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ADVOCATES AND SOLICITORS

March - April 2025

Legal Updates, Insights and Summary Judgements

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Insights & Updates: Key Perspectives, Partner Additions, Roundtables, and Recent Developments

26% Tariff on Indian Imports by the U.S. — What Should Businesses Do Now?

The latest move by the United States to impose a 26% reciprocal tariff on Indian imports is not just a trade story. It is a direct signal to Indian exporters, manufacturers, and policymakers to rethink their global positioning.

In this White & Brief alert, we break down:
• The Indian sectors most likely to be impacted
• What's exempt, what's at risk
• Possible policy response from India
• Immediate steps businesses should take to mitigate exposure

Whether you're in manufacturing, logistics, agriculture, or high-value exports like textiles and jewellery—this change will affect your margins, supply chains, and planning cycles.

Read the full bulletin and explore actionable strategies:

Let's use this moment to turn disruption into clarity—and clarity into a competitive edge.
https://www.linkedin.com/posts/white-and-brief-advocates-solicitors_us-tariffs-war-activity-7315940384780496897-RqHJ

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We are pleased to share that our Managing Partner, NILESH TRIBHUVANN , has been quoted in the Financial Express (India) print edition in a story titled:

"IBBI Mandates Robust Disclosure of Losses Carried Forward in CIRP."

To read the full article, click the link below:

https://www.financialexpress.com/business/banking-finance-ibbi-mandates-robust-disclosure-of-losses-carried-forward-in-cirp-3781094/

We are pleased to share that our Partner, Prateek Bansal, has been prominently featured in ETLegalWorld in an exclusive expert commentary on the evolving discourse around tariff rationalisation and its impact on India's supply chain and trade efficiency.

In the article, Prateek addresses key structural challenges that businesses face in navigating India's customs regime, including unpredictability in classification, multiplicity of rates, and increasing litigation at the assessment stage. He further articulates how tariff rationalisation is not merely a tax reform issue, but a **strategic lever for economic competitiveness**, industrial ease-of-doing-business, and global investor confidence.

"A rationalised tariff structure reduces classification disputes and litigation at the time of assessment, which in turn facilitates easier and more efficient movement of goods," he stated.

He also emphasised the need for a simplified and harmonised customs structure that supports Make in India, improves global supply chain integration, and minimises regulatory friction—especially for sectors like manufacturing, automotive, logistics, and e-commerce.

Read the full article here: https://lnkd.in/gznQaFAt

Our Partner Prateek Bansal recently shared his thoughts on GST registration reforms in a feature published by ETCFO, titled "*CBIC's GST compliance reforms can ease startup woes, rein in officer discretion, say experts.*"

The article primarily covers **Instruction No. 03/2025-GST**, issued on **April 17, 2025** by the **GST Policy Wing of CBIC**, aimed at standardizing GST registration procedures and curbing officer discretion.

In his comments, Prateek highlighted the importance of legal clarity and time-bound processes.

Read the full article here: https://lnkd.in/gQMM9CvP

We are delighted to share that our partner Prateek Bansal has been featured in Hindustan Times article titled - New IT bill allows officers to access your social media, email accounts if tax evasion suspected.

To read the full article click here :

https://www.hindustantimes.com/business/new-it-bill-allows-officers-to-access-your-social-media-email-accounts-if-tax-evasion-suspected-101741169657980.html

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Recent Judgements

ARBITRATION

Rahul Verma & Ors. v. Rampat Lal Verma & Ors. (Petition for Special Leave to Appeal (C) No. 4330 of 2025) vs. Union of India

In the instant case, the Hon'ble Supreme Court reaffirmed that an arbitration agreement does not cease to exist upon the death of the party and can be enforced by or against the legal representatives of the deceased.

The dispute arose between a surviving partner and the legal heirs of a deceased partner of a Partnership Firm. The legal heirs of one of the deceased partners i.e. the Petitioners had filed a Commercial Suit No.02/2024 seeking rendition of accounts. The Respondents being the surviving partners and other heirs invoked the arbitration clause contained in the Partnership Deed and filed a Petition as Misc (J) Case No. 206/2024 under Section 8 of the Arbitration and Conciliation Act, 1996, ("Act") seeking reference to the arbitration. However, the Civil Judge (Senior Divison), Dilbrugarh ("Ld. Trial Court") dismissed the said Petition and thereby refused to refer the matter to the arbitration. Being aggrieved the Respondents filed an appeal being Arbitration Appeal in Case No. Arb. A/6/2024 before the Hon'ble Gauhati High Court under Section 37(1)(a) of the said Act. The Hon'ble High Court allowed the said Arbitration Appeal, and set aside the order passed by the Ld. Trial Court and referred the matter to arbitration.

Being aggrieved, the Petitioners filed the present Special Leave Petition before the Hon'ble Supreme Court on the grounds that the arbitration clause was not enforceable against the Petitioners as they were the non-signatories to the said Partnership Deed. The following two (2) issues came up before the Hon'ble Supreme Court for consideration:

(i) Whether the legal heirs of a deceased partner, being non-signatories to the partnership deed and lacking explicit consent, could still be bound by the arbitration agreement?

(ii) Whether the right to sue for the rendition of accounts survives to the legal heirs of the deceased partner, allowing them to invoke the arbitration clause in the partnership deed?

The Supreme Court relied on the judgment in the matter of Ravi Prakash Goel v. Chandra Prakash Goel & Anr., (2008) 13 SCC 667, the Hon'ble Supreme Court held that that an arbitration clause in a partnership agreements survives the death of the partners and can be invoked by or against their legal representatives

The Hon'ble Supreme Court interpreted Clause 15 of the Partnership Deed, which explicitly provided for arbitration in disputes concerning the firm's dissolution or continuation, and dismissed the said Special Leave Petition andheld that the legal heirs had stepped into the shoes of the deceased partner and are therefore bound by the arbitration clause. The Arbitration Agreement survives the death of a partner and binds their legal representatives.

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Lords Inn Hotels and Resorts vs. Pushpam Resorts LLP & Ors. (Commercial Arbitration Petition No. 14 of 2025)

In the instant case the Hon'ble Bombay High Court has addressed a fundamental question in arbitration law i.e. whether an arbitration agreement can be inferred from an ambiguous contract.

A Resort Management Agreement dated 10.02.2021 ("Resort Management Agreement") was entered into between the Applicant and Respondents. Under the said Resort Management Agreement, the Applicant was responsible for the management of the resort owned by the Respondents in Karjat. However, subsequently dispute arose between the parties and on 08.10.2024, the Respondents terminated the said Resort Management Agreement effective from 15.12.2024. In response thereto, the Applicant/Petitioner vide its advocates letter 26.10.2024 contested the said termination citing breaches committed by Respondents under the Resort Management Agreement . The Applicant/Petitioner, vide its letter dated 07.12.2024 invoked arbitration clause contained in the said Resort Management Agreement. In response thereto, the Respondents, vide its reply dated 12.12.2024 denied the existence of a valid arbitration agreement in terms of Section 7 of the Arbitration and Conciliation Act, 1996 ("Act").

The said dispute led to the two proceedings before the Hon'ble Bombay High Court. Firstly, a Petition was filed under Section 9 of the Act seeking interim reliefs to prevent the Applicant/Petitioner's removal from the resort. Secondly, an application under Section 11 of the Act was filed seeking appointment of the arbitrator.

The core of the dispute centred on whether the Resort Management Agreement included a valid arbitration clause as the Applicant's argued or if the contract failed to fulfil the statutory requirements as contained under Section 7 of the Act.

The Applicant/Petitioner argued that Article XXIV sufficiently indicated the parties' intention to arbitrate, while Respondents contended that it only provided for governing law and jurisdiction without an arbitration clause. The court noted that under Section 7(4) and 7(5) of the said Act, an arbitration agreement may exist if referenced in writing, including electronic communications. Upon reviewing the said Resort Management Agreement, the court found ambiguity regarding arbitration clause.

The Hon'ble Bombay High Court applied the business efficacy test to the case at hand and held that the parties intention to arbitrate was discernible despite the missing arbitration clause. The Hon'ble Bombay High Court appointed an arbitrator under Section 11 of the Act. Furthermore, the Hon'ble Bombay High Court, also directed that the said Petition under Section 9 of the Act be treated as an application under Section 17 of the Act, allowing the Arbitral Tribunal to decide on the interim relief.

GENERAL CORPORATE

Himanshu Singh, Suspended Director of Kriti Prakashan Private Limited Versus HDFC Bank Limited and Anr.

Citation: Company Appeal (AT) (Insolvency) No. 336 of 2025

The National Company Law Appellate Tribunal (NCLAT) New Delhi has provided much-needed clarity regarding 12A of the Insolvency and Bankruptcy Code, 2016 (IBC). It held that no straight jacket formula can be laid down for adjudication by the Adjudicating Authority of an application under 12A and the objections filed therein.

The case revolves around the interpretation and application of Section 12A of the Insolvency and Bankruptcy Code, 2016 (IBC). This section allows for the withdrawal of a Corporate Insolvency Resolution Process (CIRP) after its admission. The National Company Law Appellate Tribunal (NCLAT) addressed the fundamental issue of whether the withdrawal application should be allowed despite objections from another creditor and the effect of such objections on the adjudication process. The decision, in this case, has significant implications for creditors, corporate debtors, and resolution professionals dealing with Section 12A applications.

The proceedings began when the Small Industrial Development Bank of India (SIDBI) filed an application under Section 7 of the IBC against the corporate debtor Kriti Prakashan Private Limited. After the admission of the CIRP, the corporate debtor reached a settlement with SIDBI and fully repaid the outstanding amount. Consequently, SIDBI issued a No-Objection Certificate (NOC), and the Interim Resolution Professional (IRP) filed an application under Section 12A for the withdrawal of the CIRP. However, HDFC Bank, another financial creditor of the corporate debtor, subsequently filed a claim of Rs. 4.30 crore, arguing that the withdrawal should not be allowed as it was a stakeholder in the insolvency process. When the Adjudicating Authority (NCLT) rejected the Section 12A application, the matter was appealed before the NCLAT.

NCLAT was faced with several critical legal issues including the applicability of Section 12A before the Constitution of the Committee of Creditors (CoC), the nature of CIRP as an "in rem" proceeding, and the discretion of the Adjudicating Authority in considering objections from other creditors among others.

Appellants contended that the application under Section 12A was filed before the constitution of the CoC. Hence, there was no legal requirement for obtaining consent from other creditors, and when the debt owed to SIDBI who are the original applicants, was fully settled there was no reason to continue the CIRP. The Adjudicating Authority should not have entertained objections from another creditor when the application for withdrawal was filed before the formation of the CoC. The Supreme Court in a previous case of GLAS Trust Company LLC v. BYJU Raveendran & Ors. (2024) affirmed that withdrawal applications before CoC formation should be treated differently from those after CoC formation.

HDFC Bank ("respondents") contended that the CIRP, once admitted, becomes "in rem" and it affects all creditors, not just the applicant's financial creditor. For this reason, a settlement with one of the creditors does not negate the claims of other creditors who may have pending dues against the corporate debtor that are not settled. The Supreme Court in a previous precedent of Swiss Ribbons Ltd. & Anr. v. Union of India & Ors. (2019) held that the withdrawal of CIRP applications should be decided after considering all relevant factors and circumstances affecting all concerned parties. Hence, allowing withdrawal without considering claims from other financial creditors is unfair and contrary to the collective resolution mechanism envisaged under IBC.

