless of the change in ownership or controlling interest.[22] India's three-year review period offers greater flexibility in adapting to the rapidly shifting digital market, ensuring that the regulations remain relevant and proportionate to the company's evolving market position as the digital markets are highly dynamic and can shift dramatically. It allows the regulators to react to such situations and withdraw such regulatory oversight in case the entity no longer falls under the threshold.

[18] Digital Market Act 2022, § 3(3), Act of Parliament, 2022.
[19] Digital Market Act, 2022, § 30(2), Act of Parliament.
[20] European Commission, Press Note, *Commission starts first proceedings to specify Apple's interoperability obligations under the Digital Markets Act* (2024) https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4761/
[21] Digital Competition Bill, 2024, § 4 (8).
[22] The American Innovation and Choice Online Act, HR 3816, 117th Congress (2021), § 2(d)(3) https://www.congress.gov/bill/117th-congress/house-bill/3816

The Open Market Act, (OMA) 2021[23] in the USA applies to the Covered Companies that own or control an app store with more than fifty million monthly active users. Conversely in India, the threshold limit is set much lower, with the core digital service being subject to regulation in case they have either one crore (ten million) end users or at least ten thousand business users.[24] Thus, India's regulatory authority can take inspiration from the USA approach and consider raising the threshold limit to better align with the market's size. Furthermore, The Ending Platform Monopolies Act, 2021 in the USA imposes severe penalties on individuals involved in unlawful conduct related to The Covered Platforms, with fines amounting to fifteen per cent of the total average daily US revenue of that person in the preceding calendar year or the thirty per cent of the total average daily US revenue of the person during the period when the unlawful conduct took place, whichever is higher.[25] In contrast, in India, individuals' financial penalty is limited to a maximum of ten per cent of the average income for the preceding three financial years.[26] The stringent approach of the USA places greater accountability on key decision-makers, serving as a strong deterrent to misconduct. India can consider increasing the severity of the financial penalties on individuals to enhance personal accountability and discourage unlawful activity within large digital platforms.

C. United Kingdom (UK)

The United Kingdom has enacted the Digital Markets, Competition, and Consumer (DMCC) Act, 2024 to address the challenges posed by the digital market. The United Kingdom adopts a flexible regulatory framework that does not define any specific sectors as falling under the purview of "digital activities".[27] Instead, the regulation provides a broad definition, allowing room for greater flexibility and adaptability in response to shifting market dynamics. This flexible approach contrasts with India's structured regulatory framework, which provides an illustrative predetermined list of activities falling under the core 'digital services' to be regulated.[28] The UK opts for a qualitative approach[29] in terms of designation of an undertaking as 'Strategic Market Status'(SMS), thereby empowering the Competition and Markets Authority (CMA) to undertake a case-by-case analysis, enabling a nuanced analysis and sector-specific evaluation of an entity's market status, allowing greater flexibility and ensuring that regulations can be tailored to the distinct features and requirements of different sectors. In contrast, India establishes fixed pre-defined quantitative and qualitative thresholds for the identification of entities having Significant Social Digital Service (SSDS) status empowered under Section 3(2) of the Digital Competition Bill, 2024.[30] Though the predefined threshold ensures clear guidelines, it might limit the ability of the competition authority to take into account the sectoral differences. Another key difference lies in the duration of an undertaking as SMS or SSDS. In the UK, the entity designated as SMS will be subjected to regulation for five years under DMCC Act.[31] Meanwhile, India limits the SSDS designation to three years[32] allowing for more frequent

[23] The Open App Market Act, 2021, § 2(3), (USA).
[24] Digital Competition Bill, 2024, § 3(2).
[25] The Ending Platform Monopolies Act, 2021, § 3(c)(1) & (2), (USA).
[26] Digital Competition Bill, 2024, § 28, (India).
[27] Digital Markets, Competition and Consumers Act, 2024, § 2(3), (UK).
[28] Digital Competition Bill 2024, sch. 1.
[29] Digital Markets, Competition and Consumers Act, 2024, § 6(1), (UK).
[30] Digital Competition Bill, 2024, § 3(2).
[31] Digital Markets, Competition and Consumers Act, 2024, § 18(1), No. 13, Act of Parliament, 2024, (UK).
[32] Digital Competition Bill, 2024, § 4(9).

reassessment of market conditions. Furthermore, Section 99 in DMCC[33] provides for stringency measures, including the disqualification of the director in case of non-compliance with the conduct requirement or the pro-competition interventions, thereby deterring the directors from allowing anti-competitive within the entity. On the other hand, India's regulatory framework imposes penal fines on the individuals managing the undertaking in case of non-compliance.[34] However, the bill is silent on the disqualification of directors or personal liability beyond monetary fines, thereby resulting in lesser individual accountability.

D. Singapore

Singapore stands among the few countries that oppose the legislative approach to regulating digital competition, adhering to the *laissez-faire* philosophy, which advocates for minimal government interference in markets. Singapore follows a market-driven approach, conducting market studies to identify any potential competition concerns, actively engaging with the industry stakeholders and formulating guidelines based on the findings. The notable examples of this methodology include the Market study on the online travel booking sector[35] followed by a similar market study on the e-commerce platform[36] in 2020, in response to the growing significance of the sector. Unlike India's regulatory framework, where law is specifically enacted to govern digital platforms, rather than relying on ongoing market assessments. The Competition and Consumer Commission of Singapore (CCCS) indicates that it will continue to do further study and monitor the developments in the area of artificial intelligence (AI) and algorithms before enacting any necessary law.[37] This method highlights Singapore's dynamic regulatory framework, which evolves in response to market needs. Conversely, India's regulations are silent in the area of AI. While India specifically provides both qualitative and quantitative thresholds for the designation of the SSDEs,[38] Singapore evaluates such matters based on sector-specific market studies rather than implementing a uniform threshold across all sectors, as done in India.

IV. UNCOVERING THE NEEDS AND HIDDEN DILEMMAS OF THE DIGITAL CODE IN INDIA

The CCI has consistently expressed concern over the anti-competitive behaviour of large digital enterprises; however, the CCI can only intervene and curb such behaviour when an entity is found contravening the law, which is a time-consuming and resource-intensive process with limited remedies, as observed in the following cases. For instance, In the e-commerce case, Flipkart and Amazon have been accused of entering anti-competitive arrangements with a few favored vendors by two means i.e., it was identified that Flipkart and Amazon indulge in the

[33] Digital Markets, Competition and Consumers Act, 2024, § 99, No. 13, Act of Parliament, 2024, (UK).
[34] Digital Competition Bill, 2024, s. 27.
[35] The Competition and Consumer Commission of Singapore. (n.d.), *CCCS Proposes Guidelines on Price Transparency After Online Travel Study Raises Consumer Protection Concerns* (2019), *available at* https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/otb-and-price-transparency-guidelines-30-sept-19 (last visited on Jul. 7, 2025).
[36] The Competition and Consumer Commission of Singapore. (n.d.), *Market Study on E-commerce Platforms Recommends Update to Competition Guidelines* (2020), *available at* https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/cccs-market-study-on-e-commerce-platforms-recommends-update-to-competition-guidelines (last visited on Jul. 7, 2025).
[37] *Ibid.*
[38] Digital Competition Bill, 2024, § 3(2), (India).

practice of deep discounting, where they facilitate deep discounts to a preferred seller, thereby making it difficult for the non-preferred seller to compete with the preferred seller. Further, it has been stated that these platforms give priority listings to these preferred vendors on the website, pushing non-preferred merchants down in the search results for identical items. The ability of Flipkart and Amazon to enforce such anti-competitive policies was facilitated by the significant funding received from their equity investors. This has resulted in the exclusion of the non-preferred sellers from competition; ultimately, customers bear the burden through increased prices for goods and services.[39]

In the food delivery platform case, Swiggy and Zomato have been accused of engaging in anti-competitive behavior through bundling, deep discounting, and the data effects. It has been alleged that these platforms bundle the food order and delivery services thereby making the business user (restaurants and hotels) reliant on the platform for delivery service, effectively restricting the market for new delivery entities. Further, these platforms offer deep discounts to customers on food orders, which are funded by the business users listed on the platform, resulting in siphoning from their pockets. Additionally, Swiggy and Zomato collect data on past purchases from customers and leverage the same data to make targeted offerings to customers on their platforms, without providing the same data to business users, the despite platform's policy suggesting otherwise. This behavior created an entry barrier for new entities to enter the market, leading to monopolistic usage of data, which further exacerbates the 'network effect'.[40]

In the digital payment platforms case, Google has been accused of anti-competitive conduct by mandating business users of the Play Store to exclusively use its inbuilt payment system for in-app purchases and app purchases. Non-compliance with this mandate results in exclusion from access to the Play Store, which caters to 90% of potential customers in India. Further, Google charges a 30% commission on each transaction made through its payment system; this restricts business users from switching to an alternative payment system, which is a cost-effective payment system in the market. It is further alleged that Google possesses extensive data of the Play Store users, including both personal and financial information, which it does not share with app developers. This creates an unfair advantage for Google, marginalizing its competitors and enabling Google to dictate the terms of downstream markets. Moreover, Google can use this data for targeted advertising, fetching additional revenue, and enhancing the quality of its services.[41]
In the case concerning the Android operating system and search engine services, Google has been accused of engaging in anti-competitive practices in the Indian market. It is stated that Google mandates smartphone manufacturers to pre-install Google apps during the manufacturing process. These pre-install apps include bundled Google applications such as Play Store, YouTube, Chrome, Gmail, and Meet. Since smartphone manufacturers in India utilize Google's Android system, they are prohibited from modifying the Android without Google's prior consent. Additionally, Google requires manufacturers to set its search engine as the default on web browsers and smartphones. Google further consolidates its control over the general search market by using its dominance through the Play Store. This practice is alleged to impose unfair

[39] In Re Delhi Vyapar Mahasangh v. Flipkart. Internet Private Limited and Ors., Combination Registration, No. 40 of 2019.
[40] National Restaurant Association of India ('NRAI') v. Zomato Limited ('Zomato') & Others, Combination Registration No. 16 of 2021.
[41] XYZ (Confidential) v. Alphabet Inc. and Others., Combination Registration, No. 07 of 2020.

conditions on mobile manufacturers, restricting other entities from entering the market. Moreover, Google by this means restricted multi-homing, fostering consumer inertia, where consumers become accustomed to its apps due to their preinstallation on Android devices.[42] These cases reflect that the ex-post mechanism is insufficient in rectifying the irreparable harm caused by large digital enterprises in the digital market since it fails to effectively address the same recurring anti-competitive behavior perpetrated by different enterprises or by the same entity. Hence, the ex-ante regulations are necessary to set the rules of the game in advance, ensuring that regulation and restriction are in place even before the contravention of competition law occurs. Ex-ante regulations work on the principle of prevention, aiming to prevent entities from floating the law rather than curing it after the violation.

This principle is engraved in the Digital Competition Bill, 2024, which works based on the ex-ante regulations. This bill applies only to the large digital enterprises that are designated as Systemically Significant Digital Enterprises (SSDE) upon meeting the quantitative and qualitative criteria outlined in the Act, provided they offer one of the core digital services stated in the Schedule. However, this does not mean that this act is free of shortcomings, as this act will present three key dilemmas before the CCI. Firstly, this act does not adequately consider the pace of development in the digital market; although it may be equipped with modern tools to tackle the current situation, its conventional intent overlooks emerging state-of-the-art, like Artificial Intelligence (AI) as one of the core digital services, making it lack of future-oriented act, the reason for which it has been originally enacted. Secondly, the bill lays down a threshold for designating an enterprise as a Systematically Significant Digital Enterprise (SSDE), drawing the threshold from the Digital Market Act, of 2023; however, it overlooks the raison d'être behind setting such criteria in DMA, which otherwise could lead to arbitrary order and impede the digital progress of our country. Thirdly, although all the legislation across the globe shares the same goal of curbing anti-competitive behavior, however; it can lead to multi-jurisdictional problems, as different legislation in different countries employs different definitions and thresholds for designating enterprises with market power under the law.

A. Incorporating Artificial Intelligence into A Competitive Framework

To address the first dilemma, it is essential to examine its underlying reasoning for incorporation. The Digital Competition Bill, 2024 (DCB), draws inspiration from the Digital Market Act, 2023 (DMA), particularly in its application of ex-ante regulation to predetermined core digital services,[43] however, India's adoption of predetermined core digital services categories has overlooked the additional flexibility incorporated in the European law, a feature absent in the Digital Competition Bill, 2024. Under the DMA, an entity is designated as a gatekeeper based on both qualitative and quantitative criteria,[44] as well as residuary powers[45] of the European Commission under the Digital Market Act, 2023. One of the qualitative criteria[46] for designating an entity as a gatekeeper is that it must hold a durable position in its market or it is expected to enjoy such a position in near future. This means that even if the entity is not currently dominant but can become dominant in the future, it falls within the purview of the act. Additionally,

[42] Google LLC & Anr. v. Competition Commission of India & Ors., Competition Appeal (AT) No.01 of 2023.
[43] Digital Market Act, 2022, § art. 2(2), 2022/1925, 2022, (EU).
[44] Digital Market Act, 2022, § art. 3(1) & (2), 2022/1925, 2022, (EU).
[45] Digital Market Act, 2022, § art. 3(8), 2022/1925, 2022, (EU).
[46] Digital Market Act, 2022, § art. 3(1), 2022/1925, 2022, (EU).

Article 3(8)[47] allows the European Commission (EC) to designate entities as gatekeepers by considering factors such as size, number of users, network effects, scale of the entity, etc. Moreover, Article 19(1)[48] empowers the commission to introduce new core digital services following a market investigation. A combined reading of these sections grants the commission the authority to expand the scope of the core digital services list to incorporate Artificial Intelligence without requiring legislative amendments, providing greater flexibility and adaptability in response to the evolving dynamic of the digital market.

The Digital Markets, Competition and Consumers Act, 2024 (DMCC) enacted in the UK adopts open-ended regulation, without prescribing a predetermined list of core digital services that come within its jurisdiction. This law provides flexibility to the competition authority at the time of designating an entity with the strategic market status, under the law authority must assess whether the entity has attained substantial market power, and to analyze the substantial market power, the authority must adopt the approach of a future-looking assessment on a case-by-case basis.[49] This approach empowers the authority to expand the scope of core digital services by incorporating new digital services, as per the requirements of the time. In contrast, the Digital Competition Bill, 2024 doesn't incorporate such flexibility, as the power to amend the list of core digital services rests solely with the central government. The CCI does not have the authority to amend the list of core digital services prescribed in the schedule. Even the residuary clauses given in the schedule limit the type of core digital services that can be considered within the purview of this code. In the Digital Competition Bill, 2024, AI should be designated as a core digital service due to the inherent characteristics of the digital market, where a 'winner takes all' dynamic creates entry barriers for new entities. Additionally, feedback loops and enormous data that organizations gather through first-movers advantage enable them to enhance their services further and offer tailor-made services to users' desires. These factors render an entity dominant in the AI market, potentially leading to anti-competitive behavior.[50] Alternatively, the Digital Competition Bill, 2024, must specifically empower the CCI to expand the scope of the core digital services as needed. This inclusion would align the law at par with international standards, as given in the EU and UK, and it would make the CCI more agile towards the changing needs of the digital market.

B. Harmonizing India's End-User Thresholds with Global Benchmarks

To address the second dilemma, it is significant to understand that the Digital Competition Bill, 2024, incorporates two tests, namely the Significant Financial Strength and Significant Spread Test, to designate an entity as a Systematically Significant Digital Enterprise (SSDE) outlined under Sections 3(2)(a)[51] and (2)(b)[52] respectively. A uniform threshold has been established in the test, irrespective of the core digital services provided by the platform. This methodology was inspired by the Digital Market Act, 2023; however, the law overlooked the rationale behind

[47] Digital Market Act, 2022, § art. 3(8), 2022/1925, 2022, (EU).
[48] Digital Market Act, 2022, § art. 19(1), 2022/1925, 2022, (EU).
[49] Digital Markets, Competition and Consumers Act, 2024, § 5, No. 13, Act of Parliament, 2024, (UK).
[50] OECD, *Artificial intelligence, data and competitio*n, 18 OECD (May 24, 2024), https://doi.org/10.1787/e7e88884-en/
[51] Digital Competition Bill, 2024, § 3(2)(a).
[52] Digital Competition Bill, 2024, § 3(2)(b).

setting such threshold limits for end users in the EU. Article 3(2)(b)[53] in the Digital Market Act, 2023 provides that an enterprise must have 45 million monthly active end-users in the EU for designation as a gatekeeper. This threshold relies on the principle that 10% of the EU's total population should be active end-user.[54] This means that if an enterprise has 10% of the EU's total population as active end users in a month, it will meet one of the quantitative criteria for designation.

In contrast, Section (2)(b) of the Digital Competition Bill, 2024,[55] requires enterprises to have at least 1 crore (10 million) end users for the designation as SSDEs. This threshold does not align with the 10% principle, while considering India's total population, which, as per the United Nations, currently stands at 144 crores.[56] Even if we use the internet penetration rate, which stands at 55.3% of the total population,[57] equivalent to over 72 crore (720 million) people, the principle of 10% still demands a higher threshold than 1 crore (10 million) users. The establishment of a lower threshold for the end user in the Digital Competition Bill (DCB) would posit two dilemmas before the CCI. *Firstly*, a lower threshold of the end-user may bring such entities within the purview of the law that operates in core digital services where such threshold (10 million) is considered average, such as social media networking and search engines. *Secondly*, this threshold of end users might preclude such entities from the jurisdiction of a law that has market power in their core digital services but retains a small number of end users i.e., below the prescribed. These two scenarios could frustrate the objective for which the law has been enacted. To resolve the complex scenario, it is suggested that the law should consider aligning with international practices, where the threshold of end-users is based on 10% of the total population or 15% of the total population.[58] Alternatively, a separate quantitative threshold could be prescribed for each core digital service; the rationale for this methodology stems from the varying internet user penetration rates across core digital services, such as the internet user penetration rate for online food delivery is projected to be at 20.2% in 2025,[59] while internet user penetration for social media networks is significantly higher at 72.08% in 2025.[60] These disparities in user penetration rates underscore the necessity for a different quantitative criterion of end-user for each core digital service. The lawmakers could also explore one more approach to resolve the dilemma by drawing inspiration from the American Innovation and Choice Online Act, 2021 of USA, where both domestic and worldwide end users are considered for the

[53] Digital Market Act, 2022, § art. 3(2)(b), 2022/1925, 2022, (EU).
[54] ACCC*, Digital platforms services inquiry*, Interim report 5, Report on social media services (Nov. 11, 2022), https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-25-reports/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform/
[55] Digital Competition Bill, 2024, § 3(2)(b).
[56] Khungar S., *India's Population and Growing Concerns*, The Times Of India, (Jun. 26, 2024), https://timesofindia.indiatimes.com/speaking-tree/daily-ecstasy/indias-population-and-growing-concerns/art.icleshow/111283374.cms
[57] Tanushree B., *Internet Penetration Rate in India 2014-2025*, Statista (May 26, 2025) , https://www.statista.com/statistics/792074/india-internet-penetration-rate/
[58] *Supra* Note 54.
[59] Statista Market Forecast, *Online Food Delivery – India*, *Statista,* (May 2025), https://www.statista.com/outlook/emo/online-food-delivery/india
[60] Tanushree B., *Social Network Penetration India 2018-2028,* Statista, (Dec. 18, 2023) , https://www.statista.com/statistics/240960/share-of-indian-population-using-social-networks/

designation of the enterprises as a covered platform.[61] The Digital Competition Bill, 2024, could similarly consider the worldwide end user, rather than relying just on Indian-based end users, as a criterion for the designation of enterprises as SSDEs. This approach would make the significant spread test more rational and pragmatic, avoiding any arbitrary application.

C. Bridging Global Regulatory Gaps

The rise of large digital enterprises is a global phenomenon, prompting countries to enact laws to regulate their acts. However, this mechanism resulted in discrepancies in laws concerning digital enterprises across the globe, raising three dilemmas before the CCI. *Firstly,* different legislation utilises varying manifestations of power and thresholds, both financial and user-based, to impose ex-ante obligations on the enterprises (referred to as SSDE in India). This variation may lead to inconsistencies in designation, where an enterprise might be subject to an ex-ante obligation in one country but not in another. *Secondly,* the divergence in legislation across the world results in differing obligations for the same digital enterprises; some competition authorities employ tailored obligations specific to each entity, while others enforce predetermined obligations uniformly on the entity. This variation enhances the compliance burden on an entity, impeding economic stability and growth. *Thirdly,* some jurisdictions provide for proactive assessment to authority to examine whether ex-ante rules could be imposed on an enterprise[62] while other legislation imposes such procedural obligations on entities through self-assessment;[63] these inconsistencies compel entities to shift their business activities to the lenient regulatory regime.
To tackle the multi-jurisdictional challenges faced by the CCI, it is suggested that Indian law be aligned with international standards, minimising discrepancies within the legislation across the globe and creating a uniform compliance procedure for enterprises, thereby advancing the objective of ease of doing business in India.[64] Additionally, India should consider signing a bilateral and multilateral covenant with various countries. These covenants would allow CCI to take cognisance of information submitted by the same enterprises to other competition authorities worldwide, thereby preventing enterprises from escaping from the penalties by submitting conflicting information. This methodology would also foster certainty and reduce the compliance burden on the enterprise.

V. CONCLUSION

The manifestation of competition in the digital world diverges from the traditional paradigms, as enterprises in this domain are not circumscribed by the conventional boundaries of the market, thereby expanding the scale and scope of the business, which, in turn, raises the competition concern. The digital market subtly challenges the idea of dominance, compelling a shift in regulatory approaches. Unlike traditional law, where penalties are imposed on the entity when it abuses its dominance; however, ex-ante regulation empowers the competition authority to intervene before an entity becomes dominant. However, this preventive approach carries a risk of

[61] House Judiciary Committee, *H. Rept. 117-655 - American Innovation and Choice Online Act*, (H.R.3816) p. 53, https://www.congress.gov/committee/house-judiciary-committee/hsju00
[62] Digital Markets, Competition and Consumers Act, 2024, § 9, No. 13, Act of Parliament, 2024, (UK).
[63] Digital Market Act, 2022, § art. 3(3), 2022/1925, 2022, (EU).
[64] Ministry of Commerce and Industry, *Centre Spearheads Several Initiatives under Ease of Doing Business and Reducing Compliance Burden Aimed at Creating a Conducive Business Environment* (Feb. 10, 2023), https://pib.gov.in/PressReleasePage.aspx?PRID=1898016

false positives, where the entity not only suffers monetarily but also reputationally, without not engaging in anti-competitive activity. Therefore, it is necessary that any law enacted need to be practical, transparent, and future-orientated. To ensure that the Digital Competition Bill, 2024, possesses these qualities, it may be essential to recognize artificial intelligence as a core digital service, given its potential for a sizeable impact across various economic sectors. Further, reforming the end-user threshold is necessary to prevent the law from inadvertently bringing small digital enterprises within its jurisdiction, and the law should also be at par with international standards to effectively address the multi-jurisdictional complexities that may arise before the Competition Commission of India. These reforms will enable the law to adopt both a facilitative and regulatory approach, thereby advancing the aim of consumer interest and viable competition.

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Right to Protest Vs. Public Order: A Constitutional Dilemma in India

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Abstract: *India's most enduring constitutional tension is between the right to protest and the State's duty to preserve public order. Drawing on Article 19's interlinked freedoms, which are speech, peaceful assembly, and association, it argues that protest is a democratic imperative even though it is not expressly named in the Constitution. Yet Article 19(2) permits 'reasonable restrictions', with public order the ground most often invoked. Through leading Supreme Court decisions such as Ram Manohar Lohia, Ramlila Maidan, Shaheen Bagh, and other cases, the study traces how Indian courts differentiate 'law and order' from 'public order', apply proximity and clear-and-present-danger tests, and demand proportionality in State action. Contemporary movements such as the protest against the Citizenship (Amendment) Act, 2019, or the farmers' protest, etc., reveal both the power of sustained peaceful dissent and the frequent overuse of Section 163 Bhartiya Nagrik Suraksha Sanhita, 2023 (formerly CrPC 144), internet shutdowns, and sedition-style charges. This paper examines comparative insights from European, American, and British jurisprudence to highlight global best practices. At the same time, innovative protest forms like symbolic art, economic boycotts, digital mobilizations, etc., show how citizens adapt to legal constraints. The paper contends that India needs clearer statutory safeguards: designated protest zones, a transparent online permit portal, and ultimately a comprehensive 'Right to Protest Act' that imposes positive duties on authorities, codifies police engagement rules, and embeds independent oversight. The analysis concludes that maintaining both dissent and public order is not about choosing one over the other, but about showing the maturity of a democracy. Robust facilitation of peaceful protest, paired with evidence-based restrictions, can simultaneously protect civil liberties and social stability, ensuring that the streets remain a legitimate forum for accountability while everyday life continues unhindered.*

***Keywords*:** *Right to protest, Public Order, Article 19, Law and Order, Democracy.*

I. INTRODUCTION

The tension between the fundamental right to protest and the state's obligation to maintain public order represents one of the most enduring constitutional dilemmas in democratic societies. This dichotomy becomes particularly pronounced in India, where the Constitution simultaneously guarantees citizens the freedom of speech, expression, and peaceful assembly while empowering the state to impose reasonable restrictions to preserve public order. The challenge lies not merely in balancing these competing interests but in ensuring that the essence of democratic governance—the ability of citizens to dissent and hold their government accountable—remains intact while preventing chaos and maintaining social stability. The right to protest, though not explicitly enumerated as a distinct fundamental right, emerges as a composite right derived from various provisions of Article 19 of the Constitution of India.[1] This right embodies the democratic principle that governance must remain responsive to the will of the people, providing citizens with peaceful means to express dissatisfaction with governmental policies and actions. However, the state's responsibility to maintain public order, as enshrined in Article 19(2), creates an inherent tension that requires careful constitutional navigation.

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[1] SEERVAI H.V., CONSTITUTIONAL LAW OF INDIA, 2, (Universal Law Publishing, New Delhi, 4th ed., 2020).

This constitutional dilemma has gained renewed significance in contemporary India, where protests have become increasingly frequent and sometimes contentious. From the anti-CAA demonstrations (i.e., protest against the Citizenship (Amendment) Act, 2019) to farmers' protest against the three farm laws, the delicate balance between protecting democratic rights and maintaining social harmony has been repeatedly tested. The challenge for constitutional democracy lies in ensuring that restrictions on protest rights are not arbitrary or excessive while preventing the misuse of protest rights to disrupt social order or infringe upon the rights of others.

II. CONSTITUTIONAL FRAMEWORK OF RIGHT TO PROTEST IN INDIA

A. Article 19 and the Foundation of Protest Rights

The Constitution of India, while not explicitly mentioning a 'right to protest', provides a robust framework for this right through Article 19, which guarantees several fundamental freedoms. Article 19(1)(a) ensures the right to freedom of speech and expression, which forms the ideological foundation for protest activities by allowing citizens to publicly express their opinions on governmental actions and policies.[2] This freedom encompasses not only the right to speak but also the right to remain silent, to criticize government policies, and to express dissenting views through various forms of communication. Article 19(1)(b) guarantees the right to assemble peaceably and without arms, which is crucial for collective protest activities.[3] This provision enables citizens to gather in public spaces, organize demonstrations, and participate in collective expressions of dissent. The phrase 'peaceably and without arms' establishes the constitutional expectation that assemblies must remain non-violent and should not involve the carrying of weapons, thereby distinguishing legitimate protest from potential threats to public order. Article 19(1)(c) provides the right to form associations or unions, which supports the organizational aspect of protest movements.[4] This right allows citizens to create formal and informal groups, organizations, and movements that can sustain long-term advocacy and protest activities. Together, these three sub-articles of Article 19 create a comprehensive framework that supports various forms of protest, from individual expressions of dissent to large-scale organized movements.

B. The Doctrine of Reasonable Restrictions

The constitutional framework for protest rights is not absolute but is subject to the doctrine of reasonable restrictions outlined in Article 19(2). These restrictions can be imposed in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation, and incitement to an offence. Among these grounds, "public order" represents the most frequently invoked justification for restricting protest activities.[5] The Supreme Court has consistently held that the test of reasonableness is not fixed but varies according to the nature of the right infringed and the

[2] Express Newspapers (P) Ltd. v. Union of India, AIR 1958 SC 578, at 69.
[3] CONSTITUTION OF INDIA 1950, § art. 19(1)(b).
[4] All India Bank Employees' Association v. National Industrial Tribunal, (1962) 3 SCR 269.
[5] Disha Mohanty, Article 19(2) and 'Public Order': Revisiting Reasonable Restrictions to Guarantee Freedoms, Vidhi Centre for Legal Policy (March 17, 2023), https://vidhilegalpolicy.in/blog/article-192-and-public-order/.

underlying circumstances.[6] The restrictions must be narrowly tailored to serve legitimate state interests and must not be broader than necessary to achieve those interests. This principle ensures that the state cannot use the pretext of maintaining public order to suppress legitimate democratic dissent.[7] The constitutional balance requires that any restriction on protest rights must satisfy several criteria: it must be prescribed by law, pursue a legitimate aim, be necessary in a democratic society, and be proportionate to the legitimate aim pursued.[8] These criteria, while drawing from international human rights law, have been incorporated into Indian constitutional jurisprudence to ensure that restrictions on fundamental rights are not arbitrary or excessive.[9]

III. PUBLIC ORDER: DEFINITION AND CONSTITUTIONAL LIMITATIONS

A. Distinguishing Public Order from Law and Order

One of the most significant contributions of Indian constitutional jurisprudence has been the distinction between "law and order" and "public order," a differentiation that has profound implications for regulating protest activities. The Supreme Court, in landmark cases such as *Ram Manohar Lohia v. State of Bihar & Ors.*, established that public order refers to the absence of disorder involving breaches of public peace and public tranquility, while law and order encompasses a broader spectrum of public safety concerns.[10] The Court conceptualized this distinction using the metaphor of concentric circles, with public order forming a smaller circle within the larger circle of law and order.[11] Not every disturbance of law and order constitutes a threat to public order; there must be a degree of disturbance that affects the community at large and disturbs the current of life of the community.[12] This distinction is crucial because it prevents the state from using minor disturbances as justification for restricting fundamental rights of protest.[13] In *Madhu Limaye v. Ved Murti*, the Supreme Court further clarified that for an act to qualify as a disturbance to public order, it must have an impact on the broader community and evoke feelings of fear, panic, or insecurity among the general public.[14] However, this does not mean that the Court or law ignores individual emergencies like medical emergencies,[15] or any other kind of emergencies during protests. This standard ensures that only genuinely disruptive activities that threaten community peace can justify restrictions on protest rights, preventing the misuse of public order provisions to suppress legitimate dissent.

B. The Proximity Test and Clear and Present Danger

The Indian judiciary has developed sophisticated tests to determine when protest activities cross the threshold from legitimate expression to threats to public order. The proximity test,

[6] Maneka Gandhi v. Union of India, (1978) 1 SCC 248, 28.
[7] Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India* 24–25, 59 (2016).
[8] Nyaaya, 'Everything You Need to Know About Your Right to Protest' (February 26, 2022) https://nyaaya.org/nyaaya-weekly/everything-you-need-to-know-about-your-right-to-protest/
[9] Article 19, *The Right to Protest: Principles on the Protection of Human Rights in Protests* (ARTICLE 19 2016) https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf
[10] Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740, 740–741, 745, 751.
[11] *Ibid.,* 711.
[12] Ameena Begum v. The State of Telangana 2023 INSC 788, 32–33, 38.
[13] *Ibid.*
[14] Madhu Limaye v. Ved Murti, AIR 1971 SC 2608.
[15] Paschim Banga Khet Mazoor Samity v. State of West Bengal, (1996) 4 SCC 37; Parmanand Katara v. Union of India, AIR 1989 SC 2039 (right to emergency medical care as part of Article 21).

established in the *Ram Manohar Lohia case*, requires a very proximate link between the speech or protest activity and the alleged public disorder.[16] This test prevents the state from restricting protest rights based on speculative or remote possibilities of disorder. Building upon this foundation, the Supreme Court in *Shreya Singhal v. Union of India (2015)* emphasized that mere annoyance or inconvenience does not constitute a disturbance of public order.[17] There must be a clear and present danger or tendency to create public disorder for restrictions to be justified. These standard draws inspiration from American constitutional jurisprudence, particularly the test established in *Brandenburg v. Ohio (1969),*[18] while adapting to Indian constitutional requirements, ensuring that restrictions on protest rights are based on imminent and substantial threats rather than hypothetical concerns. The clear and present danger test requires courts to examine the nature of the protest, the context in which it occurs, the likelihood of actual disorder, and the severity of potential consequences. This multi-factor analysis ensures that restrictions on protest rights are carefully scrutinized and that the fundamental principle of proportionality is maintained in balancing democratic rights with public order concerns.

IV. THE INHERENT TENSION: BALANCING RIGHTS AND ORDER

A. Democratic Imperative vs. Social Stability

The fundamental tension between the right to protest and public order reflects a deeper philosophical conflict between democratic governance and social stability. Democracy inherently requires spaces for dissent, criticism, and opposition to governmental policies, as these mechanisms ensure governmental accountability and responsiveness to citizen concerns. However, unlimited protest activities can potentially disrupt social harmony, interfere with the rights of others, and undermine the effective functioning of governmental institutions.
This tension becomes particularly acute in diverse societies like India, where protests often intersect with complex social, religious, and economic dynamics. The state must navigate between protecting minority voices and preventing majoritarian dominance while ensuring that protest activities do not escalate into violence or communal discord. The challenge is compounded by the fact that what constitutes "reasonable" restrictions may vary significantly based on cultural, historical, and contextual factors. The constitutional framework recognizes this inherent tension by providing for both the protection of protest rights and the authority to impose reasonable restrictions. However, the practical application of this balance requires careful judicial oversight and administrative discretion that respects democratic principles while maintaining social order. The success of this balance depends on the maturity of democratic institutions and the commitment of state actors to constitutional values.