After considering relevant facts, circumstances, and arguments of the parties, the NCLAT concluded that no straight jacket formula can be laid down for adjudication by the Adjudicating Authority of a 12A application and the objections filed therein. The facts of each application under 12A and objections therein need to be looked into before taking a decision as to whether the application under 12A be allowed or rejected. The Adjudicating Authority has discretion in assessing whether to allow or reject such an application based on specific circumstances.

The Tribunal reaffirmed the principle that once CIRP is admitted, it impacts all stakeholders, not just the creditor who initiated the insolvency proceedings. Since HDFC Bank had a substantial claim, it was entitled to object to the withdrawal application. Further, the Tribunal clarified that there is no absolute rule that objections from other creditors must always be entertained. If the settlement involves the majority of claims, this may be a factor weighing in favor of withdrawal. The mere fact that a stakeholder of the corporate debtor has filed an objection before the constitution of the CoC, itself cannot be a reason to reject the 12A application. It is the responsibility of the Adjudicating Authority to advert to the relevant factors which may include the nature and quantum of claim of the stakeholders.

This ruling provides clarity on the adjudication of Section 12A applications under the IBC. It reinforces that insolvency proceedings, once initiated, impact all creditors, not just the applicant. This ruling is poised to serve as a guiding principle for future cases involving Section 12A withdrawals in corporate insolvency matters.

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SARANGA ANILKUMAR AGGARWAL VERSUS BHAVESH DHIRAJLAL SHETH and ORS.

Insolvency and Bankruptcy Code

Citation: CIVIL APPEAL NO(S). 4048 OF 2024; MARCH 04, 2025

The instant case dealt with a critical issue regarding the Moratorium under Section 96 of the IBC. It made it clear that such a moratorium does not extend to regulatory penalties imposed by regulatory bodies, because the penalties arising from regulatory infractions are beyond the ambit of "debt" under IBC.

The Supreme Court clarified that the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 (IBC), does not shield an individual debtor from the execution of penalties imposed under the Consumer Protection Act, 1986 (CP ACT). This judgment provides that the service providers are not allowed to evade penalties by invoking insolvency proceedings. The decision distinguishes between financial obligations that may be restructured under the IBC and penalties that serve a regulatory and deterrent function. It is now clear that the insolvency proceedings are not meant to be used to nullify statutory liabilities.

The present case posed a unique situation since it did not involve a mere financial dispute but was concerned with the enforcement of consumer rights through regulatory penalties. Given that the legislative intent behind the CP Act is to ensure compliance with consumer welfare measures, the court was posed with the responsibility to balance statutory application with consumer rights.

The case arose from a dispute involving a real estate developer ("appellant") who failed to deliver possession of residential units to homebuyers within the agreed timeline. Homebuyers approached the National Consumer Disputes Redressal Commission (NCDRC), which ruled in their favor and imposed multiple penalties on the developer under Section 27 of the Consumer Protection Act.

When the developer failed to comply with the NCDRC's order, the homebuyers initiated execution proceedings. In response, the appellant sought a stay on the penalty proceedings before the NCDRC, on the ground that an application under Section 95 of the Insolvency and Bankruptcy Code, 2016[2] has been filed against them, triggering an interim moratorium under Section 96 of the IBC.

The NCDRC rejected this argument, stating that penalties imposed under consumer protection laws do not fall within the ambit of the IBC moratorium. The developer then appealed to the Supreme Court, seeking a ruling that the interim moratorium protected him from enforcement of the penalties. The Apex Court was called upon to adjudicate whether execution proceedings under Section 27 of the CP Act, can also be stayed during an interim moratorium under Section 96 of the IBC.

Appellants argued that the interim moratorium under Section 96 of the IBC stays all "legal actions or proceedings in respect of any debt." Proceedings under Section 27 of the Consumer Protection Act are similar to debt recovery actions and should be stayed. The appellant placed reliance on a previous case of P. Mohanraj and Others v. Shah Brothers Ispat Private Limited (2021), in which it was held that proceedings under Section 138 of the NI Act are covered under "any legal action or proceeding pending" even though they are quasi-criminal in nature, thus also staying criminal proceedings against the corporate debtor. The appellant further contended that insolvency proceedings should take precedence over all other claims under Section 96 of the IBC for interim moratoriums applicable to personal guarantors and individuals and unless such a stay is granted, the insolvency process will be frustrated, and the appellant will be subjected to conflicting proceedings across multiple fora. Hence, the execution proceeding pending against the appellant must stay till the operation of the interim moratorium under Section 96 of the IBC.

Respondents contended that the penalties imposed by the NCDRC are not merely monetary claims but punitive measures to deter unfair trade practices. The respondents further submitted that the moratorium imposed under Section 96 of the IBC does not extend to criminal proceedings under Section 27 of the CP Act, it is limited to recovery actions and civil proceedings against the debtor.

Section 27 of the CP Act provides for punitive action against those who fail to comply with orders of the consumer forum. It is penal in nature which is distinct from debt recovery proceedings. The purpose of the moratorium under IBC is to protect the assets of the corporate debtor and the personal guarantor from alienation. However, not all debts are covered under this protection. Section 94 of the IBC clarifies that the moratorium applies only to debts that are not "excluded debts" under Section 79(15) of the IBC.

After considering the facts, circumstances, and arguments of the parties in dispute, the Supreme Court ruled that penalties imposed under the Consumer Protection Act do not fall within the definition of "debt" under the IBC. There is a fundamental distinction between civil and criminal proceedings concerning a debt moratorium. While civil proceedings are generally stayed under IBC provisions, criminal proceedings, including penalty enforcement, do not automatically fall within its ambit unless explicitly stated by law. The penalties imposed by the NCDRC are regulatory in nature and arise due to noncompliance with consumer protection laws. They are distinct from "debt recovery proceedings" under the IBC
Regarding the Scope of Interim Moratorium Under Section 9, the Court clarified that a moratorium under Section 96 of the IBC is distinct from a corporate moratorium under Section 14 of the IBC. Section 96 of the IBC applies to individuals and personal guarantors and provides that during the interim moratorium period, "any legal action or proceedings relating to any debt shall be deemed to have been stayed." However, this provision applies only to "debt" as defined under the IBC and not to regulatory penalties imposed for non-compliance with consumer protection laws. The legislative intent behind the moratorium is to ensure that the debtor's assets are preserved for an efficient resolution process and to prevent creditors from taking unilateral actions that may frustrate the objective of insolvency proceedings. However, the protection under the moratorium does not cover all forms of liabilities, particularly those classified as "excluded debts" under Section 79(15) of the IBC.

Moreover, Section 27 of the CP Act empowers consumers fora to impose penalties to ensure adherence to consumer protection norms. These penalties do not arise from any "debt" owed to a creditor but rather from the failure to comply with the remedial mechanisms established under consumer law. Unlike a criminal prosecution, which requires the establishment of mens rea, the penalties imposed by NCDRC are regulatory in nature and aim to protect the public interest rather than to punish criminal behavior. In the present case, the damages awarded by the NCDRC arise from a consumer dispute, where the appellant has been held liable for deficiency in service. Such damages are not in the nature of ordinary contractual debts but rather serve to compensate the consumers for the loss suffered and to deter unethical business practices.

The court reiterated that IBC cannot Be used as a shield to evade consumer protection laws. They should not become a mechanism for individuals to evade statutory obligations. Allowing a stay on consumer protection penalties would defeat the purpose of regulatory enforcement mechanisms. The IBC, being a special law meant to balance the interests of all stakeholders, does not intend to provide relief to those who have been held liable for statutory breaches or misconduct.

The Supreme Court distinguished the present case from P. Mohanraj, where criminal proceedings under Section 138 of the NI Act were stayed under the IBC moratorium. The Court noted that Section 138 cases involve dishonored cheques, which directly relate to financial debts, whereas penalties under the Consumer Protection Act serve a punitive function. The court noted that there is a distinction between debt recovery proceedings and punitive actions, and therefore all criminal liabilities do not fall within the scope of the moratorium unless explicitly covered under the IBC. Consequently, penalties imposed by regulatory bodies in the public interest cannot be stayed merely because insolvency proceedings are ongoing.

The Supreme Court’s judgment reaffirms that statutory penalties under consumer protection laws cannot be shielded by an IBC moratorium. By clarifying that regulatory fines serve a distinct purpose from financial debts, the ruling ensures that consumer protection laws remain enforceable. The present case dealt with more than a mere financial dispute. It concerned the enforcement of consumer rights through regulatory penalties. Given that the legislative intent behind the CP Act is to ensure compliance with consumer welfare measures, staying such penalties would be contrary to public policy.

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Supreme Court Affirms Res Judicata's Reach Over SEBI Orders

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Case Title: Securities and Exchange Board of India versus Ram Kishori Gupta & Anr.
Neutral Citation: 2025 INSC 454

The Supreme Court decided that res judicata applies to quasi-judicial proceedings. According to the ruling, SEBI would not be able to reopen the issue once it had passed a final order in an enforcement matter without an adequate legal justification especially one which has become final and acted upon. This has confirmed the principles of finality of proceedings and the application of res judicata to administrative actions. With regard to proceedings against M/s. Vital Communications Ltd. (VCL), a publicly listed company, shares of which were traded on various stock exchanges in India, an action was taken against VCL by SEBI for allegedly issuing misleading advertisements pertaining to share buy backs, bonus issues and preferential allotments, which were alleged to have falsely represented the value of shares by stating them at ₹30, while actually traded in the range of ₹3 to ₹12.

Punishments were levied under Section 11B of the SEBI Act, 1992, by SEBI in its order dated 31 July 2014. With lesser penal provisions against some persons while some directors including the former CMD were exonerated of charges. This order barred VCL and some of its directors/promoters from dealing in securities for a period of two years.

VCL challenged this order before the SAT, which remanded the matter back to SEBI thereafter. Meanwhile, certain individual investors allegedly misled by the ads commenced separate proceedings before the SAT, praying for compensation. SEBI thereafter issued fresh show-cause notices and tried to re-initiate proceedings on the same set of facts, which resulted in the passing of fresh directions and an order of disgorgement in 2018.

SAT directed SEBI to pay the aggrieved investors. SEBI went on to appeal against this direction before the Supreme Court, questioning the applicability of the principle of res judicata and defending its powers to reignite the matter.

The Supreme Court took note that once SEBI exercised its regulatory discretion and passed a final order in 2014 after the due adjudicatory process, it could not lawfully have reopened the proceedings without fresh cause and just cause. The Court noted that while the SEBI Act empowers SEBI to act in the interest of market integrity and investor protection, such powers are bounded by public policy principles that require closure, certainty, and procedural fairness.

The Court rejected SEBI's argument that res judicata, which is normally invoked before civil courts to bring closure to litigation through Section 11 of the Code of Civil Procedure (CPC), is not applicable to regulatory bodies such as SEBI. The Court clarified that SAT was not bound by CPC; however, such freedom would not extend to proceedings before SEBI, especially those ending in final orders affecting rights and liabilities. Thus, SEBI could not argue that it ought to be exempted from the application of the wider principle of res-judicata, as that principle itself is based on public policy and the avoidance of vexatious litigation.

It was observed that reopening anything that had already been resolved on the basis of any other set of facts or legal consideration does not just violate legal certainty but also disturbs the equilibrium of the market and investor faith. The Court observed that the SEBI Act directs that no further action can be taken by SEBI on that same cause of action." Disgorgement, in the Court's opinion, was a matter of conscious regulatory choice on the part of SEBI in 2014. Once SEBI adopted that decision, it could not thereafter justify issuing another disgorgement order years later on the same cause of action. The Supreme Court criticized SEBI for its inaction and delay. SEBI's conduct, according to the Supreme Court, indicated a time gap between the final order and reopening of the matter. The Supreme Court also pointed out the indecision and inconsistency of SEBI as an institution.

Further, the Court noted that the claims for compensation raised were already adjudicated and finalized by the SAT in April 2013. Accordingly, it was not open to the parties to try and reopen their claims and attach further liability to SEBI. Hence the Supreme Court allowed SEBI's appeal and set aside the judgment of the SAT which had awarded compensation and ordered the second round of proceedings before SEBI. The Court affirmed that regulatory certainty and procedural finality have to be maintained in financial governance. Henceforth, the Court barred any further actions on the same cause of action by SEBI, whereby the principle of res judicata would achieve legal closure.

This judgment strengthens the jurisprudence around regulatory discipline and the principle that even statutory authorities must respect the rule of finality in the interest of protecting both regulated entities and investors.

SC Clarifies Demarcation Between Avoidance & Fraudulent Transactions Under IBC

Case Title: Piramal Capital and Housing Finance Limited (Formerly Known as Dewan Housing Finance Corporation Limited) v. 63 Moons Technologies Limited & Others Neutral Citation: 2025 INSC 421

In a landmark judgment, the Supreme Court of India has concluded that applications filed in respect of fraudulent and wrongful trading carried out by a corporate debtor (CD)cannot be termed as "Avoidance Applications" under the Insolvency and Bankruptcy Code, 2016 (IBC). The ruling was delivered on the civil appeals, including one filed by Piramal Capital and Housing Finance Limited (formerly known as DHFL) against the judgment of the National Company Law Appellate Tribunal, New Delhi. Dewan Housing Finance Corporation Limited (DHFL), an important non-banking financial company regulated by the National Housing Bank and the Reserve Bank of India that had availed large-scale financial assistance from various lenders through many instruments, such as, loans, debentures, public deposits, and external commercial borrowings, has been alleged to have executed one of the largest scams in India concerning allegations such as money laundering, loan fraud, abuse of shell companies, and fake borrowers.

The Reserve Bank of India took a decision to supersede the board of DHFL in November 2019 because of the growing allegations and initiated corporate insolvency proceedings (CIRP) under IBC by filing a petition before the National Company Law Tribunal (NCLT). NCLT admitted the petition and appointed an administrator. Piramal Capital had submitted a resolution plan that was ratified by the Committee of Creditors (CoC).

However, this resolution plan was being contested by 63 Moons Technologies Limited as an aggrieved financial creditor before the NCLAT. The NCLAT particularly objected to the clause of the resolution plan that entitled the Successful Resolution Applicant (SRA), on receipt of approval for the plan, to appropriate recoveries from applications filed relating to a claim under Section 66 of the IBC (pertaining to fraudulent and wrongful trading). On the orders of the NCLAT CoC, to reconsider the plan, the matter has been taken up by the Supreme Court. The primary dispute between the parties before the Supreme Court was whether applications pertaining to fraudulent and wrongful trading under Section 66 of the IBC should be treated on par with "avoidance applications", which are typically filed under Sections 43, 45, or 50 governing preferential, undervalued, and extortionate transactions.

It was held by the Court that such applications are different by their very nature and must be treated under different provisions, as applications under Section 66 fall under Chapter VI of the IBC, while avoidance applications come under Chapter III. The adjudicating authority shall thus distinguish these different types of applications and adjudicate the same accordingly.

In emphasizing its view, the Court stressed that even if a resolution professional were to file a composite application covering both Chapter III and Chapter VI, the NCLT will have to apply the proper legal framework to each claim with utmost care. The Supreme Court reiterated that the interference of judicial authorities in a resolution plan after its approval by the CoC with the requisite majority is, however, limited to checking the fulfillment of the conditions prescribed under Section 30(2) of the IBC. The court emphasized that commercial wisdom resides with the CoC and thus any such compliant plan should be binding upon all the stakeholders, including dissenting creditors.

The Court also went on to criticize the concept adopted by the NCLAT that recoveries in Section 66 applications cannot be appropriated by the SRA and such approach would go beyond the jurisdictional limits prescribed under Section 61 of the IBC. It further elaborated that Section 26 of the IBC permits applications for avoidance, including Section 66 ones, to move parallel with the CIRP and does not inhibit merger of recovery provisions into resolution plans. The conclusions of the Supreme Court were that the NCLAT had overstepped its jurisdiction, incorrectly fused together the legal provisions under Chapters III and VI of the IBC. It held that recoveries from fraudulent and wrongful trading cannot be perforated out of the fold of resolution plans.

The Court set aside the judgment of the NCLAT and restored the original order of the NCLT approving Piramal's resolution plan. The NCLT was directed to decide the pending applications filed by the Administrator in accordance with the specific provisions under which they were filed, namely, under Sections 44, 48, 49, and 51 for avoiding transactions and Section 66 for fraudulent or wrongful trading.
Through this order, the Court has provided much-needed clarity on the scope and categorization of the various legal actions under the IBC framework, thereby preserving the sanctity of the commercial conclusions of the CoC and upholding the structural integrity of the resolution process.

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CRIMINAL

GYANENDRA SINGH @ RAJA SINGH VERSUS STATE OF U.P.
Citation : 2025 INSC 335

In the instant case, the Apex Court was tasked with balancing two acts ie the Indian Penal Code, 1860 (IPC) and the Protection of Children from Sexual Offences Act, 2012 (POCSO) providing punishment for similar offenses. The case pertains to the appellant who was convicted of sexually assaulting his minor daughter under Sections 376(2)(f) and 376(2)(i) of the IPC and Sections 3 and 4 of the POCSO Act. He was sentenced to undergo life imprisonment by the Trial Court as per the provisions of IPC. This sentence was later modified by the High Court who then converted his punishment to life imprisonment for the remainder of his natural life. When the issue reached the Supreme Court via an appeal, the court affirmed the conviction but along with it, it also addressed the issue of sentencing as per two contravening laws ie IPC and POCSO. The appellant contended that since the offenses for which he has been convicted were covered under both IPC and POCSO, the special law POCSO should override the general law IPC and hence, the lesser punishment prescribed under the POCSO Act should apply. The appellant further added that his interpretation is in conformity with Section 42A of the POCSO Act which states that the provisions of POCSO being an addition to and not in derogation of the provisions of any other law for the time being in force will prevail over any other law in case of a conflict between POCSO and the other law.

For these reasons, the Apex court was bestowed with the responsibility to address several key legal issues including whether the punishment should be determined under the IPC or POCSO Act where the offense is punishable under both, and whether the High Court erred in modifying the life imprisonment to imprisonment for the remainder of the convict’s natural life without a State appeal for enhancement.

It must be noted that Section 42 of the POCSO Act explicitly provides that if an act is punishable under both POCSO and IPC, the offender shall receive the punishment prescribed under the statute wherein the punishment is greater in degree. Section 42A states that in case of inconsistency between the POCSO Act and any other law, the POCSO Act will prevail. The Supreme Court distinguished between the scope of these provisions by stating that Section 42 deals with the quantum of punishment and mandates applying the greater punishment, whereas Section 42A pertains to procedural aspects and does not override Section 42. In other words, a combined reading of sections reveals the priority of IPC over the degree of punishment and the priority of POCSO, being a special law, in other cases.

In the factual matrix of the current scenario, since Sections 376(2)(f) and 376(2)(i) of IPC prescribe a higher punishment (life imprisonment for the remainder of natural life) compared to POCSO's minimum 10 years up to life imprisonment, it was pertinent for the Court to impose punishment provided under IPC as per Section 42 of the POCSO. For these reasons, the Court rejected the appellant's argument that POCSO should override IPC under Section 42A even if it is a special statute because Section 42A does not negate Section 42 but only applies where there is an inconsistency. Since both laws provided for punishment, the one with the greater severity (IPC) applied. The High Court in its judgment interpreted the Trial Court's sentence of "life imprisonment" as meaning imprisonment for the remainder of the convict's natural life, effectively enhancing the sentence. The Supreme Court found this problematic. The Trial Court had discretion under IPC to impose life imprisonment without it necessarily extending to natural life. The High Court could not enhance the sentence in an appeal filed by the convict unless the prosecution had sought enhancement which in the present matter was not the case.

The Apex Court relied on Swamy Shraddananda v. State of Karnataka Case (2008), where it was held that in cases not warranting the death penalty but requiring a stricter punishment than 14 years of life imprisonment, courts could fix imprisonment terms beyond 14 years but not necessarily for the remainder of life. This made the Supreme Court reinstate the Trial Court's sentence of life imprisonment, removing the High Court's modification that extended it to the convict's natural life.

The Supreme Court also considered precedents allowing for fixed-term life imprisonment. One such case was Navas v. State of Kerala (2024), wherein the Court recognized a middle-ground approach stating that life imprisonment does not necessarily mean for the convict's natural life. In another case, Veerendra v. State of M.P. (2022), a life sentence was interpreted to mean 30 years of actual imprisonment for sexual offenses under IPC and POCSO.

This makes it clear that there is no mandate by law or a blanket life sentence compulsorily extending to the convict's natural life. Accordingly, Conviction under IPC was upheld. The court observed that the High Court erred in modifying the life imprisonment to imprisonment for the remainder of natural life in the absence of a State appeal. Hence, the sentence was restored to simple life imprisonment without the additional stipulation that it would last until the convict's natural life which was originally the pronouncement by the Trial Court. A fine of Rs. 5,00,000/- was imposed, payable to the victim, with a two-year additional imprisonment in case of default. Both sentences are to run concurrently.

This makes it evident that the Supreme Court has reaffirmed that when an offense is punishable under both the IPC and POCSO Act, the statute prescribing the greater punishment applies. It also reaffirmed that High Courts cannot unilaterally enhance a sentence in an appeal filed by a convict without a State appeal since there is no such legal mandate on it. This ruling provides clarity on sentencing jurisprudence in cases involving overlapping penal provisions.

Case : P Madhavan Pillai vs Rajendran Unnithan and others

Citation: CIVIL APPEAL NO(S).3530-3531 OF 2025

The exercise of jurisdiction by various investigation agencies like the Central Bureau of Investigation (CBI), the Enforcement Directorate (ED), etc has been a topic of discussion and judicial scrutiny for quite some time. One of the reasons is the overlapping jurisdiction over the classes of offenses both deal with. There are many classes of offenses that overlap directly and there are some which do indirectly. Another reason is the excess use of jurisdiction exceeding the limit of powers bestowed on these agencies. In many instances, it also leads to infringement of the accused person's rights. Nevertheless, this becomes a reason for confusion if not contention requisitioning the intervention by the judicial institutions. As the category of cases keeps evolving, the interpretation and application of laws and regulations by the judiciary have also been playing an active role in providing much-needed clarity. One such clarity has been provided in the instant case with regard to the role of ED.

The instant case of P. Madhavan Pillai v. Rajendran Unnithan is a significant ruling that addresses critical aspects of the Prevention of Money Laundering Act, 2002 (PMLA) and the role of the Enforcement Directorate (ED) in initiating investigations. This case, along with precedents like Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office (2024), helps delineate the limits of the ED's powers and provides judicial guidance on procedural safeguards under the PMLA. In the Tarsem Lal case, the Supreme Court limited the ED's powers vis the rights of the accused by stating that the ED has no power to arrest a person under the PMLA after a cognizance has been taken by a Special Court.