B. Individual Liberty vs. Collective Rights

Another dimension of this constitutional dilemma involves balancing individual liberty with collective rights and social welfare. While individuals have the right to express their views through protests, such activities must not infringe upon the rights of others to enjoy their lives without undue interference. The Supreme Court in *Mazdoor Kisan Shakti Sangathan v. Union of India* recognized this conflict, emphasizing that the right to protest must be balanced with every

[16] *Supra note* 7.
[17] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[18] Brandenburg v. Ohio, 395 U.S. 444 (1969).

person's right to life guaranteed under Article 21.[19] This balancing act becomes particularly challenging in densely populated urban areas where protest activities can significantly impact traffic, commerce, and daily life. The Court's decision in the Shaheen Bagh case exemplified this challenge, as it had to balance the protesters' right to express dissent against the Citizenship (Amendment) Act, 2019 (hereinafter 'CAA') with the rights of commuters to access public roads and pathways.[20] The Court's ruling that protests should be confined to designated areas represents an attempt to reconcile these competing rights. The principle of proportionality becomes crucial in resolving such conflicts, requiring that restrictions on protest rights be commensurate with the potential harm to other citizens' rights. This approach ensures that neither protest rights nor other fundamental rights are given absolute priority, but rather that a reasonable accommodation is reached that respects the legitimate interests of all parties involved.

V. JUDICIAL ELUCIDATION

A. The Ramlila Maidan Incident Case

The Supreme Court's decision in *Re: Ramlila Maidan Incident v. Home Secretary, Union of India*, established important precedents for regulating protest activities while protecting democratic rights.[21] The Court held that while citizens have the fundamental right to peaceful protest, such activities require police permission, which serves as a reasonable restriction to ensure social order. This ruling recognized the legitimate role of state authorities in regulating the time, place, and manner of protests while preventing arbitrary suppression of protest rights.
The Court emphasized that police authorities must be objective and consider citizens' rights to freedom of speech and expression when granting or denying permission for protest activities.[22] The refusal or withdrawal of permission should only occur for valid and exceptional reasons, and authorities should not use their power to suppress legitimate democratic dissent. This standard ensures that administrative discretion in regulating protests is exercised within constitutional bounds. The principle established in *Re: Ramlila Maidan Incident* case affirmed that protesters cannot claim an absolute right to protest at any location without regard to the rights of others or public safety concerns. The Court's approach balanced the democratic importance of protest rights with practical considerations of urban management and public safety, creating a framework that protects both individual liberty and collective welfare.

B. The Shaheen Bagh Case

The Supreme Court's judgment in the *Amit Sahni v. Commissioner of Police*, (Shaheen Bagh case) represents a significant development in the jurisprudence of protest rights, particularly regarding the temporal and spatial dimensions of protest activities.[23] The Court ruled that while citizens have the right to peaceful protest, demonstrations cannot permanently occupy public ways and public spaces. This decision addressed the practical challenges posed by indefinite occupation of public spaces while acknowledging the legitimacy of protest rights. The Court's emphasis on designated areas for protests reflects an attempt to create structured spaces for

[19] Mazdoor Kisan Shakti Sangathan v. Union of India, AIR 2018 SC 3476.
[20] Amit Sahni v. Commissioner of Police, AIR 2020 SC 4704.
[21] Re: Ramlila Maidan Incident v. Home Secretary, Union of India, (2012) 5 SCC 1.
[22] *Ibid.*
[23] *Supra note* 14.

democratic dissent while minimizing disruption to public life. This approach recognizes that effective protest often requires visibility and public attention, but such activities must be balanced against the rights of other citizens to access public facilities and services. The judgment established that the right to protest is not absolute and must be exercised within reasonable temporal and spatial constraints. However, the *Shaheen Bagh* decision has also been criticized for potentially restricting the effectiveness of protest activities by confining them to designated areas that may lack the visibility and impact necessary for meaningful democratic expression. Critics argue that such restrictions may favor governmental interests over democratic accountability, particularly when designated areas are located away from centers of power or public attention.

C. Constitutional Interpretation in Emergency Context

The Indian experience during the Emergency period (1975-1977) provides crucial insights into the fragility of protest rights and the importance of constitutional safeguards. During this period, fundamental rights, including the right to protest, were suspended, leading to widespread suppression of democratic dissent and political opposition.[24] This experience highlighted the vulnerability of democratic rights during periods of political crisis and the need for robust constitutional protections. The post-Emergency constitutional discourse has emphasized the importance of maintaining democratic spaces even during periods of national crisis. The Supreme Court's role as the guardian of constitutional rights has been reinforced through various judgments that have strengthened protection for protest rights while establishing clear boundaries for state interference.[25] These developments have contributed to a more mature understanding of the balance between security concerns and democratic rights. The Emergency experience also demonstrated the importance of civil society organizations and independent judiciary in protecting democratic rights. The National Human Rights Commission, established in the post-Emergency period, has played a crucial role in monitoring and addressing violations of protest rights, contributing to a more robust framework for protecting democratic dissent.[26]

VI. WHEN PROTEST BECOMES NECESSARY: A DEMOCRATIC IMPERATIVE

A. The Moral and Political Justification for Protest

The question of when protest becomes necessary touches upon fundamental principles of democratic theory and political legitimacy. Protest serves as a mechanism for political participation when normal democratic channels prove inadequate or unresponsive to citizen concerns. In representative democracies, electoral processes provide periodic opportunities for citizens to express their preferences, but the complex nature of governance often requires more immediate and specific forms of political engagement. Protest becomes particularly necessary when governmental actions threaten fundamental rights, violate constitutional principles, or fail to address urgent social problems despite repeated attempts through formal channels. The moral justification for protest rests on the principle that governmental legitimacy depends on popular consent, and citizens retain the right to withdraw or condition that consent when governments act

[24] Additional District Magistrate, Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207.
[25] *Ibid.*
[26] National Human Rights Commission, Annual Report 2021–22, 59 (2022).

contrary to the public interest.[27] This principle is deeply embedded in democratic theory and finds expression in various constitutional traditions worldwide. The practical necessity of protest also emerges from the limitations of formal democratic processes in addressing complex social and economic issues. Electoral cycles may not align with the urgency of particular problems, and elected representatives may be influenced by interests that diverge from broader public welfare. In such circumstances, protest provides an alternative mechanism for citizen voice and political accountability that complements rather than replaces formal democratic institutions.

B. Graduated Response and Exhaustion of Alternatives

The question of whether protest should be a last resort or a regular feature of democratic participation reflects different philosophical approaches to democratic governance. Some argue that protest should only be employed after exhausting all formal channels of political participation, including petitions, lobbying, electoral participation, and judicial remedies. This perspective emphasizes the importance of institutional stability and the rule of law in democratic societies. However, an alternative view suggests that protest should be understood as a normal and healthy component of democratic discourse rather than an exceptional response to governmental failure.[28] This perspective recognizes that formal democratic institutions may be systematically biased toward certain interests or may be structurally incapable of addressing particular types of problems.[29] From this viewpoint, protest serves as a continuous mechanism for democratic accountability rather than merely a crisis response. The Indian constitutional framework supports both perspectives by protecting the right to protest while encouraging the use of formal democratic institutions. The Supreme Court has recognized that protest rights are essential for maintaining democratic accountability while also emphasizing the importance of peaceful and lawful means of political expression.[30] This balanced approach allows for both institutional stability and democratic dynamism, ensuring that protest rights can be exercised without undermining constitutional governance.

C. Retaliation and the Costs of Dissent

Citizens who choose to exercise their right to protest must often confront the possibility of various forms of retaliation, ranging from legal prosecution to social ostracism and economic consequences. The Indian experience includes numerous instances where protesters have faced police action, criminal charges, and social persecution for their participation in protest activities. Understanding these potential costs is crucial for citizens making informed decisions about political participation. Legal retaliation can include criminal charges under various provisions of Indian law, including sedition laws, unlawful assembly provisions, and anti-terrorism legislation.[31] The misuse of such laws to suppress legitimate protest has been a recurring concern in Indian democracy, with critics arguing that vague and broadly worded

[27] RAWLS JOHN, *A THEORY OF JUSTICE* 319-342 (Harvard University Press, Cambridge, 1971).
[28] Kathryn Dunn Tenpas (Host) & Vanessa Williamson (Guest), *Can Democracy Exist Without Protest?*, Democracy in Question (Brookings Podcast Network, June 5, 2025), https://www.brookings.edu/wp-content/uploads/2025/06/Ep-08-Williamson-20250605.pdf
[29] Paradigm Hq, Press Release: *The Right to Peaceful Protest: A Pillar of Democratic Governance as Constitutionally Guaranteed* (July 31, 2024), https://paradigmhq.org/press-release-the-right-to-peaceful-protest-a-pillar-of-democratic-governance-as-constitutionally-guaranteed/
[30] People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301.
[31] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

statutes are often employed to intimidate protesters and discourage political dissent. The Delhi High Court's observation that the state sometimes blurs the line between constitutionally guaranteed protest rights and terrorist activity reflects these concerns.[32] Social and economic retaliation can include employment discrimination, social boycotts, and various forms of harassment that can significantly impact protesters' lives and livelihoods. These informal mechanisms of suppression can be particularly effective in discouraging protest participation, especially among economically vulnerable populations. The challenge for democratic societies lies in creating legal and social protections that enable citizens to exercise their protest rights without fear of disproportionate consequences.

VII. FORMS OF PROTEST: PEACEFUL VS. VIOLENT DISCOURSE

A. The Constitutional Preference for Peaceful Protest

The Indian Constitution's emphasis on "peaceful" assembly in Article 19(1)(b)[33] reflects a clear preference for non-violent forms of protest. This constitutional mandate is based on the principle that democratic societies should provide adequate channels for the peaceful expression of dissent, making violent protest unnecessary and counterproductive. The requirement of peaceful assembly also serves to distinguish legitimate protest from criminal activity, providing clear boundaries for both state regulation and citizen action. Peaceful protest encompasses a wide range of activities, including demonstrations, rallies, sit-ins, strikes, marches, and various forms of symbolic expression. The diversity of peaceful protest methods ensures that citizens can choose forms of expression that are appropriate to their particular circumstances and objectives. This flexibility is crucial for maintaining the vitality of democratic discourse and ensuring that different groups and communities can participate effectively in political processes.
The constitutional preference for peaceful protest is also based on practical considerations of effectiveness and legitimacy. Peaceful protests are more likely to gain public sympathy and support, can sustain longer-term participation, and are less likely to provoke counterproductive state repression. Moreover, peaceful protest methods are more consistent with democratic values of deliberation, persuasion, and rational discourse that are essential for legitimate political change.

B. The Problem of Ignored Peaceful Protest

One of the most challenging aspects of the peaceful protest paradigm is the question of what citizens should do when peaceful protest activities are ignored or dismissed by governmental authorities. This dilemma becomes particularly acute when urgent problems require immediate attention but peaceful protests fail to generate adequate governmental response. The risk is that ignored peaceful protests may lead some participants to conclude that more disruptive or violent methods are necessary to achieve their objectives. Several strategies can be employed to enhance the effectiveness of peaceful protests without resorting to violence. These include expanding the scope and scale of protest activities, building broader coalitions and alliances, employing creative and innovative protest methods that capture public attention, and utilizing media and communication technologies to amplify protest messages. The goal is to create sufficient political pressure to compel governmental response while maintaining the moral authority and

[32] Natasha Narwal v. Union of India, 2021 SCC OnLine Del 3262, 36.
[33] The Constitution of India, 1950, § art.19 (1)

legal legitimacy of peaceful methods. International experience suggests that sustained and well-organized peaceful protest movements can achieve significant political change even when initial protests are ignored.[34] The key factors for success include strategic planning, broad-based participation, clear and achievable objectives, effective leadership, and the ability to maintain non-violent discipline over extended periods. These elements require significant organizational capacity and popular commitment, but they offer the most promising path for democratic change.

C. Creative and Innovative Protest Methods

The evolution of protest methods reflects the creativity and adaptability of democratic movements in responding to changing political and technological circumstances. Traditional forms of protest such as marches and rallies remain important, but contemporary movements have developed numerous innovative approaches that can be more effective in capturing public attention and achieving specific objectives. These creative methods often reflect the particular context and culture of specific protest movements. Consider, for instance, a hypothetical scenario involving workers in a shoe manufacturing company who wish to protest against their working conditions or management policies. Rather than engaging in a traditional strike that would halt production entirely, these workers could employ a creative form of protest by doubling their production, but with a strategic twist. Instead of producing complete pairs of shoes, which would benefit the company, the workers could choose to manufacture only shoes for the left foot, creating a surplus of single shoes that are commercially useless. This approach would demonstrate the workers' capabilities while simultaneously creating economic pressure on management to address their concerns. Such creative resistance methods can be more effective than traditional strikes because they maintain worker income while still imposing costs on the employer and drawing attention to the workers' cause.

Similar innovative approaches have been employed in various contexts around the world, including 'work-to-rule' campaigns where employees strictly follow all regulations to slow down operations, 'pink slips' protests where participants wear specific colors or symbols to demonstrate solidarity, and 'virtual protests' that utilize digital technologies to organize and coordinate resistance activities. These methods demonstrate the potential for creative adaptation in protest tactics while maintaining peaceful and lawful approaches. The effectiveness of creative protest methods often depends on their ability to generate media attention, public sympathy, and political pressure while avoiding the negative consequences associated with violent or illegal activities. Successful innovative protests typically combine elements of surprise, symbolism, and strategic calculation to maximize their impact while minimizing risks to participants. The development of such methods requires careful planning and coordination but can offer significant advantages over traditional approaches.

VIII. REGULATORY FRAMEWORK AND STATE RESPONSE

A. Section 163 and Preventive Restrictions

Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') (earlier The Code of Criminal Procedure's Section 144) represents one of the most frequently employed tools

[34] CHENOWETH ERICA AND STEPHAN MARIA J., WHY CIVIL RESISTANCE WORKS: THE STRATEGIC LOGIC OF NONVIOLENT CONFLICT (Columbia University Press, 2011), 167-189.

for regulating protest activities in India. This provision empowers District Magistrates and Sub-Divisional Magistrates to prohibit the assembly of more than four people in public spaces when there is a likelihood of danger to human life, health, safety, or disturbance of public tranquility. While this provision serves legitimate public safety purposes, its frequent use to pre-emptively restrict protest activities has raised concerns about its impact on democratic rights.
The legal framework surrounding Section 163 requires that restrictions be temporary, specific to particular areas, and based on reasonable apprehension of disorder. However, the practical application of these requirements often falls short of constitutional standards, with authorities sometimes imposing blanket restrictions without adequate justification or maintaining such restrictions for extended periods.[35] The challenge lies in ensuring that preventive measures do not become tools for suppressing legitimate democratic dissent. Recent judicial decisions have attempted to establish clearer guidelines for the use of Section 163 in relation to protest activities. Courts have emphasized that the mere possibility of protest should not automatically justify restrictions and that authorities must demonstrate specific and credible threats to public order.[36] These developments reflect an ongoing effort to balance legitimate security concerns with constitutional protection for protest rights.

B. Police Discretion and Operational Guidelines

The role of police in managing protest activities involves complex decisions about when and how to intervene in protest situations. Police authorities must balance their responsibility to maintain public order with their constitutional obligation to protect citizen rights, including the right to peaceful protest. This balance requires careful judgment about the appropriate level and timing of intervention, as well as the methods employed to manage protest activities. Effective police response to protests requires clear operational guidelines that respect constitutional rights while maintaining public safety. These guidelines should address issues such as the use of force, crowd control techniques, arrest procedures, and communication strategies.[37] The goal is to create predictable and lawful police responses that minimize the potential for escalation while protecting both protesters and the general public. International best practices in protest policing emphasize importance of communication, de-escalation, and proportionate response.[38] Police training should include education about constitutional rights, crowd psychology, and conflict resolution techniques. Moreover, oversight mechanisms should be established to ensure that police actions during protests comply with legal and constitutional standards and that violations are appropriately addressed.

C. Administrative Challenges and Coordination

The regulation of protest activities often involves multiple levels of government and various administrative agencies, creating coordination challenges that can impact the effectiveness of both protection for protest rights and maintenance of public order. Central, state, and local authorities may have different perspectives on the appropriate response to protest activities,

[35] CJP Team, *How Free Are All Indians to Exercise Their Right to Peacefully Protest under Article 19? A Fundamental Right Overshadowed by Government Retaliation* (03 September, 2024), https://cjp.org.in/how-free-are-all-indians-to-exercise-their-right-to-peacefully-protest-under-article-19/
[36] Anuradha Bhasin v. Union of India, AIR 2020 3 SC 1308.
[37] *Supra* note 27.
[38] Julia Kozma and Asbjorn Rachlew, *Combating Torture During Police Custody and Pre-Trial Detention: Discussion Paper* (22–23 March 2018).

leading to conflicts and inconsistencies in policy implementation. These challenges require clear frameworks for inter-governmental coordination and communication. The constitutional division of responsibilities between central and state governments regarding law and order creates additional complexities in protest regulation. While 'Police' and 'Public Order' are state subjects under the Seventh Schedule to the Constitution,[39] central authorities may become involved when protests involve national issues or cross state boundaries. This division of authority requires careful coordination to ensure effective and consistent responses to protest activities.

Effective administrative responses to protest require adequate resources, training, and institutional capacity. Many local authorities lack the expertise and resources necessary to manage large-scale protest activities effectively, leading to either excessive restrictions or inadequate responses that may escalate into violence. Building administrative capacity for protest management is essential for maintaining the balance between democratic rights and public order.

IX. INTERNATIONAL PERSPECTIVES AND COMPARATIVE ANALYSIS

A. European Convention on Human Rights Framework

The European approach to balancing protest rights with public order provides valuable insights for understanding international standards and best practices. The European Convention on Human Rights, particularly through Articles 9-11, establishes a comprehensive framework for protecting the rights to freedom of thought, expression, and assembly while allowing for restrictions necessary in a democratic society.[40] This framework has been developed through extensive jurisprudence from the European Court of Human Rights, creating detailed guidance for national authorities. The European approach emphasizes the principle of proportionality in restricting protest rights, requiring that any limitations be strictly necessary and proportionate to the legitimate aim pursued. The Court has established that restrictions must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society.[41] This three-part test provides a rigorous framework for evaluating the legitimacy of restrictions on protest activities and has influenced human rights law globally. European jurisprudence also recognizes the special importance of political expression and assembly rights in democratic societies, requiring particularly strong justification for restrictions on political protest. The Court has emphasized that democracy thrives on the exchange of ideas and that even offensive or disturbing ideas deserve protection unless they directly incite violence or hatred.[42] This approach reflects a strong commitment to democratic values while acknowledging legitimate security concerns.

B. American Constitutional Approach

The American constitutional tradition offers another important comparative perspective on balancing protest rights with public order concerns. The First Amendment's protection of free speech and assembly rights has been interpreted broadly by the Supreme Court, with particular emphasis on the marketplace of ideas concept and the clear and present danger test.[43] The American approach generally provides strong protection for political expression while allowing

[39] CONSTITUTION OF INDIA 1950, Seventh Schedule, List II, Entries 1 and 2.
[40] EUROPEAN CONVENTION ON HUMAN RIGHTS 1950, § arts. 9-11, Council of Europe.
[41] Sunday Times v. United Kingdom, (1979) 2 EHRR 245.
[42] Handyside v. United Kingdom, (1976) 1 EHRR 737.
[43] U.S. CONSTITUTION amend. I (1791).

for content-neutral time, place, and manner restrictions. The development of the clear and present danger test in American jurisprudence has influenced legal thinking globally, including in India. This test requires that restrictions on expression be based on imminent and substantial threats rather than speculative concerns.[44] The American experience demonstrates both the possibilities and challenges of maintaining robust protection for protest rights while addressing legitimate public safety concerns. However, the American approach has also faced criticism for its sometimes-permissive attitude toward hate speech and extremist expression. The tension between broad protection for expression and the need to address harmful speech remains an ongoing challenge in American constitutional law. This experience suggests that different societies may reach different balances based on their particular historical, cultural, and political contexts.

C. United Kingdom's Public Order Framework

The United Kingdom's approach to protest regulation reflects the country's particular constitutional traditions and the absence of a written bill of rights. The Public Order Act and related legislation provide extensive powers for authorities to regulate protest activities, with particular emphasis on preventing disorder and protecting public safety.[45] This approach places greater emphasis on legislative discretion and administrative judgment compared to constitutional systems with stronger judicial review. The UK experience demonstrates the importance of legislative frameworks in defining the boundaries of protest rights and public order concerns. The evolution of British public order law reflects changing social and political circumstances, including responses to terrorism, civil unrest, and large-scale protest movements. This evolutionary approach allows for adaptation to new challenges but also raises concerns about the consistency and predictability of legal standards. Recent developments in UK law, including the Police, Crime, Sentencing and Courts Act 2022, have expanded police powers to restrict protest activities, generating significant controversy about the appropriate balance between security and democratic rights.[46] These debates reflect ongoing tensions between public safety concerns and civil liberties that are common to many democratic societies.

X. CONTEMPORARY CHALLENGES AND CASE STUDIES

A. The Anti-CAA Protests: Democracy in Action

The nationwide protests against the Citizenship (Amendment) Act, 2019, during 2019-2020 represented one of the most significant test cases for the balance between protest rights and public order in contemporary India. These protests involved millions of participants across the country and raised fundamental questions about citizenship, secularism, and democratic rights. The government's response to these protests, including the use of Section 144,[47] internet shutdowns and police action highlighted the ongoing tensions in Indian democracy. The Shaheen Bagh protest, in particular, became a symbol of sustained civil resistance and women's political participation. Led primarily by Muslim women, the protest demonstrated the power of peaceful resistance while also raising questions about the occupation of public spaces and the rights of

[44] *Supra* note 12.
[45] Public Order Act 1986, United Kingdom.
[46] Police, Crime, Sentencing and Courts Act 2022, United Kingdom.
[47] The Code of Criminal Procedure, 1973 (Act 2 of 1974).

other citizens. The Supreme Court's eventual intervention reflected the judicial system's attempt to balance competing rights and interests while maintaining constitutional principles. The government's response to the anti-CAA protests included allegations that protesters were "anti-national" and threats to national security. The use of the Unlawful Activities Prevention Act (UAPA) against student activists and protest leaders generated significant controversy about the appropriate boundaries of anti-terrorism legislation.[48] The Delhi High Court's observation that the state was blurring the line between constitutional protest rights and terrorist activity reflected broader concerns about the expansion of security legislation.

B. Farmers' Protests: Economic Rights and Democratic Expression

The 2020-2021 farmers' protests against agricultural reform legislation represented another major test of India's capacity to manage large-scale protest movements. The protests involved hundreds of thousands of farmers camping at Delhi's borders for over a year, creating unprecedented challenges for both protesters and authorities. The scale and duration of these protests raised complex questions about the sustainability of prolonged protest activities and their impact on public life. The farmers' protests demonstrated the intersection between economic grievances and democratic rights, as farmers sought to use constitutional mechanisms to challenge policy decisions they viewed as harmful to their livelihoods.[49] The protests employed various innovative tactics, including tractor rallies, sit-ins, and cultural programs that maintained participant morale and public attention.[50] The eventual repeal of the farm laws represented a significant victory for protest movements and demonstrated the potential effectiveness of sustained peaceful resistance.[51]

However, the protests also involved incidents of violence and confrontation with security forces, highlighting the challenges of maintaining peaceful discipline in large-scale movements. The events of January 26, 2021, at the Red Fort particularly tested the protesters' commitment to non-violence and provided opportunities for critics to question the legitimacy of the movement. These incidents demonstrate the complex dynamics involved in managing large-scale protest activities and the importance of effective leadership and organization. The government's response to the farmers' protests involved a combination of negotiation, legal challenges, and security measures. The use of physical barriers, internet restrictions, and allegations of foreign involvement reflected the authorities' concerns about the protests' impact on public order and national security. The eventual resolution through legislative repeal demonstrated the possibility of addressing protest demands through democratic processes, though critics argued that earlier engagement might have prevented the prolonged confrontation.

C. Digital Age Protests and New Challenges

The emergence of digital technologies has fundamentally transformed the nature of protest activities, creating new opportunities for organization and participation while also generating

[48] Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).
[49] Natasha Behl, '*India's Farmers' Protest: An Inclusive Vision of Indian Democracy*', American Political Science Review, 116(3), pp. 1141–1146.
[50] *Ibid.*
[51] The Farm Laws Repeal Act, 2021 (Act 40 of 2021).

novel challenges for regulation and public order. Social media platforms enable rapid mobilization of protest participants, facilitate coordination across geographic boundaries, and provide alternative channels for political expression that can bypass traditional media gatekeepers. These developments have democratized access to protest organizations while also creating new forms of political participation. However, digital technologies also create new vulnerabilities for protest movements, including surveillance, misinformation campaigns, and digital harassment of participants. The Indian government's use of internet shutdowns during protest periods has raised concerns about the proportionality of such measures and their impact on fundamental rights.[52] The challenge for democratic societies lies in harnessing the positive potential of digital technologies while addressing their risks and vulnerabilities.

XI. EXAMPLES OF POWERFUL PEACEFUL PROTEST IN THE POST-INDEPENDENCE ERA

A. **Chipko Movement, 1973**: The Chipko Movement was started on Gandhian non-violent ideas. People, particularly women, protested against deforestation by embracing trees. Thousands of people came out in support of the green movement across India.

B. **Jayaprakash Narayan's "Total Revolution" Movement (1974–77):** It's led to the fall of Indira Gandhi's government, culminating in her defeat in the 1977 elections. The movement relied on mass mobilization using Gandhian principles of nonviolent civil disobedience.

C. **Narmada Bachao Andolan (1985)**: This Andolan altered people's perceptions about development schemes. This demonstration was held to show opposition to a high number of dams being built along the Narmada River. It brought together a big group of Adivasis, farmers, environmentalists, and human rights advocates. The court ordered that development at the dam be halted immediately.

D. **Anna Hazare's Anti-Corruption Movement (2011)**: This mass movement called for the implementation of the Jan Lokpal Bill. When anti-corruption campaigner Anna Hazare went on hunger strike at Jantar Mantar, Delhi, it inspired nationwide peaceful demonstrations and led to significant policy discussions and anti-corruption legislation. This effort was a once-in-a-decade occurrence.

E. **Nirbhaya Movement, 2012:** Following the 2012 Delhi Gang Rape, hundreds of people took to the streets to protest in various areas of the country. Finally, new legislation was enacted. The government also launched the Nirbhaya Fund to ensure the girls' protection.

F. **Farmers' Protest, 2020:** The year-long protest by farmers all over the country against the three farm acts was successful, as the government withdrew the bills and formed a committee to review the MSP.

XII. INNOVATIVE APPROACHES TO PROTEST: CREATIVE RESISTANCE

A. Symbolic and Cultural Expressions

The development of symbolic and cultural forms of protest has expanded the repertoire of democratic expression while often avoiding direct confrontation with public order concerns. These approaches utilize art, music, literature, and other cultural forms to convey political messages and mobilize public sentiment. The advantage of symbolic protest lies in its

[52] *Supra* note 28.

ability to communicate complex ideas and emotions while maintaining peaceful and legal forms of expression. Cultural protests can be particularly effective in societies with rich artistic traditions and diverse cultural expressions. In the Indian context, the use of traditional songs, dances, and theatrical performances in protest activities connects contemporary political movements with historical and cultural narratives. This approach can broaden participation by making protest activities more accessible and meaningful to diverse communities. The "Shoe Satyagraha" employed by IIM-Bangalore students during the anti-CAA protests exemplifies creative adaptation to restrictive circumstances. When Section 144[53] prevented traditional forms of assembly, students used symbolic placement of shoes and placards to express their dissent. This innovative approach demonstrated how protesters can adapt their methods to legal constraints while maintaining the essential communicative function of protest activities.

B. Economic and Consumer-Based Resistance

Economic forms of protest, including boycotts, strikes, consumer activism, over production, etc., represent important alternatives to traditional assembly-based demonstrations. These approaches leverage economic relationships and market mechanisms to create pressure for political change while often avoiding direct confrontation with public order restrictions. The effectiveness of economic protest depends on the economic vulnerability of targeted institutions and the ability to coordinate collective action. The example of the shoe manufacturing workers mentioned earlier illustrates the potential for creative economic resistance that maintains productivity while imposing costs on employers. By producing only left-foot shoes, workers could demonstrate their capabilities while creating economic pressure for addressing their concerns. This approach avoids the economic costs of traditional strikes for workers while still imposing consequences on management for failing to address legitimate grievances. Consumer boycotts represent another form of economic protest that can be highly effective when coordinated across large populations. The Indian independence movement's use of Swadeshi campaigns demonstrated the potential for consumer activism to achieve political objectives.[54] Contemporary digital technologies enable more sophisticated coordination of economic protest activities, including targeted boycotts and positive purchasing campaigns that support preferred businesses or causes.

XIII. RECOMMENDATIONS AND THE WAY FORWARD

A. Designated Protest Zones: Balancing Rights and Responsibilities

Peaceful protest is a fundamental democratic right that allows citizens to voice their concerns and seek redress for grievances. However, the exercise of this right should not infringe upon the basic liberties and daily functioning of other individuals. The concept of designated protest zones emerges as a balanced solution that respects both the protesters' constitutional right to free expression and the general public's right to uninterrupted access to essential services, transportation, and livelihood opportunities. These dedicated spaces would serve as legitimate platforms where concerned groups can organize demonstrations, hold rallies, and express dissent without blocking roads, disrupting public transport, or hindering access to hospitals, schools, and commercial establishments. Such zones could be strategically located in areas with adequate space and infrastructure, ensuring that protesters have visibility and media attention while

[53] The Code of Criminal Procedure, 1973.
[54] Bipan Chandra, *India's Struggle for Independence* 156-178 (Penguin Books, London 1989).

minimizing inconvenience to the broader community. This approach has been successfully implemented in several democracies where "Speaker's Corner" type arrangements allow for organized dissent within defined parameters.

The establishment of designated protest areas would also enable better coordination between protesters and law enforcement agencies, reducing the likelihood of conflicts and ensuring the safety of all parties involved. By channelising protests into these specified zones, authorities can provide necessary security arrangements, medical facilities, and crowd management services while maintaining public order elsewhere. This system would ultimately strengthen democratic participation by legitimizing peaceful protest while preserving the rights and freedoms of all citizens in a diverse society. For example, the United States has established "Free Speech Zones" particularly on college campuses and during government events, where people can exercise their right to free expression.[55] The Philippines has created "Freedom Parks" - public spaces specifically reserved for free speech and demonstrations. These international examples demonstrate that the concept of balancing protest rights with public order through designated spaces is not only feasible but has been successfully implemented across different political systems and cultural contexts.

B. Strengthening Institutional Frameworks

The improvement of India's approach to balancing protest rights with public order requires strengthening institutional frameworks at multiple levels of government. This includes developing clearer guidelines for police and administrative authorities regarding the management of protest activities, creating better coordination mechanisms between different levels of government, and establishing more effective oversight and accountability systems. These institutional improvements should be based on constitutional principles and international best practices while reflecting India's particular circumstances. Training and capacity building for law enforcement personnel should emphasize constitutional rights, de-escalation techniques, and community policing approaches that build trust between police and citizens. Regular training programs should include education about the importance of protest rights in democratic societies and practical guidance for managing protest situations without unnecessary restrictions or violence. Professional development should also address the complex legal and constitutional issues involved in protest regulation. Judicial training and continuing education should similarly emphasize the constitutional principles underlying protest rights and the standards for evaluating restrictions on those rights. Judges should receive regular updates on evolving jurisprudence and best practices for balancing competing rights and interests. The development of specialized courts or judicial procedures for handling protest-related cases could improve the consistency and quality of legal decisions in this area.

C. Legal and Policy Reforms

Section 163 of BNSS (earlier Section 144 of the CrPC) must be reformed because this provision is frequently used to issue pre-emptive bans on assembly. The Supreme Court itself has flagged this issue, that there is a tendency that, because there is a protest, 144 (CrPC) order is issued...

[55] Thomas J. Davis, *Assessing Constitutional Challenges to University Free Speech Zones Under Public Forum Doctrine,* 79 Indiana Law Journal 267(2004), https://heinonline.org/HOL/LandingPage? handle=hein.journals/ indana79&div=13&id=&page/

This happens because 144 is being misused.[56] The law should require any order under this section to be accompanied by a written justification demonstrating that it is a necessary and least restrictive measure, thereby preventing its use as a tool to curb legitimate expression. Also, a Digital "Protest Permission and Management Portal" must be introduced because the current process for granting protest permits is often criticized as opaque and arbitrary, with a report by the Part III Action Research and Resource Centre noting that courts have frequently found that the discretion granted to the executive has been improperly exercised.[57] There must be a mandatory creation of a state-level online portal for managing protest applications. This portal should feature:

(i) A standardized application form with clear, pre-defined criteria based on judicial precedent.

(ii) A statutory 72-hour deadline for a decision, after which permission is deemed granted by default.

(iii) A public dashboard showing the status of all applications to enhance transparency.