The Court also noted that after the Special Court takes cognizance, proceedings shall be governed under CrPC because the trial procedure under CrPC is not inconsistent with PMLA. Only when the procedures under the PMLA are in contradiction with the CrPC, the special courts should give priority to the PMLA. If ED wants to take a person into custody, they have to apply to the Court which may grant permission. An appearance after a summons will not be "deemed" custody.

In the instant case, P. Madhavan Pillai ("petitioner"), was subjected to an investigation by the ED("respondents") under the PMLA based on alleged financial irregularities linked to proceeds of crime. The dispute arose when the petitioner challenged the ED's actions, contending that the agency had initiated an investigation without due compliance with procedural safeguards under the Act. He sought relief from the Special Court, arguing that the initiation of an Enforcement Case Information Report (ECIR) was done arbitrarily and without any legal backing. He corroborated his claims with the fact that the Supreme Court had previously recognized the need for strict procedural adherence in economic offenses in multiple judicial pronouncements.

The case raised several pertinent legal issues, including judicial oversight of the ED's investigation, the scope of the ED's powers under PMLA, and the applicability of precedents.

The case of the petitioner was based on infringement of various rights including constitutional right of procedural fairness in criminal investigations enshrined in the Constitution of India. It was argued that the ED could not proceed with an investigation unless a predicate offense had been duly established and cognizance taken by the appropriate court.

The ED argued that as per the statute PMLA which is one of the primary legislations granting powers to it, it is intra vires to investigate financial crimes and that judicial interference in this process would hinder its ability to combat its foremost task of prevention of money laundering. They further contended that PMLA has an overriding effect over general provisions of the Code of Criminal Procedure (CrPC), as per which the agency's actions were lawful. Further, judicial intervention at the stage of initiating an ECIR could set a dangerous precedent for other cases.

The court, after examining the arguments along with the facts and circumstances of the case, ruled in favor of the petitioner. The court held that ED's powers are extensive but not unchecked. Hence, it must adhere to statutory safeguards under the PMLA. Judicial oversight is necessary to prevent the misuse of investigative powers.

In a previous judgment of Tarsem Lal, the Supreme Court ruled that once the Special Court takes cognizance of a complaint under Section 44(1)(b) of the PMLA, the ED cannot arrest the accused under Section 19 of the Act. This decision established crucial principles, including that summons should be the first recourse in securing an accused's presence, with arrest warrants issued only in cases of non-cooperation. It also held that Section 88 of the CrPC, which allows an accused to furnish bonds for appearance, does not equate to bail, and thus, the stringent conditions of Section 45 of the PMLA do not apply. These principles reaffirm the position taken by P. Madhavan Pillai, underscoring that investigative agencies must operate within a legal framework and that courts have a role in ensuring procedural fairness.

ED is a multi-disciplinary organization responsible for conducting an investigation of offenses of money laundering and violations of foreign exchange laws. The statutory functions of the Directorate include the enforcement of various Acts including the Foreign Exchange Management Act, 1999 (FEMA), the Fugitive Economic Offenders Act, 2018 (FEOA), PMLA, etc. PMLA is a criminal law enacted to prevent money laundering and matters connected therewith or incidental thereto. However, the powers of ED are not unchecked and cannot be exercised arbitrarily leading to violation of individual rights. In case of arbitrary use of power leading to infringement of individual rights, ED's actions are subject to judicial intervention. The instant case is a landmark ruling in the domain of procedural fairness in financial crime investigations under the PMLA. It highlights that ED's investigative powers are subject to judicial oversight. This solidifies individual rights and shields them from potential abuse of authority.

WHITE & BRIEF
ADVOCATES AND SOLICITORS

What Must Police Follow During Arrests? Supreme Court Shares Guidelines, Warns of Strict Action for Violations

Case Title: Vijay Pal Yadav vs Mamta Singh and others Special Leave to Appeal (C) No(s). 20330/2023

In a significant ruling, the Supreme Court of India expressed its deep concern over the recurrent breach of arrest procedures by police officers. The court went on to reiterate that constitutional and legal safeguards cover accused persons and stated that further transgressions by the police officials of arrest guidelines would attract coercive action. The ruling came in a case of allegations of custodial misconduct against the Haryana Police. The case arose from the Special Leave Petition filed by the petitioner alleging illegal arrest by Haryana Police in violation of the arrest guidelines laid down in the landmark case of Arnesh Kumar v. State of Bihar (2014) 8 SCC 73. The petitioner alleged that he was physically beaten during the arrest and subsequently at the police station.

The court was made aware that an email was sent to the superintendent of police by the brother of the petitioner after the arrest. Post that the police officers behaved aggressively in dealing with the complaint, proceeded to physically abuse the petitioner, and subsequently lodged an FIR against him almost two hours after his arrest. The High Court had dismissed a previous contempt petition concerning this matter, prompting the petitioner to apply to the Supreme Court. After examination of the case records, the court found prima facie evidence of police high-handedness. The bench emphasized that the rule of law applies equally to all persons, including the police, and that even persons accused are entitled to basic rights, including dignity and protection from assault. The court said that while a common citizen may sometimes be expected to act with emotion or impulse, police officers as agents of the state are expected to keep calm and exercise discretion in the observance of procedural law.

The violation of the arrest norms would not be tolerated. It emphasized the necessity for Directors General of Police to introduce a zero-tolerance policy towards custodial misconduct exhibited by subordinate officers.

Arguing the validity of the arrest, the State of Haryana presented a filled checklist of Section 41(1)(b)(ii) under the Criminal Procedure Code, 1973, which was purportedly framed to monitor compliance with arrest requirements. The documentation was found to be unsatisfactory by the court, which considered the filling-up of the checklist list as a mechanical formality.

The court expressed its opinions against the perfunctory approach towards these checklists and directed that judicial magistrates should not treat such documents with mechanical acceptance. They must consider whether the contents of the checklist correspond with having given those procedural safeguards relevant to the person arrested their meaningful consideration. The Supreme Court took the opportunity to direct broader directions towards compliance on a systematic level. It ordered that a copy of this order, along with the Court's order in Somnath v. State of Maharashtra, 2024 LiveLaw (SC) 252, be sent to the Directors General of Police of all States and Union Territories including the Commissioner of Police for Delhi. The court also made it clear that the intent was to reiterate the compulsory nature of the sought legal safeguard and ensure its proper observance across jurisdictions.

The bench noted that in the event of any future instance of noncompliance being brought to its attention, it would do well to treat that instance with much vigor and launch coercive action against all errant officials, and that signals a newfound judicial intolerance with procedural abuses by the police. The said order contrarily affirms the Supreme Court's mounting anxiety about the indifference of the police authorities towards the recognized legal norms regarding arrest and custody. The court established the principle that the legitimacy of policing rests with the ultimate observance of constitutional protections and procedural fairness. It placed the enforcement in the hands of senior police leadership and judicial accountability bodies, while emphasizing that safeguarding individual rights is absolutely non-negotiable, even in the context of criminal justice.

WHITE & BRIEF
ADVOCATES AND SOLICITORS

Supreme Court clarifies difference Between FIR Registration Provisions Under S. 154 CrPC & S. 173 BNSS

Case Title: Imran Pratap Gadhi v. State of Gujarat Criminal Appeal No.1545 of 2025

The Supreme Court's decision has given a major shift provided by the Bhartiya Nagarik Suraksha Sanhita (BNSS) as compared with the decades-long Code of Criminal Procedure, 1973 (CrPC). The ruling stated that both laws speak about mandatorily registering an FIR for cognizable offences, yet the BNSS makes an exception and requires preliminary inquiry into certain offences. The court reiterated that as per section 154 CrPC, every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant. Section 154 of the CrPC does not mandate any preliminary inquiry. The position is settled as it was in the Constitution Bench decision in Lalita Kumari v. Government of U.P., where the Court had unequivocally stated that the police have no discretion in delaying or denying registration of such cases.

Under CrPC, no preliminary inquiry can be made just because the information apparently discloses a cognizable offence. Such inquiries are allowed only when the cognizability of the offence is denied or in doubt. While Section 173(1) of the BNSS is mostly a repeat of Section 154 of the CrPC in its wordings and structure, the Supreme Court noted that subsection (3) of Section 173 presents a major exception. If the offence reported was punishable with imprisonment of three years or more but less than seven years, the police officer would be entitled to conduct a preliminary inquiry, provided prior permission is secured from a superior officer-not below the rank of a Deputy Superintendent of Police.

This inquiry is intended to check whether a prima facie case exists whereby further action by the police is merited. It is in this light that the court advanced that the reason behind the introduction of the preliminary inquiry under Section 173(3) was to filter frivolous cases. However, the officer has to complete the inquiry without delay and proceed to the registration of an FIR immediately, where prima facie a case is made out. Where it is not so, the complainant must be informed and has the right to seek redressal before a superior officer under Section 173(4).

For alleged offence under section 196 of the BNS punishable for up to three years, the Court emphasised that the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of the BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

The Court observed in such a case that the registration of FIRs, particularly those based on public speech or artistic expression or their social media content, must be dealt with more judiciously. The new provision in BNSS empowers police officers to exercise a responsible discretion before FIR filing in borderline case situations. This keeps the criminal justice system from being weaponized against individuals whose free speech rights stand regulated under Article 19(1)(a). The Supreme Court is inscribing a major procedural innovation in the transition from CrPC to BNSS. With preliminary inquiries allowed for offenses punishable between three to seven years, BNSS maintains balance in ensuring police responsiveness while in the same breath, guarding an individual's rights against arbitrary or retaliatory prosecution. The Court reiterated that while FIR registration remains mandatory in most cognizable cases, Section 173(3) BNSS introduced a constitutionally relevant safeguard for fairness in the criminal justice process.

Civil

M/s A.P. Electrical Equipment Corporation Versus The Tahsildar & Ors. (Civil Appeal Nos 4526-4527 of 2024)

In the present matter the Supreme Court ruled that when faced with conflicting judgments, High Courts must follow the one whose facts align more closely with the case at hand.

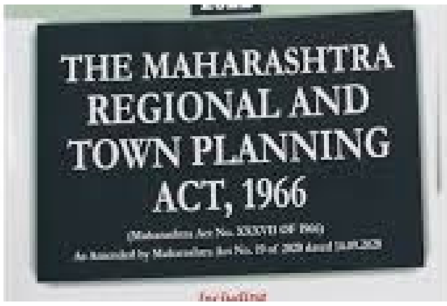
The case concerned the legality of land acquisition under the Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act) before its repeal in 1999. The appellant, A.P. Electrical Equipment Corporation (now ECE Industries Ltd.), owned land in Fatehnagar Village, Telangana. The State claimed possession was taken through notices under Sections 10(5) and 10(6) of the ULC Act and a panchnama dated 08.02.2008, while the appellant argued possession was never actually taken and that these documents were fabricated post-repeal.

A Single Judge of the High Court, citing State of Uttar Pradesh v. Hari Ram (2013) 4 SCC 280, ruled in favor of the appellant, stating that mere issuance of notices does not establish possession and that the panchnama was unreliable. The Division Bench overturned this, favoring the State based on State of Assam v. Bhaskar Jyoti Sarma (2015) 5 SCC 321. However, the appellant contended that Bhaskar Jyoti Sarma was inapplicable, as it addressed delayed legal challenges, whereas in this case, actual possession was never taken.