(iv) A fast-track digital appeal mechanism to a judicial magistrate against any denial.

D. Right to Protest Act

The legislature must work towards the creation of a comprehensive "Right to Protest Act", a legislation that should consolidate the various principles developed across multiple judicial precedents and affirmatively codify the rights and duties of all stakeholders. Key components of such an Act should include:

1. **Positive Obligations on the State**: The law must impose a duty on the state to *facilitate* peaceful protest. This would include:
   - **(i)** Mandating every city to designate permanent, visible "Protest Sites" (as suggested by the Supreme Court).
   - **(ii)** Requiring authorities to provide basic amenities like water, mobile toilets, and emergency medical aid for large, pre-notified assemblies.
   - **(iii)** Ensuring the protection of protesters from counter-protests or hostile actors.
2. **Clear Rules of Engagement for Police**: The Act should codify clear protocols for law enforcement, emphasizing their role as protectors of constitutional rights. This would involve:
   - **(i)** Mandating de-escalation as the primary strategy.
   - **(ii)** Strictly defining and limiting the use of force, prohibiting practices like "kettling" (corralling protesters) and indiscriminate use of tear gas/water cannons against peaceful gatherings.

[56] Amisha Shrivastava, *Whenever There's a Protest, S.144 CrPC Order Is Issued; This Sends Wrong Signal*: Supreme Court, *Live Law* (Jan. 27, 2025), https://www.livelaw.in/top-stories/whenever-theres-a-protest-s144-crpc-order-is-issued-this-sends-wrong-signal-supreme-court-282102/

[57] Ashlin Mathew, *Have Our Courts Upheld Our Right to Protest?*, Nat'l Herald India (Oct. 20, 2024), https://www.nationalheraldindia.com/opinion/have-our-courts-upheld-our-right-to-protest/

(iii) Establishing an independent oversight body to review police conduct after major protests and ensure accountability for excesses.

3. **Framework for Balancing Rights**: The legislation should provide a clear framework for balancing the right to protest with other public rights, such as the right to free movement. It could define "essential services" (like ambulances) that must have guaranteed passage and create a formal mediation process to resolve disputes over protest routes or duration before they escalate.

XIV. CONCLUSION

The constitutional dilemma between the right to protest and public order represents one of the defining challenges of contemporary democratic governance in India. This tension reflects deeper questions about the nature of democratic legitimacy, the role of dissent in political systems, and the appropriate boundaries of state power in diverse societies. The resolution of this dilemma requires not merely legal or constitutional solutions but a broader commitment to democratic values and practices that respect both individual liberty and collective welfare. The Indian constitutional framework provides a solid foundation for addressing this dilemma through its protection of fundamental rights subject to reasonable restrictions. However, the practical implementation of this framework requires constant vigilance, institutional improvement, and social dialogue to ensure that neither protest rights nor public order concerns are given absolute priority. The success of Indian democracy depends on maintaining this delicate balance while adapting to changing social, political, and technological circumstances.

The experience of recent protest movements in India demonstrates both the vitality of democratic expression and the challenges of managing large-scale political mobilization. These experiences provide valuable lessons about the importance of peaceful protest methods, the need for effective institutional responses, and the dangers of excessive restrictions on democratic rights. They also highlight the creativity and resilience of civil society in adapting to restrictive circumstances while maintaining commitment to constitutional principles. Looking forward, the balance between protest rights and public order will continue to evolve as Indian society confronts new challenges and opportunities. The digital revolution, changing economic circumstances, and evolving social relationships will all influence the nature and forms of protest activities. The constitutional framework must remain flexible enough to accommodate these changes while maintaining its core commitment to democratic governance and individual liberty. The ultimate resolution of the constitutional dilemma between protest rights and public order lies not in perfect legal formulations but in the maturation of democratic culture and institutions. This requires ongoing commitment from all sectors of society—government officials, civil society leaders, judicial authorities, and ordinary citizens—to the values of democratic dialogue, mutual respect, and constitutional governance. Only through such collective commitment can India maintain its democratic character while managing the inevitable tensions between individual freedom and collective order.

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CYBERCRIME AND THE STATE: ASSESSING THE ROLE OF LAW ENFORCEMENT IN THE DIGITAL AGE

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***Abstract**: In the context of the rapid expansion of the digital ecosystem and the global rise in cybercrime, this article conducts a doctrinal and comparative analysis of the role of law enforcement authorities in India. It positions cybercrime as a multifaceted, transnational threat that calls for a departure from traditional police paradigms. The article outlines the legal and operational challenges posed by cybercrime, including jurisdictional ambiguities, technological gaps, and evidentiary vulnerabilities. It distinguishes cyber surveillance from traditional enforcement, focusing on proactive surveillance, digital forensics, inter-agency cooperation, and rights-based investigative mechanisms. The article examines the Information Technology Act, 2000, (IT Act), the Bharatiya Nyaya Sanhita, 2023, (BNS), and the Digital Personal Data Protection Act, 2023, (DPDP Act) assessing their adequacy in empowering Law Enforcement Authorities (LEAs) against sophisticated digital crimes. It analyzes institutional mechanisms such as the Indian Cybercrime Coordination Centre (I4C), the Indian Computer Emergency Response Team (CERT-In), and state-level cyber cells, identifying capacity constraints and recommending reforms. A comparative dialogue with the FBI's Cybercrime Division, INTERPOL's Global Cybercrime Strategy, and Europol's EC3 highlights transferable practices for collaboration. Emphasis is placed on the admissibility of electronic evidence, data sovereignty, and private sector cooperation in enhancing resilience. Ultimately, the article argues that Indian LEAs must be reconceptualized as digitally competent actors with prosecutorial power and improved coordination, capable of upholding national security and individual rights. Legal reform, advanced training, cross-border cooperation, and public accountability are essential elements of a future-proof cyber enforcement regime that embodies digital constitutionalism.*

***Keywords:** Cyber policing, digital evidence, law enforcement authorities, cross-border cybercrime, cybersecurity governance.*

I. INTRODUCTION

In the twenty-first century, the main areas of human interaction, trade, governance, and crime have shifted decisively to the digital sphere. Cyberspace is no longer simply an extension of real-world interactions; it is the world itself, an evolving virtual society without borders, where opportunities and threats are intertwined. Among the biggest emerging threats in this area is cybercrime, which has become one of the most widespread and insidious forms of criminal activity. Whether it's ransomware, phishing, cyberterrorism, or deepfake, the modern criminal does not operate in the shadows but on screens, not with weapons but with code.[1] In this rapidly changing landscape, law enforcement authorities, the traditional bulwark of state power, are grappling with profound structural, legal, technological, and jurisdictional challenges. Cybercrime transcends territorial borders, goes beyond regulatory reforms, and evolves faster than policing models can adapt. As India rapidly digitizes,[2] vulnerabilities inherent in its

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[1] Council of Europe, *Convention on Cybercrime ETS No. 185* (Budapest, 2001) https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185

[2] National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs, Government of India, 2024).

infrastructure, citizens, and governance systems are becoming prime targets for cybercriminals. In 2023 alone, India reported more than 2.2 million cases of cybercrime, but conviction rates remained extremely low.[3]

This article critically discusses the role of law enforcement authorities in the fight against cybercrime in India and beyond. It assesses legislative frameworks such as the Information Technology Act, 2000 and the Bharatiya Nyaya Sanhita, 2023 and institutional responses, including the Cybercrime Coordination Centre, the Indian Computer Emergency Response Team (CERT-In), and cyber police stations, and juxtaposes them with international models such as the Budapest Convention, 2001 and agencies such as Europol's EC3 and INTERPOL's Cybercrime Directorate.[4] The central argument of this article is twofold: first, the current framework of cybercrime surveillance in India is reactive, fragmented, and underfunded; second, a holistic approach encompassing legal reform, transnational cooperation, training, and digital skills development is essential for effective law enforcement. The article proposes structural reforms, legal modernization, capacity building, and a rights-sensitive approach that balances law enforcement and digital privacy.

This article argues that India's law enforcement authorities must be reconceptualized as digitally competent and rights-respecting institutions, empowered through legislative harmonisation, specialised investigative mechanisms, and institutionalised public-private cooperation. Specifically, the article contributes in four ways: first, by analysing the Information Technology Act, 2000, the Bharatiya Nyaya Sanhita, 2023, and the Digital Personal Data Protection Act, 2023; second, by evaluating institutional mechanisms such as the Indian Cybercrime Coordination Centre (I4C), the Indian Computer Emergency Response Team (CERT-In), and state cyber cells; third, by engaging in comparative dialogue with models like the FBI Cybercrime Division, INTERPOL's Global Cybercrime Strategy, and Europol's EC3; and fourth, by recommending structural reforms to strengthen capacity while safeguarding constitutional rights.

II. THE LEGAL FRAMEWORK GOVERNING CYBERCRIME IN INDIA

The legal regulation of cybercrime in India is primarily derived from two main laws: the Information Technology Amendment Act, 2008 and the Bharatiya Nyaya Sanhita, 2023. The former defines the substantive and procedural framework for crimes against digital infrastructure, while latter is invoked to punish traditional crime perpetrated using digital means.

A. Information Technology Act, 2000

The Information Technology Act was India's first legislation dedicated to cybercrime and digital transactions. It defines a range of cybercrimes under Sections 43 to 66F, covering unauthorized access (hacking), identity theft, data breaches, cyberterrorism, and posting obscene material online.[5] Particular importance is given to Section 66F, which criminalizes 'cyberterrorism' and

[3] Lok Sabha Unstarred Question No. 3532, Cybercrime Conviction Rate, https://www.mea.gov.in/lok-sabha.htm?dtl/33642/question+no3532+developmental+assistance/
[4] INTERPOL, *Cybercrime*, https://www.interpol.int/en/Crimes/Cybercrime/
[5] Information Technology Act, No. 21, Acts of Parliament, 2000.

introduces strict sanction mechanisms.[6] Despite its status as a foundational, the law suffers from significant deficiencies. Its language is technologically outdated, does not define emerging threats such as deepfakes or synthetic media, and offers limited clarity for prosecutions. In addition, the lack of procedural synchronization with the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) often leads to confusion in investigations and trials.[7]

B. Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita applies at the same time as the Information Technology Act, in particular for offenses related to criminal association [Section 61(2)], deception [section 318(4)], defamation [Section 356(1)], criminal intimidation [Section 351(2) and (3)], and obscenity [Section 294]. While the Bharatiya Nyaya Sanhita offers a broader framework for penalizing online harm, it is not digital legislation and does not reflect the technical nuances required by cybercrime.[8]

III. INSTITUTIONAL MECHANISMS AND LAW ENFORCEMENT AGENCIES

A. The Indian Cybercrime Coordination Centre (I4C)

Launched in 2020 under the aegis of the Ministry of Home Affairs, the Indian Cybercrime Coordination Centre is the supreme coordinating agency to facilitate a comprehensive and coordinated approach to the prevention, investigation, and prosecution of cybercrime. It includes seven key components, including the National Cybercrime Reporting Portal, the Cybercrime Investigation Training Modules, and the National Centre for Cybercrime Research and Innovation.[9] While the Indian Cybercrime Coordination Centre is a commendable move, critics say it lacks legal support, real-time surveillance power, and adequate cybersecurity personnel, especially at the state level.

B. National Cybercrime Units

Most Indian states have established cybercrime cells or cyber police stations. However, these units vary greatly in terms of resources, infrastructure, and expertise. A 2022 audit by the National Bureau of Crime Records (NCRB) found that less than 20% of these cells were staffed with personnel trained in digital forensics.[10]

C. Indian Computer Emergency Response Team (CERT-In) and the National Centre for the Protection of Critical Information Infrastructure (NCIIPC)

The Indian Computer Emergency Response Team (CERT-In) and the National Centre for the Protection of Critical Information Infrastructure (NCIIPC) are specialized agencies responsible for protecting national infrastructure and responding to cyber incidents. While CERT-In is under the Ministry of Electronics and Information Technology, NCIIPC operates under the umbrella of

[6] Cyber Law Committee, *Expert Recommendations on Amendments to the IT Act* (MeitY, 2023) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2154268#:~:text=Information%20Technology%20(Intermediary%20Guidelines%20and,be%20prosecuted%20under%20section%20111/

[7] Ministry of Home Affairs, *Indian Cybercrime Coordination Centre (I4C)* (2023), https://cybercrime.gov.in/

[8] DSCI, *Cybercrime Training Gaps in State Police* (2022), https://www.dsci.in/events/content/12th-cybercrime-awareness-workshop/

[9] NCRB Report, Cyber Infrastructure Audit (2022), https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf

[10] *Id.*

the National Technical Research Organisation (NTRO). These agencies are primarily focused on cyber threat intelligence and responding to privacy breaches, but they are not investigative agencies *per se*.[11]

IV. CHALLENGES FACED BY LAW ENFORCEMENT IN CYBERCRIME CASES

A. Jurisdictional Complexity and Territorial Ambiguity

One of the main legal challenges is the question of jurisdiction. Cybercrimes often involve cross-border data streams, foreign-based servers, and anonymous perpetrators operating via VPNs or the darknet. In such cases, the traditional notions of territorial jurisdiction in Indian criminal law (Sections 197 and 199 of the BNSS) become inadequate.[12] Mutual legal assistance treaties are often slow, non-transparent, and inadequate to request real-time data.[13]

B. Capacity Shortfalls and Technical Delays

A 2021 report by the Parliamentary Standing Committee on Information Technology highlighted that more than 90% of police personnel had not received formal training on cybercrime.[14] Law enforcement continues to rely heavily on outsourced forensic expertise, leading to delays, compromised chains of evidence, and poor prosecution outcomes.[15]

Digital evidence, especially metadata, IP logs, encryption keys, and timestamps, requires rapid collection and processing. However, police officers at police stations are often ill-equipped to handle cybersecurity complaints, resulting in low FIR registration rates.[16]

C. Legislative Fragmentation and Procedural Gaps

Despite the existence of the Information Technology Act, there remains a procedural disharmony with the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the BNSS, and the BNS. For example, Sections 62 and 63 of the Bharatiya Sakshya Adhiniyam, relating to electronic evidence remain poorly understood and poorly implemented, especially after the landmark decision of the Hon'ble Supreme Court in the case of *Anvar P.V. v. P.K. Basheer.*[17] In addition, while the Digital Personal Data Protection Act, 2023 has since been enacted, its procedural integration is still a developing area, leaving law enforcement agencies without clear procedural safeguards to manage digital privacy.

D. Privacy, Conflicts of Interest, and Excessive Scrutiny

Law enforcement's reliance on mass surveillance tools, such as facial recognition and predictive policing software, has raised concerns among privacy advocates. The Pegasus spyware scandal revealed how state surveillance could evade judicial oversight, in violation of Article 21 of the

[11] Ministry of Electronics and Information Technology (MeitY), *CERT-In Functions*, Notification (April 2022), https://www.cert-in.org.in/PDF/CERT-In_Directions_70B_28.04.2022.pdf
[12] Bharatiya Nagarik Suraksha Sanhita, 2023, § 197-199, No. 46, Act of Parliament, 2023.
[13] Ministry of Foreign Affairs, *Manual of the Mutual Legal Assistance Treaty (MLAT)* (2021) https://legalaffairs.gov.in/documents/mlat/
[14] Standing Committee on Information Technology, *Cyber Surveillance and Capacity Building* (2021) https://sansad.in/getFile/lsscommittee/Communications%20and%20Information%20Technology/18_Communications_and_Information_Technology_5.pdf?source=loksabhadocs/
[15] Comptroller and Auditor General of India, Cyber Crimes, Vol II (2020) https://cag.gov.in/uploads/media/Vol-II-Cyber-Crimes-20200528155403.pdf
[16] *Id.*
[17] Anwar P.V. v. P.K. Bashir, (2014) 10 SC 473.

Constitution.[18] The lack of a legal framework for surveillance mechanisms left agencies operating in legal grey areas, undermining trust in LEAs.

E. Low Conviction Rates and a Lack Of Prosecution

Despite the increase in cybercrime reports, conviction rates remain below 3%.[19] Reasons include poor prosecution, lack of clarity on the admissibility of digital evidence, delays in retrieving data from intermediaries, and insufficient coordination with judicial officials who are unfamiliar with digital concepts.[20]

VI. COMPARATIVE INTERNATIONAL APPROACHES

A. The Budapest Convention on Cybercrime

The Council of Europe Convention on Cybercrime, 2001 also known as the Budapest Convention, remains the only binding international instrument dedicated to cybercrime. It harmonizes national laws, promotes international cooperation, and facilitates criminal investigations into crimes ranging from data interference to content-related crimes.[21] Although India has refused to sign the treaty, citing sovereignty issues,[22] the Convention's procedural and research models have been adopted globally. Article 32 allows cross-border access to data stored with the consent of the legitimate user, while Articles 16 to 21 prescribe expedited protocols for data retention and retrieval. The Convention, therefore, serves as a procedural reference for international cooperation.[23]

B. INTERPOL and Europol

INTERPOL's Cybercrime Directorate serves as a global hub, coordinating 194 member countries for information sharing, operations and the issuance of Purple Cyber Threat Notices.[24] The Directorate's Digital Crime Centre in Singapore has played a key role in dismantling ransomware networks, credit card fraud schemes, and darknet operations.[25] Europol's European Cybercrime Centre (EC3), established in 2013, supports EU states in the fight against organized cybercrime, child exploitation and dark web activities.[26] In particular, EC3's Joint Cybercrime Action Working Group (J-CAT) operates through a multinational liaison model, which builds trust and speed between agencies.[27]

C. United States

In the United States, agencies such as the FBI's Cyber Division, Homeland Security

[18] Pegasus Spyware Case, SC Writ Petition (Civil) No. 314 of 2021.
[19] Law Commission of India, *Report No. 277, Prosecution Failures in Cybercrime Cases* (2023), https://static.pib.gov.in/WriteReadData/userfiles/Report%20No.%20277%20Wrongful%20Prosecution.pdf
[20] *Id.*
[21] Council of Europe, *Explanatory Report on the Convention on Cybercrime* (2001), https://rm.coe.int/16800cce5b#:~:text=The%20Convention%20aims%20principally%20at,well%20as%20other%20offences%20committed/
[22] *Id.*
[23] *Id.*
[24] INTERPOL, *Cybercrime Directorate Annual Report* (2023), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.interpol.int/content/download/22267/file/
[25] *Id.*
[26] Europol EC3, *Joint Cybercrime Action Group (J-CAT) Overview* (2024), https://www.europol.europa.eu/how-we-work/services-support/joint-cybercrime-action-taskforce/
[27] *Id.*

Investigations (HSI), and the Cybersecurity and Infrastructure Security Agency (CISA) lead enforcement against cybercrime. The Computer Fraud and Abuse Act, 1986 (CFAA) provides substantial grounds for prosecution, while initiatives such as the National Cyber Investigation Joint Task Force (NCIJTF) promote collaboration between agencies.[28] The U.S. model demonstrates a high degree of institutional integration and real-time response capabilities, particularly in counterterrorism cyber operations and election interference monitoring.[29]

D. United Kingdom

The UK's approach is based on the National Crime Agency (NCA) and its National Cybercrime Unit (NCCU), backed by the Computer Misuse Act, 1990.[30] The Cyber Aware program, a public-private partnership, focuses on training and raising awareness among citizens.[31] Unlike India, the UK deploys Regional Organized Crime Units (RCUs) to decentralize expertise and improve local response capacity.[32]

E. Estonia: A Model of Cyber Resilience

Following the 2007 cyberattacks on its infrastructure, Estonia undertook structural reforms that transformed it into a model of cyber resilience. Its NATO-affiliated Centre of Excellence for Cooperative Cyber Defense (CCDCOE) organizes the annual Locked Shields exercise, which simulates real-world cyber incidents for law enforcement in all jurisdictions.[33] Estonia's experience highlights the fundamental value of preventive planning, digital literacy and inter-agency exercises.[34]

VII. CYBER POLICING CASE STUDIES: INDIA AND ABROAD

A. India: The Cosmos Bank Cyber Heist (2018)

In August 2018, hackers diverted around ₹94 crore from the Pune-based Cosmos Bank through a malware attack on its ATM switching server.[35] The perpetrators used cloned debit cards in 28 countries in two days. The incident highlighted the deep vulnerabilities of the cooperative banking infrastructure and the deficiencies in incident response.[36] The Maharashtra Cyber Cell collaborated with INTERPOL and multiple foreign agencies, but no arrests were made for more than a year.[37] Despite traces of evidence, legal hurdles involving server jurisdictions and lack of intermediary cooperation hampered prosecutions. This case has highlighted the urgent need for

[28] Federal Bureau of Investigation (FBI), *Attribution of WannaCry to the Lazarus Group* (2018), https://www.justice.gov/archives/opa/pr/north-korean-regime-backed-programmer-charged-conspiracy-conduct-multiple-cyber-attacks-and/

[29] U.S. Department of Justice, *Operation Disruptor Results* (October 2020), https://www.justice.gov/archives/opa/pr/international-law-enforcement-operation-targeting-opioid-traffickers-darknet-results-over-170/

[30] UK Home Office, *Cybersecurity Strategy 2022-2030,* https://www.gov.uk/government/publications/government-cyber-security-strategy-2022-to-2030/

[31] National Crime Agency (UK), *Annual Cybercrime Threat Report* (2023), https://assets.publishing.service.gov.uk/media/66b627400808eaf43b50dfd0/NCA+Annual+Report+2023-24.pdf

[32] *Id.*

[33] NATO CCDCOE, *Locked Shields Cyber Defence Exercise* 2023, https://ccdcoe.org/news/2023/6016/

[34] *Id.*

[35] Cosmos Bank FIR Case No. 456/2018.

[36] *Id.*

[37] *Id.*

international treaties and real-time data sharing.[38]

B. India: The Case of the Bulli Bai and Sulley Agreements

In 2021-22, two major cases of online harassment involved uploading manipulated images of Muslim women to fictitious auction apps hosted on GitHub.[39] The FIRs were registered under Sections 78, 79 of the BNS and 66E of the Information Technology Act. Mumbai and Delhi police, in coordination with Indian Computer Emergency Response Team (CERT-In) located the defendants using digital fingerprints. The cases demonstrated how digital forensics and rapid interstate cooperation can produce results, though they also highlighted GitHub's initial delay in providing user data due to jurisdictional hurdles.[40]

C. International: WannaCry Ransomware Attack (2017)

WannaCry affected more than 300,000 systems in 150 countries, focusing on healthcare, banking, and government infrastructure.[41] The National Health Service (NHS) in the UK was severely affected.[42] The investigations have been traced back to North Korean state-sponsored hackers, though attribution has been diplomatically sensitive.[43] The response included collaboration between the FBI, Microsoft, and Europol. The Indian Computer Emergency Response Team (CERT-In) in all jurisdictions have released decryption tools and patches. This case illustrated the need for global cooperation and a multi-stakeholder cybersecurity apparatus.[44]

D. International: Operation Disruptor (2020)

A joint effort by the U.S. Department of Justice, Europol, and law enforcement agencies from nine countries, Operation Disruptor dismantled darknet markets, including Alpha Bay and Wall Street Market.[45] More than 170 arrests were made, and crypto seizures totalled more than $6.5 million.[46] This operation is a model of cross-border collaboration, forensic tracking of cryptocurrencies, and proactive law enforcement through cyber patrols and undercover digital agents.[47]

VII. THE ROLE OF PUBLIC-PRIVATE PARTNERSHIPS AND DIGITAL LITERACY

A. Industry Collaboration and Cyber Surveillance

The private sector, which includes ISPs, social media platforms, fintech services, and cybersecurity firms, has an unprecedented technology infrastructure and real-time monitoring capabilities. Law enforcement authorities rely heavily on these entities for data retention, log

[38] *Id.*
[39] *GitHub Response Disclosure under MLAT*, Mumbai Police Case File (2022).
[40] *Id.*
[41] Europol and FBI, *WannaCry Coordinated Investigation* (2017), https://www.europol.europa.eu/media-press/newsroom/news/2017-year-when-cybercrime-hit-close-to-home/
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] U.S. Department of Justice and Europol, *AlphaBay Takedown and Evidence Seizure Report* (2020), https://www.justice.gov/archives/opa/pr/alphabay-largest-online-dark-market-shut-down/
[46] *Id.*
[47] UK Cabinet Office, *Cyber Aware Evaluation* (2023), https://www.gov.uk/government/publications/information-security-review-2023-final-report/information-security-review-2023-final-report-html/

analysis, and IP address tracking. In accordance with Section 79 of the Information Technology Act, intermediaries are obliged to exercise due diligence and provide the necessary assistance. However, a 2020 report by the Data Security Council of India (DSCI) found that intermediary response times ranged from 10 to 45 days, making investigations severely difficult.[48] To address this problem, some jurisdictions, such as the United Kingdom, have formalized public-private coordination units within law enforcement structures. In India, this integration remains informal and inconsistently enforced.[49] Joint working groups, cybersecurity simulation exercises, and information-sharing mechanisms between the Indian Computer Emergency Response Team (CERT-In) and big tech companies (such as Google, Meta, and Microsoft) have shown promise, but they need to be institutionalized.[50] The Reserve Bank of India (RBI)[51] and the Securities and Exchange Board of India (SEBI)[52] has also issued industry notices requiring regular cyber audits, thereby incentivizing compliance.

B. Capacity Building and Digital Literacy

India's digital penetration rate exceeds 850 million users, but digital literacy remains alarming, especially in rural and Tier 2 and Tier 3 regions. According to a 2023 survey conducted by Internet and Mobile Association of India (IAMAI), less than 30% of users were able to identify phishing or scam attempts.[53] This lack of knowledge makes citizens vulnerable to cyber fraud and undermines trust in reporting mechanisms. The training programs of National Association of Software and Service Companies (NASSCOM), National Institute of Criminology and Forensic Sciences (NICFS) and police academies are nascent but growing.[54] Initiatives such as Cyber Dost[55] (a Twitter-based outreach platform by MHA) and CBSE's cyber wellness program are examples of state-backed efforts to promote awareness.[56] Despite this, there is no consolidated national policy on cyber hygiene for students, seniors, and small business owners. A 360-degree approach is needed combining basic awareness, school curricula and platform accountability.

C. The Role of Academia and Civil Society

Academia and civil society organizations play a key role in analyzing state surveillance, formulating rights-based critiques and suggesting ethical frameworks for law enforcement

[48] DSCI and MeitY, *Public-Private Cybersecurity Frameworks in India* (2022), https://www.dsci.in/files/content/knowledge-centre/2023/India-Cybersecurity-Industry.pdf
[49] *Id.*
[50] CERT-In, *Annual Report on the Coordination of Cyber Threat Intelligence* (2024), https://www.cert-in.org.in/PDF/Digital_Threat_Report_2024.pdf
[51] Reserve Bank of India (RBI), *Cyber Security Framework for Banks*, Circular (2016), https://www.rbi.org.in/commonman/English/scripts/Notification.aspx?Id=1721/
[52] Securities and Exchange Board of India (SEBI), *Cyber Security and Cyber Resilience Framework for Market Infrastructure Institutions* (2018), https://www.sebi.gov.in/legal/circulars/aug-2024/cybersecurity-and-cyber-resilience-framework-cscrf-for-sebi-regulated-entities-res-_85964.html
[53] Internet and Mobile Association of India (IAMAI) and Nielsen, *India Internet Report* (2023), https://uat.indiadigitalsummit.in/sites/default/files/thoughtleadership/pdf/Kantar_iamai_Report_20_Page_V3_FINAL_web_0.pdf
[54] NASSCOM and NICFS, *Digital Forensic Capability Survey* (2021), https://community.nasscom.in/communities/cyber-security-privacy/digital-forensics-solving-legal-and-regulatory-issues.html
[55] Ministry of Home Affairs, *CyberDost Campaign Review* (2023), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2065959/
[56] Central Board of Secondary Education (CBSE), *Cyber Wellbeing Curriculum* (2022), https://www.cbse.gov.in/cbsenew/documents/Cyber%20Safety.pdf

conduct.[57] Collaborations have emerged between law schools and state cyber cells for legal assistance, research, and capacity building, but they require more institutional support.[58]

VIII. RECOMMENDATIONS FOR REFORM AND THE WAY FORWARD

A. Legislative Review and Harmonization

India needs to enact a comprehensive cybercrime code that consolidates the scattered provisions of the Information Technology Act, the Bharatiya Nyaya Sanhita, and the Bharatiya Sakshya Adhiniyam. The harmonization of procedural law is essential, especially with regard to the collection of digital evidence, the admissibility of data under the Bharatiya Sakshya Adhiniyam, and integration with global protocols such as the Budapest Convention. The recently enacted Digital Personal Data Protection Act must be effectively implemented to provide legal guarantees to citizens and clarity for the application of the law.

B. Establishment of Specialized Courts For Cybercrime

To address procedural backlogs and low conviction rates in cybercrime cases, India needs to establish specialized cybercrime courts at the district and higher court levels. Judges and prosecutors should receive mandatory training in digital forensics, blockchain, data preservation, and cyber law. In addition, case management systems should incorporate electronic filing, virtual testimony, and secure discovery portals to ensure procedural efficiency and chain of custody integrity.

C. Capacity-Building and Training Of The Police

The current police training curriculum needs to be updated to include modules on Open Source Intelligence (OSINT), cyber forensics, cryptocurrency tracing, and darknet monitoring. Cyber cells in all districts should be equipped with modern digital laboratories, and their performance indicators should be linked to the success of prosecutions and not just to the number of FIRs registered. Mandatory certifications from National Institute of Electronics and Information Technology (NIELIT) or National Institute of Criminology and Forensic Science (NICFS) help standardise cyber surveillance credentials. Judicial oversight mechanisms, independent audits and whistleblower protection must be institutionalised to ensure accountability. Public confidence in law enforcement cannot be the result of mere efficiency; it must be based on legitimacy. As digital policing tools become more invasive, ethical and rights-based frameworks must evolve simultaneously.

IX. CONCLUSION

As the frontier of crime shifts into cyberspace, the response of law enforcement authorities must transcend conventional paradigms. The nature of cybercrime is borderless, anonymous and rapidly evolving, requiring a rethink of jurisprudence on crimes, evidence and sanctions. India, with its booming digital population and expanding e-governance, is at a critical juncture. The

[57] University Grants Commission (UGC), *Model Law Curriculum - Cyber Law Module* (2024), https://ugcmoocs.inflibnet.ac.in/index.php/courses/view_ug/185#:~:text=UGC%20MOOCs:%20A%20Vertical%20of,About%20UGC%2DMOOCs/

[58] NICFS, *Cybercrime Investigation Curriculum* (2023) https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://cytrain.ncrb.gov.in/&ved=2ahUKEwj3-ej7mtaPAxX0T2wGHXhaCWYQFnoECBoQAQ&usg=AOvVaw2JvWDUfY7v2KxDNxTj6cZq/

current legal and institutional framework, while laudably evolving, remains fragmented, under-resourced and procedurally inadequate to address the complex cyber threat architecture. While initiatives like Indian Cybercrime Coordination Centre (I4C) and the Indian Computer Emergency Response Team (CERT-In) are structurally promising, they must be backed by legal legitimacy, advanced training, and collaborative ethics. International models reveal the need for transnational cooperation, decentralised law enforcement and multi-stakeholder participation. Case studies, both national and global, highlight not only the vulnerabilities but also the resilience that coordinated law enforcement can bring. Ultimately, the legitimacy of cyber policing lies in its ability to guarantee digital rights without compromising civil liberties. A digital Leviathan must remain chained to constitutional morality. Vigilance should not be a substitute for evidence, and technological prowess should not silence procedural fairness. For the rule of law to prevail, India must invest not only in infrastructure but also in imagination, re-engineering its law enforcement agencies not just with better tools but with a new philosophy, one that is as agile, borderless, and technologically fluent as the threat it seeks to contain.

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THE GREAT INDIAN IPO RUSH IN LIGHT OF THE 2025 SEBI ICDR REGULATIONS

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***Abstract**: The 2025 amendments to Regulation 56 of the SEBI ICDR Regulations significantly reshape startup compensation structures and governance norms. Earlier, only Employee Stock Options (ESOPs) could survive beyond the Draft Red Herring Prospectus (DRHP), while Stock Appreciation Rights (SARs) and other incentive schemes had to be terminated before listing. The new framework permits issuance of equity shares from SARs post-DRHP, provided they are granted exclusively to employees under recognized schemes and fully allotted before the Red Herring Prospectus (RHP). These SAR-linked shares also enjoy the same lock-in exemptions as ESOP conversions. For Indian startups, particularly in capital-intensive technology sectors with delayed profitability, this reform enhances flexibility while addressing governance challenges tied to founder dominance and external funding reliance. SEBI's clarification that pre-IPO ESOPs granted at least one year before the IPO may be exercised post-listing had raised governance concerns, as promoters already benefit from sweat equity and dual-class share structures. Additional ESOPs risk disproportionate enrichment. Cases like Paytm, WeWork, and Gokaldas Exports highlight risks of control concentration and ESOP misuse. Restricting SARs to employees with oversight mitigates these concerns, though ambiguities remain over unvested and cash-settled SARs post-DRHP, and their interaction with pre-IPO instruments like convertibles and placements.*

***Keywords:** Stock Appreciation Rights (SARs), Employee Stock Options (ESOPs), Corporate Governance, SEBI ICDR Regulations 2025, Dual-Class Shares (DCS).*

I. INTRODUCTION

The 2025 amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations[1] (hereinafter '*ICDR Regulations*') represent a transformative step in India's capital market framework, reflecting SEBI's intent to balance investors protection with issuer flexibility while aligning with global best practices. These reforms address long-standing ambiguities relating to Stock Appreciation Rights (SARs), promoter contributions, and Offer for Sale (OFS) mechanism, thereby providing greater certainty to IPO-bound companies and fostering innovation in equity-linked compensation structures[2]. By streamlining timelines, disclosure standards, and reporting formats across the IPO lifecycle, the amended framework enhances transparency and regulatory predictability. Drawing from the recommendations of the Expert Committee the revised regulatory framework aims to balance investor protection with issuer flexibility[3]. At the same time, the amendments are not without limitations. Persistent challenges such as the treatment of pre-IPO transactions, governance roles of non-promoter investors, and

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[1] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, F. No. SEBI/LAD-NRO/GN/2025/233, *Gazette of India*, Pt. III, § 4 (Mar. 8, 2025).

[2] Vaibhav Singh Tiwari & Yash Sharan, *Rights, Risks, and Reforms: Decoding SEBI's Game-Changing IPO Regulations*, Arbitration & Corporate L. Rev. – Blog, https://www.arbitrationcorporatelawreview.com/post/rights-risks-and-reforms-decoding-sebi-s-game-changing-ipo-regulations/

[3] SEBI ICDR Regulations: Key Features, Importance & Recent Updates, *The Legal School Blog* (last updated Mar. 3, 2025), https://thelegalschool.in/blog/sebi-icdr-regulations/

valuation risks in hybrid instruments underscore the need for further refinement. Against this backdrop, the central argument of this paper is that while the reforms mark an important leap towards modernizing India's IPO ecosystem, they remain transitional in nature. The essay therefore evaluates the amendments' impact on Indian startups, highlights interpretive gaps, and proposes measures to improve clarity, coherence, and convergence with international standards.

II. MAPPING THE REGULATORY SHIFT

To better understand the implications of the 2025 amendments to Regulation 56 of the SEBI ICDR Regulations[4], particularly in the context of startup compensation structures and corporate governance, it is useful to undertake a clause-by-clause analysis. This approach will allow for a more nuanced examination of how the revised provisions affect the treatment of Stock Appreciation Rights (SARs), the flexibility available to issuers during the IPO process, and the broader impact on promoter entitlements and investor protection. By unpacking each aspect of the amendment in detail, we aim to critically assess its practical effectiveness, identify lingering ambiguities, and evaluate its alignment with global governance standards.

A. Treatment of Stock Appreciation Rights under the Amended ICDR Framework

Before the changes to the 2025 Regulations, Employee Stock Options (ESOPs) were the only employee stock option planning that could survive the filing of a Draft Red Herring Prospectus (DRHP)[5]. Stock Appreciation Rights (SARs) and other employee incentive instruments had to be terminated before a listing occurred. Issuers were unable to maintain flexibility in their compensation schemes when the IPO process was occurring. The 2025 amendment to Regulation 56 of the ICDR Regulations permits equity shares arising from SARs to be issued post-DRHP, provided they are granted exclusively to employees under a recognized scheme and disclosed in the offer document[6]. Such shares must be fully allotted before the filing of the Red Herring Prospectus (RHP)[7]. Lock-in exemptions available to ESOP-converted shares have been extended to SAR-linked equity shares, including those issued through bonus allotments.

An analysis of capital-intensive Indian tech startups shows the need to safeguard both founders and long-term shareholders, as their founder-driven governance, reliance on external funding, delayed profitability, and intangible assets make them more vulnerable to IPO-related concerns than traditional firms.[8]. Uncertainty had existed over whether promoters can exercise pre-IPO ESOPs post listing, and SEBI had clarified that it is possible if the ESOP has been granted at

[4] Securities & Exchange Board of India, *Issue of Capital and Disclosure Requirements Regulations, 2018*, Reg. 56, as amended by *Issue of Capital and Disclosure Requirements (Amendment) Regulations, 2025*, Gazette of India, pt. III, sec. 4 (Mar. 8, 2025) (India).

[5] Cyril Amarchand Mangaldas, *Client Alert: IPOs Post the SEBI ICDR Amendments 2025* (Mar. 21, 2025), https://www.cyrilshroff.com/wp-content/uploads/2025/03/Client-Alert-SEBI-ICDR-Amendments.pdf

[6] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 56, *Gazette of India*, Pt. III, § 4 (Sept. 11, 2018).

[7] Amar Shardul, *SEBI ICDR Amendments, 2025: Key Takeaways for IPOs*, Amsshardul (Mar. 10, 2025), https://www.amsshardul.com/insight/sebi-icdr-amendments-2025-key-takeaways-for-ipos/.

[8] Post-IPO Challenges and Opportunities: A Guide for Startups, *Surana & Surana International Consultants — Blog*, https://ssinternational.in/post-ipo-challenges-and-opportunities-a-guide-for-startups/.

least one year before the IPO decision[9]. When viewed from a corporate governance perspective, it was quite problematic as promoters could already receive benefits in the form of sweat equity shares under Section 54 of the Companies Act[10]. They were also exercising strategic control through Dual Class Shares, which makes the grant of additional ESOP incentives both redundant and misaligned. Since such promoters are already provided with substantial economic and control-based advantages, any further issuance of ESOPs would result in an unfair dilution of minority investors' shareholding in the company.

It becomes pertinent at this juncture also to analyze cases such as that of Paytm wherein the founder despite having superior voting shares was provided with additional stock options post-IPO incentive[11]. Similar corporate governance concerns had arisen in the case of WeWork, where Adam Neumann's stock-based incentives ultimately enabled him to exercise excessive control through the use of dual-class share structures.[12] SoftBank was later forced to restructure WeWork's Ownership Model to ensure better governance. Similar was the case with Gokaldas Exports, wherein there was allotment of ESOPs to the top executives, which was severely criticized by International Investor Advisory Services, stating that ESOPs should only remain as employee incentives, and not become a disproportionate tool to further enrich senior leadership.[13] By restricting the grant of SARs exclusively to employees and placing them under regulatory oversight, the amendment effectively addresses concerns similar to those previously associated with ESOPs. However, the treatment of cash-settled SARs post-DRHP remains unclear. Unlike ESOPs, SARs must be exercised prior to the RHP, creating uncertainty regarding unvested SARs and their alignment with IPO timelines.[14] The determination of SAR-linked equity issuance alongside other events, such as convertible instruments or pre-IPO placements, also warrants further regulatory clarity.[15]

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[9] Securities & Exchange Board of India (SEBI), *Consultation Paper on Certain Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and SEBI (Share-Based Employee Benefits & Sweat Equity) Regulations, 2021*, Mar. 20, 2025. Simran Godhania, *SEBI's Move to Allow Promoters to Retain ESOPs Post-IPO: A Critical Analysis*, IndiaCorpLaw (Apr. 21, 2025), https://indiacorplaw.in/2025/04/21/sebis-move-to-allow-promoters-to-retain-esops-post-ipo-a-critical-analysis/

[10] The Companies Act, § 54, No. 18, Acts of Parliament, 2013 (India).

[11] Shreejith R & Payaswini Upadhyay, *Paytm's ESOP Scheme: Stock Options to Founders Under SEBI Scanner*, Resolut Partners (Oct. 15, 2024), https://resolutpartners.com/research/paytm-s-esop-scheme-stock-options-to-founders-under-sebi-scanner/

[12] Jena McGregor, *Adam Neumann's Billion-Dollar Exit Package from WeWork Is a Lesson in Giving Founders Too Much Control*, Wash. Post (Oct. 24, 2019), https://www.washingtonpost.com/business/2019/10/24/adam-neumanns-billion-dollar-exit-package-wework-is-lesson-giving-founders-too-much-control/

[13] Rajesh Mascarenhas, *Shareholders of Gokaldas Exports Vote Against ESOP Resolutions*, Econ. Times (Jan. 22, 2025), https://economictimes.indiatimes.com/markets/stocks/news/shareholders-of-gokaldas-exports-vote-against-esop-resolutions/articleshow/117471284.cms/

[14] *Amendment to Make Companies with Outstanding Stock Appreciation Rights IPO Eligible: A Few Steps Closer, but Not There Yet*, Lexology (Apr. 18, 2024), https://www.lexology.com/library/detail.aspx?g=6eb4a875-0341-446d-bdef-b1cde89f3d68/

[15] *Supra* at 2.

B. Offer for Sale Restrictions under Regulation 8A

Regulation 8A[16] of the SEBI ICDR Regulations imposes limits on shareholder participation in an OFS where the issuer does not satisfy the financial eligibility criteria prescribed under Regulation 6(1)[17]. In such cases, covered by Regulation 6(2)[18]shareholders holding more than 20% of the fully diluted pre-IPO share capital may offer up to 50% of their holding, while those holding less than 20% are restricted to 10 %. These thresholds are to be computed on a fully diluted basis. The 2025 amendment introduces an explanatory note to Regulation 8A to clarify that the prescribed limits apply not only to shares offered in the IPO but also to any secondary transfers affected prior to the offering.[19] The thresholds are now expressly tied to the DRHP filing date, ensuring consistent treatment of pre-IPO disposals and public offers while addressing past interpretive gaps in OFS structuring.

C. Clarifications on Minimum Promoter Contribution and Lock-in Requirements

The 2025 amendment to Regulation 15 of the SEBI ICDR Regulations clarifies that the price per share, used to determine the eligibility of securities for minimum promoter contribution, must account for all corporate actions undertaken in the year preceding the DRHP filing[20]. Shares subscribed at a price higher than the IPO price during the latest capital raising round prior to filing are rendered ineligible for this purpose. Further, where the primary object of the IPO is capital expenditure, the minimum promoter contribution is subject to a lock-in period of three years from the date of allotment, as opposed to the standard 18-month lock-in applicable in other cases. Any promoter shareholding in excess of the minimum requirement is additionally subject to a six-month lock-in. Notably, the repayment of loans availed for such expenditure also falls within this scope.[21]

These revisions are intended to prevent misuse of issue proceeds for indirect financing of capital expenditure without appropriate regulatory scrutiny. However, the absence of a carve-out for completed projects financed through loans leaves limited flexibility, despite potential merit in differential treatment. The primary rationale behind introducing such lock-in requirements was to ensure that promoters demonstrate sustained commitment to the company and are not allowed to exit immediately after receiving the IPO proceeds. When it comes to startups, traditional ownership structures of the Indian companies are being replaced by institutional investors such as Private Equity firms, Alternative Investment Funds, etc., who would stay invested in the company for a considerable period of time before the company goes public. The organisational

[16] Securities & Exchange Board of India (SEBI), *Issue of Capital and Disclosure Requirements Regulations*, Reg. 8A (as amended in 2024), Gazette of India, Extraordinary, Part III, Sec. 4 (Mar. 5, 2024).
[17] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 6(1), Gazette of India, pt. III § sec. 4, Sept. 11, 2018 (India).
[18] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 6(2), Gazette of India, pt. III § sec. 4, Sept. 11, 2018 (India).
[19] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Reg. 8A, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar 8, 2025 (India).
[20] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Reg. 15, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).
[21] *Supra* at 2.

structure of such companies also consists of a mature business environment propelled by professionals with expertise, which remains unrelated to the promoter group. This has led to a situation wherein the equity investors are ready to be termed as promoters for the company going public;hence, the proposed amendments would not only be of benefit to the investors who remain non-promoters but also to the promoters in the company which goes public.

On analyzing the data of companies which had undergone listing from the period 2007 to 2015, it would highlight that the promoters have not materially sold their shares even after the there has been expiry of the lock-in period.[22] The aggregate promoter shareholding in the top 500 listed companies declined significantly to approximately 50% by 2018, while institutional investor ownership in the same set of companies rose from 25% to 34% during that period. This trend indicates a shifting ownership pattern in India's capital markets, suggesting that the traditional rationale of ensuring promoter 'skin in the game' is gradually losing its relevance.[23]

D. Voluntary Pro Forma Financials and Compliance Officer Eligibility

Pro forma financial statements are typically required in IPO filings when material acquisitions or divestments occur after the most recently disclosed financial period. These must be prepared in accordance with the ICAI's guidance note and certified by a statutory auditor or a peer-reviewed chartered accountant. While mandatory in material cases, the SEBI ICDR Regulations permit issuers to voluntarily provide such financials, even if the transactions fall below prescribed materiality thresholds.[24] The 2025 amendments clarify that voluntary pro forma financials may also be included for transactions completed prior to the last reported period in the DRHP or RHP[25]. In instances where the acquired or divested business is not a standalone entity, combined or carved-out financials must be prepared in line with applicable assurance standards.[26] Questions remain about the adequacy of historical audit reports and whether additional auditor certification is required for such financial disclosures. Further, where multiple acquisitions or divestments have occurred, a combined set of pro forma financials is required.[27] However, the regulations do not specify whether this applies only to material transactions, raising ambiguity around the scope of voluntary disclosures in such cases.

Though the 2025 amendment permitting voluntary pro forma disclosures is a welcome move, it presents challenges for startups that frequently engage in small-scale acquisitions as part of their rapid expansion strategy. Startups often grow by acquiring niche assets, technologies, or teams that individually may not meet the materiality threshold for mandatory disclosure but, when

[22] Nishith Desai Associates, *SEBI Relaxation on Lock-In Requirements Cheers Private Equity Investors*, News Details (Aug. 25, 2021), https://nishithdesai.com/NewsDetails/4804/

[23] Organisation for Economic Co-operation and Development (OECD), *Ownership Structure of Listed Companies in India* (2020),https://www.oecd.org/corporate/ownership-structure-listed-companies-india.pdf

[24] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Reg. 34(3), Gazette of India, pt. III § sec. 4, Sept. 11, 2018 (India) (as amended).

[25] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, A(B)(11)(ii) (as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025) (India).

[26] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, item B(11), as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

[27] *Ibid.*

aggregated, can have a significant impact on their financial structure or operations. The current regulatory framework does not specify whether such cumulative transactions must be disclosed or how they should be presented in the offer documents. This ambiguity creates uncertainty during IPO preparation, as startups may be unsure whether to invest time and resources in preparing pro forma financials for acquisitions that, while individually minor, collectively alter the company's risk profile or earning potential.[28] Moreover, since many of these acquisitions involve non-standalone units or assets without separate financial statements, preparing accurate disclosures becomes operationally difficult. The absence of defined thresholds or presentation standards increases the risk of inconsistent compliance and potential regulatory scrutiny. In effect, while the provision for voluntary pro forma disclosures aims to improve transparency, the lack of clarity on how to handle multiple small transactions could lead to IPO delays, audit complexities, or post-filing queries, particularly for high-growth startups. Furthermore, startups do not maintain separate books for each of their units of verticals, thereby making it a time-consuming and tedious process. The IPO timelines may be delayed, and there are possibilities for audit qualification risks.

E. Additional Disclosures and Reporting Obligations

The 2025 amendments introduce enhanced disclosure requirements concerning the shareholding of promoters, the promoter group, and the top ten shareholders. Issuers are now required to disclose pre-issue shareholding, post-issue shareholding based on the price band as of the pre-issue advertisement, and post-issue shareholding at the time of allotment, all within the prospectus.[29] Further, the regulations mandate the disclosure of material agreements involving promoters, promoter group entities, directors, key managerial personnel, and employees, whether acting individually or jointly with the issuer or third parties. Such agreements must be disclosed where they directly, indirectly, or potentially impact the control or management of the issuer, or impose restrictions or liabilities upon it.[30] This includes any amendments, terminations, or rescissions of such agreements, regardless of whether the issuer is a direct party. To align with the SEBI LODR Regulations, two clarifications have been provided. First, agreements entered into in the ordinary course of business are exempt from disclosure unless they materially affect the management or control of the issuer.[31] Second, 'directly or indirectly' includes obligations on parties designed to influence the conduct of the listed entity. These refinements aim to ensure transparency while preventing over-disclosure of routine contractual arrangements.[32]

F. Disclosure of Legal and Regulatory Proceedings

The 2025 amendments align the materiality thresholds for civil litigation disclosures in IPO offer documents with those prescribed under the SEBI LODR Regulations. Issuers are now required to disclose such proceedings if they exceed the lower of: (a) 2% of turnover based on the latest

[28] Sahara India Real Estate Corp. v. Sec. & Exch. Bd. of India, (2012) 10 S.C.C. 603 (India).
[29] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, Part A, B(10)(E), as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).
[30] *Key Disclosure Rule Challenged: Why It Matters for Listed Companies*, Fox Mandal (July 16, 2025), https://www.foxmandal.in/key-disclosure-rule-challenged-why-it-matters-for-listed-companies/
[31] *Supra* note at 4.
[32] *Ibid*

annual restated consolidated financial statements; (b) 20% of net worth, except where net worth is negative; (c) 5 % of the average absolute value of profit or loss after tax over the last three financial years; or (d) a materiality threshold defined by the issuer's board and disclosed in the offer document.[33]

In addition, the amendments mandate the disclosure of criminal proceedings, including those initiated by regulatory and statutory authorities, such as tax-related actions, against key managerial personnel and senior management. This ensures consistency in disclosure obligations applicable pre- and post-listing.[34] Industry standards issued under the aegis of stock exchanges further guide issuers on evaluating the impact of pending litigation. These standards recommend focusing on the expected financial impact on turnover or profit and loss, specifically, using a 2% turnover threshold or 5% of average post-tax profit or loss, rather than net worth. This industry practice may assist issuers in making consistent and investor-relevant materiality assessments.[35]

G. Reporting of Pre-IPO Transactions

The 2025 amendments introduce a mandatory reporting requirement for all securities transactions undertaken by promoters and the promoter group between the filing of the DRHP and the closure of the issue. Such transactions must be reported to the stock exchanges within 24 hours. Similarly, any proposed pre-IPO placement disclosed in the draft offer document must also be reported within 24 hours of execution.[36] These requirements are aligned with the July 2023 advisory issued by the Association of Investment Bankers of India, which mandates disclosure of pre-IPO placements or share transactions aggregating to 1% or more of the issuer's paid-up equity capital.[37] While the amendments do not expressly mandate public dissemination, the Expert Committee has recommended that details of such transactions be made accessible to public investors through the stock exchange websites. This is intended to enhance transparency and ensure parity of information between institutional and retail participants.[38] However, the scope of these disclosures remains ambiguous. It is unclear whether the requirement applies exclusively to primary pre-IPO placements explicitly disclosed in the offer document or whether it extends to other forms of secondary transactions by shareholders under the broader interpretation of Regulation 8A.[39] Further clarification from SEBI may be required to ensure

[33] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Schedule VI, Part A, § Reg. 12, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).
[34] *Ibid*
[35] *Ibid*
[36] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Regs. 54, 95 & 150, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).
[37] Ass'n of Investment Bankers of India, *Consultation Paper on Certain Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018*, (n.d.), http://aibi.org.in/DISCUSSION_PAPERS/Consultation_Paper_on_certainAmendments_to_SEBI%28ICDR%29Regulations_2018.pdf
[38] *Expert Committee for Facilitating Ease of Doing Business and Harmonization of ICDR and LODR Regulations*, MMJC Insights (July 13, 2024), https://www.mmjc.in/expert-committee-for-facilitating-ease-of-doing-business-and-harmonization-of-icdr-and-lodr-regulations/
[39] Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, § Reg. 8A, as amended by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025, Gazette of India, Mar. 8, 2025 (India).

consistent compliance practices.

III. GLOBAL REGULATORY BENCHMARKS FOR STRENGTHENING INDIA'S IPO FRAMEWORK: LESSONS FROM THE U.S. EQUITY AND DISCLOSURE REGIME

A. Structured Valuation of SARs: Lessons from Section 409A of the U.S. Code

Though the SAR scheme is provided only to employees, the chance for mismanagement of powers has been reduced. The amendment is still unclear with respect to unvested SARs and cash-settled SARs. An inspiration that can be taken in this regard is from Section 409A of the U.S. Internal Revenue Code[40] which provides a structured framework for determining the Fair market Value (FMV) of equity-based compensation, particularly stock options and SARs. It distinguishes between public and private companies and prescribes specific methods and safe harbours for valuation to ensure regulatory and tax compliance. Where the underlying stock is publicly traded, FMV may be established using any reasonable method that reflects actual market transactions.[41] For companies whose shares are not publicly traded, FMV must be determined using the application of a reasonable valuation method, with such valuation taking into account all relevant facts and circumstances as of the valuation date.[42] Factors typically considered include the company's asset base, projected future cash flows, and recent arm's-length transactions.[43] Further, these valuations are not considered reasonable if they are older than 12 months or fail to incorporate material information that would affect the company's value.

To provide certainty and reduce compliance risk, Section 409A recognises three valuation safe harbors as presumptively reasonable:

1. *Independent valuation* – conducted within 12 months of the grant date, aligned with employee stock ownership plan standards.
2. *Illiquid startup valuation* – based on a good-faith, written valuation report by a qualified individual for closely held startups.
3. *Binding formula* – a pricing formula that is consistently used in legally binding contracts like buy-sell agreements or third-party transfers.[44]

The structured process that exists within this framework would help in standardising the procedure that needs to be followed while determining the amount that needs to be fixed for cash-settled SARs and how much of a right would get transferred in case of an unvested SAR.[45]

[40] 26 U.S.C. § 409A (2022).
[41] Treas. Reg. § 1.409A-1(b)(5)(iv)(A) (as amended in 2016).
[42] Treas. Reg. § 1.409A-1(b)(5)(iv)(B)(1).
[43] Technical Guide on Valuation (Revised 2018 ed.), *Institute of Chartered Accountants of India*, https://kb.icai.org/pdfs/50944clcgc40588.pdf
[44] Team Qapita, *A Comprehensive 409A Safe Harbor Guide*, Qapita Blog (Apr. 2, 2024), https://www.qapita.com/blog/409a-safe-harbor-guide/
[45] Stock Appreciation Right (SAR), *Corporate Finance Institute,* https://corporatefinanceinstitute.com/resources/career/stock-appreciation-right-sar/

B. Minimum Promoter Contribution: A Comparative Context

Unlike India, the U.S. Securities and Exchange Commission (SEC) does not impose statutory lock-in requirements or a minimum promoter contribution on initial public offerings (IPOs). Rather, underwriting agreements are used to contractually impose the requirements, which are commonly referred to as lock-ups in practice.[46] They usually apply to principal shareholders (usually more than 10%), majority shareholders (more than 50%), and many shareholders who own more than 5% of the business. This is in contrast to India, which is still developing its capital market and has regulatory protection and stability for investors that still needs to be developed, the U.S. market is distinguished by its institutions, sophisticated investors, and use of disclosure-based regulations and private contracts that allay issues with disinvestment risk at early stages of investments.[47] The modifications are conditions of relaxation of lock-in (reduction of lock-in for use of certain post-issue requirements), which maintain a minimum mechanism for investor protection, even though SEBI's requirement for minimum promoter contribution and lock-in is a regulation meant to be a reasonable approach given India's situation. This strategy aims to address and strike a balance between the demands of a local developing market and the requirement to conform to international market standards.[48]

C. Standardising Voluntary Pro Forma Disclosures: Regulatory Insights from U.S. SEC Rules 3-05 and 11-01

India's current approach to voluntary pro forma financial disclosures in IPO offer documents permits issuers to include financials for acquisitions or divestments that are below the materiality thresholds, or where the transaction has occurred prior to the latest disclosed period.[49] However, the absence of detailed standards regarding eligibility, presentation format, and aggregation thresholds results in inconsistency and potential confusion for investors, particularly in the context of multiple non-material acquisitions or businesses acquired without distinct legal or accounting separation.[50]

In contrast, the U.S. SEC provides a structured and risk-weighted approach under Rule 3-05[51] and Rule 11-01[52] of Regulation S-X. These rules govern when and how registrants are required to provide historical financial statements and pro forma financial information for acquired or disposed businesses. Specifically:

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[46] Steven B. Bochner & Shawn J. Lindquist, *Securities Regulation*, *Insights Magazine* (July 2004), https://www.wsgr.com/a/web/10/bochner0704.pdf

[47] Dr. Biswadev Dash, *Capital Market Law – Indian v. U.S. CA*, LinkedIn (Oct. 17, 2023), https://www.linkedin.com/pulse/capital-market-law-indian-vrs-us-ca-dr-biswadev-dash/

[48] S*upra* at 20.

[49] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) § Regulations, 2025, Sched. VI, Part A, 10(F) (India), Gazette Statutory Regs., Mar. 8, 2025.

[50] Amendments to Financial Disclosures About Acquired and Disposed Businesses, Securities Act Release No. 10786, Exchange Act Release No. 88,438, 85 Fed. Reg. 54,902 (Sept. 2, 2020), https://www.sec.gov/rules/final/2020/33-10786.pdf

[51] 17 C.F.R., § 210.3-05, (2024).

[52] 17 C.F.R., § 210.11-01, (2024).

> ‘(i) Abbreviated financials may be permitted for acquired businesses that were not legally or operationally distinct entities at the time of acquisition, where preparing full historical financials is impracticable.
>
> (ii) Pro forma financials may be presented using only relevant historical data and Transaction Accounting Adjustments, excluding management estimates or forward-looking assumptions.
>
> (iii) For individually insignificant acquisitions (typically under 20% significance), registrants are required to disclose aggregate pro forma effects only if the combined impact is materially significant. Pro forma information used to measure significance must be based strictly on completed transactions and may not factor in proceeds from an offering or hypothetical structuring assumptions.’[53]

From the U.S. regulatory framework, India can adopt codified thresholds for acquisitions, allow abbreviated financials for complex assets, restrict unaudited inputs with auditor assurance, and clearly distinguish forward-looking from historical data. These measures would ensure consistent disclosures, enhance comparability, and boost investor confidence while remaining practical for issuers. Adopting a rule-based framework along the lines of SEC Rule 3-05[54] would allow Indian issuers and their advisors to assess and present the significance of business combinations more consistently, while ensuring that pro forma disclosures meaningfully inform investor decision-making.

D. Persisting Challenges In India’s Capital Market Regulatory Framework

While the 2025 amendments represent a significant step toward streamlining India’s IPO and disclosure regime, several structural and interpretive challenges remain unaddressed. First, the inclusion of non-individual investors in fulfilling up to 10% of the minimum promoter contribution (MPC) seeks to align Indian practice with global norms and address promoter dilution in startups and high-growth firms. However, the potential influence of such investors, who may not participate in day-to-day operations, raises concerns regarding shifts in control, governance complexity, and possible misalignment with promoter vision, particularly in strategic decisions. Second, the permissibility of convertible cumulative preference shares (CCPS) as part of the MPC introduces valuation risks. Where conversion terms are fixed in the DRHP but implemented after material changes in company performance, the conversion price may no longer reflect fair value, potentially disadvantaging promoters. Third, ambiguity remains regarding the disclosure obligations for pre-IPO transactions. While the Expert Committee has advocated for post-transaction publication of key details through stock exchanges, it is unclear whether such requirements apply solely to primary placements disclosed in the offer document or also extend to secondary transactions. The interplay with Regulation 8A further complicates interpretive certainty. Together, these issues indicate that while recent reforms have improved procedural efficiency, further regulatory clarification is necessary to ensure consistency, transparency, and governance balance in capital formation.

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[53] *Amendments to Financial Disclosures about Acquired and Disposed Businesses*, Securities Act Release No. 33-10786, Exchange Act Release No. 34-88914, Investment Company Act Release No. IC-33872, 85 Fed. Reg. 54002 (Aug. 31, 2020) (to be codified at 17 C.F.R. pts. 210, 230, 239, 240, 249, 270, and 274).
[54] 17 C.F.R., § 210.3-05, (2024).

IV. CONCLUSION

The 2025 amendments to the SEBI (ICDR) Regulations mark a significant modernization of India's capital market framework, particularly for IPO-bound startups and high-growth firms. Key reforms include liberalized treatment of Stock Appreciation Rights (SARs), adjustments to Offer for Sale (OFS) limits, changes in minimum promoter contribution (MPC) rules, and enhanced disclosure standards. These measures aim to provide flexibility in equity-linked compensation, strengthen pre-IPO governance, and align disclosure practices with global benchmarks, balancing investor protection with issuer autonomy. However, interpretive uncertainties persist, notably around cash-settled and unvested SARs, pre-IPO disclosures under Regulation 8A, and MPC obligations involving non-individual entities. Risks also arise from including hybrid instruments like CCPS in promoter contributions without valuation safeguards. Comparative insights from U.S. frameworks, such as Section 409A SAR valuation and SEC disclosure norms, show the need for codified safe harbours. Overall, the reforms are promising but transitional, requiring clearer rules and stakeholder engagement to enhance India's IPO ecosystem.

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REGULATION OF COMMERCIAL RESOURCE UTILISATION IN OUTER SPACE: LEGAL LANDSCAPE AND NEW RESEARCH ANGLES

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Abstract: *The rapid growth of the global space economy, driven by technological advancements and private investment, has transformed the concept of commercial resource utilization in space from theory to a realistic near-term opportunity.[1] Extracting minerals, water, and other essential resources from celestial bodies like asteroids, the Moon, and Mars, including in-situ resource utilization (ISRU), could alter how humans engage in space activities. This swift progress has outpaced the creation of a solid legal framework to manage these activities. This highlights issues about ownership rights, environmental protection, and fair access to benefits. The existing space law in the international context, based on the Treaty of Outer Space in 1967, includes key principles. These principles prohibit national appropriation (Article II), require state authorization and oversight of private actors (Article VI), and mandate avoiding harmful contamination of space and Earth environments (Article IX). Additionally, existing "soft law" principles set by the UN support norms of peaceful use, cooperation, transparency, and sustainability.[2] Yet, inconsistent national laws, such as Luxembourg's Space Resources Act (2017)[3] and the U.S. Commercial Space Launch Competitiveness Act (2015)[4], leading to different jurisdictions and creating tensions with the "common heritage of mankind"[5] Principle. This paper throws light on the current legal landscape, identifies regulatory gaps, and advocates for the development of unified international standards. These standards should balance commercial innovation with environmental care, conflict avoidance, and fair benefit-sharing to guarantee a long-term and cooperative future for space resource activities.*

Keywords: *Space Resource Utilization, Regulatory Gaps, International Cooperation*.

I. INTRODUCTION:

Earth has been a resource of Human Growth for an exceptionally long time. All the minerals and valuable materials found in the Earth's crust have pushed Humanity's capabilities.[6] As human capabilities rapidly progress, space exploration has increased, and the gathering of valuable materials from the heavenly bodies has increased. The Space Economy is growing with immense

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[1] Space Found., The Space Report 2025 Q2 (2025), https://www.spacefoundation.org/2025/07/22/the-space-report-2025-q2/

[2] Irmgard Marboe, Space Law Treaties and Soft Law Development, UN/China/APSCO Workshop on Space Law (2014), https://www.unoosa.org/documents/pdf/spacelaw/activities/2014/pres02E.pdf

[3] Loi du twenty juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace, Journal Officiel du Grand-Duché de Luxembourg, No. 674 (July 28, 2017).

[4] U.S. Commercial Space Launch Competitiveness Act, Pub. L. No. 114-90, 129 Stat. 704 (2015).

[5] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies art. I, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.

[6] Mr. Thomas Cheney, Developing and Adapting Space Law to Govern Long-Term and Permanent Human Settlement of Outer Space, the Moon and Other Celestial Bodies, in Proceedings of the 61st International Institute of Space Law Colloquium on the Law of Outer Space 959 (P.J. Blount et al. eds., Eleven 2020), https://core.ac.uk/download/334412146.pdf

growth. In the year 2023, the global economy of space was recorded at approximately 570 billion U.S. Dollars, as compared to the previous year, it was 531billion U.S. dollars.[7] As an outcome, in 2017, the approximate worth of extraction from asteroid mining globally was calculated as 712 million USD, and by 2025, it's estimated to increase to some 3.87 billion USD.[8] This market value refers to developing the required technological progress and spacecraft designs that will enable humans to gather raw materials from the celestial bodies. This rapid progress has caused a change, where government activity is declining and the private sector is taking over.[9] Space 2.0 signifies a new wave of space travel.[10]. The growth in this area is marked by the private companies, including an increasing number of startups combining new tech innovations with new business models.[11] As of 3 November 2022, the total investment in space startups since 2014 has been 265 billion U.S. dollars, with two countries leading in the top 2 positions, the U.S. and China, with 46.3 billion U.S. dollars and 29.8 billion U.S. dollars, respectively[12]. India is leading with 2.3 billion dollars in this sector.[13] This growth shows that there is a requirement for some rules and regulations that can help avoid any international conflict arising from it. The current authorities in Space Law at the International Level are not sufficient to formulate a legal foundation for the commercial discovery of valuable materials on heavenly bodies.[14] As there is no framework governing it, there is unrestricted use, no ownership, and a clash on the principle of "common heritage of mankind," and confusion in commercial projects. Hence, there is a requirement to implement a framework of regulations that balances legal, policy, financial, and practical concerns.[15] Despite the continuous growth of private entities in space conduct and the increase in the economy of resource extraction, the existing international and national legal frameworks remain fragmented and inadequate. This creates uncertainty over ownership and enforcement, raising the urgent question of how international space law can evolve to regulate commercial resource utilisation without stifling innovation. This paper delves into the legislative frameworks available in national or international regimes with a few comparisons and challenges, providing insight into the position of India at the present time.

II. OVERVIEW OF COMMERCIAL RESOURCE UTILIZATION IN SPACE

Commercial resource use in space focuses on exploring valuable materials beyond Earth, such as those on asteroids, the Moon, Mars, and other celestial bodies. It includes activities like mining and resource extraction, where minerals, metals, water, and other valuable elements are gathered.