The Supreme Court reinstated the Single Judge's ruling, holding that mere paper possession is insufficient; the State must prove actual, physical possession with clear evidence. The Supreme Court expressly relied on its decision in Hari Ram (supra), holding that for land to be deemed acquired, physical possession must be taken by evicting all occupants.

Mere vesting of land under the ULC Act, without actual possession, is not enough. The burden is on the State to prove it had taken over the land before the Act's repeal.
The Court further clarified that High Courts must not blindly follow one Supreme Court ruling while ignoring another. Instead, they should analyze and apply the judgment most factually relevant to the case.

Nirmiti Developers vs The state of Maharashtra (Civil Appeal Nos. 3238-3239 OF 2025)



In the instant case the Supreme Court recently ruled on the applicability of Section 127 of the Maharashtra Regional and Town Planning Ac, 1966 (“MRTP”), which requires that land reserved for specific purposes must be acquired within a prescribed timeline. The Court emphasized that if land is not acquired within ten years or acquisition proceedings are not started, the landowner can serve a notice, and if no action is taken within twelve months, the reservation will lapse.

In this case, the land was originally reserved for a private school, and the owners submitted a development plan in 1993, which was sanctioned. However, on 25.02.1993, a revised development plan under the MRTP Act came into effect, designating the land for acquisition by the authority. Despite this, no steps were taken to acquire the land until 2006. On 04.07.2006, the original owners served a purchase notice under Section 149 of the MRTP Act, demanding that the authorities either acquire the property or release it from reservation. However, the authorities failed to initiate acquisition proceedings within the required timeframe and only commenced the process in January 2008 (one year after acknowledging the notice).

In 2015, the land was sold to new owners (the appellants), who filed a writ petition seeking either compensation for the land reserved for the school or for the reservation to be declared lapsed. The High Court disposed of the petition, granting the appellants liberty to take appropriate steps according to the law.

The Supreme Court, citing the timelines set under Section 49 of the Act, ruled that the reservation had lapsed as of January 2, 2008. The Court stated that the land had been kept reserved for 33 years without being utilized, and the delay prevented both the original owners and the new owners from using the land. The Court referred to its earlier decisions, in which it upheld the importance of timely acquisition or the reservation lapsing.

The Court noted that the reservation lapsed for all purposes, and the appellants could now use the land as if there had been no reservation. The delay, which spanned nearly three decades, led the Court to declare the reservation had lapsed, in accordance with Section 127 of the MRTP Act, and also exercised its jurisdiction under Article 142 of the Constitution to ensure complete justice.

This ruling reflects the Court's stance on not allowing indefinite reservation of land, which deprives the owner of its use for extended periods.

Virtual Testimony Boundaries: Analyzing SEC's Authority to Summon Indian Nationals Within Legal Frameworks

As cross-border enforcement of securities becomes a reality, the jurisdictional issues confronting regulators, such as the U.S. Securities and Exchange Commission (SEC), are growing. The SEC is armed to compel evidence and testimonies within the U.S., but its ability to summon individuals abroad, particularly Indian nationals, is bound by the laws of international cooperation and domestic Indian laws.

International Enforcement Frameworks

As the federal regulator enforcing securities laws in the U.S., the SEC investigates cases of cross-border fraud, insider trading, and financial irregularities where persons from outside the jurisdiction are involved; it leans on international collaboration for collection of evidence in those situations. The primary frameworks facilitating this cooperation are bilateral and multilateral arrangements, including the Enhanced Multilateral Memorandum of Understanding (Enhanced MMOU) under the International Organization of Securities Commissions (IOSCO) and a bilateral Memorandum of Understanding (MOU) signed with the Securities and Exchange Board of India (SEBI) in 1998.

Scope and Limits of the Enhanced MMOU

The Enhanced MMOU, after SEBI signed it in 2021, legitimizes mutual assistance between regulators, including sharing of information, obtaining of testimonies, and freezing assets, among other things. Significantly, such assistance is to be provided subject to the laws of the requested jurisdiction. Therefore, the Enhanced MMOU does not create enforceable obligations that would override Indian laws and regulations.

SEBI's Role Under Indian Law

One of the key questions arising in this regard is whether the SEC can compel an Indian national to testify virtually in connection with the U.S. investigation. Under Indian law, especially under the SEBI Act, the SEBI has the power to help other countries' regulators by giving information or facilitating an interview. On the other hand, SEBI, while acting under the guise of foreign regulators, is constrained in compelling attendance and enforcing testimony.

Save in furtherance of its own investigation, Section 11(2)(ib) of the SEBI Act confers upon SEBI the power to call for or to furnish information to foreign counterparts but does not entitle it with civil court powers to summon individuals or compel testimony under oath. This differentiation is important because it limits SEBI's role to merely that of acting as a conduit and not an agent that enforces foreign regulatory demands. This means that the SEC's pursuit of any virtual testimony is to be routed through SEBI, who shall possess the discretion relating to the exercise of protections afforded by Indian law.

Rights of Individuals and Safeguards in Procedures

The Enhanced MMOU establishes the principle that individuals may be compelled to attend interviews but not to answer questions that might incriminate them. This principle thus upholds the domestic constitutional safeguards. It follows further that the requested authority (in the current case, SEBI), can only challenge or interpret the request; the individual cannot. However, this shield gives way to Indian courts, as individuals whose rights are threatened may seek relief from the Indian courts.

Hague Convention and the Judicial Assistance

Besides, India is a signatory to the Hague Evidence Convention of 1970 regarding cross-border requests for evidence in cases of a civil or commercial nature. Its implementation in India is through Section 78, Orders 26, Rules 19-22 of the Code of Civil Procedure (CPC). A letter of request may be sent by the U.S. court or SEC, through diplomatic channels or directly to the concerned High Court of India, which will then appoint a commissioner to record evidence under judicial supervision. The procedure is enforceable but lengthy and rigorously procedural compared with an informal inter-regulatory cooperation.

Balancing Enforcement and Sovereignty

The structure of cooperation under the Hague Convention and the Enhanced MMOU represents a balancing act between international enforcement and national sovereignty. Although the Enhanced MMOU promotes mutual assistance, it is not intended to supersede domestic laws regarding privilege, privacy, and due process. The implication thus is that Indian nationals cannot be forced by foreign regulators to provide testimony unless Indian courts or SEBI, operating within the constraints of Indian domestic law, would approve such action and allow it.

Practical Considerations

In practical terms, the ability of the SEC to obtain virtual testimony from an Indian national will depend upon SEBI's willingness and legal capacity to coordinate such a request. It may, for example, invite a person's voluntary interview or share non-privileged documents. But to the extent the request seeks testimony under oath or requires examination on sensitive matters, it may require judicial oversight or may even be rejected altogether under Indian law.
With the rising number of multi-jurisdictional securities fraud investigations that increasingly target online statements, cross-border transactions, and violations of digital assets, the relevance of this architecture is rising. This creates a need for Indian legal practitioners advising clients on SEC matters to be vigilant about these nuances and advise their clients accordingly-especially where constitutional rights or reputational harm may be at issue.

Conclusion

SEC can initiate a request for information or testimony for Indian nationals, but its powers are not unlimited. Its success in achieving cooperation will depend on the facilitation by SEBI and the procedural checks and balances built into Indian law. This ensures that Indian sovereignty is respected, and individuals are protected from overreach, even in the name of global securities regulation. As regulators continue to strengthen ties, maintaining this balance between cooperation and constitutional fidelity will be central to the legitimacy and effectiveness of cross-border enforcement.

WHITE & BRIEF
ADVOCATES AND SOLICITORS

RBI's Rate Cut and the Elusive Transmission: Analyzing Why Banks Aren't Passing on the Benefits to Borrowers

Recently, the Reserve Bank of India (RBI) reduced the repo rate by 25 basis points, bringing it down to 6%. This marked the second consecutive rate cut this year, following a similar reduction in February. The decision was aimed at stimulating economic growth amidst global uncertainties and a domestic slowdown. However, the anticipated benefits for borrowers, particularly in terms of reduced loan interest rates, have not materialized as expected.

Repo Rate and Its Significance

The repo rate is the rate at which the RBI lends money to commercial banks. A reduction in this rate typically lowers the cost of funds for banks, enabling them to offer loans at more competitive interest rates. Therefore, it is a very potent mechanism to incite borrowing conditions, which therefore foster economic activity. The embellishment by lending transparency in transmitting monetary policy was put to place when the RBI, in October 2019, mandated the linkage of every new floating-rate personal or retail loan to an external benchmark, including the repo rate.

Banks' Reluctance to Pass on the Benefits

After some time of intervention by the RBI, many banks are still finding it difficult to cut their lending rates for customers in line with the latest cut in the repo rate. Some of the reasons for this tardiness are:

- Cost of funds: Banks are facing exorbitantly high deposit rates, and these have not yet dropped in line with the current repo rate. This mismatch affects their net interest margins, making them cautious about reducing lending rates.
- Liquidity: The other reason keeping banks from passing on repo cuts to end customers has been tight liquidity conditions in the banking system. And even if the RBI may have intervened to infuse liquidity into the market, there remained many banks where, due to some peculiar conditions, demand for liquidity even at cut price was excessive for them to lend at such lower prices.
- Non-Performing Assets (NPA): The fear of increasing NPAs has discouraged lending by banks even when the cost of funds declines. NPA risk weighs heavily on lending decisions.
- Operational and Regulatory Lag: Adjusting lending rates involves operational changes and compliance with regulatory frameworks, which can introduce delays in the transmission process.

Impact on Borrowers

For borrowers, especially under home loans tied to external benchmarks, deadlines for transmission mean escalated EMI payments to date. Some banks announced a reduction in lending rates at varying amounts and timings. SBI reduced its Repo Linked Lending Rate (RLLR) by 25 basis points to 8.25%, effective April 15, 2025. This move aligns with the RBI's rate cut but may not immediately benefit all borrowers, depending on their loan reset dates. Other public sector banks have realigned their external benchmark-linked lending rates. However, the degree to which this adjustment has occurred varies from one institution to another. Lower levels of interest have usually resulted in benefits for the housing sector vis-a-vis growth opportunities.

Challenges faced by lenders

In India, it is indeed a paradox that prices with even rate cuts by the RBI have scaled up in cities. According to ANAROCK Research, average housing prices increased by 10% to 34% in Q1 2025, the highest reported increases of 34% and 20% occurred in NCR and Bengaluru, respectively. With these steep price rises, waiting for the rate cuts would only add to the diminishments in affordability before potential buyers even realize RBI's invitation to dip their toe into the housing market. Most industry specialists emphasize the need for a mechanism that transmits effects more directly.

The lender has higher funding costs and is more reluctant, thus causing the effect on borrowers in terms of the availability of rate cuts not to take place immediately. Although the objective of mandatory external benchmark linked loans by RBI was to establish better transmission, the ultimate results depended on costs involved in banks and other market conditions.

Way Ahead

For improving the effectiveness of the monetary policy transmission, a number of actions can be considered:

- Bringing in Liquidity: The RBI can design targeted liquidity infusion for banks to be in a position to lend at the lower rates.
- Regulation: More monitoring can ensure much closer alignment of changes in lending rate vis-à-vis policy rate changes.
- Encouraging Competition: By encouraging competition, banks will have to offer attractive rates even to retain and add customers.
- Financial Education: How borrowers can empower themselves to have better terms or borrow from other lenders when necessary.