[7] Global Turnover of the Space Economy from 2009 to 2023 (in Billion U.S. Dollars) (Space Foundation), Statista, https://www.statista.com/statistics/946341/space-economy-global-turnover/

[8] Market Value of Asteroid Mining in 2017 and 2025 (in Million U.S. Dollars) (GlobeNewswire), Statista, https://www.statista.com/statistics/1023115/market-value-asteroid-mining/

[9] Eur. Space Pol'y Inst., The Rise of Private Actors in the Space Sector (2022), https://www.espi.or.at/wp-content/uploads/2022/06/ESPI-report-The-rise-of-private-actors-Executive-Summary-1.pdf

[10] Countries Are Leading the Space Race 2.0, Statista, https://www.statista.com/chart/28667/countries-are-leading-the-space-race-20/

[11] The Growth of Private Space Companies: Investment & Funding Trends 2020-2030, Patent PC (Aug. 15, 2025), https://patentpc.com/blog/the-growth-of-private-space-companies-investment-funding-trends-2020-2030/

[12] *Ibid.*

[13] *Ibid.*

[14] Jonathan P. Ziga, Commercialization of Resource Extraction Throughout the Final Frontier: How Exploiting Outer Space Can Be Universally Beneficial While Avoiding the Tragedy of the Commons, 55 Case W. Res. J. Int'l L. 667, 670 (2023).

[15] Paul Stephen Dempsey, National Laws Governing Commercial Space Activities: Legislation, Regulation, & Enforcement, 36 Nw. J. Int'l L. & Bus. 1, 15-20 (2016).

In-situ resource utilization (ISRU) refers to using these materials where they are found.[16] Mining and resource extraction involve getting materials like water, metals, minerals, and volatiles from space bodies. For instance, extracting water ice from asteroids or lunar soil could provide drinking water, oxygen for breathing, and hydrogen/oxygen for rocket fuel.[17] ISRU is a practice of using materials found in the local space environment to support human and robotic missions. This approach lessens the need to launch everything from Earth, which is expensive and complicated.[18] ISRU also includes eolith (surface soil) for construction materials.[19]

III. CURRENT INTERNATIONAL LEGAL FRAMEWORKS

A. **Outer Space Treaty 1966**: In the mid-1960s, the delegates of the United Nations Legal Subcommittee executed the drafts which became the foundational Treaty for Outer Space (OST).[20] The new rules were added in 1963 after the declaration of legal principles in the previous year.[21] It was opened for signature in January 1967 by the Russian Federation, the UK, and the US, and entered into force in October 1967. It establishes the core foundation for peaceful space conduct, affirming that all the States recognise the humanity's shared interest, and pledging to cooperate scientifically and legally in its exploration.[22] According to the United Nations Office for Outer Space Affairs, by 5 May 2025, a total of 117 States have ratified the Treaty.[23] Key provisions of this treaty are –

1. Article I: Space belongs to Humanity for all nations.
2. Article II: Restricts nations from claiming sovereignty or possession over celestial entities.
3. Article VI: States are accountable for all space conduct conducted by their government or by private entities.
4. Article VI: States must maintain oversight and grant official authorisation of any non-governmental space organisation.

[16] NASA, In-Situ Resource Utilization (ISRU) (Aug. 1, 2024), https://www.nasa.gov/mission/in-situ-resource-utilization-isru/

[17] P.T. Metzger et al., Thermal Extraction of Volatiles from Lunar and Asteroid Regolith for In-Situ Resource Utilization, J. Aerospace Engineering, Aug. 3, 2020, https://ascelibrary.org/doi/10.1061/(ASCE)AS.1943-5525.0001165/

[18] What is ISRU, and How Will it Help Human Space Exploration? Universe Today (Aug. 29, 2022), https://www.universetoday.com/articles/what-is-isru-and-how-will-it-help-human-space-exploration/

[19] Leveraging Lunar Regolith to Further Space Exploration, NASA Science (Feb. 11, 2025), https://science.nasa.gov/biological-physical/leveraging-lunar-regolith-to-further-space-exploration/

[20] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, UN Audiovisual Library (Dec. 31, 2007), https://legal.un.org/avl/ha/tos/tos.html

[21] UNOOSA, Declaration of Legal Principles (May 17, 2015), https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/travaux-preparatoires/declaration-of-legal-principles.html

[22] Christopher D. Johnson (ed.), Insight - 2017 and the Fiftieth Anniversary of the Outer Space Treaty, Secure World Foundation, (Jan. 16, 2017), https://www.swfound.org/publications-and-reports/insight---2017-and-the-fiftieth-anniversary-of-the-outer-space-treaty/

[23] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon, and Other Celestial Bodies, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.

B. **The Moon Agreement (1979):** In the 1970s, the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies[24] was adopted by the UN in 1979 and came into force in July 1984 after the ratification by Austria.[25] This arrangement reaffirms the Outer Space Treaty and underscores that the lunar or conduct on other heavenly bodies should be done peacefully and must not harm their environments. It obliges parties to update the UN with information on such conduct on those surfaces. This arrangement recognises that the Moon's resources are the common heritage of humanity and creates an international regime to oversee the resource uses when such technological advancements are ready.[26] Key Provisions of this treaty are-

1. Article 11(1): Recognise that the lunar resources are for the shared interest of all humankind.
2. Article 11(3): Restricts the claim of ownership or possession of surface or sub-surface or any resources.
3. Article 11(5): A requirement to create an international regime to govern resource exploitation when such technological advancements are ready.
4. Article 11(7): If exploitation is imminent, parties must collaborate to develop and agree upon the regime.

C. **Artemis Accord (2020)**: In 2020, NASA, working with the Department of State of the U.S.A. and seven other initial signatories, established the Artemis Accords.[27] The accord establishes principles for managing civil exploration and use, growing space activities around the moon, and conducting missions and operations by the nations and private companies. The Artemis Accords reaffirm the commitment of signatory countries to the Outer Space Treaty, the Registration Convention, and the Rescue and Return Agreement to follow established best practices and conduct in space responsibly. This accord is not binding but is a political commitment. As of 24 July 2025, 56 countries are signatories to this accord.[28] Key Provisions of this treaty are-

1. Section 3 Peaceful Purposes: The activities should be peaceful and adhere to and maintain the standard established by international law.
2. Section 4 Transparency: Signatory State Parties of this accord must share their space policies, mission plans, and scientific data publicly, ensuring transparency, which is also consistent with Article XI of the OST.
3. Section 10.2 Space Resources**:** The gathering of valuable material from the heavenly entities does not amount to any domestic or sovereign claim under Article II of the OST.
4. Section 11.7: Signatories will provide information regarding their activities and coordinate activities in designated 'safety zones' to avoid harmful interference.

[24] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, opened for signature Dec. 5, 1979, 1363 U.N.T.S. 3, 18 I.L.M. 1434 (1979).
[25]UNOOSA, Moon Agreement (Apr. 29, 2014), https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/intromoon-agreement.html
[26] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 5 December 1979, 1363, U.N.T.S. 3, 18 I.L.M. 1434 (1979).
[27] Artemis Accords, Wikipedia (May 14, 2020), https://en.wikipedia.org/wiki/Artemis_Accords/
[28] Artemis Accords, 13 October 2020, U.S. Dep't of State, https://www.nasa.gov/artemis-accords/

International treaties like the Outer Space Treaty and non-binding frameworks like the Artemis Accords establish the broad principles for peaceful, transparent, cooperative space activities. Still, they lack detailed, enforceable rules for commercial resource extraction and a binding force regarding property rights and benefit sharing. As a result, states such as the USA and Luxembourg have enacted their legislation, namely, the Commercial Space Launch Competitiveness Act of 2015[29] and Luxembourg's Law on the Exploration and Use of Space Resources (2017)[30], which provides their nationals' rights to possess and sell extracted resources from the celestial bodies. These national laws are not in accordance with the OST's Article II, which prohibits the claims being made in the name of a domestic or sovereign claim.[31]

IV. NATIONAL OR DOMESTIC LEGAL FRAMEWORKS

The OST, signed in 1967, establishes that space, including the lunar and other heavenly entities, cannot be a part of any claim of any nation as territory and emphasizes that space must be for the benefit of all humanity.[32] However, the United States, Luxembourg, and other countries have developed national space laws because the OST, while restricting national appropriation of celestial bodies, explicitly places responsibility for space activities on individual countries, including activities by private companies for national space activities.[33] Since the OST explicitly places accountability for space conduct on individual countries, the countries can make individual laws on space conduct performed by them or private entities in their country.

A. United States

Commercial Space Launch Competitiveness Act (2015)[34] Provides Americans and companies the right to legally own resources, like minerals or water, taken from asteroids and other celestial bodies, and have possession, ownership, transport, use, and sale of valuable materials extracted from the heavenly entities. The law makes it clear that these rights do not equate to claiming sovereignty, exclusive rights, or authority over any celestial body, which is in line with the Outer Space Treaty. But let American companies own them. However, as the OST imposes an obligation on the Countries to supervise their own companies, this law obligates those companies to take permission from the U.S. space authorities, i.e., NASA and the Federal Aviation Administration, who will authorize and supervise those missions. The Act also provides flexibility for the private space sector by postponing specific federal safety regulations for spaceflight participants. This lets innovation grow without immediate regulatory pressures.[35] It provides government-backed protection to protect the companies

[29] U.S. Commercial Space Launch Competitiveness Act, Pub. L. No. 114-90, 129 Stat. 704 (2015).
[30] Loi du twenty juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace, Journal Officiel du Grand-Duché de Luxembourg, No. 674 (July 28, 2017).
[31] International Law's Inability to Regulate Space Exploration, N.Y.U. J. Int'l L. & Pol. (Jan. 1, 2025), https://nyujilp.org/houston-we-have-a-problem-international-laws-inability-to-regulate-space-exploration/.
[32] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, § art. II, opened for signature Jan. 27, 1967, 610 U.N.T.S. 205, 212 (entered into force Oct. 10, 1967).
[33] Sergio Marchisio, National Jurisdiction for Regulating Space Activities, in Proceedings of the UN/ESA/Austria Workshop on Space Law 3, 4 (2010), https://www.unoosa.org/pdf/pres/2010/SLW2010/02-02.pdf
[34] U.S. Commercial Space Launch Competitiveness Act, Pub. L. No. 114-90, 129 Stat. 704 (2015).
[35] U.S. Commercial Launches of Space Nuclear Systems: Insurance and Indemnification Considerations, Pillsbury Winthrop Shaw Pittman LLP 15-16 (2025), https://www.pillsburylaw.com/a/web/eTQjCfYJZLjjisDujnvCQf/us-commercial-launches-of-space-nuclear-systems-insurance-and-indemnification-considerations-accepted-version_05may2025.pdf

from any major third-party liability in case of any mishap.[36] The Act includes rules about indemnification, licensing, and oversight by the Federal Aviation Administration (FAA), making sure that private launch activities are authorised and regulated. In summary, while the Act allows for "commercial recovery" and rights to resources gathered, it does not clearly define what "commercial recovery" exactly means. This lack of definition affects legal certainty on how private entities can operate in space resource utilisation under U.S. law.[37]

B. Luxembourg

Law on the Exploration and Use of Space Resources (2017).[38] It provides that companies in Luxembourg can own and sell any minerals extracted from space. However, it does not let the state claim any part of it as its territory. Instead, it creates a licensing system that enables them to authorise and supervise those activities.[39]

C. United Arab Emirates

Federal Law No. 12 of 2019 on the Regulation of the Space Sector.[40] It states that space resources include minerals and water, and it mandates companies to mine in space only with a governmental permit and carry insurance.[41] If a licensed company causes damage or creates an international liability, it must pay for any claims against the UAE. This clear structure of the framework permits insurance and liability rules to give investor confidence by spelling out exactly who is responsible for what.[42]

D. Japan

Act on Promotion of Business Activities Related to the Exploration and Development of Space Resources (Law No. 85 of 2021)[43]The law of the resources of space lets Japanese companies own whatever they extract from space, unless there is any intention to own it.[44] It has also created a framework and the regulations under which the activities related to mining must either be launched from Japan or controlled by a Japanese-based entity, which enables the creation of a direct link between the country's jurisdiction and any resources pulled from space.

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[36] U.S. Commercial Space Launch Competitiveness Act § 50914, Pub. L. No. 114-90, 129 Stat. 704, 715 (2015) (establishing three-tiered liability risk sharing regime).

[37] An Analysis of the United States' Commercial Space Sector, Critical Debates in Higher Sec. & Global Just. (Oct. 2, 2023), https://criticaldebateshsgj.scholasticahq.com/article/88428-legislation-outpaced-by-innovation-an-analysis-of-the-united-states-commercial-space-sector/

[38] Loi du twenty juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace, Journal Officiel du Grand-Duché de Luxembourg, No. 674 (July 28, 2017).

[39] Philip De Man, Luxembourg Law on Space Resources Rests on Contentious Relationship with International Framework, Working Paper No. 189, KU Leuven 6-7 (July 2017), https://ghum.kuleuven.be/ggs/publications/working_papers/2017/189deman/

[40] Federal Decree Law No. 12 of 2019 on the Regulation of the Space Sector, Fed. Decree-Law No. 12/2019, U.A.E. Off. Gaz. (Dec. 19, 2019).

[41] Understanding Third-Party Liability in UAE Space Law, Chambers & Partners (Feb. 14, 2024), https://chambers.com/articles/understanding-third-party-liability-in-uae-space-law/

[42] Legal and Regulatory Challenges in the UAE's Space Sector, 23 Problems & Perspectives in Mgmt. 426, 430, (2025), https://www.businessperspectives.org/index.php/journals?controller=pdfview&task=download&item_id=22086.

[43] Act on the Promotion of Business Activities for Exploring and Developing Space Resources (Act No. 83 of June 23, 2021), Kanpō (Official Gazette), June 23, 2021 (Japan).

[44] [31] Japan Information on the Mandate and Purpose of the Working Group on Space Resources, UNOOSA 3 (2023), https://www.unoosa.org/documents/pdf/copuos/lsc/space-resources/LSC2023/StatesResponses/Japan_Information_to_Space_Resource_WG.pdf

V. DIFFERENCES OF ARTEMIS ACCORD AND OUTER SPACE TREATY

A. The OST and the Artemis Accords

The OST was able to create a foundation for international space regulation. This treaty, though, broadly provided the principles governing space activities. However, it lacked detailed information regarding the implementation or the mechanisms, which provide a space for each state to determine for themselves how these principles will be incorporated into their domestic rules and frameworks. This flexibility has resulted in wildly different approaches among the nations. Some, like Russia, maintained strict State Control, while states like the U.S. promoted private enterprises.[45] Some states, like the U.S., Japan, etc., have also created laws to regulate these private space ventures. In contrast, some countries chose not to frame any specific legislative framework, leading to inconsistent regulatory environments.[46] In contrast, the Artemis Accords embed implementation mechanisms directly into their text. Section 2 focuses explicitly on implementing cooperative activities related to the exploration and use of outer space, specifying that legal and practical agreements, in which instruments like Memoranda of Understanding can be used. The accords also enabled the states to use open international standards by which they can create their hardware, data, and communications, or can even innovate new ones as needed, ensuring interoperability between different countries' space technologies.[47]

B. Legal Aspect and its Nature

The OST is a legally binding treaty. As per the data of UNOOSA, on 5 May 2025, there were about 117 nations that ratified it, creating enforceable international obligations. States parties are legally responsible under Article VI for all national space activities, including activities conducted by any entity, whether they involve governmental or any private sector activities.[48] The Artemis Accords are not a treaty or any framework that is binding on any nation. It represents a political understanding rather than a binding agreement among nations regarding mutually beneficial practices. As per the data of 24 July 2025, 56 countries have signed this accord.[49]

C. Mining of the Resources and Claims:

In OST, Article II explicitly prohibits claims made as of national or sovereign but lacks clarity on the appropriate resource extraction.[50] The Artemis Accords address this ambiguity in Section

[45] Fabio Tronchetti, The Non-Appropriation Principle as a Structural Norm of International Space Law, 33 Air & Space L. 277, 285 (2008).
[46] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, opened for signature Jan. 27, 1967, 610 U.N.T.S. 205 (entered into force Oct. 10, 1967).
[47] Artemis Accords, Oct. 13, 2020, U.S. Dep't of State, https://www.nasa.gov/artemis-accords./A. Salmeri, Interoperability, the Artemis Accords and the Future of Space Exploration, Spacewatch Global 8 (2020), https://orbilu.uni.lu/bitstream/10993/45184/1/A.%20Salmeri,%20Spacewatch%20Global.pdf.
[48] Outer Space Treaty, Art. VI.
[49] Artemis Accords, Oct. 13, 2020, U.S. Dep't of State, https://www.nasa.gov/artemis-accords/
[50] Cody Curabba, *The Outer Space Treaty vs. The Artemis Accords*, AMERICAN CENT. FOR SPACE POLICY (Nov. 5, 2012), https://acsp.space/blogs/the-outer-space-treaty-vs-the-artemis-accords-a-roadmap-for-the-future/

10.2, stating that the gathering of valuable materials from space does not amount to national appropriation under Article II of the Outer Space Treaty.[51]

VI. FIVE DECLARATIONS WITH PRINCIPLE FOR OUTER SPACE AND KEY LIMITATIONS:

A. Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (1963)

This declaration created the core principles forming the foundation of the Outer Space Treaty, promoting peaceful exploration, non-appropriation, and equal access to space.[52] However, as a General Assembly resolution, it is not legally binding and suffers from enforcement deficiencies. Key Limitations:

1. Non-binding nature: As noted by legal scholars, the declaration "could not establish binding norms of international law" despite its foundational importance.[53]
2. Definitional ambiguities: The declaration fails to clearly define critical terms such as "outer space" boundaries, creating enforcement challenges.[54]
3. Enforcement gaps: The lack of specific compliance mechanisms has created a gap that is "largely unenforceable on private actors,".[55]

B. Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting (1982)

This declaration addressed cross-border satellite broadcasting issues. However, it faces notable implementation challenges in the modern era.[56] Key Limitations:

1. Technological obsolescence: The principles were designed as per the technology of 1982 and lack to address contemporary broadcasting challenges.[57]
2. Compliance difficulties: The soft law nature means "no international responsibility will be imposed against the wrongdoer" in case of violations.
3. Jurisdictional confusion: The are no proper enforcement mechanisms when broadcasting crosses multiple authorities.[58]

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[51] *Ibid.*
[52] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, UN Audiovisual Library (Dec. 31, 2007), https://legal.un.org/avl/ha/tos/tos.html.
[53] Abhishek Varshney, International Liability of Commercial Space Activities and Space Debris, 7 INT'l J.L. MGMT. & HUMAN. 591 (2024).
[54] Henry Hertzfeld, Current and Future Issues in International Space Law, 15 ILSA J. Int'l & Comp. L. 325, 325 (2008).
[55] Christina Isnardi, Problems with Enforcing International Space Law on Private Actors, 58 Colum. J. Transnat'l L. 489 (2020).
[56] United Nations Office for Outer Space Affairs, International Space Law 48-51(United Nations Instruments 2018, UN iLibrary), https://doi.org/10.18356/014c0e55-en/
[57] Autonomy Has Outpaced International Space Law, War on the Rocks (Mar. 10, 2025), https://warontherocks.com/2025/03/autonomy-has-outpaced-international-space-law/
[58] Future Legal Issues and Challenges of International Space Laws, I Pleaders (Jan. 4, 2021), https://blog.ipleaders.in/future-legal-issues-challenges-international-space-laws/

C. UN Principles Relating to Remote Sensing of the Earth from Outer Space (1986)

This declaration addressed the principles for observations of the Earth that are to be made by the satellites. However, these principles contain significant regulatory gaps that become problematic to their effectiveness.[59] Key Limitations:

1. Major legal lacuna: Research identifies that 'there is no provision requiring the negotiation between the sense state and the sensed state before the collection of satellite remote sensing data'.[60]
2. Discriminatory application: Despite advocating direct access, several states have 'started imposing the most detailed, complex and extensive national legal prohibitions on the collection and distribution of such imagery'.[61]
3. Soft law weakness: As there are non-binding guidelines, they fail to protect developing countries' interests effectively and lack enforcement mechanisms.[62]

D. Principles Relevant to the Use of Nuclear Power Sources in Outer Space (1992)

This declaration created principles to provide safety frameworks for the use of nuclear power in space conducts, but it contains regulatory gaps regarding security implications and enforcement.[63] Key Limitations:

1. Verification absence: The principles lack 'a verification mechanism to ensure compliance' with nuclear safety standards in space.[64]
2. Enforcement challenges**:** The issue remains that 'how to effectively enforce' prohibitions on nuclear weapons in space due to technological and diplomatic complexities.[65]
3. Regulatory gaps: There remain 'gaps regarding the governance of the utilisation of nuclear energy sources, especially with respect to their security implications'.[66]

E. Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States (1996)

This declaration emphasises that there should be global cooperation and benefit-sharing for humankind. However, faces implementation challenges in practice.[67] Studies show that despite

[59] United Nations Treaties and Principles on Outer Space, UNOOSA ST/SPACE/11/Rev.2, at 45-48 (2017), https://www.unoosa.org/pdf/publications/st_space_11rev2E.pdf
[60] Loh Ing Hoe, Roslan Umar & Mohd Khairul Amri Kamarudin, Evaluation of Remote Sensing Principles 1986: The Unsolved Problems, 7 Int'l J. Acad. Rsch. Bus. & Soc. Scis. 1, 1 (2017).
[61] *Ibid.*
[62] *Ibid.*
[63] Irmgard Marboe, Space Law Treaties and Soft Law Development, UN/China/APSCO Workshop on Space Law 8 (2014), https://www.unoosa.org/documents/pdf/spacelaw/activities/2014/pres02E.pdf
[64] Buzzword or Real Threat? How Concerns over Nuclear Capabilities in Outer Space Can Trigger Extension of Space Security Discussions, FR. INST. FOR STRATEGIC ANALYSIS (Feb. 15, 2024), https://www.frstrategie.org/en/publications/notes/buzzword-or-real-threat-how-concerns-over-nuclear-capabilities-outer-space-can-trigger-extension-space-security-discussions-2024/
[65] *Ibid.*
[66] *Ibid.*
[67] Implementation of Soft Law Relating to Outer Space, Biblioteka Nauki 288, 295 (2023), https://bibliotekanauki.pl/articles/48899365.pdf

strong policy rhetoric about space as a "global commons," there is minimal institutional implementation of benefit-sharing principles.[68] Together, these declarations and principles create a solid ethical and operational framework for international space law. They highlight peaceful use, non-appropriation, mutual respect, responsibility, safety, transparency, cooperation, and equitable access, which are essential for sustainable and responsible space activities that benefit all humanity.[69]

Declaration/Principles	UNGA Resolution and Year	Key Sections/Principles
Declaration of Legal Principles	Res. 1962 (XVIII), 1963	Principles 1–3, 6–7: Benefit of all; liberty in use; no claims; peaceful use; fair acknowledgement; international accountability
Broadcasting Principles	Res. 37/92, 1982	Principles 1–2, 5, 8: Sovereignty; prior consent; cooperation; equitable access
Remote Sensing Principles	Res. 41/65, 1986	Principles I, IV, XII, XIV: Benefit of all; respect for sovereignty; access to data; protection of sensitive information
Nuclear Power Sources Principles	Res. 47/68, 1992	Principles 3–4, 7, 9: Safety; prevention of hazards; notification of accidents; international cooperation
Benefits Declaration	Res. 51/122, 1996	Paragraphs 1, 3, 5, 7: Benefit of all States; non-discrimination; cooperation; data sharing; peaceful purposes

VII. CHALLENGES RELATED TO COMMERCIAL RESOURCE UTILISATION

A. Non-appropriation Principle under Article 2 of the OST[70]

The OST forbids countries from claiming space beyond Earth, notably the lunar surface and other planets or heavenly bodies, through sovereignty, occupation, or use. This principle against appropriation is understood to prevent ownership claims over these celestial bodies by either

[68] Pauline Pic, Philippe Evoy & Jean-Frédéric Morin, Outer Space as a Global Commons: An Empirical Study of Space Arrangements, 17 Int l J. Commons 288 (2023).
[69] Cassandra Steer, Sources and Law-Making Process Relating to Space Activities, in Routledge Handbook of Space Law 19, 25 (Ram Jakhu & Paul Stephen Dempsey eds., 2017).
[70] Non-Appropriation Principle, Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, § art. II, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.

states or private parties. However, the domestic law of some nations, like Luxembourg's space resource laws[71] and the U.S. Commercial Space Launch Competitiveness Act (2015)[72], allows companies of the private sector to possess, own, and sell resources taken from space bodies without asserting sovereignty over those bodies. This situation creates legal confusion and conflict, as some see it as a violation of the non-appropriation principle. They argue that owning resources may suggest actual appropriation.[73] Although U.S. and Luxembourg laws state that owning extracted resources does not mean claiming sovereignty or territory, critics and some international scholars believe this 'dualism' undermines the OST's goals and creates a divide in international space law.[74]

B. Interpretation of 'Use' vs. 'Appropriation'

Some nations contend that extracting and owning resources is "use" and not "appropriation," and therefore allowed under the OST, while others argue ownership of extracted resources amounts to a form of appropriation inconsistent with the treaty's spirit.[75] This semantic and legal ambiguity fuels disputes over the legality of commercial space mining ventures.[76]

C. Absence Of A Clear Guideline On Both Senses

The UN Guiding Principles on Business and Human Rights (UNGPs) are now the global standard for responsible corporate behaviour.[77] There is confusion over whether it is sufficient to merely have a framework of procedures (process) or whether the firms must always be evaluated on the actual-world outcomes of those procedures (outcome), for instance, UNGPs guide a tech company deploying satellites for global communications to conduct "human rights due diligence" i.e., to map and mitigate risks to individuals across their operations.[78]. But the regulations do not state if it is sufficient that the company simply uses a checklist (the process), or if it is necessary to see to it that nobody gets injured or exploited due to their activity (the outcome). The companies can simply state compliance by demonstrating that they have a policy and procedure without guaranteeing their application or the result of said process.[79]

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[71] *Loi du twenty juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace*, Journal Officiel du Grand-Duché de Luxembourg, No. 674, (July 28, 2017).
[72] *U.S. Commercial Space Launch Competitiveness Act*, Pub. L. No. 114-90, 129 Stat. 704 (2015).
[73] Fabio Tronchetti, The Non-Appropriation Principle as a Structural Norm of International Space Law, 33 Air & Space L. 277, 285 (2008), https://kluwerlawonline.com/journalarticle/Air+and+Space+Law/33.3/AILA2008021/
[74] Zois A. Paliouras, The Non-Appropriation Principle: The Grundnorm of International Space Law, 27 Leiden J. Int'l L. 37, 42 (2014).
[75] Andrew Pershing, Interpreting the Outer Space Treaty's Non-Appropriation Principle: Customary International Law from 1967 to Today, 42 Yale J. Int'l L. 149, 161 (2019), https://openyls.law.yale.edu/bitstreams/53f751d8-60f8-41bc-a263-26bff3fd375f/download/
[76] Johnson-Freese & Weeden, Application of Ostrom's Principles for Space, 3(1) Global Policy 72 (2012).
[77] United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/HRC/17/31 (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf
[78] Anna Marie Brennan, Developing Principles of Corporate Human Rights Due Diligence for Outer Space Use and Exploration: A Critical Evaluation, 5 Lex ad Coelum 1 (2025).
[79] Understanding and Implementing the UN Guiding Principles on Business and Human Rights, Oxford Law Practice (May 13, 2025), https://academic.oup.com/oxford-law-pro/edited-volume/59931/chapter/512682392/

D. Lack of International Consensus and Dispute Resolution Mechanisms

There is no international legal framework that specifically addresses how to regulate commercial resource extraction, ownership, and conflict resolution. This leads to uncertainty.[80] The Moon Agreement (1979) tried to regulate resource exploitation as the "common heritage of mankind," but major spacefaring nations, including the U.S. and Luxembourg, reject it. This lack of global agreement and enforcement mechanisms creates different interpretations about commercial mining and resource use rights.[81]

E. Accountability And Supervision By The State Under Article VI Of The OST[82]:

As per the OST, states must authorise and frequently oversee the conduct of their nationals in space. This creates questions about how states can ensure that private resource utilisation is consistent with international obligations, especially where domestic laws might promote expansive commercial exploitation.[83]

F. Intellectual Property And Commercial Rights:

Emerging issues on the protection of intellectual property rights (IPR) in space resource technologies and exploitation add another layer of legal complexity.[84], with potential conflicts between private commercial interests and international public goods.[85] Conflicting legal provisions revolve around the tension between the OST's international treaty obligations, especially non-appropriation, and newer national laws that seek to stimulate private commercial resource activities with rights to ownership of extracted materials. The resulting legal ambiguity and diverging interpretations create uncertainty and potential disputes within the international space law regime. These conflicts suggest a pressing need for an updated, multilateral regulatory framework to clarify rights, responsibilities, and dispute mechanisms for commercial resource utilisation in space.[86]

G. Address Of The Space Debris:

The current regime does not explicitly address the issue of the debris caused by nations. Debris in space is not considered in the treaties established by the U.N.[87] Due to this, there has been a

[80] Space Resource Discussions in the UN Committee on the Peaceful Uses of Outer Space, Opinio Juris (July 10, 2021), https://opiniojuris.org/2021/07/11/space-resource-discussions-in-the-un-committee-on-the-peaceful-uses-of-outer-space/

[81] Florian Rabitz, Space Resources and the Politics of International Regime Complexity, 17 Int'l J. Commons 288, 295 (2023), https://thecommonsjournal.org/articles/10.5334/ijc.1274/

[82] *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies* art. VI, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.

[83] John G. Wrench, Non-Appropriation, No Problem: The Outer Space Treaty Is Ready for Asteroid Mining, 51 Case W. Res. J. Int'l L. 437, 445 (2019).

[84] Varshney, Abhishek, "International Liability of Commercial Space Activities and Space Debris," 7 Intl. J.L. Mgmt & Humanities 591 (2024).

[85] Melissa de Zwart, Space Resource Activities and the Evolution of International Space Law, 89 Acta Astronautica 534, 540 (2023).

[86] Space Resource Regulation: From National Approaches to the Need for a General Framework, Space Generation Advisory Council (Sept. 18, 2024), https://spacegeneration.org/space-resource-regulation-from-national-approaches-to-the-need-for-a-general-framework/

[87] Legal Issues Surrounding Space Debris and Satellite Regulation, Bhatt & Joshi Associates (Jan. 3, 2025), https://bhattandjoshiassociates.com/legal-issues-surrounding-space-debris-and-satellite-regulation/

loss of several countries due to debris existing in space, and there is no mechanism to address that accountability.[88]

VIII. INDIA's CHANGING LANDSCAPE IN SPACE ACTIVITIES:

India started its journey with the establishment of the Indian National Committee for Space Research in 1962, and then, after 7 years, the Department of Space (DOS) was founded in 1969.[89] Over these decades, India has progressed with immense growth in developing robust space capabilities with the Indian Space Research Organisation (ISRO), pioneering satellite launches, telecommunications, remote sensing, and successful interplanetary missions like Chandrayaan and Mangalyaan.[90] Previously, India had state-led space activities. With the developments and growth in the changing times, in the last decades, there has been a turn in the growth of private enterprises and commercial participation. This shift is in accordance with global commercial mining in space and the utilisation of celestial materials or their resources, prompting India to reconsider its present legal and institutional framework.

A. Present Legal Frameworks Governing Space Activities In India:

1. **Remote Sensing Data Policy (2011)**: This framework created a centralised system granting the license and developing regulations for remote sensing data in India under the Department of Space (DoS). It established state ownership of all Indian remote sensing satellite data and made a system that enabled private users to apply for licenses to access and use such data. It aimed to balance the concerns regarding the security of the nation with promoting data-driven applications in agriculture, disaster management, and urban planning.[91]
2. **Indian Space Policy 2023**: This policy embarked on a significant shift by opening "end-to-end" space activities, including the production or manufacturing of the satellite, launch vehicles, remote sensing, and, importantly, commercial recovery of space resources, to private and non-governmental entities. The Indian National Space Promotion and Authorisation Centre (IN-SPACe)[92] It was created as the primary agency operating under the Department of Space to oversee and facilitate space-related activities in India, an autonomous regulator for authorising, promoting, and supervising commercial space activities, fostering industry growth while ensuring regulatory compliance with safety, security, and international standards.[93]
3. **Norms, Guidelines & Procedures (NGP 2024)**: It was released by IN-SPACe in 2024. It provided detailed operational guidance, procedures, as well as criteria for implementing the Indian Space Policy 2023. It outlined the application procedures, eligibility criteria,

[88] Abhishek Varshney, International Liability of Commercial Space Activities and Space Debris, 7 INT'l J.L. MGMT. & HUMAN. 591 (2024).
[89] Indian Space Research Organisation, Genesis, ISRO, https://www.isro.gov.in/genesis.html
[90] Achievements of India's Space Program, NextIAS (Aug. 11, 2025), https://www.nextias.com/blog/achievements-of-indian-space-program/
[91] Remote Sensing Data Policy, Dep't of Space, Gov't of India (2011), https://www.isro.gov.in/media_isro/pdf/Policies/rsdp_policy_2011.pdf
[92] Indian National Space Promotion and Authorisation Centre (IN-SPACe), Indian Space Research Organisation, https://www.isro.gov.in/about-isro/in-space/
[93] Indian Space Policy – 2023, Dep't of Space, Gov't of India (Apr. 20, 2023), https://www.isro.gov.in/media_isro/pdf/Policies/Indian_Space_Policy_2023.pdf

compliance requirements, insurance and liability norms, and ongoing supervision mechanisms for various space activities, including commercial resource utilisation beyond the Moon. These guidelines make regulation stronger in the absence of any ambiguity and support safe, transparent, and effective commercialisation of space in India.[94]

4. **India's Draft Space Activities Bill, 2017**: This Bill has not been enacted yet. This bill intends to establish a comprehensive legal regime that will enable a system of issuance of licences, supervision, liability, and penalties related to space activities, including commercial resource extraction. In early 2025, this bill is still in the advanced stages of approval.[95]

B. Lack Of Legislative Attention And Areas That Require Some Work:

India has seen immense growth in the last decades, creating a robust space technology and advancements. However, with this growth, new challenges have emerged that require regulations. India has some framework to govern these activities, but there is a gap or lack of legislative attention in it:

1. **Lack of Enacted Comprehensive Law**: The absence of a passed Space Activities Act leaves ISP 2023 and NGP 2024 lacking a statutory backing, making them vulnerable to incorrect implementation.[96]
2. **Ambiguity on Property Rights**: ISP 2023, though, hints at private ownership rights on the extracted resources from the celestial bodies. However, it conflicts with the no-claim principle of the Outer Space Treaty (OST), posing legal tension that requires a comprehensive legal backing.[97]
3. **Jurisdictional Uncertainties**: The Draft Bill does not explicitly provide the regulations for Indian Nationals' activities abroad or foreign actors operating in India.[98]
4. **Environmental and Debris Policies**: There is no dedicated regulation or statutory framework that can address the safeguards of the environment and orbital debris mitigation.[99]
5. **Liability and Insurance and Investments**: Formal regulations on liability, multi-tier insurance framework, or indemnity provisions compared to U.S. or UAE laws have not yet been developed. Though 100% FDI is allowed, screening and cybersecurity frameworks need more strengthening and clarification.[100]

[94] Norms, Guidelines and Procedures for Implementation of Indian Space Policy – 2023, IN-SPACe, Gov't of India (May 2024), https://www.inspace.gov.in/sites/default/files/NGP2024.pdf
[95] The Space Activities Bill, 2017, Dep't of Space, Gov't of India (Draft, Nov. 2017), https://www.isro.gov.in/media_isro/pdf/Policies/About-Space-Activities-Bill2017.pdf
[96] Norms, Guidelines and Procedures for Implementation of Indian Space Policy – 2023, IN-SPACe, Gov't of India (May 2024), https://www.inspace.gov.in/sites/default/files/NGP2024.pdf
[97] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, art. II, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.
[98] V.S. Rana, *Outlining Inconsistencies in the Indian Space Policy 2023*, WB Nat'l Univ. Juridical Scis. Blog (May 2023), https://nujs.edu/casl/outlining-inconsistencies-in-the-indian-space-policy-2023/
[99] Dep't of Space, Gov't of India, *ISRO Space Debris Mitigation Measures*, https://www.isro.gov.in/SpaceDebrisMitigation.html
[100] Convention on International Liability for Damage Caused by Space Objects, Mar. 29, 1972, 961 U.N.T.S. 187.

IX. DISPUTE RESOLUTION AND CASES

As there's no proper framework to address such commercial disputes, Arbitration is one of the best ways to resolve conflicts in a peaceful manner, keeping all the crucial info related documents safe, as they can be used as subject to national interest, and it's speedy in nature.[101] In 1899, Hague, Netherlands, an arbitration court was established for handling disputes between states, which is a neutral platform. It was termed the Permanent Court of Arbitration. The primary handling of cases by this court is related to states, organisations and private entities on issues like territorial disputes, maritime boundaries, commercial contracts and investment conflicts.[102] While primarily dealing with traditional problems, in recognition of suitability for the arbitration of space-related disputes, the PCA in 2011 published its Optional Rules for Arbitration of Disputes Relating to Outer Space Activities.[103] However, a strong framework is required on both international and national levels, primarily focusing on the national level. India needs a strong and comprehensive legal framework to make it viable for disputes to be resolved.

Case 1: Unauthorised Launch of Swarm Technologies' Space Bee Satellites (2018)[104] On 12 January 2018, four US-built nanosatellites (Space Bee 1–4) were launched aboard India's PSLV-C40 via Antrix Corporation, despite the US Federal Communications Commission (FCC) explicitly denying authorisation in December 2017 due to safety risks from their extremely small size. Swarm Technologies bypassed this denial through a commercial rideshare agreement with Spaceflight Industries. The FCC investigated post-launch and imposed a \$900,000 penalty, acknowledging it was lenient but imposing strict licensing restrictions. The main issue was whether a private company could legally launch satellites abroad after being denied by its own regulator, and the responsibility of the launching state under international law. Under Article VI of the Outer Space Treaty, oversight rests with the state of nationality (here, the US). International law does not obligate foreign launch providers or states like India to verify domestic authorisations unless bound by bilateral agreements. This highlighted a regulatory gap as firms may evade national restrictions by using foreign launch providers.

Case 2: Liability Convention – Cosmos-954 (1978)[105] On 24 January 1978, the Soviet Cosmos-954 satellite, powered by a nuclear reactor, disintegrated over Canada, scattering radioactive debris across 124,000 square kilometres. Cleanup under Operation Morning Light cost \$14 million CAD, and Canada sought compensation under the 1972 Liability Convention, which makes launching states fully liable for damage caused on Earth. The USSR contested Canada's claim, citing Article 5 violations for excluding Soviet specialists and questioning whether environmental damage qualified as "damage." After lengthy negotiations, a settlement was

[101] Darcy Beamer-Downie & Leonor D'Albiousse, Space Law and Arbitration: Dispute Resolution Mechanisms for Space-Related Disputes, Clyde & Co (Apr. 18, 2024), https://www.clydeco.com/en/insights/2024/03/overview-of-dispute-resolution-mechanisms-for-space/

[102] History, Permanent Court of Arbitration (Dec. 31, 2024), (established by the 1899 Hague Convention), https://pca-cpa.org/en/about/introduction/history/

[103] Optional Rules for Arbitration of Disputes Relating to Outer Space Activities, Permanent Court of Arbitration (Dec. 6, 2011), https://www.mcgill.ca/iasl/files/iasl/optional-rules-arbitration-disputes-outer-space-6dec2011.pdf

[104] Swarm Technologies, Inc., Unauthorized Launch and Operation of Space Bee Satellites, Memorandum Opinion & Order, FCC File No. SAT-LOA-20161205-00117, 33 FCC Rcd 603 (2018) (Fed. Commc'ns Comm'n).

[105] Agreement Between the Government of Canada and the Government of the Union of Soviet Socialist Republics on the Settlement of Questions Arising from the Cosmos 954 Incident, Can.-U.S.S.R., Apr. 2, 1981, 20 I.L.M. 689.

signed in April 1981 in Moscow, with the USSR paying \$3 million CAD—far less than Canada's initial claim but accepted as final. The case set a precedent for applying the Liability Convention and demonstrated the preference for diplomatic resolution over litigation in space law disputes.

X. CONCLUSION

The rapid rise of a commercially driven Space 2.0 era is defined by significant private investment, technological innovation, and ambitious projects like asteroid mining and lunar resource extraction. This has surpassed the current international legal system. While the potential rewards of commercial space resource use are considerable, including in-situ resource use (ISRU) for sustainable deep-space missions, the lack of universally accepted regulations has grave legal, geopolitical, and environmental challenges. The OST (1967) serves as the foundation of space governance. It includes principles of non-appropriation (Art. II), state responsibility and supervision (Art. VI), and environmental protection (Art. IX). The Moon Agreement (1979) further builds on this by stating that lunar resources are the "common heritage of mankind" and an international system for their use. However, few countries have ratified it, which limits its effectiveness. Soft-law instruments like the UN Declarations and Principles range from the 1963 Declaration of Legal Principles to the 1996 Benefits Declaration, reinforcing norms of peaceful use, cooperation, and fair access. At the national level, laws such as the U.S. Commercial Space Launch Competitiveness Act (2015)[106] and Luxembourg's Space Resources Act (2017)[107] give private entities specific rights to the resources they collect, while making it clear that this does not amount to sovereignty claims. However, these independent approaches may lead to regulatory confusion and disputes over compliance with international obligations. With increasing investment billions of dollars every year and growing geopolitical interest, there is an urgent need for clear, enforceable, and globally accepted rules for commercial space resource use. This framework should balance the commercial incentives driving innovation with principles of environmental protection, peaceful use, and fair benefit-sharing. In the end, the sustainable and cooperative development of outer space as a shared domain will rely on aligning binding treaties, national laws, and non-binding best practices into a clear, universally respected system that ensures space remains a realm of opportunity for all humankind.

[106] *U.S. Commercial Space Launch Competitiveness Act*, Pub. L. No. 114-90, 129 Stat. 704 (2015).
[107] *Loi du 20 juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace*, Journal Officiel du Grand-Duché de Luxembourg, No. 674 (July 28, 2017).

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WAGE DISPARITIES IN INDIA AND BRIDGING THE GENDER GAP: ROLE OF JUDICIARY AND STATUTORY SAFEGUARDS

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Abstract: *Wage disparities refer to the unequal distribution of wealth among citizens of a country. There are many factors which contribute to wage ddisparities like huge population working in uunorganized sectors, prevailing economic conditions like ppoverty, uunemployment. There is gender gap pertaining to wage disparities where women are paid less for the same amount of work men perform. Globalization and Privatization worsened the wage iinequalities. World has witnessed the rise of the gig eeconomy coupled with low paying jjobs, lack of incentives from the ggovernment for employment. Workers must balance their wages with the increasing iinflation rates of eessential commodities. There are statutory safeguards pertaining to securing the prices of eessential commodities like Essential Commodities Act of 1955, but these statutes have implementation gaps. Modern eeconomies of the wworld are shifting towards promoting the interests of ccapitalists, imposing a toll on welfare of workers. Capitalists maximize the profits by reducing the wages paid to workers. This paper explores the urban- rural divide pertaining to wages and what safeguards should be ensured to protect their socio- economic status. Wage ddisparities is a multifaceted issue and solutions must be based on a multidisciplinary approach. In India, rural populations depend on aagriculture, hhorticulture, pisciculture which are low paying in nature and there is no job security for them. This paper focuses on how statutes like Equal Remuneration Act, 1976, Minimum Wages Act, 1948 and other sstatutes ensure safeguards for employment in various sectors, the cconstitutional mechanism and role of jjudiciary in upholding the socio- eeconomic rights of workers.*

Keywords**:** *Wage iinequality, labor laws, informal sector, socio- eeconomic Justice.*

I. INTRODUCTION

Poverty is an economic condition in which the person is unable to meet the basic amenities required for life. One of the main causes of poverty are low wages, and wealth inequality existing in India. More than 50% of people in India engage in self-employment and the rest in wage work. To analyze wage disparities in India, one must look at urban and rural populations which give different perspectives. In the USA labour is expensive, i.e, employers must give more wages to workers compared to workers in developing nations. In India many workers are dependent on the primary sectors like agriculture, where more than 50% of the workforce is employed in this sector. There are distinctions pertaining to types of workers, for example differences between regular labour and casual labour, urban labour and rural labour, divide between men and women labour.[1] There are various factors contributing to wage disparities like geography, religion and sectors of employment. This persists because of inequalities in the labour market. Inequality in wages could be minimized by collective efforts of the Central and State Government. One of the main causes of poverty is low wages and the wealth inequality existing in India. In socialist countries like India, the rich tend to become richer and the poor

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[1] Menon, *Determinants of Inequality in India Regular Wage Employment*, 160 International Labour Review 477 (1993).

become poorer. The gap between incomes of the working class must be minimized. Equal pay is not only about wages but respecting the contribution of both genders to the economy. The World Economic Forum ranks India 135 out of 146 in the Index of Global Gender Gap which was released in 2022[2]. Women in India are mostly employed in social work and health care, whereas businesses, jobs in financial Institutions prioritize men over women. Despite having Constitutional provisions like Article 14 (Right to Equality) and Article 16 (Right to employment), implementation drawbacks in Government policies are rising. Research by McKinsey suggests that gender inequalities have persisted in the world since times immemorial. [3] Women who are in the stage of education work for part- time jobs which are low- paying in nature and they are not provided with monetary benefits like pension, post- retirement non-monetary benefits, medical leaves etc.

The National Institution for Transforming India suggests that if women keep taking leaves for their children and maternity leaves it impacts the working efficiency of women when they continue their jobs.[4] Women do not have equal say compared to men in negotiating their wages, this is predominantly seen in construction activities. Lack of adequate representation of women in law making bodies portrays policies lacking the ascent of women. There are laws specific to women like POSH (2013), Domestic Violence Act (2005), Dowry Prohibition Act (1961) are existing but there are laws lacking to discuss protection of women employment. Companies Act, 2013 has mandated companies to compulsorily have a woman director but questions persist regarding consideration of opinions of women directors.[5] The lack of adequate representation of women in law-making bodies results in policies that fail to reflect women's perspectives.

II. LEGAL POSITION AND LITERATURE REVIEW

K.P. Kannan[6] in his research paper titled "Wage Inequalities in India: Structural and Social Dimensions" highlights how wage inequality in India is deeply rooted in the country's economic and social structure. In a nation where most people rely on any available work to survive, nearly half the workforce is in wage employment, while the rest are self-employed. Rather than a single, unified wage system, India has fragmented labour markets divided between casual and regular work, and between rural and urban areas. These divisions lead to multiple layers of wage disparity, further influenced by factors like gender, education, and most strikingly, social group identity. Kannan's study, covering 1993 to 2012, reveals that while wage inequality slightly declined in the later years of this period, the overall picture remains grim, especially for the bottom half of workers who continue to earn well below even the modest national minimum wage. Despite strong economic growth during this time, the benefits have not trickled down to those at the bottom of the wage ladder, exposing a persistent and unjust "long tail" of wage inequality.

[2]World Economic Forum, *Global Gender Gap Report 2022* (13 July 2022), https://www.weforum.org/publications/global-gender-gap-report-2022/ accessed 21 July 2025/
[3] Mekala Krishnan, Kweilin Ellingrud, *Ten Things to know about gender equality,* (McKinsey & Company, 2018), accessed on 17 February 2025.
[4] Sunita Sanghi, 'Youth: A Change agent' (June 2017) *Yojana,* NITI Aayog, https://www.niti.gov.in/sites/default/files/2019-01/article-skill.pdf accessed on 11 September 2024/
[5] The Companies Act, § 149.
[6] K P Kannan, *Wage Inequalities in India* (Centre for Development Studies, December 2018).

In their 2018 study on "Gender Wage Gap: Some Recent Evidences from India", Somasree Poddar Roychowdhury[7] and Ishita Mukhopadhyay explore the stubborn persistence of gender wage inequality in India. Using advanced statistical methods on NSSO employment data, they break down the gender wage gap into two key elements: occupational segregation (based on economic factors) and direct discrimination (not justified by such factors). Their findings reveal that discrimination is most severe in areas controlled by employers, especially in decisions related to industry type pointing to deep-rooted biases in hiring and wage practices. Notably, since most employers in India are men, this could explain the ongoing neglect of gender-based pay disparities. The study also shows that part of the wage gap is due to lower skills and experience among women, suggesting that legal reforms alone will not be enough. For real change, they argue, India needs active policies that empower women through skill development and entrepreneurship opportunities.

Saloni Khurana[8], Kanika Mahajan, and Kunal Sen in their research paper titled "Minimum Wages and Changing Wage Inequalities in India" examine the decline in wage inequality in India over the past two decades and explore how rising minimum wages have contributed to this change. By analyzing employment and earnings data from 1999 to 2018, they found that increasing minimum wages significantly raised earnings for the lowest-paid workers. Specifically, a 1% rise in minimum wages resulted in a 0.17% wage increase for those in the bottom 20% of earners, with minimal impact on higher wage groups. Through counterfactual analysis, they estimate that around 26% of the total reduction in wage inequality during this period can be attributed to increases in minimum wages. Their study highlights how minimum wage policy has played a meaningful role in reducing wage disparities, especially for the most vulnerable workers.

Mitali Chinara's[9] 2018 study titled "Gender Discrimination in Wage Earnings: A study of Indian Wage Market" explores the persistent issue of gender discrimination in wage earnings across India. Despite some progress globally and in India particularly in education the economic gender gap remains wide. India has managed to reduce its overall gender gap by 2% in one year, but major inequalities continue in employment and earnings. Chinara focuses on the differences in wages between men and women that arise either from differing characteristics (like education and experience) or from discrimination, where men are paid more even when their qualifications are like women's. Using the Blinder Oaxaca decomposition method, she breaks down these wage gaps into their explained and unexplained components, and uniquely applies this analysis across different Indian states. The paper also compares gender wage gaps in urban and rural labour markets, highlighting the uneven nature of wage discrimination across regions.

[7] Somasree Poddar Roychowdhury and Ishita Mukhopadhyay, Gender Wage Gap: Some Recent Evidences from India (2018) 17, *Journal of Quantitative Economics* 3.
[8] Khurana Saloni, Mahajan Kanika and Sen Kunal, *Minimum Wages and Changing Wage Inequality in India* (UNU-WIDER Working Paper 2023/67, United Nations University World Institute for Development Economics Research 2023).
[9] Mitali Chinara, 'Gender Discrimination in Wage Earnings: A Study of Indian Wage Market' (2018), *Indian Journal of Labour Economics* (Indian Society of Labour Economics).

III. LEGAL FACTORS AND ANALYSIS

A. Factors Contributing to Wage Disparities

Wage disparities in India arise from a multifaceted interplay of structural, economic, cultural, and policy-related factors. A thorough understanding of these factors is imperative to assess the effectiveness of existing statutory safeguards and to design comprehensive reform measures. India's unorganized sector absorbs a large portion of the workforce, including agricultural laborers, construction workers, daily wage earners, domestic helpers, and small-scale vendors. This sector is typified by the absence of formal contracts, ambiguous job roles, and highly variable wage structures.

Without the protection of formal labour contracts, workers are often unable to claim statutory benefits, making them susceptible to wage theft, irregular payments, and exploitation by employers. The diffuse nature of the unorganized sector complicates systematic monitoring. Regulatory agencies face challenges in data collection, standard-setting, and enforcement of minimum wage laws. The Ministry of Labour & Employment has introduced several schemes including skill development programs and social security measures to integrate these workers into the formal economy. Nonetheless, a persistent implementation gap continues to undermine these efforts. Wage disparities are closely linked to broader economic conditions. Areas with high poverty and unemployment levels exhibit lower wage ceilings due to an oversupply of labour and limited alternative employment opportunities. Rapid demographic growth and inadequate job creation have led to a labour surplus, where workers are forced to compete for limited opportunities, often resulting in lower wages.

Escalating prices of essential commodities erode the real value of wages, thereby deepening the disparity between nominal earnings and living costs. Statutory instruments such as the Minimum Wages Act (1948) mandate periodic revisions in wage rates to mitigate the impact of inflation. However, inconsistencies in policy implementation and regional disparities persist across different states. Despite progressive legislation like the Equal Remuneration Act (1976), gender wage discrimination continues to be a significant challenge. Historical biases and deeply ingrained societal norms contribute to persistent inequities between male and female workers. Women are often confined to roles and sectors that are traditionally lower paid or less valued, despite having comparable qualifications and competencies. Systemic practices such as the “glass ceiling” limit women's access to higher-paying, senior-level positions and curtail career progression opportunities. Judicial interventions have reinforced the legal doctrine of “equal pay for equal work.” Nevertheless, proving discrimination in informal or loosely regulated sectors remains an ongoing challenge.

B. Impact of Globalization and Privatization

The liberalization policies of the 1990s fundamentally reshaped India's economy. Globalization and privatization have brought about structural changes that, while fostering competition and efficiency, have also led to wage suppression, especially in sectors prone to cost-cutting measures. Companies exposed to global competition may standardize compensation at lower levels to remain competitive, particularly impacting workers in developing markets. The shift from public to private ownership often entails restructuring efforts geared toward profitability.

Such transformations can reduce job security and erode established wage and benefit structures.[10] The challenge for policymakers is to balance the benefits of economic liberalization with the need to protect vulnerable workers.

International labour standards, as advocated by the ILO, emphasize the importance of integrating robust social safety nets within economic reforms.[11] The advent of the gig economy represents a significant paradigm shift in work patterns. Characterized by freelance, contract-based, and on-demand engagements, this sector offers flexibility at the expense of stability and traditional labour rights. Gig workers often face unpredictable and fluctuating incomes, making financial planning and economic stability difficult. These workers are typically excluded from standard benefits such as health insurance, pension schemes, and statutory wage protections, leaving them more exposed during economic downturns. Existing labour laws inadequately address the rights of gig workers. There is a critical need for comprehensive legal reforms to redefine employment relationships and extend statutory safeguards to this increasingly.

C. Gender Wage Gap: Causes and Impacts

The gender wage gap in India is a complex phenomenon shaped by historical injustices, entrenched cultural norms, and systemic labour market biases. This section analyzes the roots of gender-based wage disparities and examines their far-reaching consequences. From colonial times to the modern era, gender roles have been rigidly defined. Women have traditionally been relegated to domestic roles, restricting their access to quality education and competitive job markets.[12] The resultant labour market segmentation continues to influence wage disparities. This landmark legislation was designed to ensure equal pay for equal work, providing a legal basis for challenging discriminatory wage practices. Despite its clear mandate, deep-seated biases and implicit discrimination have limited its full effectiveness in practice. Courts have continually reinforced the principle of equal pay and provided redress in cases of clear wage discrimination. These judicial decisions have contributed to shaping labour laws and societal expectations regarding fairness. The persistence of gender stereotypes has led to occupational segregation, with women often confined to lower-paid administrative, service, or care giving roles.[13] This segregation results not only in lower wages but also in fewer opportunities for advancement.

Cultural expectations regarding family responsibilities disproportionately affect women, limiting their availability for full-time or higher-paying roles. The absence of sufficient childcare support and flexible working arrangements further exacerbates these disparities. The cumulative effect of the gender wage gap often results in reduced household income, affecting access to education, healthcare, and overall quality of life for entire families.[14] At a macroeconomic level, under-utilizing the potential of half the population hinders overall economic growth. Gender-based

[10] ABRAHAMSON MARK, Urban Sociology 123, (Published Online, 1st edn., 2013).
[11] Parthasarathi Shome, *The Creation of Poverty and Inequality in India,* (Bristol University Press, Bristol, 1st edn., 2023).
[12] G. Findlay, "India in Convalescence" 4, *Foreign Affairs Journal* 648 (1926)
[13] Elisabetta Basile & Ishita Mukhopadhyay, *"*The Changing Identity of Rural India*"* 63- 64, (Cambridge University Press, Online, 2012).
[14] KOHLI ATUL, Democracy, and Inequality in India (In Press, 2025).

wage gaps limit consumer spending and contribute to long term inequities in wealth distribution. While judicial interventions have paved the way for redress, social acceptance of discriminatory practices remains a barrier. Effective judicial enforcement combined with proactive government policies and corporate responsibility is essential to narrow the wage gap.

D. Bridging Wage and Gender Gaps

The judiciary has been central in interpreting labour laws and ensuring that statutory protections are enforced to safeguard workers' socioeconomic rights. This section delves into the evolving judicial landscape as it pertains to wage and gender equity. The Indian judicial system has played a pivotal role in reconciling statutory provisions with contemporary social realities. By interpreting key legal provisions such as those under the Equal Remuneration Act and Minimum Wages Act, the courts have underscored the importance of fairness, equity, and compliance with international labour standards. Judges have consistently emphasized the need to balance employer prerogatives with workers' rights. This approach has often resulted in landmark decisions mandating periodic wage reviews and adjustments, particularly in the face of economic volatility. Several high-profile cases have reinforced the concept of "equal pay for equal work", compelling employers to rectify wage disparities in both private and public sectors. These cases have led to heightened awareness, prompt remedial measures, and have sometimes served as a catalyst for legislative amendments.[15] The ripple effect of these judicial decisions extends beyond individual cases. They inform broader policy debates and encourage systemic reforms that progressively align statutory frameworks with the evolving needs of a modern, equitable labour market.

The Supreme Court and various High Courts have frequently intervened in wage disparity cases by enforcing stricter compliance, ordering wage adjustments, and directing enhanced monitoring by regulatory bodies. Judicial decisions have not only provided immediate relief to aggrieved workers but have also influenced legislative amendments and executive actions.[16] The courts' steadfast position on safeguarding socio-economic rights reinforces the necessity for proactive enforcement of wage policies. Despite the comprehensive legislative framework designed to promote wage equality, several critical gaps persist in actual implementation. This section assesses the root causes of these challenges and highlights the areas requiring urgent reform. Regulatory bodies tasked with enforcing wage laws often operate under significant resource limitations. These include inadequate manpower, technological shortcomings, and insufficient infrastructural support, all of which diminish their effectiveness.[17]

E. Cultural and Societal Resistance

The slow pace of judicial processes in addressing wage-related disputes further compounds the problem. Protracted litigation not only delays compensation but may also disincentivize workers from seeking legal redress. Due to its very nature, the informal sector eludes systematic

[15] Sairam Patro, Wage Discrimination on the Basis of Gender: An Analysis of Indian Legal Position, 9, *Indian Journal of Law and Human Behaviour* 105 (2023).
[16] CASSON CATHERINE, Evolutions of Capitalism 212- 236, (Bristol University Press, Bristol, 2022).
[17] Rashmi U Arora, Regional financial disparity in India: Can it be measured?, 17, Journal of Institutional Economics 836 (2021).

monitoring. The absence of comprehensive data hampers the development of targeted interventions and accurate policy reviews. Fragmented and region-specific enforcement practices lead to inconsistencies in the application of statutory protections. Bridging these gaps requires both technological innovation in data collection and stronger coordination among local, state, and national agencies.[18] Persistent societal beliefs and cultural norms that undervalue certain types of labour especially work performed by women or in rural areas pose significant challenges to reform. Changing these entrenched attitudes necessitates long-term educational and advocacy initiatives. A lack of awareness among workers about their legal rights further perpetuates wage inequities. Grassroots campaigns and community-based legal aid services are crucial in remedying this situation.

F. Statutory Laws on Wage Disparities

The Constitution of India[19], which is regarded as Grundnorm places Fundamental Rights at a higher pedestal. Article 23 of Part- III of Constitution impliedly says that everyone has "equal pay for equal work" which works in consonance with Article 14 (Right to equality). Denial of equal pay for equal work would infringe Article 21 of Constitution. There is duty vested upon State to enforce this right by virtue of Article 39 sub- clause (d). Article 47 ensures that State shall provide nutrition, public health and improve standard of living, without this Article eliminating wage disparities would be difficult for the State. In case law Randhir Singh vs Union of India, SC held that "interpretation of equal pay for equal work should be done in a holistic way considering other provisions of Constitution. Central Government has enacted Equal Remuneration Act, 1976[20] which aims to eliminate all forms of discrimination in various processes like recruitments, trainings in job, job promotions etc. Companies and its Directors can be held accountable for violations of principles of this statute. Supreme Court of India in plethora of cases has held that an approach which is inclined towards flexibility must be adopted in determining "equal pay for equal work.

Women are also entitled to Maternity leaves which ranges from 20- 26 weeks depending on Organization and nature of work. During this leave, they shall be provided wages which are like days of work. In case of labor-intensive works, the maternity leave could be extended to 30 weeks. The Workmen's Compensation Act provides relief to any person injured during time of work. This injury may be a result of Employer's negligence. This act was criticized for being gender bias as the act suggests only "Workmen," but Supreme Court and High Courts gave purposive interpretation to include women under the umbrella of "Workmen" , Minimum Wages Act, 1948[21] ensures minimum wages to pe paid to workers in certain employments. Section 3 of this Act talks about how minimum wages shall be calculated, the section has segregated wage periods by hours, days, and month. Every State Government has authority to fix minimum wages from time to time. This act did not expressly talk about "Equal pay for equal work."

[18] Thomas, "The Agrarian Situation in India", 50, *International Labour Review,* 451 (1944).
[19]The Constitution of India 1950, https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf
[20]Equal Remuneration Act 1976, India, *https://samadhan.labour.gov.in/whatsnew/equal_remuneration_act_1976.pdf*
[21] Minimum Wages Act 1948, India, https://clc.gov.in/clc/sites/default/files/MinimumWagesact.pdf

G. New Wages Code, 2019:

Earlier the Equal Remuneration Act had no express provision pertaining to "Equal pay for equal work," it was supplemented by Article 14, 23 and 39 (d) of Indian Constitution. Section 2 (ii) of New Wages Code[22] states that there shall not be any form of discrimination during recruitment process expect in places of employment where women is expressly prohibited to work by Authority of Law. Section 42 (2) of the New Code states that 1/3rds of members of Central Advisory Board shall be women. Section 42 (3) (b) states that the Central Advisory Board can make recommendations to increase employment opportunities for women. Section 42 (3) (c) states that the Board can issue a notification mentioning what kinds of workplaces women may be employed. Section 42 (4) (b) states that every State Government must establish a State Advisory Board to increase opportunities for Women. Proviso of Section 2 (k) states that there shall be equal wages for men and women when accumulating allowance, travelling concession, house rent, remuneration and overtime allowance. This provision is criticized for its limited scope of applicability and its silence on various other aspects of salary like Dearness allowance. The New Code is silent on "Eliminating discrimination against women pertaining to salaries."

H. Wage Disparities in International Perspective

India has signed the International Labour Organization (ILO)[23] in 1922. 29 years later in 1951, India signed Convention on Equal Remuneration which focuses equal wages for men and women if they are employed in doing similar work. Article 2 of UDHR[24] (1948) safeguards Indivicual rights by eliminating discriminations on basis of race, religion, sex etc. Article 7 of International Convention on Economic, Social and Cultural Rights provides concessions for Women who are employed in work places. Unequal pay for equal work would amount to direct discrimination where employers are categorizing women on basis of gender. India has ratified Convention on Elimination of all forms of Discrimination against women in 1993. This convention ensures that women are provided with same rights to that of men. Article 11 of CEDAW[25] states that member countries shall take necessary means to bring equality between men and women in matters of employment. Article 11 (d) states that there shall be equal remuneration and benefits between men and women. Article 13 states that member countries shall make laws which gives women the right to loans, mortgages and credits from banks and financial Institutions.

I. Judicial Pronouncements on Wage Disparities

In case law Mackinnon Mackezie & Co vs Audrey D' Costa[26] Supreme Court was considering whether denial of equal remuneration would amount to violation of Article 14 (Right to equality) and whether men and women who are doing same work or work of similar nature be getting

[22] The Code on Wages 2019, https://labour.gov.in/sites/default/files/the_code_on_wages_as_introduced.pdf
[23] International Labour Organization Ratifications for India 1993, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:102691/
[24] Universal Declaration of Humar Rights 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights/
[25] The Convention of Elimination of all forms of Discrimination against Women 1979, https://www.un.org/womenwatch/daw/cedaw/
[26] MacKinnon Mackenzie & Anr., A.I.R 1987 S.C. 1281 (India).

equal wages? The case involved male and female stenographers who have same skill and similar work. Supreme Court held that India being a signatory of International Labour Organization (ILO) and ratified it makes it relevant for the case to be considered. There is an underlying obligation upon State to eliminate discrimination on basis of gender in matters relating to wages.

In case law Randhir Singh vs Union of India[27], the petitioner is an ex- army man who voluntarily retired from service to join as driver in Delhi police force, The pay scale of driver in Police force ranged from 200- 230 rupees, whereas salaries of Drivers in other departments of Government ranged from 300- 450 rupees. The nature of work and duration of work was similar but pay scale was different. The petitioner invoked jurisdiction of court by filing a Writ Petition under Article 32 where his rights under Article 14 (Right to equality) and Article 16 (Equality in matters of Public Employment) is violated. Supreme Court held that it is inherent duty of State to ensure that all drivers shall get equal pay for equal work. The Apex Court directed the Third Pay Commission to revise the wages and bring coherence to drivers wages in other departments of Delhi Government.

In case law State of Madhya Pradesh and Another vs Pramod Bhartiya and Another[28], Supreme Court was considering whether classification of workers into various groups and paying different wages based on those groups, would it violate Article 14 of Constitution and whether such classification is reasonable in nature? SC held that if classification is unreasonable then Article 14 would be violated. In this case there were differences between pay scales of technical schools and Higher Secondary Schools. SC relied on Article 2 of Equal Remuneration Convention where it is duty if state to employ necessary means to ensure adherence to the convention. In case law, Union of India vs Indian Navy Civilian Design Officers[29], there were differences in pay scales between Civil Technical Officers of Design (7500- 12000). Junior Design Officers had requested Ministry of Finance to bring their pay scales like that of Civil Technical Officers, but their concerns were rejected by tribunals. Supreme Court held that the quantity of the work may be same but quality of work is different for the two posts. Hence Supreme Court had set aside the order of High Court and Tribunal and allowed the appeal.

IV. RECOMMENDATIONS AND POLICY SOLUTIONS

Regularly update the Equal Remuneration Act (1976) and the Minimum Wages Act (1948) to address new economic realities, close regulatory loopholes, and ensure that wage standards keep pace with inflation. Institute dedicated training programs for judges, legal practitioners, and labour inspectors to ensure that wage-related disputes are handled with sensitivity and precision, considering evolving social norms and economic conditions. Encourage periodic audits of wage structures across various sectors, with particular attention to the informal economy, to ensure that statutory safeguards are adhered to. Provide tax breaks and subsidies for companies that implement transparent, equitable pay structures. Incentivize best practices that promote gender neutrality and fair labour practices.