Conclusion

The recent repo rate reductions reported by the RBI involve strides toward rejuvenating the economy. Still, that benefit is apparently diluted concerning the leaning approach of banks plus structural management issues. Reform from the RBI, banks, and policymakers as agents of change will have to see that monetary policies translate into actual, tangible benefits for consumers, thereby achieving the much-desired outcome on the economy.

WHITE & BRIEF
ADVOCATES AND SOLICITORS

Expanding Tax Oversight: Implications of the New Income Tax Bill's Provisions for Social Media and E-Mail Scrutiny

Over decades, the Income-tax Act, 1961, has been the main touchstone for the Indian tax system. To keep pace with the digitization of financial transactions and the rise of online services, the government has proposed the Income Tax Bill of 2025, seeking to modernize tax administration and improve compliance using advanced technologies. However, while the bill promises increased efficiency as well as revenue collection, it has raised certain alarms with respect to privacy and misuse of power, along with impediments in judicial oversight.

Key Provisions and Critical Comparison .

Under the Income Tax Act, 1961, tax officials were entitled to search physical premises such as homes, offices, and bank lockers on suspicion of tax evasion. The new Income Tax Bill, 2025, expands these powers significantly and incorporates searches on digital devices, emails, social media activities, and online transactions. According to Section 247 of the bill, a taxpayer's 'virtual digital space' includes email servers, social media accounts, online investment accounts, trading accounts, and cloud storage that tax authorities are authorized to access. If access is denied, officials have the benefit of overriding security measures to retrieve the necessary data . While this provision could be expected to address some methods of modern tax evasion, it raises significant privacy concerns. Tax authorities getting access to personal and financial digital data without prior judicial approval could even lead to misuse and infringement of the rights of the individual.

WHITE & BRIEF
ADVOCATES AND SOLICITORS

Digital Taxpayer Monitoring

The previous tax monitoring system was largely dependent on bank records and the financial statements filed by taxpayers. The new law aims to set in place artificial intelligence-driven mechanisms that help monitor online transactions, e-commerce expenditures, and digital wallets to identify tax fraud. The revamped Income Tax Business Application (ITBA 2.0) plans to apply artificial intelligence in assessing returns, marking discrepancies, and preventing fraud. While this improves tax compliance, it also poses the risks of surveillance in mass terms and misuse of financial data about taxpayers personally. An AI-based system may cause the concerned taxpayer to suffer wrongful penalties due to the system's error or biases.

Mandatory Digital Filing and Verification

Previously, tax returns could be filed manually and electronically under the Income Tax Act, 1961. Now, e-filing is mandatory under the new bill for every taxpayer with biometric verification and an accompanying digital verification process. While this ensures faster processing and reduces paperwork, it poses challenges for taxpayers with limited digital access and raises concerns about data security and potential breaches.

Judicial Override in Tax Investigations

The earlier tax law necessitated judicial intervention for tax investigations in certain cases, thus establishing checks and balances within the system. The Income Tax Bill, 2025, does away with such a requirement and enables tax authorities to conduct searches and seizures without a warrant. Although this provision is likely to enhance the efficiency of the investigations, it increases the likelihood of abuse and harassment of taxpayers by government officials. Taxpayers may not only suffer from arbitrary actions taken against them but would also deny the principles of natural justice.

Privacy Issues and Legal Controversies.

By landmark ruling in Justice K.S. Puttaswamy v. Union of India (2017), the Supreme Court declared the Right to Privacy as an inherent right under Article 21 of the Constitution. The Income Tax Bill, 2025 raises concerns with respect to privacy as it provides for monitoring of all digital transactions, emails and online activities of the individuals concerned without any judicial oversight. Such provisions could easily be put under challenge as violating constitutional rights.

Potential for Misuse of Power.

Without independent checks and balances, tax authorities may harass individuals and businesses under the pretext of tax investigation. The lack of appeal mechanisms against wrongful penalties makes it difficult for taxpayers to challenge unfair tax assessments. The bill is criticized for granting tax officials unrestricted access to personal digital spaces without warrants or prior notice.

Conclusion.

The Income Tax Bill, 2025 modernizes the tax system in India, making the tax collection process more efficient using AI, automation, and digital compliance. Unfortunately, it extends the powers of the tax authorities even further, with no scope for judicial oversight and potential violations of privacy, giving rise to serious alarms. Enforcement of taxes should not lack rigidity but must be balanced with taxpayer rights.

WHITE & BRIEF
ADVOCATES AND SOLICITORS

Why GST Rate Rationalization Matters & What are the Consequences on Economy?
Introduction

Post the announcement of the Union Budget 2025, the concerns regarding the need for GST Rate Rationalization have started echoing yet again, and this time, even the Finance and Revenue Secretary, Tuhin Kanta Pandey, said that GST rate rationalization is needed. Now the question comes of why we need it so desperately that even after eight years, these concerns still remain.

It is required to reduce the complexities in the tax system and make it easier to understand and comply with for the common masses.

Need for GST Rate Rationalization

The existing GST rate structure which consists of multiple rates has been criticized for several reasons with the first being its complex nature which makes compliance difficult. Let's go over the top five reasons why GST Rate Rationalization is the need of the hour.

- ·Multiple tax rates and compliance burden: Multiple tax slabs complicate GST, raising compliance costs for businesses and administrative load for authorities. Recent cases, like differing tax rates on popcorn based on preparation and the dispute over pizza toppings (12% as cheese vs. 18% as edible preparation), highlight how such distinctions trigger litigation and uncertainty.
- Issue with Input Tax Credit (ITC): Designed to simplify taxation, ITC often strains MSMEs due to higher GST on raw materials than finished goods, causing cash flow mismatches. While excess tax can be claimed as credit, the refund process ties up working capital. For example, businesses paying 18% GST on inputs but selling at 12% face delays in recovering the 6% difference. Industries like textiles and footwear are heavily impacted, highlighting the need for tax rationalization to ease operations and reduce ambiguities.

- Reduction of Classification Disputes: Multiple tax rates create classification ambiguities, fueling disputes and litigation. Pending Central GST appeals have surged from 5,499 in 2020-21 to 14,227 by June 2023, with cases still rising. Divergent state rulings worsen the issue. To prevent the newly established GST Appellate Tribunal (GSTAT) from facing similar backlogs, a simplified indirect tax structure is essential.
- Economic Growth and Job Creation: GDP growth hit a seven-quarter low of 5.4% in Q2 FY 2024-25, reflecting sluggish private investment, often linked to policy uncertainty. A simplified, rationalized GST structure can reduce the tax burden, encourage business expansion, and drive job creation, fostering a more growth-friendly economic environment.
- Enhanced Revenue Efficiency: The goal of GST rate rationalization is simplification, not revenue generation. A well-designed system can boost compliance and collections, even with lower rates. For example, merging essential goods into one slab while increasing rates on luxury and sin-taxed items can enhance revenue without burdening businesses.

Proposed Solution: International Comparisons and Rate Structures

A three-tier GST structure could simplify taxation while minimizing revenue loss by merging existing slabs into low (essentials), standard (most goods/services), and high (luxury/sin goods) rates. Australia applies a flat 10% GST on most goods and services, with exemptions for essentials like certain foods, healthcare, and education—streamlining compliance and reducing administrative burdens. Singapore's broad-based GST, raised to 9% from January 1, 2024, applies uniformly to most goods and services with minimal exemptions, ensuring definitional clarity and administrative simplicity.

Drawing from these international models, India could consider transitioning to a three-tier GST structure. For instance, we currently have five key GST slabs: 0%, 5%, 12%, 18%, and 28%. To transition to a three-tier system, the following mergers can be considered:

- Low Rate (5%): The existing 5% slab remains for essential goods and services (e.g., food grains, primary healthcare, basic education). Some items from the 0% (exempt category) could move to 5% to expand the tax base while keeping essential goods affordable.
- Standard Rate (15%): The 12% and 18% slabs could be merged into a single 15% rate, simplifying compliance, reducing disputes, and taxing most consumer goods at a moderate level. This aligns with global averages (e.g., Singapore: 9%, Australia: 10%, OECD average: ~19.2%).
- High Rate (28% or More): The 28% slab applies to luxury and sin goods (e.g., high-end cars, tobacco, alcohol). To prevent revenue loss, this rate could be increased to 30% or 32%, ensuring steady government earnings from non-essential items. Additional cesses on products like tobacco and alcohol can also continue to support specific state needs.

Impact of Proposed Rate Rationalization on the Indian Economy

Rationalizing India's GST rates could simplify tax structures, reduce classification complexities, and create a predictable environment for business growth and investor confidence. Fewer slabs would ease compliance, improve efficiency, and reduce disputes.

However, rate adjustments may lead to short-term revenue fluctuations, impacting government budgets, particularly with ongoing GST compensation to States. To minimize losses, merging 0% and 5% into 5%, 12% and 18% into 15%, and raising 28% to 30% is proposed. Cesses on harmful products can continue, with potential revenue sharing with States.

A streamlined, transparent system will build taxpayer trust, promote voluntary compliance, expand the tax base, and reduce administrative costs, enabling more resources for growth and innovation.

Conclusion

India can build a more efficient and equitable GST system by learning from global models and addressing challenges unique to its economy. Recent government initiatives, including the reforms announced in the Union Budget 2025-26, emphasize simplifying tax laws and boosting economic certainty.

Major reforms, such as income tax cuts to stimulate growth, and a simplified income tax bill to reduce litigation, reflect this commitment. In indirect taxes, the budget proposed customs duty changes, including the removal of seven tariff rates, aiming to incentivize sectors like semiconductors and clean energy.

Managing Currency Risks: How RBI's Foreign Exchange Management Reforms Aim to Strengthen the Indian Rupee

The Indian Rupee (INR) has experienced significant fluctuations over the years, influenced by various global and domestic factors. Recently, the rupee hit an all-time low of 87.95 at the interbank foreign exchange from 87.94, a fall of 45 paise from its previous value.[1] Currency volatility poses substantial risks to businesses, investors, and the overall economy. To mitigate these risks and strengthen the INR, the Reserve Bank of India (RBI) has implemented a series of foreign exchange management reforms. This article delves into the nature of currency risks, the factors contributing to INR volatility, the RBI's strategic reforms, and their impact on the Indian economy. Additionally, it explores strategies that businesses and investors can adopt to effectively manage currency risks.

Understanding Currency Risks

Currency risk, also known as exchange rate risk, refers to the potential for financial losses resulting from adverse movements in exchange rates. Entities engaged in international trade, foreign investments, or those with foreign currency-denominated liabilities are particularly susceptible to such risks. The primary types of currency risks include transaction risk, translation risk, risk to the overall economy etc.

Transaction Risk arises from the effect of exchange rate movements on the value of a company's future cash flows denominated in foreign currencies. For instance, an Indian exporter who has invoiced a foreign buyer in USD may receive less INR if the USD depreciates against the INR before payment is received. Translation Risk also known as accounting exposure, is a type of risk that occurs when a company consolidates its financial statements and has to translate foreign subsidiaries' assets, liabilities, revenues, and expenses from foreign currencies to INR. Fluctuations in exchange rates can significantly impact the reported financial performance and position.

Economic Risk or the broader impact of currency fluctuations on a company's market value and future cash flows reduces competitiveness and affects future revenues. For example, a sustained appreciation of the INR could make Indian goods more expensive abroad.