Invest in modern data collection and analysis tools to monitor wage trends accurately and to enforce compliance in both urban and rural settings. Foster collaborations between the

[27] Randhir Singh v. Union of India & Ors., A.I.R 1982 S.C. 879 (India).
[28] State of Madhya Pradesh & Anr vs Pramod Bhatiya & Ors., (1992) 1.S.C.C. 714 (India).
[29] Union of India v. Indian Navy Civilian Design Officers, 2023 SCC OnLine SC 173.

government and corporate sector aimed at comprehensive wage audits, certification for fare-paying employers, and targeted programs for the vulnerable workforce. Encourage organizations to conduct regular wage audits, develop transparent pay scales, and institute robust performance evaluation systems that prioritize fairness. Strengthen policies that empower women and other marginalized groups through mentorship, leadership training, and dedicated career advancement programs. Launch nationwide public awareness initiatives to inform workers about their statutory rights and available avenues for redress. training programs that enhance employability in higher-paying sectors, particularly for workers in rural and informal settings. Strengthen community-based legal support structures to ensure that workers, especially those in remote areas, can exercise their certification for fair-paying employers.

V. CONCLUSION

In summary, wage disparities in India are the product of a confluence of factors ranging from the dominance of unorganized labour and adverse economic conditions to systemic gender discrimination and the disruptive effects of globalization and emerging work models. The judiciary, in combination with robust statutory safeguards like the Equal Remuneration Act (1976) and the Minimum Wages Act (1948), has played a significant role in addressing these inequities. However, persistent implementation gaps, inadequate enforcement mechanisms, and cultural barriers continue to challenge the quest for socio economic justice. To bridge these wage disparities, a multidisciplinary approach is imperative one that blends legislative reform, proactive government policies, corporate accountability, and community empowerment. The evolution of labour laws and judicial decisions must be complemented by concerted efforts in public awareness and economic support structures to safeguard the socioeconomic rights of all workers, particularly the vulnerable in rural and informal sectors. Future research and policy development should focus on leveraging technological advancements for better monitoring, fostering international cooperation on labour standards, and ensuring that the push for economic growth does not come at the cost of worker welfare. A multidisciplinary approach is imperative one that blends legislative reform.

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POLICY RATIONALE AND INVESTMENT FALLOUT OF INDIA'S 2025 OVERHAUL ON FOCC DOWNSTREAM INVESTMENT

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Abstract: *Over the years, India has emerged as a favoured foreign investment hub, driven by its robust economic growth and the resulting burgeoning market. Before 2009, Indirect Foreign Investment ("IFI") lacked clear regulatory guidelines, with sector-specific rules limited to the Telecom, broadcasting, insurance, and infrastructure services. The Department of Industrial Policy and Promotion initially introduced the idea of IFI in press notes in February 2009, but it wasn't until the Reserve Bank of India adopted the guidelines in June 2013 that it gained official regulatory status. The Reserve Bank of India and the Central Government had different stances, which caused the delay. Revisions to the framework have been made since the official notification in June 2013. Notably, a series of notifications under the Foreign Exchange and Management Act ("FEMA") were released in 2015-16, significantly improving regulatory clarity. Transaction structure has long been complicated by the regulatory ambiguity surrounding downstream investments made by foreign-owned or controlled entities. Although not all issues were completely resolved by the 2024 and 2025 amendments to the FEM (Non-Debt Instruments) Rules, 2019 ("NDI Rules"), they did offer important clarifications that reinforced the framework for FOCCs and allowed for more strategic investment planning, structure, and execution. Beyond just consolidating recent rule revisions, the 2025 update to the Master Direction on Foreign Investment in India expands on this endeavour by addressing a number of areas that were previously left in legislative silence. It is noteworthy because it provides much-needed clarification on downstream investment, an area that still requires cautious regulatory interpretation. With an emphasis on their effects on downstream investment, this article analyses the reform trajectory through the 2024 and 2025 revisions to the NDI Rules, 2019, as well as important clarifications added in the 2025 Master Directions on Foreign Investment in India.*

Keywords: *Downstream Investment, FEMA, IFI, RBI, FOCC.*

I. INTRODUCTION

In India, both direct and indirect foreign investments are regulated under the Foreign Exchange Management Act, 1999 ("FEMA"), together with subordinate rules and regulations framed pursuant thereto.[1] FEMA vests the Reserve Bank of India (**"**RBI") with the authority to issue regulations, while conferring on the Central Government the power to prescribe rules.[2] The principal legal framework governing foreign direct investment in India consists of the FEMA, 1999, and the NDI Rules, 2019[3], which together regulate the infusion of foreign equity by non-resident entities into Indian companies. The NDI Rules also set out the framework for regulating indirect foreign investment[4] in Indian entities, it is commonly referred to as downstream

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[1] Foreign Exchange Management Act 1999, Act No. 42, 1999, (India).
[2] Foreign Exchange Management Act 1999, § 46-47.
[3] Foreign Exchange Management (Non-debt Instruments) Rules 2019, F.NO.1/14/EM/2015.
[4] NDI Rules, 2019, Rule 23.

investment.[5] In addition, the RBI issued the 'Master Directions on Foreign Investment in India' ("Master Directions")[6] under FEMA, which provides detailed procedures for conducting foreign exchange transactions in line with the NDI Rules, 2019. Taken together, FEMA, the NDI Rules, and the Master Directions form India's comprehensive framework for regulating Foreign Direct Investment ("FDI"). Notably, the Master Direction on Foreign Investment in India, updated as recently as January 20, 2025, not only consolidated amendments to the NDI Rules but also provides crucial clarifications on previously ambiguous areas, including downstream investment regulations.[7] This article seeks to present a comprehensive account of the regulatory framework governing downstream investments in India, highlighting the recent developments in 2025 marking a deliberate policy pivot with the clarifications released in its favor to facilitate a constructive dialogue for channeling indirect foreign investment/ foreign capital inflows and facilitating cross border mergers and acquisitions (M&A), further streamlining regulatory clearances to enhance India's appeal as a business hub.

II. UNDERSTANDING FOCCS AND DOWNSTREAM INVESTMENT: A CONCEPTUAL PRIMER

A downstream investment refers to an investment made by an Indian company that is owned or controlled by a person resident outside India (an "FOCC").[8] According to the NDI Rules, specifically the explanation to Rule 23, which states,

> '*Downstream Investment is an investment made by an Indian entity which has received foreign investment or an Investment Vehicle in the equity instruments or the capital, as the case may be, of another Indian entity.*'[9]

In other words, when an Indian entity owned or controlled by a person resident outside India invests in the equity instruments/ capital of another Indian entity, it constitutes a downstream investment for the person resident outside India ("PROI"), enabling indirect foreign investment through layered ownership structures.[10] Accordingly, downstream investments are governed by the same restrictions and conditions that apply to direct foreign investments.

The ambit of FOCC covers both Indian companies and Limited Liability Partnerships ("LLPs").[11] An Indian company or LLP is considered '*owned*' by persons resident outside India when such persons hold the prescribed ownership interest, and is regarded as '*controlled*' when they possess the right to appoint a majority of directors or control management and policy decisions.[12] Under the NDI Rules, an Indian entity receiving foreign investment is deemed an FOCC if it is either not owned and controlled by resident Indian citizens or is owned or

[5] *Id.*
[6] Reserve Bank of India, Master Direction - Foreign Investment in India, RBI/FED/2017-18/60, (Issued on January 4, 2018).
[7] Aparna Ravi, Aastha Bhandari, *Updated Master Direction on Foreign Investment in India: Clarifications to the Regulatory Framework*, Taxmann (Sept. 14, 2025), https://www.taxmann.com/research/preview-document?categoryName=fema-banking-insurance&fileId=105010000000026435&subCategory=experts-opinion&searchText=downstream%20investment%20in%20india/
[8] CS Amandeep Singh Oberoi, *Downstream Investments under FEMA - Regulatory and Practical Considerations*, CS Journal, 97, 97 (2024).
[9] NDI Rules, 2019, § Rule 23, Explanation.
[10] Master Direction, para. 9.1.13 (Updated on January 20, 2025).
[11] NDI Rules, 2019, § Rule 23(7)(c).
[12] NDI Rules, 2019, § Rule 23(7)(f).

controlled by PROI.[13] Conversely, suppose an Indian entity receiving foreign investment falls short of the threshold for being '*owned*' or '*controlled*' by a PROI; in that case, its subsequent investment in another Indian entity is treated as a domestic investment.

The guiding principle of the regulatory framework is *"what cannot be done directly, shall not be done indirectly,"*[14] which aligns downstream investments with foreign direct investments in terms of regulatory treatment. Accordingly, downstream investments deemed to be indirect foreign investments must comply with the NDI Rules regarding entry routes, sectoral caps, investment limits, pricing guidelines, and conditionalities.[15] However, ambiguity has historically stemmed from a lack of clarity on the scope of these principles within the FDI regime.[16] In response, the RBI issued a series of FEMA notifications, culminating in the January 20, 2025, update to the Master Directions ("Updated Master Directions"), which introduced significant clarifications.

III. RECALIBRATING THE NDI RULES

As discussed, India's Foreign Investment regime (direct or indirect), governing the terms and conditions under which foreign capital may flow into Indian entities, has its legal backbone in the NDI Rules, 2019. The years 2024 and 2025, together, represent one of the consequential phases of reform since the enactment of the NDI Rules. Through four separate amendments in 2024 and a further one in 2025, the government additionally liberalized entry norms across multiple sectors and also resolved long-standing issues that had undermined investor trust.[17] These reforms have changed the downstream investment scenario for Indian companies[18] categorized as FOCCs, opening new avenues while also, when needed, tightening compliance requirements.

A. Foreign Exchange Management (Non-Debt Instruments) Amendment Rules 2024

The first amendment of 2024 introduced the Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme[19], marking the start of the reform wave. By creating a new chapter X[20] and Schedule XI[21], the amendment enabled Indian public companies to list their equity shares directly on the notified international exchanges. It signaled India's readiness to integrate with global capital markets and lessen its reliance on antiquated instruments such as American Depository Receipts ("ADRs") or Global Depository Receipts ("GDRs"). With respect to FOCCs, this indirectly facilitated downstream investment by enhancing the capital-raising capacity of Indian companies in which they hold stakes.[22] The

[13] *Supra note* 8.
[14] Master Direction, para. 9 (Updated on January 20, 2025).
[15] Master Direction, para. 9.2 (Updated on January 20, 2025).
[16] Anindya Ghosh, Anantha Krishnan Iyer, Jaidrath Zaveri, Shubham Tiwary, *A Nod for SWAPS and Deferred Consideration in Downstream Investment: Unlocking the Foreign Investment Regime in India*, Argus Partners (Aug. 2, 2025), https://www.argus-p.com/papers-publications/thought-paper/a-nod-for-swaps-and-deferred-consideration-in-downstream-investment-unlocking-the-foreign-investment-regime-in-india/
[17] *Supra note* 7.
[18] Master Direction (Updated on January 20, 2025).
[19] Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2024.
[20] Foreign Exchange Management (Non-Debt Instruments) Amendment Rules 2024, Ch X, Rule 34.
[21] Foreign Exchange Management (Non-Debt Instruments) Amendment Rules 2024, Schedule XI.
[22] *Supra note* 7.

amendment carefully restricted participation to '*permissible holders'*.[23] It also linked eligibility to anti-money laundering norms, ensuring that while global capital was welcomed, it did not compromise regulatory integrity.[24] The amendments thus laid the groundwork for a more globally connected capital-raising environment that FOCCs could leverage in their downstream strategies.

B. Foreign Exchange Management (Non-Debt Instruments) (Second Amendment) Rules 2024

The second amendment of 2024 tackled a narrow yet critical issue. Through this amendment, the legislation expanded the scope of *'unit'* by including partly paid-up units[25], subject to SEBI regulations framed in consultation with the Government of India, addressing the uncertainties relating to the phased funding models, i.e., the investment not paid in full at once but in parts (tranches). Before this clarification, questions arose as to whether subsequent calls on such units constituted fresh foreign investment, thereby requiring separate compliance. For FOCCs investing downstream through such vehicles, this created an unnecessary compliance burden and heightened regulatory scrutiny. The amendment attempts to resolve this issue by aligning FEMA with SEBI's established practices, providing certainty that phased funding structures are permissible. It shall greatly benefit FOCC-backed entities looking to invest in capital-intensive sectors without risking inadvertent non-compliance.

C. Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules 2024

The Fourth Amendment of 2024[26] stands out as the most comprehensive of the year, extending across definitional changes, investment eligibility, sectoral caps, and new entry routes. The first major change was the harmonization of the definition of *'control'* with that in the Companies Act, 2013.[27] This new uniform standard shall ensure consistency and predictability, which is vital for FOCCs structuring downstream investments through layered shareholding arrangements, as the differing definitions across statutes have led to confusion about when an Indian entity would be considered foreign-controlled or owned.[28] In the case of LLPs, *'control'* is now explicitly tied to the right to appoint a majority of designated partners who possess exclusive authority over policy decisions.[29] Equally significant was the insertion of Rule 9A, which formally permitted the swap of equity instruments between residents and non-residents and the swap of equity capital of foreign companies, provided the transactions complied with the FEMA and the Overseas Investment Rules, 2022.[30] This reform addressed a long-standing demand of industry stakeholders, as earlier share swap transactions required case-by-case approval from the RBI, creating delays and uncertainty.[31] The amendment facilitates cross-border mergers and acquisitions by codifying the process, making complex downstream

[23] Foreign Exchange Management (Non-Debt Instruments) Amendment Rules 2024, Rule 2(ak).
[24] *Id*.
[25] Foreign Exchange Management (Non-Debt Instruments) (Second Amendment) Rules 2024, § Rule 2(aq).
[26] Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules, 2024.
[27] Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules 2024, § Rule 23(7)(d); Companies Act, 2013, § 2(27).
[28] *Supra note* 8.
[29] Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules 2024, § Rule 23(7)(d).
[30] Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules 2024, § Rule 9A.
[31] Master Direction (Updated on January 20, 2025).

structuring more feasible for FOCCs.[32] The amendment also makes an important clarification in the context of indirect foreign investment. The rules remove a longstanding irritant by providing that investments made on a non-repatriation basis by entities owned and controlled by Non-Resident Indian ("NRIs") or PROIs (including companies, trusts, and partnerships) shall not be considered in calculating indirect foreign investment. For FOCCs, this relaxation translated into the structuring of downstream investments without the risk of technical non-compliance.[33]

D. Foreign Exchange Management (Non-Debt Instruments) (Amendments) Rules 2025

The 2025 reform[34], aimed at resolving a long-standing compliance ambiguity in India's FDI regime. The amendment authorizes Indian companies operating in FDI-prohibited sectors or activities to issue bonus shares to their pre-existing non-resident shareholders, subject to the condition that such issuances do not alter the existing shareholding pattern. By inserting sub-rule (2) under Rule 7, the reform directly addresses concerns that bonus share issuances, though not involving any inflow of fresh foreign capital, might nevertheless be construed as violating FEMA restrictions.[35] The FEMA has incorporated that bonus share issuances to non-resident shareholders in FDI-prohibited sectors would be permissible, provided there was no alteration to the shareholding structure.[36]

IV. DECODING THE 2025 MASTER DIRECTION

The January 2025 update to the Master Direction on Foreign Investment[37] introduced a series of clarifications and definitions aimed at closing interpretive gaps and improving procedural certainty, particularly in the context of downstream investment by Foreign Owned or Controlled Companies. A foundational clarification asserts that in case of inconsistency between this Master Direction and notifications issued under FEMA, the latter will prevail, thereby reaffirming the primacy of statutory instruments over guidance documents.[38] This edition of the Master Direction also addressed the long-uncertain treatment of inherited securities and changes in residential status.[39] Where equity instruments are inherited by a non-resident from a resident Indian, they are to be held on a non-repatriation basis and are exempt from reporting.[40] Similarly, when a resident investor becomes a non-resident, any existing investments will retain non-repatriable character.[41]

Further refinements were made to terminologies that directly affect employee-linked capital instruments. The terms Employee Stock Option Plans ("ESOP"), '*sweat equity shares*', and '*Share Based Employee Benefits*' are now clearly defined in reference to the Companies Act and

[32] Prateek Lala, Ritwik Mukherjee, *Downstream investments by FOCCs: Practical challenges and conundrums*, Trilegal (Aug. 10, 2025), https://trilegal.com/magazine/downstream-investments-foccs-practical-challenges-and-conundrums-insights-issue-11.html
[33] *Id.*
[34] Foreign Exchange Management (Non-Debt Instruments) (Amendments) Rules, 2025.
[35] Foreign Exchange Management (Non-Debt Instruments) (Amendments) Rules 2025, § Rule 7(2).
[36] *Id.*
[37] Master Direction (Updated on January 20, 2025).
[38] Master Direction, para. 1.1 (Updated on January 20, 2025).
[39] Master Direction, para.1.3 (Updated on January 20, 2025).
[40] NDI Rules, 2019, § Rule 6(2).
[41] Master Direction, para. 1.3 (Updated on January 20, 2025).

SEBI regulations.[42] Importantly, the scope of Share-Based Employee Benefits has been extended to allow Indian companies to issue equity instruments to non-resident employees or directors of their overseas subsidiaries, joint ventures, or parent entities.[43] These instruments must comply with sectoral caps and applicable laws, and prior government approval is necessary where FDI approval routes apply or when recipients are citizens of Bangladesh or Pakistan. Notably, sweat equity has been permitted since June 2015[44], while other share-based benefits for non-residents have been allowed since April 2022, marking progressive liberalization in this area.[45] To eliminate ambiguity in language, it has been clarified that any undefined term used in the Master Direction will carry the same meaning as assigned in FEMA and associated rules.[46] Moreover, the expression "banking channels" now formally includes rupee vostro accounts held by non-residents, including Special Rupee Vostro Accounts recognized under the FEMA Deposit Regulations, 2016.[47]

The revised direction also retains restrictions on investment from countries sharing land borders with India, with a narrow exception made for multilateral banks or funds of which India is a member. These entities are no longer treated as originating from a specific country, nor is any nation deemed the beneficial owner of their investments.[48] Instruments like convertible debentures and preference shares are now recognized under strict conditions. Only fully paid and mandatorily convertible debentures and preference shares qualify, with the pricing or conversion formula required to be fixed at the time of issue. The conversion value must not fall below the fair market value assessed at issuance, thereby preventing backdoor underpricing or misuse of hybrid instruments.[49] Any amendment to the tenor of these instruments must also conform to the Companies Act and related rules.

To manage exposure in sensitive sectors, the Direction has placed a ceiling of twenty-four per cent on foreign portfolio investment in sectors where FDI is otherwise prohibited.[50] This serves to curb indirect control through passive investments. In sectors that prescribe minimum capitalization, it is clarified that only the amount received at the time of issue, comprising face value and premium, will be counted. Any subsequent premium paid in a secondary transfer will not qualify for this computation.[51] A vital clarification has also been provided for companies in the financial sector. Where a regulator prescribes minimum net owned funds as a licensing requirement, such entities may receive foreign investment strictly for the purpose of meeting this criterion[52] however, if the registration is not granted, the investment must either be returned or restructured to comply with norms applicable to non-operational entities receiving FDI.

[42] Master Direction, para. 2.15, 2.16 (Updated on January 20, 2025); Companies Act, 2013 § 2(88); SEBI (Share Based Employee Benefits & Sweat Equity) Regulations, 2021.
[43] Master Direction, para. 2.17 (Updated on January 20, 2025).
[44] Reserve Bank of India, Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, FEMA.344/2015 RB, (Issued in June 11, 2015).
[45] Master Direction, para. 6.13.1 (Updated on January 20, 2025).
[46] Master Direction, para. 2.28 (Issued on January 4, 2018).
[47] Master Direction, para. 2.28, Explanation (Updated on January 16, 2025).
[48] Master Direction, para. 3.2 (Updated on March 17, 2022).
[49] Master Direction, para. 4.6.1 (Updated on January 20, 2025).
[50] Master Direction, para. 5.4.1 (Updated on January 20, 2025).
[51] Master Direction, para. 5.2.5 (Issued on January 4, 2018).
[52] Master Direction, para. 5.2.7, note (Updated on January 20, 2025).

Under Section 62(1)(a)(iii) of the Companies Act 2013, Indian companies may issue rights shares to non-residents, subject to compliance with all applicable FEMA conditions, including sectoral caps, entry routes, and pricing norms.[53] This ensures parity between primary and follow-on capital issuances, even in cross-border shareholder structures. In cases of mergers, demergers, or amalgamations approved by the NCLT or any other competent authority, the transferee or resulting company may issue equity instruments to non-resident shareholders of the transferor entity. Such transactions must conform to prescribed entry routes, sectoral limits, and require reporting under the *FC-GPR* or *FC-TRS* formats.[54] The update also lays out safeguards for instances where an FPI's acquisition results in a temporary breach of investment caps. If this occurs, the FPI must divest the excess to an eligible resident within five trading days after settlement. Provided the transaction is resolved within this timeframe, no contravention under the NDI Rules will be recorded. Reclassification of FPI investment into FDI must follow the RBI's 2024 framework,[55] thereby standardizing such transitions.[56]

Transactions involving deferred payments, indemnities, or escrow arrangements must now be contractually recorded in the relevant share purchase or transfer agreement. This strengthens legal enforceability and ensures such mechanisms are not used to circumvent regulatory conditions. The Direction also permits swap of equity instruments between residents and non-residents, including swaps involving foreign company equity capital, provided they adhere to FEM (Overseas Investment) Rules, 2022[57] and RBI regulations notified for the same. The term "*equity capital*" used in this context retains the meaning prescribed under the latter rules, ensuring consistency in terminology.[58] Downstream investment continues to follow the principle that indirect investment must mirror the compliance standards of direct investment. Accordingly, downstream transactions must adhere to entry routes, pricing guidelines, and sectoral caps.[59] It has also been clarified that structures permissible for direct investment, such as equity swaps and deferred consideration mechanisms, are likewise permitted in downstream investments, so long as they do not violate provisions of Rule 23,[60] including the restriction on use of domestic borrowings.

Where the original investment in an Indian entity was made by a resident but the investing entity later becomes foreign-owned or controlled, the investment is to be treated as indirect foreign investment from the date of such change. The investing entity must report the transaction within 30 days and ensure compliance with the relevant sectoral norms.[61] At the same time, investments made on a non-repatriation basis by NRIs or PROIs, including those made through companies, trusts, or partnerships incorporated abroad, are not treated as foreign investment. This distinction allows FOCCs to structure certain downstream transactions outside the indirect FDI net, provided they remain within the bounds of Schedule IV.[62] Lastly, Indian companies are

[53] Master Direction, para. 6.12.3 (Updated on January 20, 2025).
[54] Master Direction, para. 6.15.1 (Updated on March 17, 2022).
[55] Reserve Bank of India, Operational framework for reclassification of Foreign Portfolio Investment to Foreign Direct Investment (FDI), RBI/2024-25/90, (Issued November 11, 2024).
[56] Master Direction, para. 7.1.4 (Updated on January 20, 2025).
[57] Foreign Exchange Management, (Overseas Investment) Rules, 2022, No. FEMA 400/2022-RB.
[58] Master Direction, para. 7.14 (Updated on January 20, 2025).
[59] Master Direction, para. 9 (Updated on March 17, 2022).
[60] NDI Rules, 2019, Rule 23.
[61] Master Direction, para. 9.1.15 (Updated on January 20, 2025).
[62] *Id.*

permitted to issue equity instruments to non-residents in exchange for equity of foreign companies. These transactions must comply with Central Government rules and RBI regulations, including the Overseas Investment Rules, 2022.[63] The term "*equity capital*" used in such swap arrangements will carry the meaning assigned under the same rules, ensuring uniform regulatory interpretation across domestic and cross-border structures.

To further streamline the regulatory framework governing foreign investment, the Reserve Bank of India introduced the *Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025.*[64] These amendments primarily address procedural aspects related to the mode of payment and remittance for various categories of foreign investment, with a focus on aligning them with the *Foreign Exchange Management (Deposit) Regulations, 2016*.[65] Under the revised provisions applicable to Schedule I transactions involving the purchase or sale of equity instruments of an Indian company by a person resident outside India, consideration for equity instruments issued to non-residents must be brought in through inward remittance or from repatriable accounts held in accordance with the Deposit Regulations.[66] The scope of permissible consideration has been expanded to include dues owed by the issuing company and equity swaps. Shares must be allotted within sixty days from receipt of consideration, or else the funds must be refunded within fifteen days. Partly paid shares follow the same timeline for each instalment. Issuers may also open foreign currency accounts with authorized dealers for these purposes.

Similar clarifications have been made across other schedules. For FPIs (Schedule II), FVCIs (Schedule VII), LLPs (Schedule VI), and investment vehicles (Schedule VIII), the payment and repatriation routes must comply with permitted banking channels or repatriable accounts. In each case, sale or maturity proceeds may be credited to these accounts, net of taxes.[67] In the case of investment in Indian Depository Receipts under Schedule X, NRIs and PROIs may invest through NRE or FCNR(B) accounts, while FPIs must use foreign currency or Special Non-Resident Account (SNRR) accounts.[68] Redemption or conversion into underlying equity shares must follow the Overseas Investment Rules, 2022.[69] The treatment of convertible notes issued by Indian start-ups has also been updated. Consideration must be received through authorized channels, and exit proceeds may be remitted or credited to designated accounts. Additionally, it has been clarified that the term "banking channels" includes rupee vostro accounts, including Special Rupee Vostro Accounts permitted under the 2016 Deposit Regulations.[70]

[63] Master Direction, Annex 1, para. 1.4 (Updated on January 20, 2025).
[64] Reserve Bank of India, Foreign Exchange Management (Mode of Payment and Reporting of Non- Debt Instruments) (Third Amendment) Regulations, 2025, FEMA 395(3)/2025-RB (Issued in January 14, 2025).
[65] Foreign Exchange Management (Deposit) Regulations, 2016, Notification No. FEMA 5(R)/2016-RB.
[66] Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, para. 3.1, Schedule I.
[67] Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, para. 3.1, Schedule II, Schedule VII, Schedule VI & Schedule VIII.
[68] Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, para. 3.1, Schedule X.
[69] Foreign Exchange Management (Overseas Investment) Rules, 2022.
[70] Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, para. 3.2.

V. BEHIND THE REFORMS: AN ANALYSIS

The 2025 reforms represent a decisive turning point in the regulatory approach to downstream investments by FOCCs, placing greater weight on predictability, procedural clarity, and alignment with international standards.[71] The NDI Rules, originally framed in 1990 and subsequently amended in 2024 and 2025, reflect a shift from a fragmented, sector-based liberalization model towards a more coherent regulatory architecture, aimed at resolving ambiguities that had long impeded the ability of FOCCs to undertake compliant downstream investments.[72] The amendment aligns the definition of 'control' with the Companies Act, thereby resolving interpretive ambiguities that might otherwise have persisted in assessing downstream investments as indirect foreign investment. For FOCCs operating through multi-tier structures, this clarity offers a significant compliance advantage. The relaxed treatment of non-repatriable investments by NRI and PROI-controlled entities marks a significant policy shift, as the government draws a clear distinction between foreign capital and diaspora-held resources that remain non-repatriable.

The introduction of Rule 9A in the NDI Rules[73] formalises swap-based transactions and provides a clear legal authorisation to the transactions related to equity swaps and cross-border mergers, with no necessity to seek case-to-case authorization of the transaction by the RBI. Rule 9A places strategic acquisitions involving FOCCs within a closed rule-based framework, leaving little scope for regulatory discretion in the decision-making process. A similar justification can be found in the recent amendment, which should permit issuances of bonuses of concerned sectors not opened to FDI inflows, but as long as the basic underlying ownership structure would not change, tackling an obstacle present long ago in FOCC-dominated enterprises. The revised Master Direction crystallises this form of regulatory revision by providing detailed guidance on reporting obligations, permissible instruments, and mechanisms for ensuring valuation protection. The clarification that any change in investor classification mandates fresh downstream compliance compels FOCCs to continuously monitor shifts in corporate control, thereby reinforcing adherence to the regulatory framework.

An Indian company may now issue ESOPs, sweat equity shares, or other share-based benefits to non-resident employees or directors of its holding company, joint venture, or overseas subsidiaries, subject to SEBI and Companies Act regulations, sectoral caps, and approval requirements under the FDI regime. These changes enhance the flexibility of FOCCs to structure employee equity allocations within the regulatory framework. Procedural discipline has now found its platform in the centre of payment operations through the Third Amendment to the FEMA Regulations that provides strict time constraints and performs specifications of channels to be used, limiting the vostro arrangements and swap transactions. For FOCCs, these changes recalibrate regulatory expectations, liberal in scope yet stringent in compliance. The result is a framework that provides legal clarity and structural flexibility, while holding FOCCs to high standards of transactional discipline.

[71] Vinod Kothari Consultants, *Downstream investment to be treated at par with FDI* (Sept. 12, 2025) https://vinodkothari.com/2025/01/downstream-investment-to-be-treated-at-par-with-fdis/
[72] *Supra note* 33.
[73] Foreign Exchange Management (Non-Debt Instruments) (Fourth Amendment) Rules 2024, Rule 9A.

VI. CONCLUSION

The revision of the foreign investment regime that India plans in 2024-25 is to enable a clear and predictable post-entry business environment coverage to downstream investors. However, the effectiveness of this agenda of reforms will rest on the manner in which it shall be interpreted and applied to the practice. The series of NDI Rule amendments, coupled with the detailed guidance provided by the 2025 Master Direction on Foreign Investment, has resolved several longstanding gaps, particularly in relation to equity swaps, the definition of control, and the exclusion of certain NRI/PROI-backed investments from indirect foreign investment calculations. Nevertheless, significant challenges remain, foremost among them the lack of legislative clarity on the transfer of equity instruments to or within an FOCC. The rules explicitly specify the applicability of pricing guidelines and reporting obligations when an FOCC acts as the transferor. However, they remain silent on the corresponding obligations when equity instruments are transferred to an FOCC, whether from a non-resident or a resident entity. The existing uncertainty on the scope of relevant and cross-border trade in terms of applying fair value caps and certain reporting is also unclear, and hence, this can result in dissimilar interpretations among authorised dealer (**"**AD**"**) banks, and allow dissimilarity in compliance efforts across jurisdictions.

The easing of restrictions on equity swaps in secondary transfers parallels the relaxation of rules governing direct equity investments. Under the revised regulatory framework, Rule 9A[74] allows the exchange of securities as valid consideration, permitting the use of equity instruments of another Indian company or the equity capital of a foreign company in place of fresh issuances. Paragraph 9 of the updated Master Directions on Foreign Investments 2025 explicitly extends the availability of equity swaps to downstream transactions that comply with FDI regulations, yet market practice in this regard remains nascent. A closer look at the new FOCC regulations[75] confirms what appears to be a dual direction concerning the future of the foreign investment. On one hand, companies gain an expanded scope for transactions; on the other, they must remain vigilant to ensure regulatory compliance. The current approach of India might be described as a calculated balance, or entry of capital and incorporation of novel deal structures is welcome, but regulation and retaining macroeconomic independence are of utmost importance. If existing uncertainties are resolved through strict regulatory interpretation and proactive enforcement, these reforms could render FOCC-led downstream investments both compliant and strategically advantageous, thereby further integrating India into global investment networks.

[74] *Id*
[75] Master Direction (Updated on January 20, 2025).

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SOVEREIGNTY ON TRIAL: THE CAIRN ENERGY V. INDIA ARBITRATION AND THE FUTURE OF INTERNATIONAL LAW IN INVESTOR-STATE DISPUTES

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I. INTRODUCTION

None of the controversies has so vividly shown the thin border between sovereign prerogative and international legal restraint as *Cairn Energy Plc & Cairn UK Holdings Ltd. v. Republic of India*[1]. In December 2020, the tribunal convened in accordance with the India-UK Bilateral Investment Treaty and advised India to pay more than USD 1.2 billion in damages to Cairn Energy Plc, ruling that the retrospective taxation system in India had infringed the guarantees of fair and equitable treatment under the treaty and constituted an unlawful expropriation.[2]

The controversy itself was centered on the Finance Act, 2012 of India - a legislative gimmick which retroactively revised the Income Tax Act to encompass indirect transfers of Indian property as early as 1962.[3] The amendment, although excused as a matter of fiscal sovereignty, impacted legitimate investor expectations and generated one of the best-documented investor-State conflicts in the past decade. The further implications on the global significance of the case were the enforcement measures that followed by Cairn in the effort to seize Indian sovereign assets across various jurisdictions.[4] This commentary on the case places Cairn v. India in the bigger picture of investment treaty arbitration. It reviews three major elements of the award: (i) how the tribunal may treat the carve-out of taxation in the BIT, (ii) how to state legitimate expectations where the fair and equitable treatment standard is applied, and (iii) the problematic issue of application of arbitral awards when sovereigns are defiant. It therefore states that although this ruling enhances the rule of law in investment protection, it also disrupts the borders of democratic sovereignty and the independence of the domestic fiscal policy.

II. FACTUAL BACKGROUND

The conflict can be traced back to the restructuring of Cairn Energy in 2006, as this deal was made under full disclosure, and the existing system of Indian taxation. Cairn physicalised shares of its Indian subsidiary, Cairn India Limited, from a UK holding company to its Indian subsidiary, an internal reorganization to simplify future operations before an eventual public offering could be made. No capital gains tax liability accrued in the Indian law at the time, and the transaction was specifically cleared by the regulatory authorities.[5] This changed radically in 2012 with the enactment of the Finance Act into law by the Indian Parliament, a statute that retrospectively amended the Income Tax Act to include indirect transfers of Indian assets dating back half a century.[6] Allegedly, being an attempt to clarify the situation concerning the ruling of

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[1] Cairn Energy Plc & Cairn UK Holdings Ltd. v. Republic of India, PCA Case No. 2016-7, Award (Perm. Ct. Arb. Dec. 21, 2020).

[2] *Id.* pp. 823–825.

[3] Vodafone Int' l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613.

[4] *Ibid*.

[5] *Supra note* 1, pp. 125–130.

[6] India-U.K. Bilateral Investment Treaty, § art. 9, March 14, 1994, 1765 U.N.T.S. 33.

the Supreme Court in the case of *Vodafone International Holdings v. Union of India*, literally reopened an area of transactions that were regarded as closed to attack the very idea of legal certainty.[7] It is based on this that the Indian tax officials have made a demand of around INR 10,247 crore (USD 1.6 billion) to Cairn and have also frozen dividends, transfer of shares, and any other proceeds due to the company.[8] Cairn was confronted with what it termed as arbitrary and confiscatory measures; it launched arbitral proceedings in 2015 under the India-UK Bilateral Investment Treaty (1994). Drawing on the commitments of the treaty in terms of fair and equitable treatment, protection against expropriation, and the right to international arbitration, Cairn claimed that Indian actions were not only a breach of its legitimate expectations as an investor but also the implementation of taxation against international law. The arbitration was conducted in accordance with the UNCITRAL Rules, in which The Hague was selected as the seat and a tribunal of three persons appointed to hear the case.

III. ISSUES BEFORE THE TRIBUNAL

The Cairn arbitration case compelled the tribunal to wrestle with issues that cut right to the bone of the investment treaty regime. The dispute was framed by three issues specifically.

a. The tribunal was to start with, required to establish its jurisdiction, considering the carve-out in taxation as stated by the India-UK BIT. India claimed that the controversies surrounding the actions of taxation were not a part of the treaty and could not be discussed under the arbiter. Cairn, on its part, argued that its case was not against how India had exercised its sovereign authority to tax per se, but the means in which it had exercised it--retrospectively, selectively, and in violation of treaty principles. The question was, could the exercise of fiscal powers be sheltered against international review by simply referring to the term taxation?[9]
b. The tribunal had to evaluate the issue of whether the imposition of retrospective tax and the confiscation of assets that followed the retrospective tax was in breach of the Fair and Equitable Treatment (FET) standard of Article 3(2) of the BIT. At the heart of this question lay the doctrine of legitimate expectations: can an investor have a reasonable expectation that a host State would not make retroactive changes in its taxation laws and that doing so would discredit the legal basis on which the investment was made?[10]
c. The tribunal needed to determine whether or not the activities of India constituted illegal expropriation. Did the State exceed the boundary between lawful taxation and uncompensated deprivation of property by freezing the dividends of Cairn, seizing shares and preventing proceeds of the sale of its Indian assets in violation of Article 5 of the BIT?[11]

Combined these concerns condensed a bigger question: how far the sovereign prerogatives of a State, especially the power to tax, are open to the sanctions of international law, after the commitments of a treaty are made.

[7] Tecnicas Medioambientales Tecmed S.A. v. United Mexican States (Tecmed), ICSID Case No. ARB(AF)/00/2, Award para. 154 (May 29, 2003).
[8] *Supra note* 6, § art. 5.
[9] *Supra note* 1, para. 340–350.
[10] *Id.* para. 538–545.
[11] *Id*. para. 580–600.

IV. TRIBUNAL'S FINDINGS

The tribunal based at the Hague under the UNCITRAL Arbitration Rules finally decided in favour of Cairn decisively. Its grant of more than USD 1.2 billion in damages, interest, and costs was based on three very significant determinations.

A. The Taxation Carve-Out Still Did Not Support Jurisdiction

The tribunal overturned the objection of India and found that the dispute was not under the taxation exception of the treaty. Although the sovereigns have broad latitude in the formulation and execution of the fiscal policies, they cannot act beyond scrutiny when they act in a way that is against the standards of the binding treaties. The tribunal established its authority by putting the dispute in the context of investment treatment issues and not the legality of taxation itself.[12]

B. Breach of Fair and Equitable Treatment (FET)

The key argument of the tribunal was the principle of legitimate expectations. In 2006, Cairn had planned its investment in India in full accordance with the Indian laws, where the legal framework did not collect tax on indirect transfer. This framework was shaken by the retrospective amendment of 2012 and made a closed transaction liable. The tribunal found that such an act was not transparent, predictable, and proportional, thus contravening the FET standard as enshrined in the BIT.

C. Unlawful Expropriation

The court also concluded that the actions by India, especially the freezing of the dividends of Cairn, the taking of its shares, and the blocked sale of its assets, were indirect expropriation. These actions denied the investor the worth and pleasure of its investment without speedy, sufficient, or efficient recompense, which is a breach of Article 5 of the BIT.[13]

Overall, the tribunal decided that the retrospective taxation regime of India applied to Cairn was a manifestation of an arbitrary and coercive deviation of international standards. It caused restitution in the form of damages and ordered India to forbear its challengeable tax claim.

D. Enforcement Struggles

The award being issued in December 2020 did not end the dispute; it only changed the battleground to enforcing courts across the world. The inability of India to do so voluntarily pushed Cairn into the unwinnable, multi-jurisdictional drive to obtain payment, a tactic that pushed the boundaries of sovereign immunity in the law of the international community.

E. Litigation Of Air India In The United States

In the Southern District of New York, Cairn petitioned to seize the property of Air India, claiming that the national carrier was an alter ego of the Indian State. Through piercing the corporate veil, Cairn argued that the property of Air India could be regarded as being identical to the property of the sovereign. The case, which eventually fell into settlement, however, indicated the increased readiness of investors to use alter ego doctrines against government-owned corporations.

[12] Cairn Energy Plc v. Republic of India & Air India Ltd., Petition to Confirm Award, S.D.N.Y. (2021).
[13] Tribunal de grande instance [TGI], Paris, July 2021 (France).

F. Seizures In France

The strongest attempt at such enforcement was perhaps the one made in Paris, the French court ordering the seizure of twenty Indian-owned properties by the government. Cairn selectively used non-diplomatic property without breaching the Vienna Convention on Diplomatic Relations (1961), so as to put additional strain on India without resorting to international immunity protection.

G. Simultaneous Criminal Prosecutions

At the same time, Cairn was engaged in recognition and enforcement claims in the United Kingdom, the Netherlands, Canada, and Singapore. Through this multiplication of jurisdictions, Cairn was placing the maximum pressure on the law and increasing the reputational costs of India as an image of a State that does not like the rule of law.[14] The overall impact of these actions was forceful. Although India has denounced the measures as an insult to sovereignty, a move by Cairn pointed out the practical weakness of even the strong states in terms of the efficiency of the enforcement action through the New York Convention.[15] Finally, the stalemate was only resolved when the Indian Parliament rescinded the 2012 retrospective amendment in November 2021, coordinating a negotiated settlement. Cairn accepted to lift its enforcement measures in return for repayment of around USD 1 billion, which ended a turbulent history in the investment arbitration history of India.[16]

V. CRITICAL ANALYSIS

The rationale of the tribunal in the case of Cairn v. India represents the positive and negative strains that are embedded in the investor-State dispute settlement (ISDS) regime. Its results are important in confirming the protection of investors, but they also raise justified concerns regarding the extension of the power of arbitration into the territory of sovereign finance.[17]

A. Merits Of The Tribunal Rationale

The principle that the law of legal certainty and predictability is a pillar in international investment law was properly cemented by the award. The tribunal highlighted that States cannot revise legal frameworks without repercussions by acknowledging the legitimate expectations of Cairn. This gives a good precedent on not engaging in any arbitrary fiscal gambles in the guise of clarifications, and host States are reminded that treaties are not a temporary political luxury but a legal obligation. Furthermore, the approach of the tribunal to expropriation is a pragmatic interpretation that the loss of dividends, shares, and proceeds may be indirect expropriation even when there is no formal nationalisation.

B. Weaknesses And Criticisms

Meanwhile, the ruling is subject to criticism because it suggests the sovereignty of democracies. Taxation is a classic type of sovereign activity, and the intervention of the tribunal makes it very awkward the possibility to challenge the authority to make fiscal policy through the intervention

[14] *Supra note* 1, para. 950–960.
[15] Taxation Laws (Amendment) Act, No. 30 of 2021, India.
[16] Ministry of Finance, Government of India, Press Release (Nov. 2021).
[17] *Supra note* 1, para. 530–540.

of the tribunal. Critics believe that questioning the power of the Parliament through the award will tend to favour the investor decision-making over the democratic process. Also, the fact that the tribunal did not uphold the carve-out argument of Indian taxation demonstrates that the palm of interpretation of BIT tribunals is elastic, which can create additional charges of regulatory chill of the ISDS system.[18]

C. Comparative Insights

The Cairn award, put in context, is at the cross-border of two streams of arbitral jurisprudence. On the one hand, it appeals to Yukos v. Russia and Occidental v. Ecuador, whose taxation and fiscal policies were examined as expropriation tools.[19] Conversely, it is in contrast to Philip Morris v. Uruguay, where there were official tribunals that supported sovereign regulatory authority in the interest of the people. The tension shows that there are more unanswered questions: is the balance to be tipped in favour of the expectations of investors or the sovereign prerogatives when the two collide with each other?[20] In this sense, Cairn v. India represents not only the affirmation of the rule of law in investment arbitration, but also a warning of the dangers posed by tribunals going too far into the areas that have typically been closed to outsourcing.

VI. INDIA AND INTERNATIONAL LAW OF INVESTMENT IMPLICATIONS

The Cairn award had an echo of a far longer length than the arbitral tribunal. To India, it is not only a billion-dollar burden but also a reputational crisis that revealed structural weaknesses in its interaction with international investment law. To the rest of the regime, it underscored the precarious nature of the State and the protection of investors.

A. India's Legislative Retreat

The full-fledged reaction was legislative in August 2021, when the Indian Parliament abolished the retrospective tax clause under the Taxation Laws (Amendment) Act.[21] The repeal had the indefinite tincture of coercion, despite being configured as an investor-friendly measure, after consecutive losses in the Cairn and Vodafone arbitrations. The relocation was an implicit recognition that retrogressive fiscal policy is inconsistent with international principles of law certainty, although it may be politically correct at home.

B. Treaty Retrenchment

At the policy level, India reacted in a dramatic and disengaged manner in the investment treaties framework. India cancelled over seventy BITs and presented its restrictive Model BIT of 2016 between 2015 and 2021. The Model BIT is a defensive stance and not a constructive recalibration by limiting the definition of investment, making arbitral review of taxation impossible, and mandating the exhaustion of local remedies.[22] Although the intention is to re-establish regulation independence, the strategy may have an isolating effect on India to the mainstream of investment governance and reduce investor confidence.

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[18] Gus Van Harten, *Investment Treaty Arbitration and Public Law* 45–47 (2007).
[19] Yukos Universal Ltd. v. Russian Fed'n, PCA Case No. AA 227, Final Award (Perm. Ct. Arb. July 18, 2014); Occidental Petroleum Corp. v. Republic of Ecuador, ICSID Case No. ARB/06/11, Award (Oct. 5, 2012), Philip Morris Brands Sàrl v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7, Award (July 8, 2016).
[20] James Crawford, *Brownlie's Principles of Public International Law,* 29–30, (9th ed. 2019).
[21] *Supra note* 18.
[22] Ministry of External Affairs, Model Text for the Indian Bilateral Investment Treaty (2016).

C. Reputational Costs And Investor Perception

The reputational fallout was perhaps the most devastating. The international business lobbyists had threatened that there would be legal uncertainties in India, and the rating of the nation in terms of the foreign investment index declined. Seizing the sovereign assets overseas portrayed India as an insurrectionary creditor instead of a faithful treaty companion. The episode caused some questions to linger after the settlement regarding the credibility of India in regard to honouring its international obligations.

Furthermore, at the systemic level, Cairn v. India encapsulates the dilemma of the developing economies. Although BITs are a tool to open up the capital stream, they may also limit the sovereign policy space in politically sensitive spheres like taxation. The withdrawal of India from the system is a reflection of more general scepticism of emerging economies, but the lack of alternatives that are credible could undermine even the stability of the investment regime itself.[23] To this end, Cairn is a national point of inflexion to India and the world as a whole, in the renegotiation of investment treaty commitments. It shows that sovereignty in the 21st century is no longer the free hand of the State, but an obligation moderated by international law and by the demands of investors.[24]

VII. CONCLUSION

The Cairn arbitration is a precedent of the attempt to push the boundaries of fiscal sovereignty as a part of international investment law. In annihilating the retrospective taxation regime in India, the tribunal has made it plain that the protection of investors under bilateral treaties cannot be subjugated to ex post facto legislative games however convenient they are. Meanwhile, the award has also sparked a larger controversy on whether or not arbitral intervention can be legitimate on the fiscal prerogatives of democratically elected governments.[25] To India, the incident has cost it dearly as well as being humiliating. The repeal of the amendment in 2012 and the settlement with Cairn was not a policy foresight move but rather a legal compulsion and reputational need. Nonetheless, following their demise, India has taken the retreatism route a step of ending its BITs and practicing a defensive model treaty, which endangers to isolate the State at the cost of investor trust.[26] The larger lesson of this case today is no longer that sovereignty which is no longer the protector of absolute autonomy but the model of responsibility as willingly adopted by international engagements. It is not in giving up the treaty system but in fixing it, in making sure that the States are still free to act in the common good, but investors are still free of randomness and confiscation. Until this harmony is achieved, there will be persistence of investor-State arbitration between charges of investor exceptionalism on the one hand and sovereign impunity on the other. Ultimately, Cairn is not so much of a warning on what arbitral over-reach can lead to as of a reflection on States themselves. It shows that the international investment order is not only founded on sovereign assertion but on sovereign reliability.

[23] UNCTAD, World Investment Report 2022, pg.78–80.
[24] UNCITRAL Working Group III, Report on Investor–State Dispute Settlement Reform, U.N. Doc. A/CN.9/1004 (2020).
[25] *Supra note* 1, para. 600–610.
[26] U.N. Charter, § art. 2, para.1.

Kiran Gupta, Prakash Sharma, P.P. Mitra, *The Emerging Trends in the Consumer Law*, First Edition, Thomson Reuters, 2024.

The Emerging Trends in the Consumer Law is a timely and intellectually rich contribution to Indian legal literature, comprising twenty-two chapters, each addressing a specific dimension of consumer protection. The book opens with a conceptual framework that examines the evolution of the citizen into a 'consumer-citizen', as an individual who is a political and legal actor operating within an increasingly global and corporatised society. By positioning the consumer as a socio-political agent, the book transcends traditional doctrinal boundaries and presents a more nuanced understanding of consumer law. This is particularly relevant in the contemporary context, where digital consumption, ethical consumerism, and platform-based grievances are becoming central to legal discourse.

Chapter One elaborates on the new institutional and procedural tools introduced by the 2019 Act, for instance, the CCPA, product liability, e-commerce regulation, and enhancement of pecuniary jurisdiction aimed at tackling globalisation-induced challenges. Chapter Two delves into the notion of 'political consumerism,' highlighting how consumer citizenship is shaping contemporary political reforms, ethical consumption, and activism. Based on the Indian context, Chapter Three explains the interpretation of 'consumer interest' under the Competition Act, detailing both ex-post and ex-ante enforcement mechanisms used by the Competition Commission of India, and elaborates on how consumer welfare is increasingly becoming a guiding principle, merging economic theory with consumer protection. Chapter Four highlights a major concern regarding certification trademarks, to assure consumers of product quality and safety, as increasing cases of fraud and misuse have surfaced in India, calling for a strong oversight of certification bodies through enhanced monitoring and enforcement measures. Chapter Five critically examines punitive regulation as a deterrent tool, while Chapter Six explores the intersection of the Consumer Protection Act, 2019, with tobacco control regulations. This analysis is particularly illuminating as it bridges public health policy with consumer law, assessing India's compliance with the Cigarettes and Other Tobacco Products Act (COTPA), 2003, and the WHO Framework Convention on Tobacco Control (FCTC), further exploring endorser liability for misleading advertisements involving tobacco products, especially under the CCPA guidelines, 2022, which is a significant development in India's consumer law jurisprudence.

Chapter Seven elaborates on the concept of product liability, further enriching the doctrinal analysis. By citing landmark judgments such as *Maruti Udyog Ltd. v. Susheel Kumar Gabgotra* and *M.C. Mehta v. Union of India*, the discussion covers concepts like breach of warranty and no-fault liability, enhancing the reader's understanding of how consumer safety is adjudicated in Indian courts. Chapter Eight examines whether consumer homebuyers should approach RERA or consumer commissions, further investigating how the Consumer Protection Act, the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), and RERA interact, often producing regulatory overlaps and ambiguities. By situating these legislative interactions in real-world scenarios, the contributors offer grounded critiques and pragmatic suggestions for reform. Chapter Nine talks about the Consumer rights discourse, increasingly incorporating animal welfare, reflecting a

broader understanding of how the treatment of animals influences human well-being and informed consumer choices.

Chapter Fifteen elaborates on e-commerce and social media, examining the Consumer Protection (E-Commerce) Rules, 2020, and the urgent need to regulate commercial transactions on social networking sites, highlighting the increasing vulnerability of digital consumers or 'e-consumers' in the absence of clear regulatory oversight and enforcement mechanisms. Chapter Seventeen critically analyses the Real Estate (Regulation and Development) Act, 2016 (RERA), noting its potential for consumer empowerment in urban housing markets, highlighting systemic issues such as a lack of transparency, procedural delays, and ineffective grievance redressal mechanisms, thereby proposing several reforms, including stronger adjudicatory bodies and better enforcement of builders' obligations under RERA. Chapter Twenty explains the shift from the principle of 'caveat emptor' (let the buyer beware) to 'caveat venditor' (let the seller beware), and undertakes a critical analysis of the redressal mechanisms provided under the Act, further identifying key legislative and policy gaps, offering constructive recommendations for their resolution. Chapter Twenty-One provides a critical overview of the development of the Indian power sector, exploring the reasons behind the persistent financial distress of DISCOMs in light of successive reform measures, exploring the intended reforms under the Electricity Amendment Bill, 2022, and their potential to revitalise the sector. Another interesting dimension is explored in Chapter Twenty-Two, which focuses on the legality of service charges in restaurants. The author clarifies the legal distinction between service charges and taxes, examining how the CCPA's recent guidelines aim to prevent exploitative practices in the hospitality sector and brings to light how consumer rights intersect with everyday transactions, making the law more tangible and relevant to the general public.

The book's depth is further demonstrated through its treatment of sector-specific and emerging international issues. For instance, the work includes the idea of 'platform justice', especially pertinent in an age where online consumer grievances are mediated through algorithms, anonymous sellers, and cross-border transactions, thus delving into the ethical, procedural, and security challenges that arise from this digital marketplace and evaluating how the 2019 Act attempts to resolve them. However, it also questions whether the current legal framework is adequate for addressing evolving concerns such as data misuse, algorithmic manipulation, and deepfake endorsements. The work also engages with one of the most pressing procedural questions in contemporary consumer law- the choice of forums. The review acknowledges the Mediation Act, 2023, particularly Section 65, revising the legal framework laid out in Section 37 of the Consumer Protection Act, 2019, enabling the referral of consumer disputes to mediation by the relevant commission. One of the book's strengths is its comprehensive coverage of legislative developments through landmark cases such as *Carlill v. Carbolic Smoke Ball Company* and *Donoghue v. Stevenson*. and their socio-legal implications. The work also traces the journey from the Consumer Protection Act of 1986, hailed by the then Food Minister H.K.L. Bhagat as the 'Magna Carta of Consumers', to the far more expansive Consumer Protection Act of 2019, reflecting a paradigmatic shift in consumer rights and redressal frameworks. In addition to its national focus, the book includes comparative insights that broaden its scope. It refers to international legal instruments such as the WHO FCTC and the UN's 2030 Agenda for Sustainable Development. India's ratification of these instruments is framed as part of a global movement toward responsible consumption, sustainability, and ethical governance. These

references provide a broader normative context for understanding India's domestic legal reforms. The book maintains an academic tone, with well-organised chapters and logical progression. While the volume is commendable for its multi-sectoral approach, there were certain thematic overlaps, such as those concerning regulatory mechanisms and institutional challenges, which may lead to minor redundancies, but the inclusion of emerging issues such as online grievance redressal mechanisms, misleading digital advertisements, and consumer activism ensures the book's relevance in today's legal discourse. This is a thoughtfully curated and intellectually robust work that critically evaluates the transformation of consumer rights in India. Its emphasis on interdisciplinary insights, legislative updates, and comparative frameworks makes it an indispensable resource for legal scholars, practitioners, students, policymakers, and activists. The volume succeeds in its central aim to illuminate the changing contours of consumer jurisprudence in a society marked by digital transformation, global interdependence and corporate dominance.

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Xavier Seuba, *The Global Regime for the Enforcement of Intellectual Property Rights*, Cambridge University Press, 2017

Studying intellectual property enforcement is akin to navigating the architecture of global governance, where law, trade, and human rights intersect in a delicate balance. It is a journey through the corridors of international institutions, national legislatures, and judicial systems, all converging on the question: how do we enforce intangible rights in a tangible world? Understanding IP enforcement equips individuals, be they creators, consumers, or regulators, with the tools to interpret the evolving landscape of rights and remedies in a globalized economy. In today's digital and innovation-driven era, the relevance of IP enforcement shines like a spotlight on the tension between proprietary control and public access. Within this context, Xavier Seuba, a distinguished scholar and lecturer at the Centre for International Intellectual Property Studies, University of Strasbourg, has made a timely and remarkable contribution through his book.

This book finds its place among seminal works such as Peter Drahos' *Information Feudalism* in 2017, Rochelle Dreyfuss' *Balancing Wealth and Health* in 2014, and Daniel Gervais' *The TRIPS Agreement: Drafting History and Analysis* in 2021. However, Seuba's work stands apart in its comprehensive treatment of enforcement mechanisms, its interdisciplinary lens, and its critical engagement with normative and empirical dimensions. Divided into five parts and fourteen chapters, the book traverses a wide array of themes, including the conceptual foundations of enforcement, international legal architecture, civil and criminal remedies, border measures, and the intersection of IP enforcement with human rights and economic development. The first question posed in the book is, **'**What does enforcement mean in the context of intellectual property?' This is answered with remarkable clarity in Chapter One. He defines 'to enforce' as 'to compel or ensure compliance with something, to give effect or force to a law or command.' Importantly, he stresses that enforcement is not merely about punishing infringement but about designing legal mechanisms that give effect to rights while maintaining a fair balance with broader societal interests. Chapter Two takes this inquiry further by examining the relationship between IP enforcement and human rights, highlighting how excessive or poorly designed enforcement can risk undermining access to knowledge and freedom of expression. Using examples such as access to medicines and freedom of expression, Seuba argues for a proportionality-based approach that respects fundamental rights while ensuring legal compliance. Chapter Three shifts the focus to the economics of enforcement. Here, Seuba critiques the lack of robust empirical data on the costs and benefits of enforcement regimes. He questions whether current enforcement models truly incentivize innovation or merely serve entrenched commercial interests. This chapter is particularly relevant in light of ongoing debates around patent evergreening and copyright term extensions.

The second part of the book, comprising Chapters Four to Six, addresses the international architecture of IP enforcement. Chapter Four maps the normative framework established by treaties such as TRIPS, WIPO conventions, and regional agreements. Seuba highlights the asymmetry in obligations and the challenges faced by developing countries in implementing these standards. Chapter Five examines the role of international bodies like the WTO Dispute

Settlement System and the International Court of Justice, and also discusses treaty-monitoring bodies. Chapter Six discusses legal transplantation, cautioning against the wholesale adoption of foreign enforcement models without contextual adaptation.

The third part of the book, spanning Chapters Seven to Nine, delves into civil enforcement mechanisms. Chapter Seven discusses measures for preserving evidence, such as Anton Piller orders, and their implications for due process. Chapter Eight focuses on interim injunctions, comparing standards across jurisdictions and emphasizing the need for judicial discretion. Chapter Nine examines the award of damages, including actual, punitive, and statutory damages. Seuba critiques the lack of consistency and transparency in damage calculations, calling for clearer guidelines and equitable remedies. To illustrate these concepts, Seuba uses landmark cases such as *eBay Inc. v. MercExchange* and *L'Oréal v. eBay International*, drawing attention to the evolving jurisprudence around online infringement and platform liability. These chapters are doctrinally rich and practically useful, especially for practitioners and judges.

The fourth part, comprising Chapters Ten to Twelve, addresses border measures. Chapter Ten outlines the global regime governing customs enforcement, including the seizure of counterfeit goods. Seuba critiques the expansion of border measures and their impact on legitimate trade. Chapter Eleven explores the intersection of border enforcement and free trade, arguing that aggressive IP enforcement can conflict with WTO principles and stifle economic development. Chapter Twelve returns to the human rights dimension, analyzing how border enforcement affects access to essential goods, particularly medicines. A memorable example in this section is the seizure of generic drugs in transit through the EU, which sparked international controversy and raised questions about the extraterritorial application of IP laws. Seuba uses this case to argue for safeguards and accountability in border enforcement practices.

The fifth and final part of the book, comprising Chapters Thirteen and Fourteen, deals with criminal enforcement. Chapter Thirteen surveys the global trend toward criminalizing IP infringement, including imprisonment and fines. Seuba critiques this trend, questioning its effectiveness and proportionality. Chapter Fourteen examines the interaction between criminal enforcement and human rights, emphasizing the need for fair trial standards and judicial oversight and the role of TRIPS Article 61 and its implementation across jurisdictions. He warns against the use of criminal sanctions as a tool for private enforcement, noting the risks of overreach and abuse.

The book is meticulously written and thoughtfully structured to explain the concepts and features of IP enforcement in a global context. However, the structure varies in depth and scope across chapters. For instance, Chapters Three and Eleven are more concise compared to the expansive treatment in Chapters Four and Ten. The book places greater emphasis on normative critique and theoretical analysis than on exhaustive case law. Unlike traditional textbooks, it reads more like a scholarly monograph, with each chapter building on the previous one to construct a cohesive argument. In addition, the book does not cover all emerging developments, such as the enforcement challenges posed by artificial intelligence and blockchain technologies. Nevertheless, it offers a thorough and accessible account of key enforcement issues, supported by case laws from various jurisdictions and contextualized within international legal frameworks. Each chapter concludes with a summary and critical reflections, which aid in comprehension and revision.

One of the most commendable features of the book is its interdisciplinary approach. Seuba seamlessly integrates legal doctrine, economic analysis, and human rights perspectives, making the book relevant not only to lawyers but also to policymakers, economists, and civil society actors. The use of visual aids, flowcharts, and comparative tables enhances readability and pedagogical value. It is easy to understand for those who are not formally trained in international law, as well as for students and professionals seeking a deeper understanding of global IP enforcement. The book serves as both a reference guide and a critical commentary, encouraging readers to question prevailing assumptions and explore alternative models. It challenges readers to think beyond the black-letter law and consider the broader implications of enforcement practices. While it may not address every emerging issue, it lays a strong foundation for future research and policy reform. For anyone interested in the global governance of intellectual property, this book is an indispensable resource.

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Anupama Goel & Seema Singh, *Reflections on Ancient Indian Jurisprudence in the Current Social & Judicial Set-Up*, First Edition, Mohan Law House, 2021.

Throughout the protracted period of the western colonization the Indian Jurist and the philosopher tenets and beliefs were dismissed or discerned inferior. However, this book offers a balanced scholarly view in regard to philosophy of law in ancient India. This review endeavors to evaluate and assess the effectiveness of all the theories discussed herein, highlight its weaknesses, while discussing its relevance in current academic space. This publication primarily focuses on the uniqueness of Indian society, and implies looking for solutions to current legal problems in its grounded history, importing structures from elsewhere risks ignoring its distinct challenges.

Prof. (Dr.) Anupama Goel, Professor of Law at National Law University, Delhi and Dr. Seema Singh Assistant Professor of Campus Law Centre, University of Delhi, Delhi; they both have compiled and edited the following volume. The prefaces written by them convey the book's focal theme, presenting a concise overview of the nation's past serving as a rationale for subsequent readings. The foreword is written Hon'ble Mr. Justice M. Rama Jois, Former Chief Justice of Punjab & Haryana High Court, wherein he gives his perspective; and erudite experience provides extensive practical expertise. It's a compilation of sixteen essays that encompasses the views of erudite jurists, eminent judges, distinguished scholars, and subject-matter experts. The authors aim to bring diverse perspectives, ranging from theoretical insights from the past to practical implications in present. First article by Justice K. Kanna explores the potential role of spiritual values in shaping individual and social life. The deprivation of *satya* or truthfulness in the legal system. There is drift in corruption and degradation in individuals and societal morality and this can only be ameliorated through *dharma* or individual moral code.

The articles by Dr. Viney Kapoor Mehra, Dr Anju Punet Singh and Krishna Kant Divedi focus on institutional metamorphosis from the ancient time. Dr. Mehra focuses on evidence-based verdict by judiciary. It doesn't matter if justice is fulfilled or not. In ancient philosophy the motive was not merely to secure justice, but also to ensure that it's embedded within the fabric of society. While Divedi focuses on the concept of speedy trial in India, examining transition from the instinct of basic survival to the feeling of revenge. While offering an understanding of legal processes such as, stages of investigation, enquiry, trial, bail and examination of the witness he asserts a speedy procedure of these. Suggests focusing on decentralization and ensuring an ancient India like-administration structure penetrating village level. Singh in a similar yet contrasting way talks about the changing administrative system, from the laws in the *Dharmasastra* to the codification of various laws, and focusing on the dispersion of justice contemporaryly with cultural trauma of the past. Further Dr. Mehra articles devoted to the ancient judicial system explore the criminal and civil law practices. It delineates on adoption of *rex non potest peccare*, where the king can do no wrong, endowing administration perception of superiority, and assumption of highest authority. But *dharamshsatra* articulates that even a king is under *dharma*. In the civil matter, where rich moneylenders are exploiting and capitalizing on the poor, *dvaigunya* and *damdupat* ensured that the rate of interest was fixed. Another notable theme explored is the environment by Amar Pal Singh and Seema Singh. A substantial number of existing laws are inadequate in addressing the escalating crises. They highlight the gradual detachment with the past ideas. Authors emphasize on ideas of *Aranyanisukta*, *Nadisukta*,

Apahsukta and *Prithvisukta* discerning nature as the expression of gods. They all envisage a personal bond with the natural environment on earth. Bhutan's happiness and a sensitive index impeded Buddhist philosophy to ensure sustainable development. The articles written by Ashish Mehra and Govind Geol engage with the issue of alternative dispute resolution, creating symbolism from similar cultures such as China. It exhibits avoidance of complexity and ensures timely solutions. The principal of *sama, dama, bheda, danda* ensured a four-level approach.

Additionally, an article on business law by Dr. Rishma Garg, provides details into *adamana* and *bhogyadhi* (mortgage and pledge), the liability and rights as mentioned in *the Smritis.* Likewise covering details of surety and guarantee practices. Pradip Kumar Das centralizes on the lack of protection of elderly people, elucidating in the eternal philosophy of mankind while discussing legal and judicial development: Rama Sharma and Mamata Sharma encourage dialogue on adequate compensation to rape victims. It emphasizes procedure ensuring all decisions are taken considering victim and dignity of women as a focal point of justice, suggesting varied principles from all the religions. Mriyunjay Kumar challenges colonial masters' notions of oriental despotism, criticizing the rationale of the system, contesting the idea behind the inorganic development of law. Alike Upasana Dhankhar implores the translation technique of Vedic texts, needing an associated system of interpretation as English words lack an equivalent of Sanskrit.

Punita Sharma emphasizes on the sources of Indian Jurisprudence, discussing the *Nyāya-śātra* she thoroughly assesses the traditional philosophical approach. Siddhartha Misra goes further back into the Indus Civilization uncovering the solution of present-day prejudice and bigotry in the peaceful coexistence of the Indus, offering measures to international. The last article is by Nistish Rai Parwani, discussing the notion of *Bharat* as a nation-state. The aim as mentioned in the book is, '*stop treating the legal system as the engine of social growth and rather make an attempt to treat the social system as the engine of legal growth.'*

Despite its contributions, the volume's primary limitation lies in the arrangement of the articles where the book could be divided in themes and then explored but it is arranged in haphazard manner. Also, the few ideas miss the historical development of *dharma*. Every society has its own constraints, ours lies in the *varna* or the caste system that was initially flexible. Regardless, with time, it turned out to be rigid and immobile, some arguments forget these evils. It also mentions *gram panchayat* as a solution to the judicial system or ADR but they lack in the standardization. There are local notions of hundreds of years that don't have any connection with the ancient principle of *dharma* and are very stringent and localized, retaining the depravity of the patriarchal and hierarchical society power being relished by the one belonging to the upper caste. Overall, it is a commendable work that synthesizes a wide range of information, bringing together extensive and varied information in one cohesive resource by *sixteen authors*. It is a valuable read for those who want to look beyond the conventional legal jurisprudence, where the emphasis is only on the western jurist, enriching the reader with new ideas and themes to explore. This book serves as an important reference for those engaged in policy planning and related disciplines as it directly provides solutions to prominent legal problems. Furthermore, providing direction to those seeking guidance for the research in a similar field, as it thoroughly examines the primary sources and gives a researcher a clue about traditional Indian Jurisprudence. It's also jotted down in a precise and unambiguous manner that any person who wants to acquire knowledge of the same can also read it.

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