Factors Influencing INR Volatility

Several factors contribute to the volatility of the Indian Rupee. Changes in global interest rates, inflation, and economic growth can influence capital flows, affecting the demand and supply dynamics of the INR. For instance, an interest rate hike by the US Federal Reserve can attract capital away from emerging markets like India, leading to INR depreciation. India imports a significant portion of its crude oil requirements. An increase in global crude oil prices can widen the trade deficit, exerting downward pressure on the INR. Large inflows or outflows of foreign capital in equity and debt markets can cause significant movements in the INR. Political instability, policy changes, or global risk aversion can trigger sudden Foreign Portfolio Investments (FPI) outflows, leading to currency depreciation. Regional conflicts, trade wars, or global political uncertainties can disrupt foreign exchange markets, leading to increased volatility in the INR. Factors such as fiscal deficit, current account deficit, inflation rates, and GDP growth influence investor confidence and, consequently, the stability of the INR.

RBI's Foreign Exchange Management Reforms

In response to the challenges posed by currency volatility, the RBI has implemented several reforms aimed at stabilizing the INR and strengthening the country's financial resilience. Key reforms include a liberalized remittance scheme (LRS), development of the foreign exchange derivatives market, enhancing foreign exchange reserves, enhancing foreign exchange reserves, bilateral currency swap agreements, export promotion measures, export promotion measures, easing of FEMA norms.

Liberalized Remittance Scheme (LRS) was introduced to facilitate the outward remittance of funds by resident individuals. It allows them to remit a specified amount annually for permissible current and capital account transactions. This scheme enhances currency flow management by providing flexibility to residents for investments and expenditures abroad.

To mitigate foreign exchange risk, the RBI has refined the regulatory framework for hedging foreign exchange exposures. By consolidating directions for over-the-counter (OTC) and exchange-traded transactions under a single Master Direction, the RBI aims to enhance operational efficiency and ease access to foreign exchange derivatives. This move is expected to deepen the forex derivatives market, allowing a broader set of customers with the necessary risk management expertise to manage their exposures efficiently.[2]

The RBI actively manages the country's foreign exchange reserves to ensure the ability to intervene in the forex market when necessary. By maintaining robust reserves, the RBI can buffer against external shocks and stabilize the INR during periods of excessive volatility. As of the end of 2024, India's forex reserves stood at $644.4 billion, covering nearly a year of merchandise imports.[3]

To reduce reliance on the US Dollar and provide liquidity support during economic distress, India has established currency swap agreements with various countries. These agreements allow for the exchange of local currencies between countries, facilitating smoother trade and investment transactions. For instance, the RBI has signed Memoranda of Understanding with the central banks of the United Arab Emirates, Indonesia, and the Maldives to encourage cross-border transactions in local currencies, including the INR.[4] India and Japan have recently renewed the USD 75 billion bilateral currencies swap agreement which was signed by the Bank of Japan and the RBI, and it remains effective as of February 28, 2025.[5]

In collaboration with the government, the RBI has implemented measures to promote exports, thereby enhancing foreign exchange inflows. These measures include providing export credit facilities, simplifying foreign exchange procedures for exporters, and offering incentives for export-oriented industries. The scheme of Export Financing was first introduced by RBI in 1967 to make short-term working capital finance available to exporters at internationally comparable interest rates in rupees as well as in foreign currency.[6] By boosting exports, the RBI aims to improve the trade balance and support the INR.

To encourage the use of the INR in cross-border transactions, the RBI has liberalized the Foreign Exchange Management Act (FEMA) regulations. Overseas branches of Authorized Dealer banks are now permitted to open INR accounts for non-residents to settle permissible current and capital account transactions with Indian residents.

Additionally, non-residents can utilize balances in their INR accounts for foreign investments, including foreign direct investments in non-debt instruments and portfolio investments in Indian markets.[7]

Impact of RBI Reforms on Currency Stability

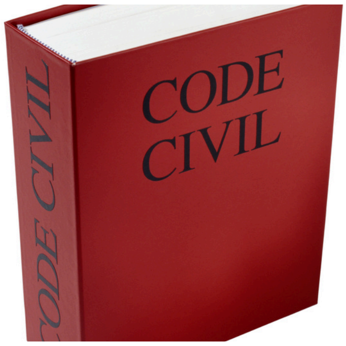
By directly intervening in forex markets, the RBI prevents excessive volatility. A stable currency enhances investor confidence, leading to greater foreign direct investments (FDI). Stronger foreign exchange reserves mitigate the impact of global economic shocks. Efficient foreign exchange management systems streamline cross-border transactions.

Conclusion

The RBI's foreign exchange management reforms play a crucial role in strengthening the Indian Rupee by reducing volatility and bolstering economic resilience. While external factors will continue to influence the rupee's performance, a proactive regulatory approach, coupled with sound risk management strategies, can help businesses and investors navigate currency risks effectively. By maintaining a robust foreign exchange reserve position, developing market infrastructure, and fostering international cooperation, the RBI remains well-positioned to safeguard the stability of the Indian Rupee in the evolving global economic landscape.

[1] https://www.business-standard.com/finance/news/rupee-hits-record-low-of-87-95-against-us-dollar-in-early-trade-today-125021000248_1.html
[2] https://www.google.com/urlq=https://economictimes.indiatimes.com/markets/forex/rbi-refines-extant-framework-for-fx-hedge-to-enhance-efficiency-ease-of-access/articleshow/105834778.cmsutm_source%3Dchatgpt.com&sa=D&source=docs&ust=1742462849059149&usg=AOvVaw0kHAv6w7f44cbguYV5MUsu
[3] https://bfsi.economictimes.indiatimes.com/news/policy/explainer-how-is-the-rbi-intervening-in-the-forex-market-to-shore-up-the-rupee/116865000 utm_source=chatgpt.com
[4] https://www.newindianexpress.com/business/2025/Jan/16/to-boost-rupee-rbi-eases-fema-norms-for-cross-border-transactions?utm_source=chatgpt.com
[5] https://economictimes.indiatimes.com/news/economy/foreign-trade/india-japan-renew-75-bn-bilateral-currency-swap agreement/articleshow/118626370.cms?from=mdr

The Section 24(5) CPC Dilemma: Legal Analysis of Appeal Transfer Jurisdiction



Section 24 of the Code of Civil Procedure, 1908 (CPC) empowers High Courts and District Courts in India to transfer and withdraw cases to ensure judicial efficiency and proper administration of justice. Section 24(5) addresses the transfer of suits or proceedings from courts lacking jurisdiction. However, whether "proceedings" under this subsection include "appeals" has been a subject of legal debate, leading to divergent judicial opinions. This article delves into the interpretational challenges posed by Section 24(5) of the CPC, examining judicial pronouncements, legislative intent, and the potential consequences of differing interpretations. Section 24 of the CPC contains provisions for transferring suits, appeals, and other proceedings. Key provisions include:

- Section 24(1): It provides that a High Court or a District Court may, at any stage, transfer any suit, appeal, or other proceeding from one subordinate court to another.
- Section 24(3): Defines "proceeding" to include a proceeding for the execution of a decree or order.
- Section 24(5): States that a suit or proceeding may be transferred from a court that lacks jurisdiction to try it.

Notably, while Section 24(1) explicitly includes appeals, Section 24(5) omits the term "appeal," leading to debates over its interpretation.

Judicial Interpretations

In the case of Rashtriya Ispat Nigam Ltd. v. Air Liquide India Holding Pvt. Ltd.(2024),[1] the Andhra Pradesh High Court ruled that the term "proceeding" in Section 24(5) does not include appeals. The court reasoned that the deliberate exclusion of the word "appeal" demonstrated the legislature's intent to prevent the transfer of appeals under this provision. The court also referred to the Supreme Court's ruling in Ram Chandra Aggarwal v. State of U.P., where it was held that the term "proceeding" in Section 24(1)(b) meant proceedings other than suits or appeals.

However, the Delhi High Court in Krishna Devi v. Kartar Singh (2014)[2] permitted the transfer of an appeal under Section 24(5). The court justified its decision on the grounds of judicial efficiency and minimizing procedural delays. It reasoned that an expansive interpretation of "proceeding" to include appeals was consistent with the objective of Section 24 to prevent unnecessary hardships for litigants.

The Kerala High Court adopted a similar approach in Cholasseri Hamza v. T.V. Udayaraj (2016)[3], allowing the transfer of an appeal. The court emphasized that the legislative purpose behind the 1976 amendment to Section 24 was to facilitate efficient judicial processes. The failure to explicitly include "appeals" was viewed as an inadvertent omission rather than a deliberate exclusion.

The controversy surrounding Section 24(5) calls for an analysis of legislative intent. There are various rules for the interpretation of statutes like Literal rule, purpose rule, expressio unius est exclusio alterius rule, rule of harmonious construction etc. The Andhra Pradesh High Court in the Ispat case applied the literal interpretation, adhering strictly to the absence of the term "appeal" in Section 24(5) whereas, the Delhi and Kerala High Courts opted for a purposive interpretation, considering the provision's objective to ensure judicial efficiency and avoid unnecessary procedural delays.

Legislative Intent and Statutory Interpretation

[1] https://indiankanoon.org/doc/123321903/
[2] https://indiankanoon.org/doc/173689413/
[3]https://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=116102823000&Title=CHOLASSERI-HAMZA-AND-ORS.-Vs.-T.V.-UDAYARAJ

Moreover, the Andhra Pradesh High Court applied expressio unius est exclusio alterius, asserting that the express inclusion of "appeal" in Section 24(1) and its exclusion in Section 24(5) implies intentional legislative exclusion whereas, the Delhi and Kerala High Courts took a harmonious interpretation, ensuring that the purpose of law is fulfilled without unduly limiting judicial powers. The lack of consensus on Section 24(5) has significant legal and practical implications. Where appeals cannot be transferred, litigants face additional procedural burdens, including refiling appeals in the appropriate court. Diverging judgments lead to uncertainty and unpredictability in judicial outcomes. Restricting transfer powers may result in prolonged litigation, undermining the judicial system's efficiency. Conflicting judgments may lead to further appeals, burdening higher courts with additional caseloads. To resolve the interpretational dilemma, Parliament can amend Section 24(5) to explicitly include or exclude appeals, thereby eliminating ambiguity. The Supreme Court of India can deliver an authoritative ruling to harmonize interpretations across High Courts. The judiciary can develop principles for applying Section 24(5) on a case-by-case basis, ensuring consistent and equitable outcomes.

Conclusion

The controversy surrounding the interpretation of Section 24(5) of the CPC exemplifies the complexities of statutory interpretation. While the Andhra Pradesh High Court adopted a strict literal approach, the Delhi and Kerala High Courts embraced a more purposive perspective. Ultimately, judicial efficiency and litigant convenience must remain paramount. Legislative intervention or a definitive ruling from the Supreme Court is essential to resolve the prevailing ambiguity. Until then, courts must strike a balance between statutory fidelity and practical justice to ensure fair and efficient dispute resolution.

Digital Regulation for Minors: Comparing Australia's Social Media Ban with India's Regulated Smartphone Guidelines

Digital regulation for minors has become a focal point for governments worldwide as they grapple with balancing technological benefits against potential risks to young users. Two notable approaches in this realm are Australia's recent social media ban for individuals under 16[1] and India's Delhi High Court guidelines on regulated smartphone use in schools. This article provides a comparative analysis of these initiatives, exploring their contexts, implementations, and potential implications.

Australia's Social Media Ban for Minors

In late 2024, Australia enacted the Social Media Minimum Age Bill, prohibiting children under 16 from accessing platforms such as TikTok, Snapchat, Instagram, Facebook, and X. This legislation positions Australia among countries with the strictest internet regulations for minors. The law mandates that social media companies block under-16 users or face fines of up to AUD 49.5 million (£25.7 million). Social media companies are required to implement age verification mechanisms, with non-compliance resulting in substantial fines. Critics argue that the government has yet to clarify how platforms should verify users' ages without compromising privacy. A trial of enforcement methods is scheduled for January 2025, with full implementation expected within the year.[2]

Rationale Behind the Ban

The Australian government introduced this legislation to address growing concerns about the negative impact of social media on youth mental health. Prime Minister highlighted specific risks, including body image issues among girls and exposure to harmful content among boys. The campaign leading up to the bill featured testimonies from parents affected by cyberbullying, bolstering public support. A national survey indicated that 77% of Australians backed the legislation.[1]

Scope and Enforcement

The ban is comprehensive, unlike similar measures in some European countries where minors may access social media with parental permission. Platforms like YouTube are exempted, as they are considered important educational tools. However, this exemption has drawn criticism from experts who argue that YouTube still exposes children to addictive and harmful content, including extremist material.[1]

Delhi High Court Guidelines on Smartphone Use in Schools

Recently, the Delhi High Court addressed the issue of smartphone use among students. However, the Court rejected a total ban and instead preferred regulated and monitored usage within educational settings. The court emphasized balancing the educational benefits of technology with potential risks associated with misuse.[2] In the opinion of the court, a complete ban on the use of smartphones by students attending school is both undesirable and unworkable. While recognizing deleterious and harmful effects that arise from the indiscriminate use and misuse of smartphones in school, the court opined that smartphones also serve several salutary purposes, including as devices that help with co-ordination between parents and the children, which adds to the safety and security of students attending school.

Key Guidelines

Rather than a complete ban on the use of smartphones in schools, the court tried to balance the negative and positive aspects of the technology and articulated certain guiding principles, which the concerned regulatory bodies like education boards, and other stakeholders may follow, adapt, and/or refine as may be best suited to their respective needs, and as may be feasible with available resources, in relation to the use of smartphones in schools. These guidelines aim to promote responsible smartphone use without imposing an outright ban, recognizing the integral role of technology in modern education. These include:

- Students should deposit their smartphones during school hours to minimize distractions.
- Smartphones should not be used in classrooms, school vehicles, or shared spaces.
- Schools must educate students on responsible online behavior, digital manners, and ethical smartphone use.
- Students should be informed about the dangers of excessive screen time, including anxiety, reduced attention span, and cyberbullying.
- Schools should develop policies with input from parents, teachers, and experts, allowing flexibility to suit their unique environments.
- Clear and reasonable consequences should be established for rule violations, ensuring consistent enforcement without being overly harsh.[1]

Comparative Analysis

Australia's strategy involves a nationwide legislative ban on social media access for minors under 16, placing the onus on social media companies to enforce compliance. In contrast, India's approach, as delineated by the Delhi High Court, focuses on regulated use within educational institutions, providing guidelines rather than imposing a blanket prohibition. This reflects a more decentralized approach, allowing schools to tailor policies to their specific contexts. The Australian law imposes strict penalties on social media platforms that fail to comply, with fines reaching up to AUD 49.5 million.

This top-down enforcement relies heavily on the platforms' ability to implement effective age verification systems. Conversely, India's guidelines empower individual schools to manage smartphone use, emphasizing education and responsible usage over punitive measures. This approach encourages collaboration among educators, parents, and students to create a balanced digital environment. Australia's ban is comprehensive but exempts platforms like YouTube, considered essential for educational purposes. Critics argue that this exemption undermines the ban's effectiveness, as YouTube can also expose minors to harmful content.[1] India's guidelines apply specifically to school environments, acknowledging the necessity of smartphones for safety and connectivity while aiming to mitigate potential distractions and misuse during school hours. In Australia, the legislation has sparked mixed reactions. While some parents and advocacy groups support the ban as a protective measure, others express concerns about overreach and potential infringement on young people's rights to participate in society. Privacy advocates warn of heightened data collection risks associated with age verification processes.[2] In India, the court's balanced approach has been well-perceived, wherein educational institutions are equipped with the flexibility to adapt guidelines to their unique environments. The emphasis on digital literacy and responsible use aligns with broader educational goals.

Global Context

Globally, countries are adopting varied approaches to digital regulation for minors. In the UK,[3] the Online Safety Act enforces stricter standards for social media platforms, including age-appropriate restrictions, but there is no outright ban on minors' access. In the European Union, the Legislation mandates parental consent for processing personal data of children under 16, with member states having the discretion to lower this limit to 13.[4] France has a nationwide ban on smartphones, tablets, smartwatches, etc in schools for students under 15 implemented in 2018, aiming to reduce distractions and cyberbullying.[5] The Chinese government introduced measures to limit minors' screen time, restricting video game play to specific hours like 10 pm to 8 am and 8 pm to 9 pm on Fridays, Saturdays, Sundays, and public holidays and requiring real-name registration for online gaming.[6] Although there is no federal ban yet in the United States, individual states like Utah and Arkansas have passed laws requiring social media platforms to verify user ages and obtain parental consent for minors.[7] These diverse approaches reflect the global debate on how best to protect children from the negative effects of digital platforms while recognizing the educational and social benefits of technology.

Long-Term Implications

Australia's ban is expected to have a direct positive impact on youth mental health by reducing exposure to harmful content and limiting social media addiction. However, there is a possibility that minors may resort to using VPNs and other circumvention methods. India's approach, focusing on balanced smartphone use in schools, promotes digital responsibility without complete deprivation. While Australia's strict ban could limit children's exposure to online platforms, it may also hinder their development of digital skills. In contrast, India's emphasis on digital literacy equips students with the necessary skills to navigate the online world responsibly. Age verification remains a major challenge for Australia. Platforms may face difficulties implementing robust systems that protect privacy while accurately verifying ages. India's decentralized enforcement through school-level policies is more adaptable, though its success depends on individual institutions' commitment. Cultural differences play a significant role in regulatory preferences. In Australia, the government's protective stance is driven by heightened concerns about cyberbullying and online harms. In India, where smartphones serve as primary educational tools for many students, the court's balanced guidelines reflect a pragmatic approach. A comprehensive approach to digital regulation for minors requires age-appropriate content controls, digital literacy programs, parental engagement, privacy-conscious verification, mental health support

Conclusion

Australia and India offer two distinct models of digital regulation for minors, each tailored to their unique social and economic contexts. Australia's comprehensive social media ban prioritizes immediate mental health protection, while India's Delhi High Court guidelines advocate for responsible digital usage without complete prohibition. Ultimately, a balanced approach that combines protective measures with digital literacy education and parental involvement is essential. Policymakers worldwide can draw valuable insights from these approaches to create adaptive, child-centric digital regulation frameworks that safeguard minors while empowering them to navigate the digital landscape responsibly.

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Rationalizing GST: A Catalyst for India's Economic Growth

India’s Goods and Services Tax (GST) regime, implemented to unify the country’s indirect tax system, has evolved but continues to face challenges that hinder its efficiency. Multiple tax slabs, classification disputes, and cumbersome compliance processes have not only burdened businesses but also created uncertainty in revenue projections. A rationalized GST framework focusing on minimizing slab distinctions, reducing litigation, and simplifying compliance can unlock greater economic potential by fostering a predictable tax environment.

Need for GST Rate Rationalisation

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- Issue with Input Tax Credit (ITC): Designed to simplify taxation, ITC often strains MSMEs due to higher GST on raw materials than finished goods, causing cash flow mismatches. While excess tax can be claimed as a credit, the refund process ties up working capital. For example, businesses paying 18% GST on inputs but selling at 12% face delays in recovering the 6% difference. Industries like textiles and footwear are heavily impacted, highlighting the need for tax rationalization to ease operations and reduce ambiguities.[1]

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A Closer Look at Our Recent Features

White & Brief Recognized as a Top Law Firm by Forbes India

We are delighted to announce that White and Brief has been recognized the TOP LAW FIRM IN INDIA 2023 by Forbes India, a testament to our UNWAVERING DEDICATION, BOLD INNOVATION, and the trust our clients place in us every day.

The prestigious award was received on behalf of the firm by MR. MOHIT BAKSHI, PARTNER (Delhi), and was presented by HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE, SUPREME COURT OF INDIA.

This achievement is a direct result of the hard work and commitment of our remarkable team, the trust and support of our valued clients, and the vision of our leadership.

We would like to extend our sincere gratitude to Forbes India for this recognition and to everyone who has been a part of our journey.

https://www.linkedin.com/posts/white-and-brief-advocates-solicitors_whiteandbrief-toplawfirm2023-forbesindia-activity-7309794299456479232-vZx5

We are delighted to share that our Managing Partner, NILESH TRIBHUVANN , has been quoted in The Times Of India story titled “Noel Tata, Ratan Tata’s half-sisters Shireen and Deanna Jejeebhoy join board of Ratan Tata Endowment Trust.”

To read the story, click on the link below:
https://timesofindia.indiatimes.com/business/india-business/noel-tata-ratan-tatas-half-sisters-shireen-and-deanna-jejeebhoy-join-board-of-ratan-tata-endowment-trust/articleshow/119147269.cms

In the News | White and Brief - Advocates & Solicitors on NDTVIndia Global

We're proud to share that our Partner – Taxation, Prateek Bansal, was featured on NDTV's India Global in a compelling discussion hosted by Gaurie Dwivedi.

The episode focused on U.S. President Donald Trump's decision to impose 25% tariffs on imported cars, effective April 2nd - a move expected to have widespread implications across the global automotive supply chain.

Prateek brought in a legal and tax perspective on the expected impact on global trade dynamics. How such policy shifts affect investment flows and manufacturing decisions Implications for Indian exporters and multinationals

📺 Catch the full segment to understand the broader economic, legal, and taxation angles shaping this global development.
https://www.linkedin.com/posts/white-and-brief-advocates-solicitors_whiteandbrief-wbinthenews-prateekbansal-activity-7311263502311071744-h9we

We are thrilled to share that our Managing Partner, NILESH TRIBHUVANN , has been featured in The Economic Times story titled- ICICI Securities shareholders could face a tax jolt.

To read the story, click on the link below:
https://timesofindia.indiatimes.com/business/india-business/noel-tata-ratan-tatas-half-sisters-shireen-and-deanna-jejeebhoy-join-board-of-ratan-tata-endowment-trust/articleshow/119147269.cms

WHITE & BRIEF
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We are pleased to share that our Partner, Prateek Bansal and Associate, Jatan Mudgal , have co-authored an article titled "Indian Quality Control Orders a Cause of Concern for ASEAN", published by Republic World.

The article delves into the rising tension between India's Quality Control Orders (QCOs) and its international trade commitments, especially with ASEAN nations. It discusses how India's push for self-reliance and stringent quality measures may be at odds with WTO obligations, and explores the implications of alleged delays in BIS audits on international trade relations.

A timely and insightful read as India continues to balance domestic manufacturing growth with global partnerships.

Read the full article here:
https://www.republicworld.com/initiatives/indian-quality-control-orders-a-cause-of-concern-for-asean

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We're excited to unveil the newly redesigned White & Brief - Advocates and Solicitors website, built to reflect who we are today and where we're headed.

Designed with you in mind, the platform offers:

- A cleaner, faster, and more intuitive interface
- Streamlined access to our practice areas, insights, and leadership
- Enhanced mobile responsiveness and performance
- A digital experience aligned with our future-ready legal vision

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Explore the new website: https://whiteandbrief.com/

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